



## Standard Terms and Conditions of Sale

### 1. Definitions

Except where the context otherwise requires,

“Supplier” means TMC Ltd

“Supplier’s premises” means any location from which the Supplier sees fit to deliver

“Contract Goods” means any goods supplied under or pursuant to the contract

“Acceptance” means an acceptance of the Supplier’s quotation as stated on the invoice.

### 2. Acceptance

All orders are accepted and goods supplied subject to the following Terms and Conditions and no additions, alterations or amendments shall apply unless specifically agreed in writing by the Supplier. Any variation to the contract must be stated in writing. Should any of these conditions conflict with any of the conditions stated in the Customers order, then these Conditions should prevail.

### 3. Delivery

a) The Supplier will make every effort to deliver the goods within the stated delivery time and does not expect any delay in meeting the suggested delivery date, but any such date given by him is for guidance only, without the assumption of any legal obligation. In no circumstances whatsoever shall the Supplier become under any liability to the customer by reason of any delay in delivery or failure to deliver from whatsoever the cause the same shall result and the customer shall not be entitled to repudiate the contract by reason thereof.

b) Unless otherwise agreed in writing, delivery shall take place at the Supplier’s premises.

c) Delivery shall be deemed to occur when the customer takes possession of the goods or (if they are sent by post) when they are posted or (if they are carried) when the carrier takes possession thereof.

### 4. Loss or Damage in Transit

The Supplier disclaims all liability in respect of loss or damage to the goods once delivery has occurred and in the case of the carrier, once the carrier has taken possession of the goods. Should any loss or damage occur in transit the customer must lodge a claim in accordance with the carrier’s regulations and notify the Supplier in writing that such claim has been made. (This also applies to, but is not limited to, the supply of goods on loan for demo purposes. Damaged goods must be replaced by Customer at current market value)

### 5. Third Party Claims

Without derogation from the provisions of Clause 13 the Supplier shall not be liable to the customer in respect of injury, loss or damage of whatsoever nature sustained by him or any third party arising out of or in connection with supply of or defects in the goods supplied whatsoever may have been the cause of such injury, loss or damage and the customer shall indemnify the Supplier and save him harmless from any damage, loss, claim, costs or expenses incurred or suffered by the Supplier as a result of any such injury, loss or damage.

## **6. Prices**

a) The Supplier shall have the right to increase prices and change specifications without prior notice and should such increase or change be necessary once an order has been placed with the Supplier such that these may be judged by the Supplier to be unacceptable to the customer then the Supplier will consult the customer with a view to renegotiating the terms of content of the contract.

b) In such cases where the Supplier has undertaken to install the contract goods the Supplier shall have the right to increase the contract price if changes in the cost of materials or labour or in revenue legislation occurring between the date of acceptance and the date of completion of the contract shall justify such an increase and the amount of any such increase shall be as much as may reasonably be required to compensate the Supplier for the changes herein before referred to and in default of agreement between the Supplier and the customer such amount shall be decided by arbitration as provided for in Clause 16.

## **7. Returns**

Goods correctly supplied may not be returned without the Suppliers prior agreement. If permitted, goods returned for credit which are not faulty, should be in the original, unopened, product packaging and in 'as new' condition. Under these circumstances, re-stocking and carriage charges will apply.

Goods are not supplied on a sale or return basis.

## **8. Payment/Credit**

Where credit is granted (at the discretion of the Supplier), whether for Contract Works or Dry Sales, the Supplier reserves the right to raise interim invoices, throughout different stages of the contract; and in any case the payment terms are 30 days from date of invoice.

The customer's obligation to pay the sale price in full within the time stated on the Invoice shall exist notwithstanding that the goods may be or may be alleged to be defective or not otherwise in accordance with the contract, subject to a refund by the Supplier if it is later agreed, or found by arbitration in accordance with the provisions of Clause 14, that by reason of the contract goods being defective or otherwise not in accordance with the contract a diminution of the contract price is justified.

## **8. Value Added Tax**

Value Added Tax shall be charged at the appropriate rate on all sales inside the United Kingdom.

## **9. Force Majeure**

The Supplier shall not be under any liability whatsoever in respect of any delay or failure to deliver any of the goods due directly or indirectly to any cause of whatsoever nature, or howsoever arising not within the reasonable control of the Supplier, including but not limited to acts of God, war, act of foreign enemy, hostilities (whether war be declared or not), civil war, strife, invasion, rebellion, riot, commotion, disorder, malicious damage, fire, flood, tempest, epidemic, quarantine restriction, strikes and / or other industrial disputes, lockouts, freight embargoes, unusually severe weather, shortage of raw materials or energy supplies, transportation delays and the failure of sub contractors or suppliers to perform, and in any such circumstances the Supplier may rescind the contract and in this event the customer shall pay to the Supplier a portion of the contract price proportional to the goods deemed to have been delivered pursuant to Clause 3.

## **10. Law**

The contract shall in all respects be governed by English Law.

## **11. Packing**

Unless otherwise stated, the goods shall be packed to the Supplier's normal specifications in nonreturnable packing, such packing having been deemed reasonably necessary for export and / or domestic transport and the Supplier accepts no liability for injury, loss or damage to the goods as provided for in Clauses 4 and 5.

