

Terms & Conditions

1. Definitions.

- 1.1. For the purpose of these terms and 'Conditions' ("Conditions')
- 1.2. The 'Company' means – M & S Fabrications Limited T/A "M & S Engineering
- 1.3. The 'Buyer' means – The purchaser, customer (individual or organisation) of goods and services from the Company.
- 1.4. 'Goods' mean – articles, equipment, services or items to which the quote pertains.

2. General

- 2.1. These 'Conditions' are only terms upon which the Company offers and agrees to contract with the Buyer. Any contract made between the Company and the Buyer for the sale and purchase of goods shall incorporate and be subject to these 'Conditions', which shall govern such contract to the exclusion of any other terms and 'Conditions' subject to which any offer made is purported to be made by the Buyer and in no case shall the Buyers' 'Conditions' of purchase apply to such contract.
- 2.2. All samples, specifications, drawings, particulars, descriptions, illustrations and price lists are intended only to represent a general idea of the goods and form no part of the contract unless expressly agreed.
- 2.3. The Buyer shall be responsible to the company for ensuring the accuracy of the details, specifications and terms of any order for goods submitted by the Buyer to the Company and for giving the company the necessary information relating to the goods with sufficient time to enable the Company to perform its obligations under these "Conditions". The Company shall incur no liability resulting from inaccurate information being supplied by the Buyer. The Buyer shall take all appropriate steps in notifying the Company in writing of any changes to the detail, specifications and terms as soon as possible.
- 2.4. The Buyer shall indemnify the Company in full on demand from and against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of any cancellation (whether directly or indirectly) or changes to the details, specifications and terms by the Buyer of any order.
- 2.5. All rights and remedies expressly reserved by the Company in these "Conditions" are without prejudice to any other right or remedy available to the company.
- 2.6. Where rights and decisions in these 'Conditions' are to be exercised or made at the sole discretion or discretion of the Company then the Company shall be under no duty or obligation to justify or provide a reason to the Buyer for the decision.

- 2.7. 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 thereby and shall remain in full force and effect.

3. Quotation and tenders

- 3.1. Quotation and tenders shall be available for acceptance for a maximum period of 30 days from date of receipt and maybe withdrawn at any time by the Company within such period. A quote by the company does not constitute an offer by the company to sell or supply goods and services.
- 3.2. Any quotation or tender given by the Company is an invitation to the Buyer to make an offer only and shall not constitute a contract. No order placed by the Buyer with the Company in pursuance of a quotation, tender or otherwise shall be binding on the Company unless and until it is accepted in writing by the Company, or the Goods are despatched.
- 3.3. In the event that no quotation or tender is given by the Company and the Company has received an order from the Buyer then provided that the Buyer shall have notice of these 'Conditions', in such circumstances all Goods are sold subject to these 'Conditions'.

4. Delivery and Access

- 4.1. The date for delivery of any Goods shall in every case be dependent upon receipt of all necessary information, final instructions or approvals from the Buyer in writing.
- 4.2. Where the Buyer requests delivery to a specific site, the responsibility is on the Buyer to ensure that the Goods have been delivered before incurring site costs, unless otherwise stated.
- 4.3. The Buyer acknowledges and accepts that changes in design specifications, approvals or quantities required may result in delay in production and / or delivery by the Company.
- 4.4. The Company will endeavour to comply with reasonable requests by the Buyer for postponements of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company the Buyer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and the Company shall be entitled to invoice the Goods in accordance with these "Conditions". The Company shall not be responsible for any deterioration to the Goods or protective coatings in the event of storage.
- 4.5. Where the Company accepts an order for the supply of Goods to be called off by the Buyer unless otherwise agreed by the Company in writing such call offs must be made so as to complete delivery of all Goods within 12 months from the date of the Buyer's original order.

