

Conditions of Sale Ingotech Engineering Limited

GENERAL

These terms and conditions shall apply to all sales of goods and/or supplies of services by Ingotech Engineering (hereinafter Referred to as "The Company") to the exclusion save where prohibited by statute of all other terms, warranties and/or conditions whether express or implied either by common law or by statute or in any other manner whatsoever, save in consumer transactions where these terms and conditions shall not take away the customer's statutory rights.

- (a) All quotations are an invitation to treat and are at prices current at the date of quotation, any contract entered into between the Company and the customer shall be subject to these terms and conditions to the exclusion of any terms, warranties or conditions which the customer shall seek to impose upon the Company.
- (i) Contract price shall be deemed to be the Company's price current at the date of despatch of the goods.
- (b) The Company will on request consider quoting in writing fixed prices and in such event will charge for goods and services supplied within such period and at such price as shall have been so agreed without variation. Unless otherwise agreed in writing, the contract price is "ex-works" the Company will provide quotation for other terms on request.
3. The purchasers agree that they will (i) rely wholly on their own skill and judgement in the selection of the goods and (ii) will not treat any information supplied to them by the Company as a representation warranty or guarantee in any manner whatsoever.
4. Data and Technical Information. The information contained in the Company's Publications is provided for general guidance only and forms no part of the contract unless expressly agreed in writing.

DELIVERY

1. Time for delivery is given as accurately as possible but is not guaranteed. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.
2. The date of delivery shall in every case be dependent upon prompt receipt of all necessary information final instructions or approvals from the Customer. Alterations by the Customer in design specifications or quantities required may result in delay in delivery.
3. The Company shall endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company the Customer shall pay all costs and expenses occasioned by such postponements including a reasonable charge for storage and transportation and the Company shall be entitled to Invoice the goods and receive payment in accordance with these Conditions.
4. Unless otherwise expressly agreed any packaging supplied by the Company is intended to be sufficient only to protect the goods for all normal conditions of transit and for the normal period of transit only.
5. The Customer shall ensure that there is good and sufficient access for lorries to the point where the delivery vehicles are required to unload.
6. Where the Contract does not require the Company to perform erection on site then the unloading of the delivery vehicles shall be undertaken by and be the responsibility of the customer.
7. Delivery involving the passage of vehicles, goods or equipment over gratings, drains, roads, pavements, forecourts, yards, asphalt paths or any like area shall be at the customer's risk and responsibility.

RISK AND TITLE

1. Risk shall pass to the Customer so that the Customer is responsible for all loss damage or deterioration to the goods. (a) If the Company delivers the goods by its own transport at the time when the Goods or a relevant part thereof arrive at the place of delivery, or (b) in all other circumstances at the time when the goods or a relevant part thereof leave the premises of the Company whether or not the company arranges transport and where the Goods are delivered by carrier, any claims for loss or damage in transit must be made by the Customer against the carrier in accordance with the carrier's conditions.
2. Until the price of the goods comprised in this and every other Contract between the company and the customer has been paid in full:-
 - (a) The title to and property in the goods shall remain vested in the Company (notwithstanding the delivery of the same and the passing of risk, therein to the Customer)
 - (b) The Company may require the Customer to return the goods and may recover and resell the same (if they are in the Customer's possession or under its control) at any time when any sum owed by the Customer to the Company under this and any such other Contract is not paid on the due date or payment. For the purpose of exercising its rights under the sub-clause, the Company, its Employees or Agents together with all necessary and appropriate transport shall be entitled to free and unrestricted entry upon the Customer's premises and any other location where the goods are situated.
 - (c) The Customer shall be in possession of the goods as bailee of the Company. If the Company so requires, the Customer shall store goods for the Company without charge to the Company separately from any goods which are the property of the Customer or any third party and ensure that they are clearly marked and identified as belonging to the Company. The Company shall be entitled to examine the goods in storage at the Customer's premises or any other location where they are situated at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so;
 - (d) The Customer is hereby authorised to sell the goods in the ordinary course of its business as agent of and for the account of the Company and to pass a good title in the goods to its customers but the Company shall be entitled by notice in writing to the Customer to revoke such authority at any time when there is default by the Customer in paying to the Company any sum owed by the Customer to the Company under this or any other Contract on the due date for payment;
 - (e) Upon the re-sale of the goods by the Customer the proceeds of re-sale thereof shall be received and held by the Customer in trust for the Company (and paid into a separate bank account unless the Company otherwise agrees) but the Customer shall be entitled to retain for himself therout the difference between the aggregate amount paid by the Customer into such bank account and the aggregate amount then owing by the customer to the Company under this or any other contract.
 - (f) The Company shall also be entitled to recover directly from the Customer's customers all such proceeds of re-sale as are unpaid by such customers provided that the Company shall return to the Customer any such proceeds of re-sale so recovered in excess of the aggregate amount then owed by the Customer to the Company under this or any other Contract the Company being entitled to deduct from such excess the costs and expenses incurred by it in the recovery of such proceeds of re-sale and the Customer shall render such assistance (including permitting the Company to take proceedings in the Customer's name against any such customer) as the Company may reasonably require in connection with the recovery of such proceeds of re-sale. Nothing in the Clause shall:-
 - (i) entitle the Customer to return the goods unless requested so to do by the Company under sub-clause b above
 - (ii) constitute or be deemed to constitute the Customer the agent of the Company otherwise than as expressly provided in the Clause, or
 - (iii) authorise the Customer to make or give any representation or warranty to any third party in relation to the goods binding on the Company unless the Company has authorised the Customer so to do in writing.
- The rights and remedies conferred upon the Company by this Clause are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract. No failure or forbearance on the part of the Company to enforce strict compliance by the Customer with the provisions of this Clause shall constitute a waiver of any of such provisions and the Company shall at all times be entitled to require the Customer to comply strictly with such provisions and to make good any failure on its part to do so. Any termination of the Contract whether by act of the parties thereto or by operation of law shall not prejudice, limit or extinguish the Company's rights under this Clause.