## **12. Carriage**

If by agreement between the Supplier and the customer the contract goods are sent or carried to the customer, any person other than the Supplier's own employees having custody of them during transit shall be deemed to be the agent of the customer for the purposes of such transit.

## **13. Condition of Goods Supplied**

In relation to the contract goods all conditions and warranties, express or implied, common law,

statutory or otherwise, are hereby excluded and replaced by the following terms, the benefit whereof is personal to the customer and cannot be assigned to any third person:

- i) the obligations of the Supplier hereunder shall not extend to the making good of and defect which in his opinion (which shall be conclusive) is due to fair wear and tear, conditions of working not notified to him in writing before acceptance, accident, misuse or failure to maintain;
- ii) the obligation of the Supplier hereunder, shall not extend to any contract goods which the customer has attempted to repair or with which he has otherwise intermeddled, whether wilfully or accidentally;
- iii) the foregoing provisions of this clause shall apply in the case of contract goods not manufactured by the Supplier, but not so as to impose upon the Supplier any more extensive liability than the liability owed to him by virtue of such express guarantee as may have been given and remains available to him;
- iv) the foregoing provisions of this clause do not apply to damage or deterioration in transit.

Once warranty period is expired, the Supplier will endeavour to repair the faulty units, however any such repairs will be chargeable to the customer. Quotations of repair costs are provided prior to commencement of work and if the customer decides not to go ahead with the repair, carriage and labour charges may still apply.

#### **14. Arbitration**

Any question, dispute or difference whatsoever which may arise between the customer and the Supplier in relation to or in connection with the contract (except where the Supplier's decision is expressed to be conclusive), shall be decided by arbitration. Upon either party giving the other written notice of the existence of such question, dispute or difference the same shall be referred to the arbitration of a person to be mutually agreed upon or, in default of agreement within 14 days of such notice, of such person as the President for the time being of the Institute of Arbitrators shall appoint. The reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1950 as re-enacted or modified.

#### **15. Transfer of Property**

- i) The goods shall remain the sole and absolute property of the Supplier as legal and equitable owner until such time as the intending purchaser shall have paid to the Supplier the agreed price together with the full price of any other goods, the subject of any other contract with the Supplier.
- ii) The Supplier may for the purpose of recovery of its goods, enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- iii) Until such time as the intending purchaser becomes the owner of the goods he will store them on the premises separately from his own goods and those of any other person and in a manner which makes them readily identifiable as the goods of the Supplier.
- iv) The intending purchaser acknowledges that he is in possession of the goods solely as a fiduciary until the full sum owing to the Supplier has been paid and until that time the entire proceeds of sale are held in trust for the Supplier.
- v) All goods shall be at the purchaser's risk from the time the goods are delivered.

#### **16. Descriptive Matter and Drawings**

The Supplier makes every effort to ensure the accuracy of technical data or sales literature relating to the goods but accepts no liability for any loss, injury or damage arising directly from any error or omission in said technical data or literature.

#### **17. Shipping Specifications**

Any shipping specifications are approximate only and the Supplier accepts no liability for any freight incurred if cases exceed the dimensions or gross weights specified.

#### **18. Determination of Contract**

If the customer shall break any provision of this or any other contract between himself and the Supplier or commit an act of bankruptcy, or make arrangement with his creditors, or if a winding up petition shall be passed or presented to wind up his business (except for the purpose of amalgamation or reconstruction), or have a receiver appointed, or suffer distress or execution, then the Supplier may determine this contract and any other contract currently subsisting

between himself and the customer without prejudice to any other claim or remedy which he may have. In any case where such determination does not arise from a breach of contract by the customer the Supplier shall be entitled to payment of any contract goods already delivered together with such costs as he may reasonably have incurred in preparing for future delivery together with an addition of 10% of such costs.

**19. Installation**

If the contract requires the Supplier to install, the customer shall afford to him all facilities requisite thereto and the customer shall not handle or interfere with the contract goods or installation until such installation is complete. Installation shall be deemed to continue until the customer receives written notice from the Supplier that it is complete.

**20. Insurance (Contract Works Only)**

For insurance purposes, the equipment being installed on site will become the responsibility of the client at the point it is delivered to site (entering the building). The customer must therefore take adequate measures to safeguard the equipment, especially where there is a time delay between delivery and installation. It is essential that the client ensures adequate insurance cover is in place to cover this scenario.

The Supplier has in place the following insurance policies:

Employers Liability Insurance Limit of Indemnity £10,000,000

Public and Product Liability Limit of Indemnity £2,000,000 each

**21. Erection and Services**

When the contract provides for erection and / or services on the site by the Supplier then the customer shall:

- i) be solely responsible for the preparation of the site and said site shall be subject to approval by the Supplier as being suitable for the equipment or goods sold;
- ii) pay total costs of any modifications, alterations or making good to buildings or any other structures whatsoever on the site if required;
- iii) provide at his cost all roadways and other means of access to the site, labour, lifting gear, temporary platforms, piping and trunking, electrical and other power and all other additional services required for the prompt execution of the contract work. The customer shall also be responsible for progressing the movement of the equipment from the ship or aircraft to the site including payment and discharge of all customs, import duties and all other charges or expenses applicable thereto.
- iv) accept charges of all expenses, excluding travelling expenses, incurred by Supplier.

Company: ..... Date: .....

Print: ..... Sign: .....