

1. DEFINITIONS

- 1.1. The term "seller" shall mean the person, firm or company so named in the quotation.
- 1.2. The term "buyer" shall mean the person, firm or company so named in the purchase order.
- 1.3. The term "quotation" shall mean the tender or quotation issued by the seller for the supply of the goods including these conditions, the specification, drawings or other documents annexed by the seller to the quotation.
- 1.4. The term "purchase order" shall mean the purchase order issued by the buyer to the seller for the purchase of the goods.
- 1.5. The term "goods" shall mean the goods to be supplied by the seller as identified in the quotation.
- 1.6. "The contract" shall mean the contract between the seller and the buyer consisting of the seller's quotation, these conditions of sale and the purchase order accepting the quotation, but not any terms and conditions of purchase, other than these conditions, incorporated in or referred to in the purchase order.
- 1.7. The term "date for delivery" shall mean the firm date for delivery, if any, stated as such in the quotation.
- 1.8. The term "price" shall mean the sum stated in the quotation to be paid by the buyer to the seller for the supply of goods together with such other sums as may be payable to the seller under these conditions of sale.
- 1.9. The term "Confidential Information" shall mean any and all information of any kind whatsoever including without limitation, processes, strategies, pricing information, data, know-how, marketing strategy, trade secrets, designs, reports, test results, photographs, drawings specifications, technical literature and other information or material whether oral, written, graphic or electromagnetic form (and including without limitation any notes, information or analyses derived from such information however it is produced) which may reasonably be considered as confidential information of a Party or which is marked or otherwise identified as confidential by that Party;

2. GENERAL

- 2.1. These conditions of sale and the quotation supersede any other terms and conditions including any terms or conditions, or descriptions, or statements as to the delivery, quality or performance of the goods or their suitability for any purpose appearing in any advertisements, catalogues, or other literature relating to the goods and override and exclude other terms and conditions, descriptions and statements as to quality and performance or suitability of the goods stipulated or referred to by the buyer whether in the purchase order or otherwise.
- 2.2. No representative or agent of the seller has any authority to agree any terms or make any representations that are inconsistent with these conditions or the quotation. The seller will not be bound by any statements made by any person purporting to act on the seller's behalf as to these conditions or the quotation or any statements as to the delivery, quality, performance or suitability of the goods unless any such statement is specifically confirmed in writing by a duly authorised officer of the seller and annexed to the contract.

3. SPECIFICATION AND DESCRIPTION SAMPLE AND STANDARD

- 3.1. The description of the goods given in any advertisement, catalogue or other literature is for information purposes only and does not constitute a term of the contract.
- 3.2. The seller undertakes that the goods will conform with:
 - 3.2.1. The provisions of the quotation (except in minor respects which do not materially affect the usage of the goods). The seller reserves the right to change and improve the specification of the goods in line with its policy of progressive development provided that any substituted materials shall be of the same or better quality than those specified in the quotation and that any such change will not materially affect the usage of the goods;
 - 3.2.2. The seller's normal standards of manufacture;
 - 3.2.3. The requirements of any legislation in force at the time of the submission of the quotation.

4. QUALITY AND FITNESS FOR PURPOSE

- 4.1. The goods shall be in accordance with the quality specified in the seller's quotation and if no quality is specified, with the normal industrial quality for the type of goods in question at the contract price.
- 4.2. If the buyer has specified expressly that the goods shall be suitable for a particular purpose and the seller has agreed in the quotation expressly to supply goods suitable for that purpose, then the goods shall be so suitable within the limits specified by the seller in his quotation except in minor respects which do not materially affect the purpose for which the goods have been supplied.

5. DELIVERY

- 5.1. The seller undertakes as a warranty and not as a condition of the contract that if a firm delivery date or period has been stated in the quotation that the seller will deliver the goods by such date or within such period or any extended date or period as provided for under clause 11.
- 5.2. The seller shall deliver the goods to the delivery point stated in the quotation carriage paid, provided that if in accordance with the quotation the goods are to be given to a carrier for onward transmission to the buyer, then delivery of the goods to the carrier shall constitute delivery to the buyer.