PRICES

1. All prices and rates quoted by the Company are unless otherwise stated based upon prices and rates ruling at the date of quotation and are subject to alteration by the Company at the time of receipt of the Customer's order and final details. VAT will be charged extra in accordance with current legislation at the time of invoicing.
2. In the event of any alteration being required by the Customer in design or specification the Company shall be entitled to make an adjustment of the contract price corresponding to such alterations.

DIMENSIONS

The Company reserves the right to alter or change dimensions of the goods supplied within reasonable limits having regard to the nature of the goods. All weights and dimensions quoted are subject to normal commercial tolerances.

SHORTAGES AND DEFECTS APPARENT ON INSPECTION

- The Customer shall have no claim for shortages or defects apparent on visual inspection unless :-
- (i) The Customer inspects the Goods within three working days of arrival at its premises or other agreed destination and (ii) a written complaint is made to the Company within fourteen days of receipt of the Goods or such shorter period as the carrier's conditions (if applicable) require, specifying the shortage or defect, and
 - (iii) the Company is given an opportunity to inspect the goods and investigate any complaint before any use is made of the goods. If a complaint is not made to the Company as herein provided then the goods shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to pay for the same accordingly.

DEFECTS NOT APPARENT ON INSPECTION

1. The Customer shall have no claim in respect of defects not apparent on visual inspection at the time of delivery unless:-
 - (i) a written complaint is sent to the Company as soon as reasonably practicable after the defect is discovered and no use is made of the Goods thereafter and no alteration made thereto before the Company is given an opportunity to inspect the Goods in accordance with the Conditions and (ii) The complaint is sent within 6 months of the date of delivery of the Goods or in the case of items not manufactured by the Company, within the guarantee period specified by the manufacturer of such item.
2. The Customer shall not be entitled in any claim in respect of any repairs or alterations undertaken by the Customer without the prior specific written consent of the Company nor in any respect of any defect arising by reason of fair wear and tear or damage due to misuse.

3. The company shall not be liable for loss or damage suffered by reason of use of the goods after the Customer becomes aware of a defect or after circumstances have arisen which should reasonably have indicated to the Customer the existence of a defect.
4. The Company may within 15 days of receiving such a written complaint (or 28 days where the Goods are situated outside the United Kingdom) inspect the Goods and the Customer if so required by the Company shall take all steps necessary to enable the Company to do so.

WARRANTIES AND UNDERTAKINGS

The warranty and undertaking contained in the following provisions of this clause are given by the Company in lieu of and to the exclusion of any other representations, guarantees, conditions or warranties whatsoever as to the quality of the goods supplied by the Company or their fitness for any purpose whether such representations guarantees conditions or warranties be implied by statute or otherwise expressed and the remedy available to the Customer in the event of breach of the said warranty and/or undertaking is limited in accordance with sub-clause (c) of this clause:-

- (a) Goods will be manufactured in accordance with the contract description and of sound material and with good workmanship in accordance with any quality specification of the contract.
- (b) The Company warrants that the goods will be of merchantable quality in accordance with any quality specifications of the Contract but the Company does not warrant or represent that the goods will be fit for the Customer's specific purpose.
- (c) If within six months of the date of receipt of any goods by the Customer, the Customer notifies the Company in writing that any goods are defective such that any quality specifications of the contract has not been met:-
 - (i) The Customer shall if requested by the Company give to the Company full opportunity and access to inspect such goods at the Customer's premises.
 - (ii) If goods alleged to be defective and not in accordance with any quality specifications of the contract are returned within the said six months to the Company carriage paid for examination with full statement of alleged defect the Company will repair or at the Company's option replace such goods as the Company recognises to be defective owing to faulty material or workmanship and the Company will refund the return carriage. Replacement goods will be delivered free of charge to the same point of delivery as the original goods or to such place of equivalent distance as the Customer reasonably requests. No claim shall be made by the Customer for expenditure incurred by the Company on goods which are subsequently replaced or repaired.
 - (d) The Company shall not be responsible whether in Contract or tort or otherwise howsoever for:-
 - (i) consequential loss or damage caused by or arising out of the use of the goods or occurring in respect of the goods and
 - (ii) loss of damage occurring through any failure by the Customer to use goods in accordance with the Company's recommendations or through the Customer using goods for purposes not specifically approved in writing by the Company.
- (e) When goods contain parts not of the Company's manufacture the Customer shall be entitled only to the benefit of any guarantee condition or warranty which the Company shall have received in respect thereof and only to the extent that the Company can enforce the same.

