

## **CONDITIONS OF SALE**

The acceptance of our quotation or the placing of an order includes the acceptance of the following terms and conditions. Excluded are all other terms and conditions, unless expressly agreed by us in writing and all other representations and warranties whatsoever.

### **1. OFFER AND ACCEPTANCE**

- 1.1 Unless previously withdrawn our quotation is valid for acceptance within the period stated therein or, when no period is stated therein, within a period of sixty days after its issue.
- 1.2 The acceptance of our quotation must be accompanied by sufficient information to enable us to proceed with the order forthwith, otherwise we shall be at liberty to amend our quoted prices to cover any increase in cost which has taken place after acceptance.
- 1.3 Our quotation includes only the subject matter specified therein, collectively and severally referred to as "the Goods".
- 1.4 Prices quoted are net of VAT and other sales taxes and import duties, which will be added thereto to the extent applicable at the time of invoicing.

### **2. CANCELLATION**

Unilateral cancellation of the contract by you is not permissible and any such purported cancellation shall constitute a breach of contract.

### **3. PACKING**

- 3.1 Unless otherwise specified in our quotation, all packing cases and materials are not included in the contract price.
- 3.2 The matter of packing shall be at our discretion. No liability will be accepted for failure to pack to any particular standard or against any particular risk unless the requirement for such packing is specifically brought to our attention, accepted by us, and paid for by you.

### **4. DESCRIPTIONS**

- 4.1 Unless otherwise specified in our quotation, all specifications and particulars of weights and dimensions submitted therewith are approximate only and the descriptions and illustrations contained in our catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein and none of these shall form part of any contract.
- 4.2 You shall be entitled to receive only such manuals and other documentation under the contract as are specified in our quotation or our acceptance of your order.
- 4.3 You warrant by placing an order with us that all information and data supplied by you or your agent or representative is accurate.
- 4.4 We reserve the right to amend the specification of any of the goods or to substitute any part of the goods and at any time only where such parts affect or improve the safety of the equipment and/or any operator of the goods".

### **5. TIME**

- 5.1 It is a condition of our quotation that we may proceed forthwith upon your acceptance of our quotation, in accordance with our normal working practices and schedules.
- 5.2 Times quoted by us for performance of the contract are to be treated as estimates only not involving us in any liability for failure to perform within such times, and shall not be (or be capable of being made) of the essence of any contract.
- 5.3 We reserve the right to suspend performance during any period of non-performance on your part.
- 5.4 If for any cause whatsoever beyond our control we are unable to make any delivery on the applicable delivery date or perform any of our other obligations under the contract, we may by notice in writing to you, terminate the contract or suspend the contract without liability for any loss or damage thereby incurred by you.

### **6. DELIVERY**

- 6.1 Our quotation includes delivery of the Goods ex works unless otherwise stated.
- 6.2 Partial deliveries may be made at our discretion, and you agree to accept such deliveries. Any Goods delivered in part shall be paid for in accordance with the provisions of Clause 7.
- 6.3 If you fail to accept delivery of the Goods when the goods are tendered at the place of delivery you will be deemed to have refused delivery at that date. You will be responsible for all liabilities and costs incurred because of your refusal to accept delivery and we may, without prejudice to any of our other rights and at our sole discretion, dispose of the Goods ordered at the best price reasonable obtainable.
- 6.4 If you do not take delivery of the Goods or arrange storage or as appropriate give us your forwarding instruction to enable us to despatch the Goods within seven days after receipt of our advice that the Goods are ready for despatch, then we shall be entitled to arrange storage at our own works or elsewhere on your behalf and all charges for handling, storage, insurance and otherwise shall be payable by you. Our storekeeper's receipt or that of any third part warehouse or a similar depository shall be deemed valid for all purposes including, but not limited to, claiming payments under any relevant letter of credit as if it were your receipt of a clean bill of lading or other document as is called for to evidence effective delivery of the goods.
- 6.5 Any issues on receipt of goods must be notified in writing within 14 days of signed receipt of goods.

