

TERMS AND CONDITIONS OF SALE

1. General

- a) These terms and conditions supersede all earlier sets of conditions and apply to every contract entered into by Marste Engineering Ltd (the 'Seller') for the sale or supply of goods to any other person, firm or company (the Buyer').
- b) Unless other terms and conditions are expressly accepted by the Seller by means of a written amendment to these terms and conditions signed by one of the Seller's directors and referring specifically to the terms and conditions to be amended, any contract howsoever made between the Seller and Buyer (the Contract) shall incorporate these terms and conditions to the exclusion of any other terms and conditions whether or not the same are endorsed upon delivered with, or referred to any purchase order or other document delivered by the Buyer to the seller.
- c) Goods means the goods, articles and material which are to be supplied by the Seller pursuant to the contract.

2. Quotations

- a) All prices quoted are exclusive of value added tax and/or any other form of tax currently in force, which will be charged at the appropriate rate ruling at the date of despatch.
- b) The Seller reserves the right to amend or correct any accidental error or omission in any quotation.

3) Formation of contract

- a) In cases where the Seller has quoted for the sale of goods, acceptance of such quotation by the Buyer, by the despatch of an order or otherwise, shall be deemed to constitute acceptance of these conditions and of any additional terms and conditions contained in or referred to in the quotation. Any purported rejection variation of these conditions, contained in any document of the buyer, shall be void unless accepted in writing by the seller in accordance with paragraph 1 above.
- b) In cases where the Seller supplies goods in response to an order from the Buyer, such order is accepted by the Seller only on these terms and conditions and no others. The Buyer shall be deemed to have notice of these terms and conditions and the acceptance of the Buyer's order on these terms and conditions will be conclusive evidence that the contract has been made subject to these terms and conditions.

4 Prices

- a) Prices will be subject to the Buyer's acceptance of the Seller's quotation in 3a above, however;
- b) If any increase costs are imposed on the Seller during manufacture, whether resulting from any unforeseen circumstances, or arising from any inadequate or inaccurate instructions or drawings given to the Seller by the Buyer, or arising from some other failure by the Buyer, or from any other cause whatsoever, then such increased costs may be applied to the order price and shall be binding on both parties and shall not give rise to any right of cancellation by the Buyer.

5 Delivery

- a) Delivery of the goods shall be made to the buyer at the place agreed between the parties and the risk in respect of all goods shall pass to the Buyer at the time of delivery. If no place for delivery is agreed, delivery shall take place at the Seller's works immediately prior to loading for despatch to the Buyer. Notwithstanding such delivery, the property in and title to the goods shall not pass to the Buyer except as provided in Condition 10 hereof. Where the Seller does not deliver on its own transport and the goods are sold ex-works the seller shall on behalf of the Buyer and at the Buyer's expense arrange for the carriage of the goods and the carrier selected by the Seller shall be the agent of the Buyer. Special notice is directed to the fact that in accordance with the provisions of Section 32 of the Sale of Goods Act 1979 delivery to the carrier will, in such circumstances constitute delivery to the Buyer.
- b) Any time or date for delivery will be an estimate only and unless otherwise stated, the time for delivery shall not be of the essence of the Contract.
- c) If the delivery of the goods is prevented or delayed by reason of any industrial dispute, or any other causes beyond the Seller's control, then the time for delivery shall be extended for such period as is reasonable.
- d) Any delay in the estimate date for delivery shall not give rise to any right of cancellation by the Buyer, nor shall the seller be liable for any damages, costs or expenses arising from such a delay.
- e) Failure by the Seller to deliver in accordance with one order of a series of orders shall not entitle the Buyer to treat such failure as repudiation of subsequent order in the series.

6 Description

- a) Where goods are to be supplied to the Buyer's specification, the Buyer shall supply such specifications with sufficient information to enable the Seller to complete the delivery within the estimated period stated. Any alterations which have to be made as a result of any failure by the Buyer to supply the necessary information shall be the subject of an extra charge and the Seller shall not be responsible for any delay in delivery resulting therefrom.
- b) The Buyer shall indemnify the Seller against all actions, claims, damages, penalties, costs and expenses to which the Seller may become liable, arising from any infringement of any letters patent, trade mark, trade name, copyright or similar right to which any specification or information supplied by the Buyer must be subject.
- c) All drawings, material, patterns, tools and tooling supplied by the Buyer must be in good condition, free of defect and safe for use by the seller. The Seller does not accept any liability for the value of such items which are lost, damaged, or destroyed whilst in the seller's possession.