6. PASSING OF PROPERTY

- 6.1. The property in the goods shall not pass to the buyer until payment has been received by the seller in full for the goods and for any other goods supplied by the seller or any associated company of the seller to the buyer.
- 6.2. For the purpose of this clause the buyer undertakes that until the buyer has made payment in accordance with sub-clause 6.1:
 - 6.2.1. not to remove, deface or cover up any identification marks on the goods or marks indicating that the goods are the property of the seller;
 - 6.2.2. to store the goods separately from those belonging to the buyer or others;
 - 6.2.3. to allow the seller unrestricted access to the buyer's Works or other place where the goods are stored for the purpose of removal of the goods.

7. PASSING OF RISK

- 7.1. The risk in the goods shall pass to the buyer on delivery as defined in clause 5 above.
- 7.2. If delivery is to be made to a carrier for onward transmission to the buyer, then unless otherwise instructed by the buyer, the seller will arrange for the benefit of the buyer, insurance of the goods on the basis of carrier's risk. The premium for such insurance shall be added to the contract price and paid for by the buyer.

8. CONTRACT PRICE

- 8.1. The price stated in the quotation is based on the cost of production as at the date of the quotation. If because of any rise or fall in the cost of labour, materials, fuel or transport the cost to the seller of performing the contract shall be increased or reduced, the amount of such increase or reduction shall be added to or deducted from the contract price. No account shall be taken of any increase in cost which has been incurred by the seller

- because of any default by the seller.
- 8.2. If after the date of the quotation the cost to the seller of performing the contract is increased or reduced by reason of any change in the laws or regulations affecting the seller in the performance of the contract, including any changes in taxes, levies or National Insurance Contributions payable by the seller in respect of his workforce but excluding income tax, then the amount of such increase or reduction shall be added to or deducted from the contract price.

9. PAYMENT TERMS

- 9.1. The seller shall be entitled to invoice for the goods on delivery.
- 9.2. The buyer shall pay the seller's invoice within 30 days of its receipt.
- 9.3. If the buyer fails to pay the seller's invoice on the due date then the seller shall be entitled to:
- 9.3.1. charge interest on the outstanding amount at the rate of 8% above the base rate of the Bank of England ruling at the time when payment became due under clause 9.2 above accruing daily.
- 9.3.2. decline to deliver any further goods to be supplied under this contract or any other purchase order placed by the buyer with the seller until payment has been received in full of any amounts outstanding, and payment has been made by the buyer in advance for any goods not yet delivered without thereby incurring any liability whatsoever to the buyer;
- 9.3.3. terminate the contract if the delay in payment exceeds 30 days.
- 9.4. Value Added Tax (VAT) where applicable shall be added to the contract price as a strictly nett extra charge.

10. ACCEPTANCE

- 10.1. The buyer shall inspect the goods immediately on their receipt and shall be deemed to have accepted the goods unless within 14 days after their receipt the buyer shall have notified the seller that the goods are rejected as having been found not to be in accordance with the contract.
- 10.2. If the buyer does so notify the seller to this effect then the seller shall be given the opportunity to inspect the goods, and if reasonably satisfied that the goods are not in accordance with the contract for a reason for which the seller is responsible, shall at its option repair or replace such goods.
- 10.3. At the seller's request the buyer shall return the goods which it considers not to be in accordance with the contract to the seller at the seller's expense. The seller shall be responsible for all costs involved in the repair or replacement of the goods and for their re-delivery to the buyer.
- 10.4. The obligations of the seller under sub-clauses 10.2, and 10.3 above shall be in full satisfaction of the seller's liability in respect of such goods, and the buyer shall not be entitled to claim damages for breach by the seller of any of its obligations whether under the contract or otherwise and whether for delay or performance.

11. DELAYED DELIVERY

- 11.1. If the seller shall have included in the quotation a firm date or period for delivery then the following provisions of this clause shall take effect. Otherwise any date or period for delivery shall be considered as indicative only and not contractually binding on the seller.
- 11.2. The date for delivery shall only constitute a warranty and not a condition of the contract, time shall not be considered to be of the essence and the buyer shall not have the right to reject the goods or terminate the contract by reason of any delay in delivery.
- 11.3. If the seller is delayed in the performance of the contract by any act or default of the buyer, or any industrial dispute or any circumstance beyond the seller's reasonable control, then the date for delivery shall be extended by such period as may be reasonable.