- 4.6. The Company shall have the right to make delivery by instalments and in that event each delivery shall stand as a separate contract and failure to make any instalment delivery shall not entitle the Buyer to repudiate the whole contract.
- 4.7. Where delivery is made by the Company to the Buyers premises the Buyer will ensure the provision to the Company of full and adequate access to the point at which delivery is to take place and all other facilities and services necessary to enable the Company to deliver in accordance with the Buyer's requirements. The decision of the Company's representative as to the nearest point of accessibility to the Buyer's works shall be accepted as final and shall be deemed to be the point of delivery.
- 4.8. The Buyer will take all appropriate steps to ensure that a delivery note(s) is signed on receipt of the Goods and that a copy is provided to the Company.

5. Divisibility Clause

- 5.1. For multiple orders the contract is divisible. The works performed, or obligations taken at each stage during the course of the contract shall be invoiced separately. Each invoice for work or obligations undertaken at each stage shall be payable in full without deduction or set-off in accordance with terms of payment specified.

6. Risk and Title Retention

- 6.1. Title of goods will not pass the Buyer until the Company receives full payment. In the event of non-payment for any reason, the goods shall be returned to the Company with no liability or disruption against the Company. A rental charge maybe placed against the use of the equipment for the period of time, and a rate set at the discretion of the Company.
- 6.2. Until the purchase price of the Goods comprised in this or any other contract between the Buyer and the Company and all other indebtedness of the Buyer to the Company shall have been paid or satisfied in full nothing in this 'Condition' shall;
- 6.2.1. Entitle the Buyer to return the goods or to delay payment for the goods; or
- 6.2.2. Constitute or be deemed to have constituted the Buyer as the Company's agent otherwise than for the purpose of this 'Condition'; or
- 6.2.3. Render the Company liable to any third party for an unauthorised representation or;
- 6.2.4. Prevent the Company from maintaining an action for the price notwithstanding that the property in the goods may not have been passed to the Buyer.

7. Cancellation

- 7.1. Cancellation will only be agreed to by the Company on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Buyer to the Company.

8. Price

- 8.1. Unless otherwise agreed the price is exclusive of VAT and other taxes and the cost of carriage is based on costs current at the date of order acknowledgement or the date of the Company's quotation or tender if earlier.
- 8.2. The Company reserves the right at any time prior to delivery of the goods to adjust the price to take account of any increase in the cost to it of materials, taxes, labour, overheads, third party costs or services of any currency fluctuations which increase the costs to goods/service of goods imported into the United Kingdom.
- 8.3. The Buyer is solely responsible for the costs associated with any variation to the original specification and design of any goods quoted on that maybe subsequently demanded by any competent authority and agrees that such costs will be charged as an extra.

9. Terms of Payment

- 9.1. Unless otherwise agreed in writing by the Company, the price shall be payable within 30 days of the invoice date.
- 9.2. If at the date on which the Company is ready to deliver the goods and the Buyer delays for any reason, the Company may present invoices for settlement within 7 days of that date.
- 9.3. The Company reserves the right to charge interest at the rate of 4% per month above the Bank of England Base Rate in force at the time when payment is due on all outstanding invoices.
- 9.4. In default of payment and without prejudice to any other rights or remedies the Company reserves the right to demand payment of all outstanding balances whether or not due.
- 9.5. The Buyer shall not be entitled to withhold set-off payments for goods delivered for any reasons whatsoever and the Company may at any time, without limiting any other right or remedies it may have, set-off any amount owing to it by the Buyer against any amount payable by the company to the Buyer.
- 9.6. The Buyer shall indemnify the company against any legal or other expense reasonably incurred by the Company in the collection of sums outstanding from the Buyer to the Company, including without limitation, legal costs and fees.