7 Claims

- a) All consignments must be checked and signed for upon receipt by the Buyer.
- b) The Seller accepts no responsibility for any damage shortage or loss in transit where goods are being sold ex-works and delivered by a carrier.
- c) Where the goods are being delivered by the Seller or a carrier, no claim for damage in transit, shortage, or delivery, or loss of goods will be entertained, unless notice in writing is given to the seller within five working days from delivery. This time limit must not be exceeded and no claim will be accepted unless notified.

8 Payment

- a) Subject to anything contrary in the contract, payment for the goods must be made by the Buyer to the Seller within 30 days from the date of the invoice in respect of the goods.
- b) Interest will be charged at 4% over National Westminster Bank Base Rate applicable at the date of the invoice, from the period of 30 days after the date of the invoice to the actual date of payment.
- c) The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Seller upon the expiration of five days notice in writing to the Buyer to suspend further performance of the Contract pending payment and in addition the Seller shall be entitled without any liability to the Buyer to cancel in whole or in part the Contract or any other contract between the Seller and the Buyer without prejudice to any other remedy available to the seller in respect of such default in payment.
- d) Unless otherwise agreed in writing the Buyer shall not be entitled to set off against any monies due to the Seller under the contract, any amount claimed by or due to the Buyer from the Seller whether pursuant to the Contract or on any other account whatsoever.

9) Reservation of title

- a) The legal and beneficial ownership and title in the goods shall remain vested in the Seller until the Buyer has paid to the Seller all amounts outstanding in respect of the goods comprised in the Contract and all other due from the Buyer to the Seller on any other account has been paid or satisfied in.
- b) Until the title to and the property in the goods pass to the Buyer:-
 - i) The Buyer shall store the Seller's goods and materials in such a way that they are clearly identified as being the Seller's property.
 - ii) The Seller shall be entitled to examine the goods in storage at any time during the normal business hours and upon giving the Buyer reasonable notice;
 - iii) The Seller shall be entitled without prior notice to the Buyer to repossess and resell the goods if any of the events specified in Condition 13 hereof shall occur or if any sum owed to the Seller under the Contract or any such other contract is not paid on the due date for payment. For the purposes of exercising its rights under this sub-clause the Seller, its employees or agents together with all vehicles and plant considered by the Seller to be necessary shall be entitled at any time without prior notice to the Buyer to free and unrestricted entry upon the buyer's premises or elsewhere where the goods are situated.
- c) If at any time when the buyer is in default of payment for any goods and those goods have been resold, the Buyer shall inform the Seller of the fact and unless the Seller otherwise agrees, the proceeds of the sale thereof, or such proportion thereof as represents the unpaid price of the goods shall be held by the Buyer as trustee for the Seller.
- d) The rights and remedies conferred upon the Seller by this condition 9 are in addition to and shall not in any way prejudice warrant or restrict any other rights or remedies of the Seller under the contract or any other contract between the Seller and the Buyer.

10 Warranty

a) Every effort is made to ensure sound material and good workmanship, but all warranties and conditions expressed or implied as to materials or workmanship, or the merchantability or fitness of goods for any particular purpose, whether such purpose be known to the Seller or not, are excluded. In the event of any goods proving defective due to a process supplied by the Seller, the Seller is prepared at its sole option either:-

i) To replace such materials free of charge at the place of delivery and in the condition originally specified; or

ii) Refund to the Buyer the contract price of such goods if required to do so within a reasonable time, but no later than 12 months from the date of delivery. Any liability is limited to such replacement or refund and does not extend to any other expenditure incurred or to any consequential damages. For the warranty to apply the goods must:-

a) Have been accepted and paid for by the Buyer and

b) Be found upon examination by the Seller to be defective, owing the faulty materials or workmanship. The Seller accepts no responsibility for fair wear and tear, incorrect or defective storage, fitting, installation use, unauthorised reconditioning or repair, accident, neglect or cause beyond the Seller's control.

c) Nothing in these conditions shall:-

i) Limit or exclude the liability of the Seller in respect of death or personal injury resulting from the negligence of the Seller, its employees or agents;

ii) Or, limit or exclude the respective rights and remedies of the Seller and the Buyer under the Unfair Contract Terms Act 1977; Supply of Goods & Services Act 1982,

Sale & Supply of Goods Act 1994, The Sale and Supply of Goods to Consumer Regulations 2002.

