

CONDITIONS OF SALE

1. DEFINITIONS

In these conditions the 'Company' means Engineered Products & Solutions Limited. 'Contract' means the contract for the sale of goods between the company and the customer to which these conditions applies. 'Customer' means the person, firm or company who has placed an order for goods from the company. "Goods means all goods and associated documentation to be supplied under the contract. "Ex Works" means "ex works" as defined in the edition of the rules for interpretation of trade terms known as Incoterms current as at date of Order.

2. PREVAILING CLAUSE

All orders by the customer for the goods ("Orders") if accepted will be accepted subject to these conditions. All other terms conditions or warranties whatsoever are excluded from the contract or any variation thereof unless expressly accepted by the Company in writing (order acknowledgements do not constitute such acceptance). In particular, in no circumstances will any conditions of purchase submitted at any time by the Customer be applied to this or any other Contract and any failure by the Company to challenge any such conditions of purchase does not imply acceptance of those conditions o purchase.

Any statement or representation by the Company its servants or agents upon which the Customer wishes to rely must be set out in writing. Any statement or representation which is not so confirmed in writing is followed or acted upon entirely at the Customer's own risk.

The Company shall be entitled to cancel an Order at any time by serving notice in writing on the Customer if it does not receive, on request, satisfactory (in the Company's sole opinion) credit references in relation to the Customer. If the Company cancels an Order pursuant to this clause it shall have no liability whatsoever for any liabilities, losses, damages, costs or expenses whatsoever incurred, suffered or paid by the Customer as a result of or in connection with such cancellation

3. CANCELLATION AND AMENDMENT

No order can be amended or cancelled by the Customer except with the Company's approval in writing and should such approval be given the Customer shall indemnify the Company and keep the Company indemnified in full against all and any direct, indirect or consequential liabilities (all three of which terms include without limitation loss of profit, loss of business, depletion of goodwill and like loss), losses, claims, damages, costs and expenses (including all legal and other professional expenses) awarded against or incurred or paid by the Company as a result of or in connection with such cancellation or amendment.

4. TERMINATION

The Company shall be entitled in any of the following circumstances to terminate this and any other contract whenever made between the Company and the Customer and to receive upon demand payment of all monies payable under any such contracts whether or not otherwise due:

9. TERMS OF PAYMENT

- a) Subject to clause 9b payment of the price for the goods is due in pounds sterling 30 days from the Goods are delivered or deemed to be delivered unless otherwise agreed by the Company in writing. Time for payment of the price is of the essence of the contract.
- b) All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision
- c) In the event of default in payment by the Customer the Company shall be entitled to charge interest on a daily basis on any amount outstanding at the rate of five percent (5%) above the base rate of the Bank of England from time to time
- d) No payment shall be deemed to have been received until the Company has received cleared funds.
- e) No disputes arising under this Contract shall serve to permit payment by the Customer of sums due to the Company to be delayed or withheld nor shall disputes interfere with prompt payment in full. The Customer shall not in any circumstances be entitled to make any deduction from sums owing to the Company by reason of any such dispute.

10. RISK AND PASSING OF PROPERTY

- a) Unless otherwise agreed between the Company and the Customer in writing, risk of damage to or loss of the goods shall pass to the Customer at the commencement of the off-loading of the goods onto the Customer's designated vehicle at the site or Customer's designated offices
- b) Title to the Goods shall not pass to the Customer until either:
 - i) the Company has received in cash or cleared funds all monies payable (whether or not due) to the Company under this and any other contracts whenever made between the Company and the Customer including but not limited to contracts made after this contract; or
 - ii) When the Company serves on the Customer notice in writing specifying that the title in the goods or any part thereof has passed to the Customer.
- c) Until title to the Goods has passed to the Customer pursuant to these Conditions:
 - i) the Customer shall possess the Goods as fiduciary agent and bailee of the Company and shall store the Good separately from other goods not owned by the Company and shall ensure that they are fully insured on an all risks basis and clearly identifiable as belonging to the Company;
 - ii) the Customer shall not sell, offer to sell, assign, underlet, pledge, mortgage, charge, encumber or part with possession of the Goods or any interest in the Goods nor create or allow to be created over the Goods any lien.
 - iii) the Company and its officers, employees or agents shall be entitled to enter upon premises where such goods are kept for the purpose of satisfying itself that this condition is being complied with by the Customer. Additionally the Customer irrevocably licences the Company, its officers, employees and agents to enter upon premises of the Customer with or without vehicles, for this purpose or for the purpose of recovering any Goods in respect of which the title has not passed to the Customer.