### **7. TERMS OF PAYMENT**

- 7.1 If no terms of payment are otherwise specified, payment shall be effective strictly within 30 days from invoice date.
- 7.2 Where only part of the Goods are despatched, payment shall be made of the contract price attributable to that part.
- 7.3 In the event of any delay or delays in manufacture, despatch or delivery which are attributable to your actions or failure to act, you shall at our discretion either make payment to us in accordance with the above as if the Goods had been delivered at the times at which, but for the such delay or delays, such delivery would have taken place or make a partial payment to us in accordance with the above based upon the proportion of the order completed at the date of and due from the date of which delay was notified.
- 7.4 Unless otherwise agreed, the contract price shall be paid in Pounds Sterling.
- 7.5.1 Unless our quotation specifies otherwise, if you are based overseas, payment shall be made by irrevocable letter of credit established in our favour at the time of placing your order or accepting our quotation and confirmed by a British clearing bank acceptable to us and maintained valid for cash drawings against presentation of our invoice(s) only until final contract payment but in any case for at least two months after scheduled completion of

the contract taking into account any agreed extensions and our acceptance of your order is conditional upon such letter of credit being received with the order.

- 7.5.2 You agree to arrange extension of such letter of credit for such period as we may request from time to time. The cost of any extension is to your account.
- 7.5.3 At all times we reserve the right to payment of a non-refundable deposit.
- 7.6 We reserve the right to charge interest of three per cent per annum above the base rate quoted by Barclays Bank PLC from time to time on the daily balance from the due date until payment is made.
- 7.7 If any payment falls into arrears we shall have the right to cancel or postpone performance of the contract wholly or in part and to be paid immediately for performance of the contract to date.
- 7.8 No claim by you under warranty or otherwise shall entitle you to any deduction, retention or withholding of any part of any sums due for payment hereunder. You shall be entitled to any set-off of obligations within or between contract with us.

## 8. EXTRA COST

- 8.1 We reserve the right to vary prices where your requirements are for quantities or delivery schedules or other terms different from those against which our prices are quoted, including but not limited to changes in local or national site working practices.
- 8.2 Should we incur extra cost owing to variation or suspension of the work or any delays caused by your instructions or lack of instructions or our compliance with any laws, regulation or acts as referred to in Clause 9 or other causes beyond our reasonable control, such extra cost shall be added to the contract price and paid for accordingly.

## 9. GOVERNMENTAL REGULATION

- 9.1 Our quotation and the contract shall at all time be subject to all relevant laws, regulations and acts of governmental authority of the Government of the United Kingdom and in particular to our gaining all necessary export approvals and licences with respect to the export of goods or data, and we shall be under no liability whatsoever for any failure to perform the contract in any respect which is due to our compliance with any such laws, regulations or acts or to our failure to gain any such approvals or licences.
- 9.2 If based overseas, all necessary import licences, import duties and currency exchange approvals shall be your responsibility.
- 9.3 You agree to assist and co-operate with our compliance and without limiting the generality of the foregoing to give us such assurances and undertakings with regard to the re-export of the goods or products thereof as such laws, regulations or acts require us to demand of you.