11 Liability

a) The Seller accepts no responsibility for any damage direct, consequential or contingent, or for resulting loss, loss of profits, costs, charges, expenses or any other liability, whether of the Buyer or of any other third party howsoever arising, the Seller's responsibility being strictly limited to replacement as set out above. This exclusion is subject to any statutory enactment.

b) A claim in respect of any defect or failure to comply with the specification or order, or in respect of any part thereof, shall not entitle the Buyer to cancel or refuse delivery of or payment for any other order, delivery or instalment, or any part of the same order, delivery or instalment.

12 Force Majeure

In the event of war, invasion, act of foreign enemy, hostilities (whether war has been declared or not) civil war, rebellion, revolution, insurrection or military or usurped power, the Seller shall be relieved of all liabilities incurred under the Contract wherever and to the extent of which the fulfilment of such obligation is affected, prevented, frustrated or impeded or delayed as a consequence of any such event or by statutes, rules, regulation, orders of requisitions issued by any Government Department, Council or other duly constituted authority, including the imposition of restrictions or quotas or levies on the exportation or importation of the goods or from strikes, lockouts, labour disputes, breakdown, natural catastrophe, fire or accident to

the plant of the Seller, or a relevant supplier of the Seller or any other cause (whether or not of a like nature) beyond the Seller's control.

13 Termination

a) The contract will terminate immediately upon service of written notice of termination by the Seller on the Buyer or any one or more of the following grounds:-

i) If the Buyer commits any act of bankruptcy or makes an arrangement or composition with creditors, or otherwise takes the benefit of any act for the time being in force for the relief of insolvent debtors, or has suffered or allowed any execution, whether legal or equitable, to be levied upon his or its property or obtained against him or (being a body incorporate) had convened a meeting of creditors (whether formal or informal) or has entered into liquidation, whether voluntary or compulsory (except a voluntary liquidation for the purpose only of reconstruction or amalgamation) or has a receiver appointed of its undertaking or any part thereof;

ii if the performance of the contract or any part thereof is prevented or rendered impracticable for a continuous period of 90 days by reason of accidental damage of any kind whatsoever and however arising or by reason of any mechanical failure of the seller's machinery or by the act or default of any person other than the seller, but including the buyer.

b) Termination of the contract in any way whatsoever will be without prejudice to the rights, obligations and liabilities of either party accrued prior to termination.

c) Without prejudice to any of the Seller's other rights to claim damages, the Buyer will on termination of the contract for any reason whatsoever, or if the Buyer cancels, extends or delays or purports to cancel, extend or delay the Contract, or fails to take delivery of any goods, indemnify the Seller against any loss, damage or expense incurred by the Seller in connection with the contract, including but not limited to the payment of the costs of any goods, materials, plant or tools used or intended to be used therefore and the cost of labour and other overheads, including a percentage in respect to profit.

14) Assignment

The Seller reserves the right to assign or sub-contract the fulfilment of the contract or any part of the contract.

15) Severance

If at any time any one or more of these conditions (or any paragraph, sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted herefrom and the validity and/or enforceability of the remaining provisions of these conditions shall not in any way be affected or impaired thereby.

16) Waiver

The rights and remedies of the Seller under the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Seller nor by any failure of or delay by the Seller in asserting or exercising any such rights or remedies.

17 Agents

No agent, distributor, dealer or representative appointed by or representing the Seller is authorised to make or give any representation or warranty, or enter into any commitment on behalf of the Seller, not in accordance with these terms and conditions, unless the same is confirmed in writing by a director of the Seller.

18 Return of goods

Any goods which have been supplied in accordance with the Buyer's order and are subsequently returned with the consent of the Seller will only be accepted for credit providing the Seller's written agreement is first obtained by the Buyer, Credit if given will be allowed at current scrap metal price, as determined by the Seller, less a handling charge of 20%

19 Quantity discrepancies

The Seller reserves the right to make deliveries of quantities which may differ from the Buyer's ordered quantity by up to +/-10% without such difference being grounds for rejection of any excess or renunciation of Contract by the Buyer for short delivery. The Buyer shall not have grounds for refusing payment for any excess up to this limit.

20 Applicable law

These conditions and each and every contract pursuant thereto will be construed and operate in accordance with English Law and the seller and the buyer hereby irrevocably submits to non-exclusive jurisdiction of the English Courts.

21 Headings

The headings to these conditions are inserted for the convenience of reference only and do not form part of these terms and conditions.