- i) the Customer makes or proposes in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986 or any other composition or scheme or arrangement or assignment for the benefit of any of its creditors;
- ii) the Customer becomes subject to an administration order or becomes bankrupt or goes into liquidation;
- iii) the Customer has a petition presented for its winding-up or has an application made for the appointment of a provisional liquidator or has a creditors' meeting convened pursuant to s 98 insolvency Act 1986;
- iv) the Customer becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business;
- v) an encumbrancer takes possession or a receiver or administrative receiver or similar officer is appointed of any of the property or assets of the Customer.

5. QUOTATIONS

All Quotations shall be available for acceptance by the customer for a maximum of thirty (30) days from the date of issue by the Company and may be withdrawn by the Company by written or oral notice to the Customer at any time prior to acceptance of the Order by the Company

6. ELECTRONIC TRADING

The Company shall be entitled to reject any Order which is made electronically if the Order does not contain all of the information agreed between the Customer and the Company as being required or which is not set out in the correct format.

7. PRICES

- a) Unless otherwise agreed by the Company in writing, all Prices quoted by the Company are on an Ex-Works basis and any other applicable taxes, freight, insurance, packaging, or carriage costs are payable by the Customer in addition to the Price. Minimum net order value is £100 unless otherwise agreed in writing by the Company.
- b) The Company reserves the right at any time prior to delivery to increase the Price to reflect any increases in cost to the Company which is due to any factor beyond the control of the Company (including, but not limited to any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in labour, materials or any other costs of manufacture of the goods) any change in delivery dates, quantities or specifications for the goods requested by the Customer or failure of the Customer to give the Company adequate information or instructions.
- c) The Price for Goods shall (subject to clause 5) be the price quoted by the Company or where no price has been quoted or a quoted price is no longer valid, the price listed on the Company's price list current at the date of the order ("Price")

8. DELIVERY

- a) Unless otherwise agreed in writing by the Company, delivery shall be deemed to take place when the goods are made available by the Company for collection by the Customer or its carrier at the Company's premises ("Delivery")
- b) All dates and periods for Delivery are estimated, do not constitute fixed times for Delivery by the Company and shall not be made of the essence by notice. Unless otherwise expressly agreed in writing by the Company, the Company shall not be liable for any liabilities,

iv) the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and if the Customer fails to do so within a reasonable period of time, the Company shall be entitled to enter upon the Customer's premises or any third party's premises and recover and/or dispose of the Goods. For the avoidance of doubt, the Customer shall make no claim against the Company in respect of any such entry or disposal.

- d) The Customer's right to possession of the Goods shall terminate immediately if:
 - i) the Customer has a bankruptcy order made against him, enters into liquidation (whether voluntary or compulsory), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the customer; or
 - ii) fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - iii) The customer encumbers or in any way charges any of the Goods.

damages, losses, costs or expenses whatsoever as a result of or in connection with the failure by the Company to meet any delivery times specified in the Order or subsequently set by agreement in writing between the authorised representatives of the Company and the Customer.

- C) The date for Delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer.

Discrepancy of Goods delivered shall be notified by fax to the Company within 5 (five) working days of delivery being made.

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e) The customer grants an irrevocable licence to the Company and its agents to enter on to the Customer's premises, with vehicles if necessary, for the purpose of taking possession of the Company's property. The Company shall not be liable for any costs incurred in disassembling the Company's Goods in the cause of repossessing the Company's property. In the event of any resale by the Customer to a third party of the Company's Goods, the beneficial entitlement of the Company shall attach to any claim against the Customers purchaser and to any proceeds of that sale and the Customer shall have fiduciary duty to account to the Company for the claim and the proceeds. Where proceeds of such a sale are received by the Customer, the Customer shall keep them in a separate account as agent for the Company until the amount due to the Company is paid.