## 10. RISK AND TITLE

- 10.1 Risk passes to you on delivery of the Goods.
- 10.2 Whilst risk in Goods supplied to you under the contract shall pass on delivery, legal and beneficial ownership of these Goods shall remain with us until such time as we have received payment in full for all Goods supplied to you or until such time as the goods are sold to your customers by way of bona fide sale at full market value (whichever shall be the earlier) and until such time you shall keep such Goods separate from your property and clearly identified as our property.
- 10.3 Notwithstanding terms of payment specified herein or elsewhere payment for all Goods supplied to you shall become due immediately upon the commencement of any act of proceeding in which your solvency is involved (whether voluntary or upon application to any court) or upon the appointment of a receiver over the whole or any part of your assets or undertaking and upon such occurrence, the power of sale granted to you shall automatically determine.
- 10.4.1 If payment for any Goods is overdue whether in whole or in part and any Goods have been delivered to you we may without prejudice to any of our other rights enter upon your premises to recover and/or resell the Goods or such of them as we in our absolute discretion may designate as necessary to recover the amount of payment overdue and our reasonable costs incurred in giving effect to our rights hereunder and for these purposes you hereby irrevocable authorise us or our agent to enter and take all necessary and reasonable steps upon your premises.
- 10.4.2 Until we are paid in full for all Goods supplied you are and shall remain a fiduciary for us in respect of the Goods and if you sell or allow to be sold the Goods the proceeds of sale shall be held in a separate clearly identifiable account and our beneficial interest shall attach to the proceeds of sale and we shall have the right to trace such proceeds of sale.
- 10.4.3 If any of the Goods are incorporated or used in other products before full payment for all Goods supplied under the contract has been made or such products have been sold and all of the above provisions of this clause shall extend to such products.
- 10.4.4 Whilst ownership of the Goods remains with us until such time as full payment has been received, it will be your responsibility to insure the goods at your cost. The Goods must be insured for their invoiced value and our name must appear on the insurance documents as owners of the Goods. In the event of any damage whatsoever to the Goods during this period we are to be immediately notified in writing. The Goods are not to be repaired nor disposed of without reference to us.

## 11. CONFIDENTIAL INFORMATION

- 11.1 You are NOT authorised to copy, publicise or make available to any third part any drawings, specifications, written instructions and other technical papers supplied by us hereunder the same shall remain our property and shall be returned on demand or on termination of this contract.
- 11.2 You may make only available to third parties the confidential information which is given to you insofar as this is for the purpose of the re-sale and use of the Goods. Any of our business trade secrets or confidential information which may come into your possession must be regarded as strictly confidential even after termination of this contract.
- 11.3 We as the company will accept no responsibility for the accuracy of any information made available to third parties under para 11.2 above.
- 11.4 The foregoing shall not apply to information which is or becomes public knowledge without fault or failure by you or your employees.

## 12. ADVERTISING

You shall not use our name logo or any other identification marks for the purpose of advertising or publicity without our prior written consent.

## 13. INSPECTION AND TESTS

Our products are carefully inspected and where practicable submitted to our standard tests at our works before despatch. If tests other than those specified in our quotation or tests in the presence of you or your representative are required these shall be charged for. In the event of any delay on your part in carrying out any inspection or in attending such tests after seven (7) days notice that we are ready to test the inspection or tests will proceed in your absence and shall be deemed to have been made in your presence.

## 14. PERFORMANCE AND WARRANTY

- 14.1 Any figures quoted by us for performance on our experience and are such as we expect to obtain on test. However, we will accept no liability for failure to attain any such figures unless we have specifically guaranteed them subject to any tolerances specified or agreed to by us in an agreed sum as liquidated damages and without prejudice to the validity and continuation of the contract. Before you become entitled to claim liquidated damages we should be given reasonable time and opportunity to rectify the performance of the Goods.
- 14.2 You accept sole responsibility for the capacity, fitness and performance of the Goods being sufficient, suitable and appropriate for your purposes.
- 14.3.1 For new equipment for a period of 12 months from the date of delivery we will make good at our option by repair or replacement or refund of the purchase price applicable any defects which appear in the Goods or parts thereof. The property in any parts replaced rests with us.
- 14.3.2 For overhauled equipment for a period of 6 months from the date of delivery we will make good at our option by repair or replacement or refund of purchase price applicable any defects which appear in the Goods or parts thereof. The property in any parts replaced rests with us.
- 14.3.3 Parts that fail in this warranty period are to be returned at the discretion of our Warranty Department to us at the operators expense.
- 14.3.4 We disclaim liability for any good returned without our written consent and any Goods approved for return must be sent with a covering letter quoting our invoice number. You along must bear the responsibility for any goods returned whilst in transit to us.

