

# TERMS AND CONDITIONS OF SALE

## 1. GENERAL

- (a) In these conditions "the Company" means the supplier and "the Customer" means the addressee of this document.
- (b) Quotations are only submitted and orders are only accepted subject to the conditions hereinafter set out. If there is any conflict between the conditions hereinafter set out and the terms or conditions of the Customer's enquiry, order or acceptance whether printed otherwise the conditions hereinafter set out shall prevail unless the Company has otherwise expressly agreed in writing. Save as aforesaid no concession or waiver made by the company at any time shall effect the conditions hereinafter set out or prejudice the rights and liabilities of the Company or the Customer. No servant or agent of the Company has any authority to make any representation whatever so as to have the effect of varying any of these conditions of sale.
- (c) All offers are made subject to acceptance within thirty days after the date of the Company's quotation and to availability of the goods at the date of issue of the Company's acceptance of order or confirmation of contract.
- (d) Unless and until an agreement has been confirmed in writing by the Company it shall not be binding on the Company.

## 2. EXCLUSION

- (a) These conditions of sale are in substitution for and hereby exclude all other conditions or warranties whether express or implied by statute or otherwise.
- (b) The Company shall not be liable for any loss or damage or expense whatsoever due to any cause beyond its control including (without prejudice to the generality of the foregoing expression) Acts of Government including any regulations of the European Economic Community. Acts of war, strike, lockouts, labour disputes, riots, civil commotion, fire, lightning, aircraft explosion, flooding, acts of God, force majeure, illegality, breakdown, accident and theft.
- (c) The Company shall not be liable for any loss of any loss of profit or any actual contingent or consequential losses, expenses or damages howsoever arising whether occasioned by the act or default of the Company its servants or agents or otherwise.

## 3. PRICES

- (a) (Unless otherwise specifically stated in writing the prices quoted by the Company are ex United Kingdom warehouse.) (Unless otherwise specifically stated all prices quoted are for goods ex-the Company's works. Packing and carriage costs will be charged as extras for the Customer's account.)
- (b) The Company shall be entitled to increase the price of goods between the date of the Contract and the date of delivery by reason of the impositions of or any increase in customs excise or other duties or taxes or in the cost of raw materials or labour, scarcity of labour or any other cause whatsoever. In such case the price of any goods which have not yet here delivered shall be increased to take full account thereof as and from the day when written notice of such imposition or increase shall be given by the Company to the Customer provided that if such imposition or increase is equal to or is more than 10% of the total original Contract price the Customer may cancel the Contract so far as it relates to goods which have not been delivered at the date of such written notice by giving written notice of cancellation to the Company so as to reach the Company not later than 14 days thereafter.
- (c) The price quoted for goods manufactured or purchased outside the United Kingdom is based upon the rate of exchange prevailing at the date of the quotation. The invoice sent by the Company to the Customer will contain a provision for any alteration in the rate of exchange which has taken place between the date of the quotation and the date of the invoice. If the alteration in the rate of exchange has caused the goods to become more expensive the Customer shall pay the additional sum attributable to such alteration in the rate of exchange; if the alteration in the rate of exchange has caused the goods to become less expensive the Company shall allow a corresponding reduction in the price of goods.

## 4. Delivery

- (a) The goods (unless otherwise expressly agreed in writing) will be collected from the Company's premises by a carrier nominated by the Company and delivered to the Customer or to its order by such carrier. The cost of collecting the goods from the Company's premises and delivering them to the Customer or to its order shall be paid by the Customer.
- (b) If the Company has expressly agreed in writing that the Customer may make its own arrangements for taking delivery of the goods at the premises of the Company the Customer must take delivery of all goods subject of the Contract within 14 days of being notified in writing by the Company that the goods are ready and available for collection at its premises. If the Customer shall fail to take delivery of the goods within the aforesaid 14 day period the Company shall be entitled without prejudice to its rights to the price of the goods to charge the Customer for storing the goods or any part thereof until the Customer collects the same by taking delivery thereof at the premises of the Company.
- (c) Any delivery date which may be given by the Company is an estimate only and the Company shall not be liable for any delay in delivery whatsoever whether caused by its own default or otherwise.
- (d) Where the customer requires goods to be delivered outside the United Kingdom the Customer will be responsible for obtaining all consents and licenses which are necessary to enable it to import and use the goods and for all necessary consents (including exchange control consent) to enable it to make payment for the goods.
- (e) Where goods are offered for delivery to site, the Company's obligation into deliver as near to the site as a safe hard road permits.

## 5. RISK OF LOSS OR DAMAGE TO GOODS

- When delivery to the Customer is complete all risk of loss or damage to the goods shall pass to the Customer.
- (a) Where delivery to the Customer is by the Company's own transport delivery shall be deemed to be complete at the moment of arrival of the goods at the point of delivery and before commencement of unloading.
- (b) Where delivery is by carrier nominated by the Company delivery shall be deemed to be complete at the time of delivery of the goods by the Company to the carrier.
- (c) Where in accordance with clause 3(b) of these Conditions of Sale the Customer makes its own arrangement for taking delivery, delivery is deemed to be complete at the point when the goods leave the Company's premises.

