

## **TERMS & CONDITIONS OF SALE**

### **1 Definitions**

- 1.1 'Seller' shall mean Express Engineering Limited of Kingsway North, Team Valley Trading Estate, Gateshead, Tyne & Wear, NE11 OEG.
- 1.2 'Buyer' shall mean the person, firm, company or other corporation named overleaf.
- 1.3 'Goods' shall mean all or any of the goods or materials, which from time to time the seller contracts to supply.
- 1.4 'Services' shall mean any or all of the services, which from time to time the seller contracts to supply.

### **2 Basis of contract**

- 2.1 These conditions shall apply to all contracts, whether written, oral or implied for the supply of goods or services.
- 2.2 Any conditions of purchase or other terms provided by the buyer shall be of no effect whatsoever nor shall any variation or alteration to these conditions be of any effect unless specifically negotiated and made in writing and signed by or on behalf of the seller by a duly authorized signatory of the seller.
- 2.3 No binding contract shall be created by the placing of an order unless and until the seller's written acknowledgement of the order shall have been posted or delivered, which acknowledgement will be deemed to repeat these conditions or, alternatively in the event that no such acknowledgement is sent, at the time of acceptance of any order for the goods or services by the seller a binding contract will be created subject to these conditions.

### **3. Quotations**

Any quotation in whatever form provided by the seller is given subject to these conditions as an invitation to treat and does not constitute an offer to sell. The validity of such quotation shall expire 30 days after the date of issue.

### **4. Prices**

- 4.1 Subject to anything to the contrary contained in any quotation issued by the seller, prices for the goods or the services are unless otherwise stated exclusive of value added tax and any other similar tax, carriage, handling, packaging and any insurance charges.
- 4.2 The buyer shall have no right to set off whether statutory or otherwise.
- 4.3 The seller reserves the right, by giving notice to the buyer at any time before delivery, to increase the price of the goods or services to reflect any increase in the cost of the seller which is due to any factor beyond the seller's control.
- 4.4 Unless otherwise expressly stated in writing by the seller, all prices payable must be settled in pounds sterling but if the seller agrees to accept foreign currency and does not specify an exchange rate the exchange rate will be that of The Bank Of England at the close of business on the day preceding the day on which the seller accepts the buyer's order.

### **5. Designs and drawings**

- 5.1 Where the seller prepares designs or drawings at the request of the buyer the buyer shall approve such designs and drawings in writing and until such approval has been received by the seller, the seller shall be under no liability to the buyer and any time for delivery shall not be run.
- 5.2 If the goods are manufactured or any process is to be applied to the goods by the seller in accordance with a specification or requirement submitted by the buyer and agreed by the seller the buyer shall indemnify the seller in respect of any claim against the seller directly attributable to or caused by any such specification or requirement.

### **6 Patent Infringement**

- 6.1 The buyer warrants that any instructions, plans or designs furnished or given by it shall not be such as will cause the seller to infringe any letters patent, copyright, registered design, right of

confidence or trade mark in execution of the buyer's order and agrees to indemnify the seller against all claims, costs or other expenses incurred by the seller thereof.

## **7 Variation and cancellation**

The seller shall be under no obligation whatsoever to accept any variation or cancellation of an order once accepted. However, the seller at its complete discretion agrees to accept any such variation or cancellation if it may levy such charges as it, in absolute discretion, sees fit.

## **8 Payment and Default by buyer**

8.1 The seller reserves the right at any time at its discretion to demand security for payment before commencing and/or continuing with the contract or delivering goods or services upon which services have been rendered.

8.2 Subject to clauses 8.3 and 8.4 and unless otherwise agreed in writing by the seller the buyer shall pay the seller in full for the goods or service.

8.3 In the event that the buyer fails to make payment by the due date or otherwise commits a breach of these conditions, the seller may in its absolute discretion and without prejudice to any other rights which it may have: -

(a) Suspend all future deliveries and supplies to the buyer under the contract in question or under any

other contracts and/or terminate all or any part of such contract(s) without liability upon its part;

(b) Require payment in advance for any future deliveries.

(c) In the case of non-payment on or before the due date or on demand (as mentioned in paragraph

8.4 below) charge interest on the amount due on a day to day basis at the rate of two percent per month compounded annually from the time of delivery or date of invoice whichever is the earlier until the date of actual payment, whether before or after judgement.

8.5 without prejudice to any other rights the seller may have by virtue of paragraph 8.3(c) the seller may demand immediate payment of all sums whether or not due in the event that: -

(a) The buyer makes a voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction): or

(b) an encumbrancer takes possession of, or a receiver is appointed over, any of the properties or assets of the buyer; or

(c) the buyer ceases, or threatens to cease, to carry on business; or

(d) 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 Delivery and collection**

9.1 Subject to the provision of paragraph 10 the seller may arrange delivery to the buyer's premises at the buyer's request. In all other circumstances collection or delivery of goods or services upon which services have been rendered will be made at the seller's premises at any time after the seller has notified the buyer that the goods or services which services have been rendered are ready for collection.