10. Guarantee

- 10.1. If the Buyer is a limited company, limited liability partnership or a trust, any director or directors and any person who holds more than 25 per cent of the issued share capital of the Buyer (if a limited company) any member of the Buyer (if a limited liability partnership) and any trustee of the Buyer (if a trust) agree (if more than one, jointly and severally) to guarantee the payment of all monies, debts and liabilities of any nature from time to time due or owing from or incurred by the Buyer to the Company (the "Guaranteed Obligations").
- 10.2. This guarantee is and shall at all times be a continuing security and shall cover the ultimate balance of all monies payable under the contract, irrespective of any intermediate payment or discharge in full or in part of the guaranteed obligations.
- 10.3. Regardless of whether the guarantor ceases to be a director, shareholder, member, trustee, employee or agent, or otherwise leaves the service of the Buyer no guarantor shall be discharged or released from their obligations under this guarantee unless and until the Buyer expressly confirms in writing that they are so discharged or released.
- 10.4. The Company may at its sole discretion, conditionally or fully release or discharge any guarantor from their obligations under this guarantee or accept any compositions from or make any other arrangements with any guarantor without releasing or discharging the other(s) or without prejudicing or affecting the Company's rights and remedies against such other(s).

11. Credit

- 11.1. This contract shall be subject to the provision that if at any time thereafter the Company is advised of circumstances casting doubt on the Buyer's credit worthiness or satisfactory security for payment is not given on request, the Company may require payment of the whole or part of the purchase price from the Buyer in advance and pending such payment the contract shall be suspended. In the event of such advance payment not being made within a reasonable period stipulated by the Company, the Company may cancel the Buyer's order without liability and the Buyer shall be responsible for any resulting loss to the Company.

12. Warranty and defects

- 12.1. Placing an order will be deemed to warrant agreement on design and specifications to be supplied. Exceptions to this would be the supply of defective materials or equipment.
- 12.2. The Buyer shall lodge with the Company in writing within 7 days after delivery of the goods any claims in respect of defects in the goods (and for this purpose rust oxidation and discoloration shall be regarded as being a defect which is apparent on visual inspection at the time of delivery) which are reasonably capable of detection by careful examination. Defects which are not detectable by careful examination within that period shall be notified in writing by the Buyer as soon as practicable and in any event no later than;

12.2.1. 14 days after discovery of the defect and subject to no interference by third parties.

12.2.2. 12 months after the date of delivery of the goods, whichever occurs first.

12.3. The Company shall at its option repair, replace, refund or credit the purchase price for any goods or part thereof in which under proper storage and use defects appear within the time limits set out in 'Condition' 12.2 above which are caused by faulty material or workmanship.

12.4. This warranty does not cover faulty material, installation, misuse, alteration, wilful damage, negligence, abnormal working 'Conditions', failure to follow the company's instructions (whether oral or in writing) nor will the company be liable for any losses or consequential expenses incurred.

12.5. The Buyer shall provide such information regarding the circumstance of the claim as would be reasonably required to assess the validity of the claim and if insufficient information is provided, the Company shall be entitled, within 7 working days of requesting in detail the additional information needed, and such information not having been received, to reject the claim.

12.6. Save as aforesaid and save in respect of death or personal injury resulting from the negligence of the Company, its servants or agents, the Company shall not be liable for any claim or claims direct or indirect consequential or incidental injury loss or damage made by the Buyer against the Company whether in contract or tort (including negligence on the part of the Company its servants or agents) arising out of or in connection with any defect in the goods or any act, omissions, neglect or default (whether or not the same constitutes a fundamental breach of the contract between the Buyer and the Company) or the Company its servants or agents in the performance of the contract between the Buyer and the Company.

12.7. The company shall not be liable to the Buyer or be deemed to be in breach of these "Conditions" by reason of any delay in performing, or any failure to perform any of the Company's obligations in relation to the goods, if the delay or failure was due to any cause beyond the Company's reasonable control.

12.8. Without prejudice to the generality of the foregoing, nothing herein contained shall operate to exclude any warranty or condition implied by statute.

12.9. On receipt of the Acceptance Certificate ("Take-Over Notice") the date of acceptance will be the "Take-Over Date" when the warranty will commence. The Company will provide a 1 years' (12 months) service contract for this Equipment.

12.10. The company's Liability shall be capped at 10% of order value.

13. Liability

13.1. Save where the Company is shown to have failed to exercise reasonable care in the manufacture and/or supply of the goods and such failure results in death or personal injury

the Company shall not be liable in respect of claims arising by reason of death or personal injury.