## 6. LOSS OF OR DAMAGE TO GOODS PRIOR TO DELIVERY

- (a) No claim for loss of or damage to goods alleged to have taken place before delivery to the Customer shall be entertained by the Company, neither shall the Company be liable for such loss or damage unless
- (i) notification by the Customer in writing is received by the Company within 3 days of the date of delivery or (in the case of goods lost) within 3 days of the date on which the goods should have been delivered and
- (ii) full details in writing of the alleged loss or damage are received by the Company within 7 days of the date of delivery or (in the case of goods lost) within 7 days of the date on which the goods should have been delivered.
- (b) In addition to and not as an alternative to the above any obvious damage to goods or to their packaging must be noted on the carrier's copy of the delivery note or equivalent document at the time of delivery. Non-delivery of any part of any consignment of goods must be similarly noted.
- (c) The Company shall not in any event or in any circumstances be liable for any loss or damage consequential upon the loss or damage to goods or any part thereof.
- (d) Any claim in respect of complete non-delivery of a consignment of goods will only be entertained if the Customer notifies the Company in writing within ten days of the due date of delivery.

## 7. GUARANTEES

- (a) New goods supplied by the Company to the Customer. The Company will give the Customer the benefit of any manufacturers guarantee or warranty relating to new machines.
- (b) Reconditioned goods supplied by the Company to the Customer. If upon an examination carried out by the Company at its premises within the period of 6 months commencing with the date when the goods were dispatched for delivery to the customer or to its order or within 1000 working hours of the machine's life whichever is the less the Company finds that the goods are defective by reason of (i) the faulty workmanship of the Company and / or (ii) faulty materials supplied by the Company, the Company will repair the goods free of charge.
- (c) Secondhand goods supplied by the Company to the Customer. The Company will not be liable in any way for faults, shortages, errors, deficiencies or descriptions. No guarantee or warranty is given nor should be implied and the Customer must rely entirely upon his own inspection.
- (d) It shall be a condition of the guarantees contained in sub-clauses (a) and (b) above that the Customer shall have complied with any instructions issued by the Company and / or the manufacturer of the goods concerning the movement, erection, fixing, use and maintenance of the goods.
- (e) It shall be a further condition of the guarantees contained in sub-clauses (a) and (b) above that the Customer shall deliver the goods which are alleged to be defective carriage paid to the premises of the Company for examination.
- (f) New goods manufactured in the United Kingdom, imported goods and factored goods.
- (i) New goods manufactured in the United Kingdom other than by the Company.
- (ii) Imported goods.
- (iii) Goods in respect of which the Company acts as Factor.
- The Company gives no guarantee in respect of such goods, the rights of the Customer shall be limited to the

acceptance of any guarantee issued by the manufacturer of the goods to a purchaser thereof.

- (g) Goods sold as purchased by the Company.

The Company give no guarantee in respect of goods which are offered for sale "as seen" or "as purchased by the Company" or other similar expressions. The Customer shall be deemed to have inspected the goods thoroughly and to be satisfied that the goods are in every way storable for the purpose for which they are required by the Customer.

- (h) Goods sold as "cleaned and checked".

The Company has inspected the goods visually without stripping them down. The goods appeared to be in reasonable condition having regard to their age at the time of inspection. The Company does not guarantee that the goods have remained in reasonable condition since the date of such inspection or that they will continue to be in reasonable condition in the future. The Customer shall be deemed to have inspected the goods thoroughly and be satisfied that the goods are in every way suitable for the purpose for which they are required by the Customer.

## 8. ILLUSTRATIONS

Photographs, illustrations, specifications and publicity matter are intended to give a general idea of any machine or other item portrayed. They do not constitute a description of such machine or item nor shall they be taken to be representations made by the Company unless specifically stated saws, cutters and accessories appearing on illustrations are not included in the price of any machine or other item.

## 9. WEIGHTS AND MEASURES – SAMPLES

- (a) Any sizes, weights or measures including horsepower given are approximate.
- (b) Single samples are only submitted as indicative of the class of goods quoted for and no representation is made or implied as to the colour, exact dimensions or quality of the bulk.

## 10. TERMS OF PAYMENT

The terms of payment unless otherwise specifically agreed in writing are cash as follows.

- (a) The Customer shall on placing an order for goods pay to the Company a deposit representing 25% of the purchase price thereof.
- (b) The Customer shall on being notified by the Company that the goods are ready for delivery pay to the Company a sum representing 65% of the purchase price thereof.
- (c) The Customer shall pay the balance of the purchase price together with the cost of delivering the goods to the Customer or to its order within 28 days of the date of the invoice sent by the Company to the Customer in respect of the goods.
- (d) The Company shall be entitled to charge interest at the rate of 5% per month above the minimum lending rate in force at the date when the invoice is sent to the Customer on all overdue payments under or arising from any transaction, sale or other account whatsoever (including the price of any goods of which the Customer has failed to take delivery until the date when they are actually delivered to the Customer or otherwise disposed of).
- (e) The Company shall be entitled to suspend or cancel deliveries of goods under this and any other Contract made between the Company and the Customer:-
- (i) if any payment whatsoever is overdue or
- (ii) if the Customer has failed to take delivery of any goods.
- (f) For the purpose of this condition time of the receipt of payment by the Company shall be the essence of the Contract.
- (g) The Customer shall not be entitled to withhold or set off payment for goods delivered for any reason whatsoever.