- 14.3.5 We reserve the right to charge a reasonable handling charge where this is justified.
- 14.4 We shall be under no liability for any defect due to fair wear and tear, negligent use, tampering, wrong application, improper handling, operation or storage nor for replacement of any glass or tyres.
- 14.5 In the event of any on-site repairs being necessary during the warranty period these may be undertaken by you in consultation with us. However, we accept thereafter no liability under the warranty should there be any further failure of the same part or as a direct consequence of such repairs.
- 14.6 Our liability under this clause shall be in lieu of any warranty or condition implied by law to us as to the quality or fitness for any particular purpose of the Goods.

## 15. LIABILITY

- 15.1 We shall not be liable for any expenditure loss (including but not limited to economic indirect and consequential loss) damage or injury arising out of any use or dealing with any Goods howsoever such expenditure loss damage or injury shall arise and whether from any defect in the Goods or our negligence or otherwise. Under the Unfair Contract Terms of 1977 we must accept liability for personal injury arising out of negligence.
- 15.2 We shall not be liable in any circumstances for any consequential losses, damages, whether accidental or negligent by yourselves with respect to third parties during the operation of the Goods by yourselves or your agents or employees.

## 16. ASSIGNMENT

You may not assign, transfer or part with any of your duties or obligations to be performed hereunder without our written consent.

## 17. WAIVER

The failure of either party to this contract to exercise or enforce any rights conferred hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise thereof at any time or times thereafter.

## 18. FORCE MAJEURE

We shall not be liable to you for any delay or failure to meet our obligations under this agreement as a direct or indirect result of any force majeure including but not limited to strike, war or act of war (whether an actual declaration thereof is made or not), insurrection, riot or civil commotion, act of public enemy, fire, flood or other act of God, act of any governmental authority, and other causes beyond the control of ourselves.

## 19. TERMINATION

If you fail in or commit any breach of any of your obligations to us or cease to carry on your business or a substantial part thereof or if any distress or execution is levied on any of your property or if you make or offer to make any arrangement or composition with your creditors or commit any act of bankruptcy or if any resolution or petition to wind up your business is passed or presented or a Receiver appointed of your undertaking property or assets or any material part thereof then such event shall be deemed to constitute a breach of contract by yourself and we shall be entitled forthwith to terminate this contract with you by serving written notice on you but without prejudice to any claim or right which we might otherwise make exercise or have against you for such breach of contract.

## 20. ARBITRATION

Any dispute regarding the construction, meaning or effect of this Agreement, or the rights or liabilities of the parties hereunder, or any matter arising out of the same or connected herewith shall, unless specifically provided herein, be referred to the arbitration in London of an arbitrator. The said arbitrator shall be appointed by agreement between the parties, or in default of such agreement, by the President for the time being of the Law Society of England and Wales, before the arbitration is commenced. Any such reference shall be deemed to be a reference to arbitration within the meaning of the provisions of the English Arbitration Act of 1979 or any statutory modification or re-enactment which may for the time being be in force.

## 21. REASONABLE TERMS

We have drawn up these conditions of sale in light of the Unfair Contract Terms Act 1977 as amended and consider them to be fair and reasonable and our prices are based on contracts made on these conditions. If the purchaser considers these terms to be unreasonable, he must inform us in writing before any contract is made, otherwise he will be deemed to have accepted that these conditions are fair and reasonable.

## 22. GENERAL

- 22.1 All notices, authorisations, consents and approvals given pursuant hereto shall be \_\_\_\_\_ in writing (which shall include telex or confirmed telefax) to be effective.
- 22.2 Notices sent by post shall be deemed to have been given at time of posting. Proof of postage or despatch can be required by either party to this contract.
- 22.3 Notices sent by telex and facsimile shall be deemed to have been given at the time they are received.

## 23. LEGAL CONSTRUCTION AND LANGUAGE

- 23.1 This contract shall in all respects be construed and operate as an English contract and in conformity with English law.
- 23.2 All notices and other communications and dealings between the parties, including legal proceedings, shall be in the English language.
- 23.3 Each party irrevocably submits to the jurisdiction of the English courts.

June 2007