9.2 when delivery or collection takes place at the buyer's premises it will be the buyer's responsibility to ensure delivery or collection can take place at the time and place specified or otherwise agreed. The buyer shall indemnify the seller against any loss or expense incurred as a result of a breach of

These obligations. Without prejudice to the foregoing, if the seller or its agents or employees agree to assist in the loading or unloading as the case may be then the seller will not be liable for any loss or damage howsoever arising through any act, omission or negligence of any of its agents or employees.

9.3 Although given in good faith delivery times for the supply of the goods or services by the seller in its

quotation or otherwise are intended as estimates only and are not therefore to be traded as being of the essence of the contract or binding on the seller. The seller will not be liable to the buyer for any loss or damage (direct or indirect) occasioned by the seller's failure (whether as a result of negligence or otherwise) to deliver the goods upon which the services have been rendered by the date or within the time stated and in no case shall delay be a ground for rejecting the same.

9.4 The right to deliver the goods or the goods upon which the services have been rendered in part is expressly reserved by the seller and the condition shall apply to any such part or parts *mutatis mutandis*.

9.5 In the event that the buyer is responsible for collecting the goods or the goods upon which the services have been rendered and such collection does not occur within seven days of the buyer having been informed that such goods are ready for the collection the seller may charge the buyer for storage of any such goods until collection occurs in addition to the price for the goods or services

## **10 Risk**

The liability for goods or the goods upon which the services have been rendered shall pass to the buyer: -

- (a) in the case of delivery at the seller's premises, at the time when the seller notifies the customer that the goods or the goods which the services have been rendered are available for collection; or
- (b) in the case of delivery otherwise than at the seller's premises at the time of delivery or, if the buyer wrongfully fails to take delivery of the goods or the goods upon which the services have been rendered, at the time when the seller has tendered their delivery.

## **11 Title to Goods**

The property in the goods shall remain in the seller and the buyer shall hold the goods as Fiduciary agent and bailee for the seller until such time as the price of all goods and/or services supplied at any time by the seller together with all other sums owing to the seller on any account whatsoever at the date of this contract have been paid in full.

## **11 Exclusion of Liability**

12.1 The seller shall be under no liability in respect of any defect in the goods or services arising from any drawing, design or specifications supplied by the buyer.

12.2 [Except where the goods or services 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, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.

12.3 Any claim by the buyer which is based on any defect in the quality or condition of the goods or services or their failure to correspond with specification shall be notified to the seller within such time as the buyer reasonably require to examine the goods or the goods upon which services have been rendered which for the purpose of these conditions shall be no more than 14 days from the date of delivery. If no such notification is received, the buyer will not be entitled to reject the goods or services and must pay their price.

12.4 Where any valid claim in respect of any of the goods or services is notified to the seller in accordance with these conditions, the seller shall be entitled to repair or replace the goods (or the part in question) free of charge or, as it is sole discretion, refund to the buyer the price of the goods or services (or a proportionate part of the price) and the seller shall have no further liability to the buyer.

12.5 Except in respect of death or person injury caused by the seller's negligence, the services shall not be liable for any claim made against the buyer by any third party nor under the contract or otherwise for any consequential loss or damage.

### **13 Force Majeure**

Without prejudice to the generality of any of the foregoing conditions, the seller shall not be liable for any loss or damage caused by the non-performance or delay in the performance of any of its obligations hereunder if the same is occasioned by any cause whatsoever which is beyond the seller's control. Should any such event occur the seller may cancel or suspend this contract without incurring any liability for any loss or damage thereby occasioned.

### **14 Export**

- 14.1 Subject to any special terms agreed in writing between the seller and the buyer, the provisions of this clause 14 shall apply notwithstanding any other provisions in these conditions.
- 14.2 Where the goods are supplied for export from the United Kingdom the buyer shall be responsible for: -
- (a) complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon;
  - (b) by arranging for testing and inspection of the goods at the seller's premises before shipment. The seller shall have no liability for any claim in respect of any defect in the goods, which would be apparent on inspection and which claim is made after delivery.
- 14.3 Unless otherwise agreed in writing between the buyer and the seller the goods shall be delivered in accordance with shipping agreements determined by the seller and notified to the buyer.
- 14.4 Unless otherwise agreed in writing between the buyer and the seller payment of all amounts due to the seller shall be made either: -
- (a) by irrevocable credit opened by the buyer in favor of the seller and confirmed by a bank notified to the seller and which the seller has confirmed is acceptable; or
  - (b) if the seller has confirmed in writing on or before acceptance of the buyer's order that the foregoing requirements will be waived, by acceptance by the buyer and delivery to the seller of a bill of exchange drawn on the buyer payable thirty days after sight to the order of the seller or as otherwise specified in the bill of exchange.

### **15 General**

- 15.1 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 such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 15.2 No waiver by the seller of any breach of contract by the buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.3 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 shall not be affected.
- 15.4 Any dispute arising under or in connection with these conditions or the sale of the goods or services shall be referred to arbitration by a single arbitrator appointed by agreement or (if not agreed within 14 days) by the president for the time being of the Institute of Mechanical Engineers whose decision (including as to costs) shall be final and binding upon both parties.
- 15.5 The construction, validity and performance of the contract shall be governed by and interpreted in accordance with English law. The parties hereto agree to submit themselves to the non-exclusive jurisdiction of the English courts for the purposes of these terms and conditions.