## 11. RETENTION OF TITLE

- (a) The title in all goods delivered by the Company will remain vested in the Company and shall not pass to the Customer until the Customer has paid in full to the Company all sums owing by the Customer to the Company under or arising from any Contract transaction sale or account whatsoever.
- (b) Until payment has been made in accordance with (a) above:-
- (i) The Customer will so keep the goods that they are identified as the property of the Company.
- (ii) If the Customer uses the goods or any of the materials thereof or adds to or alters the goods in any manner whatsoever so as to make other goods (hereinafter called "the final product") The Customer shall so keep the final product that it is identified as the property of the Company and the title therein shall vest and remain vested in the Company until payment has been made in accordance with clause (a) above.
- (iii) The Customer shall not exchange or barter the goods or the final product in any way whatsoever.
- (iv) The Customer shall be entitled to sell the goods and / or the final product for money to a bona fide Customer in the normal course of business at the full market price and deliver the same pursuant to such sale. The proceeds of sale shall belong to the Company and the Customer shall keep the proceeds of sale separate from other monies and hold the same to the account of the Company until payment has been made in accordance with clause 11 (a) above.
- (v) The Customer and not the Company shall be liable for any breach of Contract, warranty or misrepresentation made by the Customer in the course of such sale and the Customer shall keep the Company fully and completely indemnified in respect thereof.
- (vi) Upon request the Customer shall assign forthwith to the Company if necessary by Deed of Assignment the benefit of any agreement whether written or oral under the goods and / or the final product has been sold including but not limited to any claim for the sale price thereof. Upon such assignment the Company shall be entitled to pursue any remedy open to the Customer and shall be entitled to retain any sum or proerty recovered as payment for any sum owing to the Company by the Customer.
- (vii) If the Customer does not pay for any goods delivered by the Company within the period of credit prescribed in Condition 10 hereof or otherwise agreed the Customer shall return the goods and / or the final product to the Company and in default the Company shall be entitled to enter upon the Customer's premises and take possession of any goods supplied to the Customer by the Company and / or the final product.

## 12. BANKRUPTCY, LIQUIDATION OR COMPOSITION WITH CREDITORS

If any distress or execution shall be levied upon any of the Customer's property or assets or if the Customer shall make or offer to make an arrangement or composition with creditors, or shall commit any act of bankruptcy, or if a petition or receiving order in bankruptcy be presented or made against him, or if the Customer is a limited company and any petition to wind up the Customer is passed, (other than for the purpose of reconstruction or amalgamation) or if the Customer shall cease to trade then upon the happening of each and every such event as aforesaid this contract shall immediately determine and the Company shall not be bound to deliver the goods or any part thereof, or to do any other act in furtherance of this contract.

## 13. INDEMNITY

The Customer shall fully and completely indemnify the Company and any officer, employee, agent or representative of the Company in respect of all claims (including but not limited to those in which negligence or breach of statutory duty is alleged against the Company its servants or agents) for any death or injury to any person or damage to any property or any other loss whatsoever caused by arising out of or in connection with the erection, installation or use of any goods designed, manufactured, imported, erected, installed or supplied by the Company or upon which the Company has carried out work and in respect of costs and charges connected with any such claims.

## 14. CANCELLATION BY THE CUSTOMER

If the Customer purports to cancel the Contractor refuses to take delivery of any of the goods the Customer shall be liable for the full Contract price but will be credited with the amount obtained by the Company if it is able to dispose of the contract goods.

## 15. TRADEMARKS

No trademark or name carried on goods supplied by the Company may be erased or replaced without the Company's consent.

**16.** The Customer shall not use in relation to any other goods of any description whatsoever the registered trade marks of the Company or which the Company is entitled to use as agent for any other Company or any other trade marks registered from time to time by the Company or by any of its subsidiary companies and applied by the Company or any such subsidiary company to the goods.

**17.** The Customer shall be solely responsible for the consequences of any patent trade mark design or copyright infringement or any other infringement of a third party's rights resulting from the Customer's use or sale of any goods and the Customer shall fully and completely indemnify the Company in respect of all damages costs charges and expenses for which the Company may be liable as a result of any such infringement or alleged infringement.

## 18. TAX

Unless otherwise indicated in writing all the Company's quotations are exclusive of Value Added Tax. Value Added Tax will be charged by the Company to the Customer on all goods or sales provided.

## 19. LAW APPLICABLE

This Contract is made subject to and shall be construed and enforced in accordance with English Law and in the English Courts.