12. CONFIDENTIALITY CLAUSE

- 12.1. Each party may be given access to Confidential Information from the other party to perform its obligations under this Contract. The receiving Party shall not disclose Confidential Information to any third party or use the Confidential Information for any purpose other than for the performance of the contract, without the prior written consent of the disclosing Party. The receiving Party shall protect such Confidential Information with the same degree of care that it regularly employs to safeguard its own proprietary and confidential information from unauthorized disclosure.
- 12.2. Receiving party's obligation under this clause shall not apply to Confidential Information which,
- 12.2.1. (is or becomes publicly known other than through any act or omission of the receiving party; or
- 12.2.2. was in the receiving party's lawful possession before the disclosure as can be shown by written evidence; or
- 12.2.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 12.2.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 12.2.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.3. All Confidential Information shall remain the property of the party providing it. Each party agrees upon a written request of the other party to return all Confidential Information and copies thereof and securely destroy any notes, analyses, studies or other writings prepared by the other party containing or based on the Confidential Information and such destruction shall be certified by the receiving party.
- 12.4. Each Party's obligation under this clause with respect to Confidential Information shall continue in force for five (5) years following delivery of the goods.

13. DEFECTS LIABILITY

- 13.1. The seller shall repair or replace at the seller's option any of the goods which are, or which become, defective within 12 months from delivery due to faulty workmanship, materials or faulty design if the seller is responsible for design, provided that the buyer shall have notified the seller in writing of such defect and have given the seller a reasonable opportunity to inspect the defective goods.
- 13.2. All expenses incurred in connection with the return of the defective goods, including all costs of transportation, shall be paid by the buyer.
- 13.3. The seller's liability in respect of defects in the goods shall be limited to those stated in this clause and subject to Clause 2(1) of the **Unfair Contract Terms Act 1977**, the seller shall not be liable whether in contract or in tort, including but not limited to negligence, or by reason of breach of statutory duty or otherwise, for any damage or loss whatsoever suffered by the buyer arising out of or attributable to such defects.

14. CANCELLATION

- 14.1. If a purchase order or contract is terminated by the buyer before the agreed completion date(s), the buyer shall provide seller with a minimum of thirty (30) days prior written notice.
- 14.2. The purchase order or contract shall terminate after the thirty (30) day period. Upon such termination seller will be entitled to receive payment from for all work performed including but not limited to engineering, materials and components, manufacturing, project management and any non-cancellable costs incurred by seller up to the date of termination of the purchase order or contract. Seller's invoice containing such termination payment shall be paid by the buyer within 30 days of buyer's receipt of the invoice.

15. LIMITATION OF LIABILITY

- 15.1. The obligations and liabilities of the seller in respect of the description of the goods, the quality of the goods or their fitness for purpose are limited to those which are expressly stated in clauses 10 and 12 above. All conditions, warranties and intermediate terms relating to the description of the goods, their quality and their fitness for purpose implied by common law or by statute or otherwise are hereby excluded from the contract.
- 15.2. Subject to seller's liability for death or bodily injury caused by seller's negligence and seller's liability for fraud or fraudulent misrepresentation, the seller's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the purchase order shall be limited to 100% of the sum received by the seller from the buyer under the purchase order.
- 15.3. Except as provided for under clause 11 above neither party shall be liable to the other for any indirect or consequential loss or damage, loss of profit, loss of use or production or of contracts which the other may suffer arising out of any breach by a party of its obligations under the contract and whether the same be due to the negligence of that party or not.

16. FORCE MAJEURE

16.1. Neither party shall be liable to the other for its failure to perform any of its obligations under the contract to the extent that such failure is a result of circumstances beyond its reasonable control, provided that the other party is notified in writing of such circumstances by the party affected as soon as they become aware of their occurrence.

17. SET-OFF

17.1. The buyer shall not be entitled to exercise any right of set-off or counter-claim.

18. LAW

18.1. The contract shall in all respects be governed by and interpreted in accordance with English law.

19. DISPUTE RESOLUTION

19.1. If any dispute or difference shall arise between the parties in connection with or arising out of the contract which cannot be settled amicably between the parties, then either party shall give to the other 14 days' written notice to such effect and such dispute or difference shall be referred to a single arbitrator agreed between the parties within 14 days of the date of the said written notice, or in default of agreement, as may be nominated by the President for the time being of the Chartered Institute of Arbitrators. Arbitration proceedings shall be held in London United Kingdom and the proceedings and award shall be confidential.