

TERMS & CONDITIONS OF SALE

1 Interpretation

1.1 In these Conditions:

- 'Buyer' means the person who accepts a quotation of the Seller for the sale of the Goods and/or supply of the Services (as appropriate) or whose order for the Goods and/or supply of the Services (as appropriate) is accepted by the Seller;
- 'Conditions' means these standard terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller;
- 'Contract' means the contract for the purchase and sale of the Goods and/or provision of the Services;
- 'Goods' means any items of machinery, spares or equipment (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;
- 'Quotation' means the quotation set out in the documents attached to these Conditions, all of which when read together constitute the Contract.
- 'Seller' means Metaltech Precision Engineers Limited, Unit 4 Diplocks Way, Hailsham, East Sussex, BN27 3JF
- 'Services' means any services supplied by the Buyer ancillary to the supply of the Goods, including without limitation maintenance, labour, design, training, installation or commissioning;

2 Basis of the sale

- 2.1 The Seller shall sell and/or provide and the Buyer shall purchase the Goods and/or the Services (as appropriate) in accordance with the Quotation (which shall include quantity, quality, description and any specification for the Goods or Services) subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.2 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or the Services unless and except to the extent that any such representations are confirmed by a director of the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed. Further, the description of the Goods contained in the Quotation is given by way of identification only and such description shall not constitute this Contract a sale by description.
- 2.3 The Buyer shall be responsible to the Seller and generally for ensuring the accuracy of any details comprised in the Quotation and/or any documentary or other material. In particular (without limitation) the Seller does not provide structural or other engineering advice or design services, and the Buyer shall be responsible for obtaining any such advice or services, if required, from third parties.
- 2.4 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller may be corrected by the Seller without any liability on the part of the Seller.

3 Orders and specifications

- 3.1 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification
- 3.2 The Seller reserves the right to make any changes in the specification of the Goods or manner of delivery of the Services which are required to conform with any applicable statutory or regulatory requirements.
- 3.3 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Seller as a result of cancellation.

4 Price of the goods/services

- 4.1 The price of the Goods/Services shall be as stated in the Quotation, save that the Price may vary due to:
- 4.1:1 any fluctuation in the cost to the Seller which arises after the date of the Contract due to factors outside the control of the Seller;
- 4.1:2 if the Buyer changes the design, weight, quantities or specification of the Goods or if work by the Seller is delayed or suspended due to a lack of instructions or information from the Buyer;
- 4.1:3 if the Buyer changes the agreed delivery date;
- 4.1:4 where the Price includes the cost of installation of the Goods, it is assumed free and unhindered access for the Seller's vehicle to the point of delivery and for forklift truck access to the final location of the Goods. Any access difficulties not specifically notified to the Seller in writing at least 7 days before the anticipated date of delivery shall result in an increase in Price.
- 4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery of the Goods to increase the price, as a result of any increased cost incurred by the Seller following the happening of any of the events described in clause 4.1 above.
- 4.3 Except as otherwise stated under the terms of any quotation or in any catalogue or price list of the Seller and unless otherwise agreed in writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis. Where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.
- 4.4 The Price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.

5 Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods/Services on or at any time after acceptance of order.
- 5.2 The Buyer shall pay the price of the Goods in cleared funds on delivery unless the Seller agrees to provide credit to the Buyer. If credit terms are agreed payment must be made within 30 days of the date of invoice. The Seller shall be entitled to recover the price of the Goods or Services notwithstanding that delivery of the Goods may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request
- 5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:
- 5.3:1 cancel the Contract or suspend any further deliveries of Goods or provision of Services to the Buyer;

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- 5.3:2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) or Services provided as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and/or
- 5.3:3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 2% per cent per annum above Barclays Bank base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.4 Where Goods are delivered in batches, each consignment of the Goods will be invoiced at delivery and each such invoice will be treated as a separate account and shall be payable accordingly.

6 Delivery

- 6.1 Delivery of the Goods shall be made by the seller from Diplocks Way or such other location as the Seller may specify in writing to the Buyer.
- 6.2 Where the Goods are to be delivered by the Seller or its carriers at premises within England Scotland or Wales the Buyer shall:-
 - 6.2:1 ensure that the Seller or its carrier shall be provided with sufficient and suitable access to the premises;
 - 6.2:2 accept the Goods at the nearest point of the premises to which delivery is to be made to public roads, which shall include any part of such premises occupied by the Buyer jointly or in common with any others;
 - 6.2:3 at its own expense provide prompt and able assistance to the Seller or its carriers in off-loading the Goods and the Buyer shall indemnify the Seller from and against any additional costs or expenses incurred by the Seller directly or indirectly as a result of the Buyer not complying with its obligations under this clause.
- 6.3 Any dates quoted for delivery of the Goods or provision of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or provision of the Services however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered or Services provided by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.4 The Seller reserves the right to deliver the Goods in instalments without any adjustment in price. Where the Goods are to be delivered or Services to be provided in instalments each delivery or provision shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods or services to replace those not delivered or provided over the price of the Goods/Services.
- 6.6 If the Buyer fails to take delivery of the Goods or provide any facilities necessary for the Seller to provide the Services or fails to give the Seller adequate delivery instructions at the time stated for delivery or provision then without prejudice to any other right or remedy available to the Seller the Seller may:
 - 6.6:1 store the Goods until actual delivery and charge the Buyer its storage charges current at the date thereof (including insurance); or
 - 6.6:2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract; or
 - 6.6:3 charge the Buyer for the cost of its personnel who would (had the Seller performed its obligations under the Contract) have been engaged in provision of the Services.
- 6.7 If the Buyer requires delivery other than Ex Works the Buyer agrees to pay the Seller the cost incurred by the Seller in arranging delivery at the Buyer's direction. Such delivery shall be at the Buyers risk and he will be solely responsible for arranging suitable insurance cover.
- 6.8 If the Buyer requires delivery of the Goods by a specific date beyond which the Buyer will incur loss, the Buyer shall not be able to recover such loss from the Seller unless it has been agreed in writing that the Seller will accept liability in full or in part for such loss or damage which the Buyer incurs as a result of the late delivery.

