

# OTTAWAY ENGINEERING LIMITED TERMS AND CONDITIONS OF SALE

## 1. Definitions:

- (a) "**Buyer**" means the person, firm or company from whom an Order is accepted by the seller.
- (b) "**Seller**" means Ottaway Engineering Limited whose registered office is at Renown Close, Chandlers Ford Industrial Estate, Eastleigh, Hampshire, SO53 4HZ
- (c) "**Goods**" means the articles or things or any of them described in the Order and supplied under the terms of the Contract.
- (d) "**Order**" means the order placed by the Buyer for the supply of the Goods.
- (e) "**Conditions**" means these Terms and Conditions of Sale.
- (f) "**Contract**" means the contract for the sale of the Goods by the Seller governed by these Conditions.

## 2. The Agreement

(a) The contract and all agreements from time to time entered into between the Seller and the Buyer which provide for the sale of any Goods by the Seller to the Buyer shall be deemed to incorporate these Conditions which represent the complete agreement of the Seller and Buyer with regard to the Goods, except as may be otherwise specially agreed in writing by the Seller.

Those Conditions shall override any terms and conditions stipulated incorporated or referred to by the Buyer in any Order correspondence negotiations, or in any other way.

(b) No order is binding on the Seller until accepted by the Seller in writing by the issue of the Seller's official Order confirmation, notwithstanding any act or statement of the Seller or its agents or representatives prior to such issue.

(c) Without prejudice to the foregoing acceptance of delivery of the Goods by the Buyer shall be deemed to constitute acceptance of these Conditions to the exclusion of all other terms and conditions whatsoever.

(d) If any terms and conditions herein (or part thereof) is held to be invalid for any reason by any Court or competent authority, it is to that extent to be deemed removed from the Contract without prejudice to the validity or effectiveness of the remaining terms and conditions hereof.

(e) The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach.

### **3. Cancellation**

(a) No cancellation by the Buyer is permitted except where expressly agreed by the Seller in writing.

### **4. Prices**

(a) The price for the Goods shall be those stipulated in the Seller's written quotation, or as otherwise may have been agreed between the Seller and the Buyer.

(b) Unless otherwise stated, all prices quoted are in Pounds Sterling, net ex-works exclusive of VAT.

(c) The Buyer shall not be entitled to make any deduction from the price of the Goods in respect of any alleged rights to set-off or counterclaim unless both the validity and the amounts thereof have been expressly acknowledged and admitted by the Seller in writing.

(d) The Seller 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 of raw materials, labour, services or any currency fluctuations affecting the cost of imported materials.

### **5. Payment Terms**

(a) Unless otherwise agreed or specified by the Seller in writing, payment for the Goods shall be made in full together with any Value Added Tax chargeable within 30 days after the date of the invoice for the Goods in question.

(b) The Seller's invoice may be issued at any time after the Goods are ready for despatch.

(c) Time for payment of the price shall be of the essence and without prejudice to any other right which the Seller may have.

(d) The Seller shall be entitled to charge interest on overdue amounts due under the Contract from the due date for payment thereof until payment. Such interest will accrue from day to day and such interest will accrue both before and after judgement and be payable on demand at the rate of eight per cent (8%) per month above the base rate for the time being of Barclays Bank Plc and proportionately for any lesser period.

(e) The Buyer shall reimburse to the Seller all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

(f) The Seller reserves the right to suspend further deliveries to demand security for payment and to cancel any allowance of further credit in the event of:

(i) any payments under the Contract (or any other Contract with the Buyer) not being made when due or

(ii) the Seller in its sole discretion at any time considering that the financial condition of the Buyer has ceased to justify any such terms being permitted.

## **6. Delivery and Risk**

(a) Unless otherwise agreed in writing the Seller shall arrange for delivery of the Goods to the Buyer's premises within the UK. The Buyer shall be liable for the cost of delivery. Any delivery date is approximate only and is not a contractual commitment.

(b) Risk in the Goods shall pass to the Buyer on delivery. If the Buyer requires postponement of delivery beyond the projected delivery date the Seller may at its option, exercisable by notice in writing to the Buyer, store the Goods at the Buyer's expense and risk shall pass to the Buyer at the time of such delivery to storage.

(c) The Buyer shall be deemed to have accepted all Goods upon their delivery by the Seller to the premises specified in the Order.

## **7. Passing of Property and Retention of Title**

(a) Notwithstanding delivery the property in the Goods shall not pass to the Buyer until the Buyer has paid in full the price of the Goods.

(b) Furthermore the property in the Goods shall not pass to the Buyer unless and until the full price of any other delivered goods, the subject of any other business transaction between the Buyer and the Seller, has been paid.