- 13.2. Under no circumstances whatsoever shall the Company be liable for consequential loss (including removal or rectification work required in connection with installation, repaired or substituted goods) loss or other indirect losses or for damage to property.

14. Copyright and Confidential Information

- 14.1. 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 Buyer will not without the written consent of the Company either give away, loan, exhibit or sell any such drawings or extracts there from, or copies thereof, or use them in any way except in connection with the goods in respect of which they are issued.
- 14.2. On written application of the Buyer, the Company will make available the copyright in such drawings or extracts on payment of fee to the Company, such fee to be agreed.

15. Drawings and Specifications

- 15.1. The Buyer shall be solely responsible for ensuring that all information advice and recommendations given to the Company either directly or indirectly by the Buyer or by the Buyer's agents, servants, consultants or advisors are accurate correct and suitable. Examination or consideration by the Company of such drawing's information advice or recommendations shall in no way limit the Buyer's responsibility hereunder unless the Company specifically agrees in writing to accept responsibility.
- 15.2. The Buyer must accept sole responsibility for any discrepancies which occur between the quantities or sizes of goods agreed to be supplied by the Company and the quantities or sizes which are needed by the Buyer in order to satisfy the particular purpose for which the Buyer requires the goods.
- 15.3. The Buyer shall indemnify the Company from and against all actions, claims, costs and proceedings which arise due to the manufacturer of goods to the drawings or specification of the Buyer where such drawings or specifications are at fault or where it is alleged that they involve an infringement of a patent, copyright, registered, design copyright or the other exclusive right.

16. Insolvency

- 16.1. If the Buyer shall become bankrupt or insolvent or compound with creditors or in event of resolution being passed or proceedings commenced for the liquidation of the Buyer (other than a voluntary winding up for the purpose of reconstruction, amalgamation or if a Receiver or Manager is appointed of all or any part of its assets or undertaking or if the Buyer (being an individual) shall die or if the Buyer shall be in default of his obligations under this contract then the Company shall be entitled to cancel this contract and any other contract between the Buyer and the Company in force at the date hereof in whole or in part by notice in writing (without prejudice to any right or remedy accrued or accruing to the Company) and the price of all Goods and services rendered by the Company to the Buyer whether under this contract or any other contract in force at the date hereof shall immediately become due and payable.

17. Force Majeure

- 17.1. Without prejudice to these 'Conditions' the Company shall not be under any liability for any delay loss or damage caused wholly or in part by an act of God, government restricted 'Conditions' or control any laws rules or regulations of the country of origin of the Goods non arrival of imported Goods or by reason of any other act done or not done pursuant to a trade dispute whether such dispute involves its employees or not or by 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'.

18. Assignment

- 18.1. The Buyer shall not assign, transfer, purport to assign or transfer any of its rights and/or obligations under any contract between the Company and the Buyer for the sale and purchase of goods and/or benefit of any such contract to any other person whomsoever.

19. Sub-Contracts

- 19.1. The Company reserves the right to sub-contract the performance of any of its obligations under any contract between the Company and the Buyer for the sale and purchase of Goods or any part of any such contract.

20. Data Protection

- 20.1. The Buyer agrees to the Company collecting and using such details (including, without limitation, Personal Data as defined in the Data Protection Act 1998) as the Buyer provides to the Company for such purposes as are necessary in the Company's sole discretion for the Company to comply with its obligations under these 'Conditions'. The Company may have to pass the Buyer's details (including, without limitation, Personal Data as defined in the Data Protection Act 1998) on to responsible third parties for the same purpose. The Company shall not be responsible for any breach of security or any act or omission of third parties who receive the Buyer's details (including, without limitation, Personal Data as defined in the Data Protection Act 1998)

21. Applicable Law

- 21.1. This agreement shall be governed by and construed in accordance with the laws of England and parties shall irrevocably submit to the exclusive jurisdiction of the English Courts to settle any dispute which may arise under or in connection with these 'Conditions', unless M & S Metal Fabrications Limited (Company Number 03235683) opt to take legal action against the Buyer before another competent court.