7 Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
 - 7.1:1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - 7.1:2 in the case of Goods to be delivered otherwise than at the Seller's premises at the time the Seller has tendered the Goods to the carrier.
- 7.2 The property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods (and any ancillary Services) and/or all other goods agreed to be sold or services to be provided by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8 Warranties and liabilities

- 8.1 Subject to the conditions set out below the Seller warrants that it will exercise reasonable care and skill in providing the Services, and that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery. Such warranty shall cover the cost of labour and materials required to remedy the defects in the Goods or Services.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
 - 8.2:1 the Seller shall be under no liability in respect of any defect in the Goods or any Services provided arising from any drawing design or specification supplied by the Buyer or any third party;
 - 8.2:2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller's or any third party's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Seller's approval;

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- 8.2:3 the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods and/or Services has not been paid by the due date for payment;
- 8.3 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, and the Seller shall not accept any liability for consequential loss.
- 8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or the Services or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly the Buyer shall not (except in respect of a defect or failure not apparent on reasonable inspection) be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- 8.7 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any indirect special or consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer or the provision of the Services and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods or relevant Services except as expressly provided in these Conditions.
- 8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods or the provision of the Services if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 8.9 The Seller shall install the Goods on the Buyer's premises. The Buyer undertakes with the Seller that it will ensure compliance so far as is reasonably practicable by his servants agents licensees and customers with any instruction (where given) of the Seller for the purpose of ensuring that the Goods will be safely and properly installed or erected, and undertakes to give the Seller such access to the premises where the Goods are to be located, together with access to such services as the Seller shall require, without delay.

9 Insolvency of buyer

- 9.1 This clause applies if:
- 9.1:1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 9.1:2 an encumbrancer takes possession or a receiver or administrative receiver is appointed over any of the property or assets of the Buyer; or
- 9.1:3 the Buyer ceases or threatens to cease to carry on business; or
- 9.1:4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries or the provision of any Services under the Contract without any liability to the Buyer and if the Goods have been delivered (or Services provided in whole or in part) but not paid for the price for the Goods (or for such Services, as appropriate) shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10 Damage or Loss in Transit

- 10.1 The Seller does not accept responsibility for any damage, shortage in the Goods or loss in transit unless:
- 10.1:1 damage or loss in transit is notified in writing both to the Seller and to the carriers within 3 days of receipt of Goods and the Goods have been signed for as "not examined" and have been handled by the Buyer in accordance with carrier's conditions; or
- 10.1:2 non-delivery (in case of total loss) is notified both to the Seller and to the carriers within 10 days of the date of dispatch.

11 Samples

Any samples sent to the Seller will be returned to the Buyer if requested by the Buyer when the sample is sent to the Seller. Where the Seller receives no such instruction samples will be destroyed 14 days after the receipt of them by the Seller.

12 Packing

Goods will be appropriately packed by the Seller unless otherwise agreed in writing, for covered transportation within the United Kingdom, but will not be appropriately packed for storage purposes. If the Buyer requires any packing other than that normally specified by the Seller the Seller reserves the right to make an additional charge by way of an increase of the Price.

13 Dispatch Abroad

Where Goods are to be transported from the Seller's works to destinations outside the United Kingdom they must be inspected by the Buyer's agents or representative before leaving the Seller's works in Exeter and the Seller accepts no responsibility for claims being made by the Buyer in respect of the Goods after they have left the Seller's premises for shipment outside the United Kingdom.

14 Design Warranty

The Buyer warrants to the Seller that all specifications and designs provided by the Buyer to the Seller are the Buyer's property or that the Buyer has rights to use such designs and specifications and the Buyer agrees to indemnify the Seller against all damages, penalties, costs, claims and expenses which the Seller may incur as a result of the use of such designs and specifications.

15 Exhibitions

The Buyer shall not without first obtaining the Sellers permission in writing, exhibit the Goods at any public or trade display.

16 General

- 16.1 Neither party may assign, charge or sub-contract this Agreement or any part of it without the other's prior written consent.
- 16.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or last known address such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 16.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 16.5 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.
- 16.6 For the avoidance of doubt nothing in these Conditions shall confer on any third party any benefit or the right to enforce any term of this Agreement.
- 16.7 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce or alter the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion or fire, explosion, flood, epidemic, lock-out, strike or other labour disputes (whether or not relating to either parties workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that if the event in question continues for a continuous period in excess of 60 days the Buyer shall be entitled to give notice to the Seller to terminate the Contract (for the avoidance of doubt, the Buyer shall, at such time of sending written notice, be liable for all costs and expenses of the Seller to date).