(c) Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall store or mark them so that they can at all times be identified as the property of the Seller.

(d) The Seller may maintain an action for the price of the Goods notwithstanding that title in them has not passed to the Buyer.

## **8. Inspection / Shortages**

(a) The Buyer is under a duty wherever possible to inspect the Goods on delivery. Where the Goods cannot be examined the carrier's note or such other note as appropriate shall be marked "not examined".

(b) The Seller shall be under no liability for any alleged defects or shortages unless a written notification of such alleged defect or shortage is received by the Seller within seven days of delivery giving full details of the alleged defect or shortage.

(c) In all cases where defects or shortages are complained of the Seller shall be under no liability in respect thereof unless an opportunity to inspect the Goods is given to the Seller before any use is made thereof, or any alteration or modification is made thereto by the Buyer.

**(d)** If the Seller, following notification pursuant to and within the time limits prescribed by sub-clause 8(b) above accepts such claim, the Seller shall at its entire discretion either replace the defective item(s), rectify the defective item(s), supply the missing item(s), or give credit for the defective or missing item(s) as the Seller may decide.

## **9. Liability**

**(a)** Nothing in Clause 9 shall be deemed to exclude or restrict the Seller's liability for death or personal injury resulting from negligence.

**(b)** Each of the sub-clauses in Clause 9 is to be treated as separate and independent.

**(c)** The Seller warrants that it has title to the Goods or will have such title at the time when property in the Goods is to pass to the Buyer under the Contract and warrants that in all other respects it is able to satisfy its obligations to the Buyer under Section 12 of the Sale of Goods Act 1979.

**(d)** Save as expressly stated herein, all warranties and conditions, whether expressed or implied by statute (including in particular Sections 13, 14 and 15 of the Sale of Goods Act 1979) usage trade custom or otherwise relating to the quality or nature of the Goods or their life or wear or fitness for any particular purpose or use under any specific conditions, are hereby expressly excluded.

**(e)** The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this arises from breach of a duty in contract or tort or in any other way (including loss arising from the Seller's negligence). Non-exhaustive illustrations of consequential or indirect loss would be:

- Loss of profits
- Loss of contracts
- Damage to property of the Buyer or anyone else and
- Personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Seller's negligence)

**(f)** The Seller's total liability for all claims arising out of any one Contract shall not exceed the Contract price.

## **10. Force Majeure**

**(a)** The Seller shall have no liability under the Contract in respect of any failure or delay in fulfilling any of the Seller's obligations to the extent that fulfilment thereof is prevented, frustrated, impeded or delayed as a consequence of any "force majeure", or any occurrence whatsoever beyond the control of the Seller, including without prejudice to the generality of the foregoing:

- (i) compliance with any order, regulation, request or control of any national or local authority, governmental department, or other competent authority of any country whether or not legally enforceable, or
- (ii) any delays in or cancellations of deliveries, or provision of services by third parties, or shortages of goods, materials or parts, or

- (iii) any strikes, lock-outs or trade disputes, whether involving the Seller's employees or others, fire, explosion, accident, calamity or civil disturbance action of elements, national calamity or Act of God; or
- (iv) failure in whole (or in part) of any power or energy supply.

**(b)** Whilst the Seller undertakes to make reasonable endeavours within its power to overcome difficulties arising in connection with any of the events or circumstances referred to in sub-clause(a) of this Condition, the Seller reserves the right to terminate the contract with the Buyer without incurring any liability whatsoever and in particular the Seller shall not be obliged to purchase any goods from third parties to make good any such difficulty.

### **11. Confidentiality**

**(a)** The Buyer shall during and after termination of the Contract keep confidential all information acquired from the Seller or which becomes known to the Buyer in connection with the Contract.

### **12. Assignment**

**(a)** The Buyer shall not assign the Contract without the written agreement of the Seller.

### **13. Governing Law and Jurisdiction**

**(a)** If any dispute or difference shall arise between the parties in connection with or arising out of the Order, which cannot be settled amicably by the parties, then such dispute or difference shall be referred to arbitration. Such arbitration shall be governed by the provisions of the Arbitration Act 1996.

**(b)** The Contract shall be governed by and construed in accordance with English law and all disputes arising in connection with this Contract shall be submitted to the jurisdiction of the English courts.

### **15. Additional Costs**

**(a)** Should the Seller incur additional costs owing to variation or suspension of the Contract by the Buyer's instructions or lack of instructions or to interruptions, delays, overtime, unusual hours, mistakes or work for which the Seller is not responsible, then the price will be adjusted by such amounts as may be reasonable in all the circumstances.