11. INTELLECTUAL PROPERTY RIGHTS

All drawings, documents, confidential records, computer software and other information supplied by the Company, whether produced by itself or a third party, are supplied on the express understanding that the copyright is reserved to the Company (or third party) and that the Customer will not without the prior consent of the Company in writing, give away, loan, exhibit or sell any drawings, documents, records, software or other information or extracts from them or copies of them or use them in any way except in connection with the Goods in respect of which they are issued.

12. WARRANTIES AND LIABILITY

a) The Company warrants the Goods against defects in material and workmanship for a period of twelve months from delivery provided the Goods have not suffered any maltreatment or misuse and provided such Goods are returned to the Company carriage paid.

b) If the Customer believes that the Goods do not comply with the warranty set out in clause 12a the Customer shall within five working days of discovery of the Defective Goods notify the Company in writing and provide to the Company evidence which supports its claim that the relevant Goods are Defective Goods. Upon receipt of notice from the Customer and satisfactory evidence (in the Company's sole opinion) in relation to the defective goods the Company shall either repair or replace the Defective Goods. For the avoidance of doubt following repair or replacement of the Defective Goods the Company shall have no further liability whatsoever to the Customer

c) The Company shall not be liable for a breach of warranty set out in clause 12a if:
i) the Customer makes any further use of such Goods after giving such notice; or
ii) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

13. RETURNS FOR CREDIT

The Company disclaims liability for goods returned without written consent of the Company. Any goods approved for return must be advised in writing quoting the Company's returns reference number. The Company disclaims liability for any returns whilst in transit to the Company. The Company reserves the right to charge a reasonable handling and re-stocking charge where this is justified.

14. INSTRUCTIONS FOR SAFE USE

Customers are advised to read the instructions supplied (where applicable) with all goods and to follow those instructions closely. If the Customer has any doubts about the interpretation of the instructions, he should seek advice from the Company prior to installation. It is the duty of the Customer to convey instructions for safe use to their employees and to members of the public.

15. RIGHT TO SUB-CONTRACT

The Company shall be entitled to Sub-Contract any part of the contract.

16. FORCE MAJURE

If the Company is prevented or delayed (directly or indirectly) from making a delivery of the Goods or any part thereof or from otherwise performing the contract or any part thereof by reason of acts including, but not limited to acts of God, war, embargo, riot(s), strike(s), lock-out(s), trade dispute(s), fire(s), breakdown, inclement weather, interruption of transport, Government action, delay in delivery to the Company of any goods or materials or by any cause whatsoever (whether or not of like nature to those specified above) outside its control, it shall be under no liability whatsoever to the Customer and shall be entitled at its opinion either to cancel the contract or without any liability whatsoever to extend the time or times for delivery by a period equivalent to that during which such delivery has been prevented.

17. ARBITRATION

The Company reserves the right to refer any dispute under this contract to arbitration in accordance with the Arbitration Acts 1950 and 1979 with any statutory modifications thereof for the time being in force and the arbitrator shall be appointed by agreement between the parties but nothing in this clause shall be taken as purporting to exclude the right of either party to seek from the courts the ultimate decision on any question of law. All arbitration and legal costs shall be met by the Customer.

18. GENERAL

The contract shall be governed by the Laws of England.

- iii) the Customer alters or repairs such Goods without the written consent of the Company
- d) The Company's total 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 this Contract shall be limited to the contract price or £8,000.00 whichever is the greater; and the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever which arise out of or in connection with the Contract.
- e) The Customer shall indemnify and keep the Company indemnified in full against all and any direct, indirect or consequential liabilities (all three of which terms include without limitation loss of profit, loss of business, depletion of goodwill and like loss), losses, claims, damages, costs and expenses (including all legal and other professional expenses) awarded against or incurred or paid by the Company as a result of or in connection with any breach of the Contract by the Customer.