CUSTOMER'S DRAWINGS

1. The Customer shall be solely responsible for ensuring that all drawings information and advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer's agents, servants or advisers are accurate correct and suitable. Examination or consideration by the Company of such drawings information advice or recommendations shall in no way limit the Customer's responsibility hereunder unless the Company specifically agrees in writing to accept responsibility.
2. The Customer shall indemnify the Company from and against all action claims costs and proceedings which arise due to the manufacture of Goods in the drawings specification of the Customer where such drawings and specifications are at fault or where it is alleged that they involve an infringement of a Patent Registered Design Copyright or Design Copyright or other exclusive right.

CONFIDENTIAL INFORMATION

All drawings documents and other information supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not without the written consent of the Company either give away loan exhibit or sell any such drawings or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are issued.

CANCELLATION

A deposit of 30% of the purchase price shall be payable by the customer when the contract is agreed. In the event of cancellation by the Customer this deposit shall not be refundable to the Customer.

TERMS OF PAYMENT

1. Unless otherwise agreed in writing by the Company, payment shall be due on notification to the Customer that the goods or any part of them are ready for despatch and payment for any services supplied shall be due upon completion thereof.
2. Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Conditions.
3. The Customer hereby agrees that he will not seek to exercise any right or set off or counterclaim or otherwise withhold payment in respect of any goods delivered pursuant to this or any other Contract between the parties for any reason whatsoever or howsoever arising.
4. In the event of default in payment by the Customer, the Company shall be entitled without prejudice to any other right or remedy to suspend all further deliveries on any contract or contracts between the Company and the Customer without notice and to charge interest on any amount outstanding at the rate of 4% per annum above the Base Rate of Lloyds Bank plc in force at the time when payment was due.

LIMITATION OF DAMAGES

It is specifically and agreed that any compensation and/or damages payment in respect of any claim or claims arising out of or in connection with the Contract, for any reason whatsoever and howsoever arising shall not amount in the aggregate to more than the Contract price of the goods forming the subject of this Contract unless the extent of such prospective liability is declared to the Company contemporaneously with the Customer's offer to purchase and agreed by the Company in writing.

VAT

The Company shall be entitled to recover from the Customer by way of addition to the Contract price such amount as it shall be or become liable to pay in respect of Value Added Tax in relation to the goods supplied by the Company under the Contract.

WORK AT CUSTOMER'S SITES

When the Company's employees or agents are working on customer's sites or at any other location in connection with the use of goods by the Customer, the Company will indemnify the Customer and keep the Customer indemnified against claims for damage to the Customer's property provided that:-

- (i) The Company shall not be liable except where damage is wholly or exclusively due to the negligence of the Company's employees or agent, and
- (ii) The Company shall not be liable except for direct damage to property and not for any further loss or damage whatsoever or howsoever arising and (iii) the total aggregate liability of the Company for damage to the Customer's property caused by any employee or agent of the Company shall not exceed the total sum payable to the Company under the contract of sale of the goods, unless otherwise agreed in writing.

SEVERABILITY

Each clause and sub-clause in these terms and conditions is separate and severable and enforceable accordingly.

NOTICES

Any notice to be given or served hereunder shall be sufficiently given or served if sent by first class post to the addressee of such notice shown in the Contract. Any document so sent by post shall be deemed to have been received not later than 72 hours after the time of posting and proof of posting addressed and stamped as aforesaid shall be proof of receipt by the addressee.

INSOLVENCY

If the Customer shall become bankrupt or insolvent or compound with creditors or in the event of a resolution being passed or proceeding commenced (other than for a voluntary winding up) for the purpose of reconstruction or amalgamation) or if a Receiver or Manager is appointed of all or any part of its assets or undertaking the Company shall be entitled to cancel the contract in whole or in part by notice in writing and to retain any deposit paid without prejudice to any other right or remedy accruing to the Company.

FORCE MAJEURE

Neither party shall be under any liability for any delay loss or damage caused wholly or in part by act of God, governmental restriction condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not or my reason of any other act matter or thing beyond its reasonable control including failure by the other party to carry out the provisions of these Conditions.

LEGAL

The contract shall be governed and interpreted exclusively according to the Law of England and shall be subject to the jurisdiction of the English Courts only.