

ERNEST DOE & SONS LTD
GENERAL CONDITIONS OF SALE

1. GENERAL

A. In these Conditions :-

“the Company” is the person firm or company to whom the order is addressed which shall be and include (according to the context) Ernest Doe and Sons Limited or its subsidiaries and trading divisions.

“the Customer” is the person firm or company by whom the order is given

“Goods” means all articles or things or services or any of them specified in the order

“Order” means the order (whether written or oral) placed by the Customer for the supply of Goods by the Company.

B. Unless otherwise agreed in writing by the Company these Conditions of Sale, which supercede any earlier sets of conditions issued by the Company shall override any terms or conditions stipulated incorporated or referred to by the Customer at any stage even if these are stated to take precedence over any other conditions.

C. Unless forming part of the Company’s quotation and order acknowledgement the Company shall not be bound by any variation waiver of or addition to these conditions of Sale except as agreed by the Company in writing and signed by a Director of the Company.

D. Every contract is between the Customer and the Company and is not assignable without the consent in writing of the Company signed by a Director of the Company.

E. The headings in these Conditions are included for convenience and shall not be considered in construing these Conditions.

2. QUOTATIONS/ORDERS

A. All quotations and orders are given subject to acknowledgement by the Company in writing on receipt of the Customer’s order and no binding contract shall be or deem to have been effected by the Customer’s acceptance of the Company’s quotation until the Customer’s order constituted by such acceptance has been confirmed in writing (or at the discretion of the Company otherwise accepted) by the Company.

B. The Company’s quotations are valid only for the period stated on them or when no period is given for Three weeks from the date of issue unless withdrawn by the Company before that date.

C. The Company’s quotations include only the items and work specified in them.

3. PRICES

A. Prices quoted by the Company are based on the current cost of Goods materials and wages transport insurance and other outgoings Prices are therefore subject to proportional variation in respect of increase in any of these items before dispatch or notice of dispatch or date of completion of work (as the case may be) and the price as so varied shall be deemed to be substituted for the price appearing in the documents forming the contract Unless expressly agreed in writing between the parties or included in any quotation prices quoted are exclusive of delivery charges.

B. The Customer shall not be released from the contract by any increase in duty or taxes to be borne by the Customer whether arising before or after the making of the contract.

C. Prices shown in a quotation shall not be binding on the company until such time as they are confirmed by the Company in writing Thereafter the price may be varied if other clauses in these conditions provide for such variation.

D. Prices and other charges of the Company are exclusive of Value Added or any other Taxes payable on the supply of Goods which will be charged at the rate in force at the date of the applicable Tax point.

E. The customer authorises the Company to carry out and charge for incidental work (in addition to that described in any order or acknowledgement) where reasonably necessary or prudent in order to comply effectively with the Customers order and instructions (and to supply such parts and materials as are reasonably required for such incidental work)

F. Orders placed cannot be cancelled except with the Company’s consent in writing and on terms which will indemnify the company against loss (without prejudice to any other right the company reserves the right to levy a handling charge of 25% of the Value of goods returned by the Customer for refund or credit). Goods returned without the company’s consent will not be accepted for credit and will remain on the Company’s premises at the Customers risk.

4. DELIVERY AND DELAY

A. Any period or date for delivery shall be an estimate only and shall not impose any contractual obligation on the Company. However the Company will make reasonable endeavours to meet the date or period estimated for

delivery but does not accept any liability for loss or damage howsoever arising by reason of failure to do so. In the event of any circumstances beyond the reasonable control of the Company (whether in the Company's business or in the business of any of the suppliers or subcontractors to the Company) Acts of God, production troubles, delayed deliveries of manufacturing material, parts sub-assemblies or strike lock-outs or breakdowns the period of delivery shall be extended accordingly and the Company will inform the Customer as soon as reasonably possible of the occurrence of any such event. The Customer shall have no right to terminate the contract by reason of any such delay as aforesaid.

B. If the Company shall be prevented from delivering any part or parts of Goods by reason of any of the causes referred to in Clause 4A hereof the Company shall deliver and the Customer shall take such part or parts of Goods as the Company shall at the time fixed for delivery be able to deliver and the Customer shall pay for Goods so delivered the same proportion of the price as Goods delivered bear to the whole of Goods agreed to be sold provided that the Customer shall not be required to accept and pay for such part delivery if the nature of the purchase and the Customer's reason therefore is such to render part delivery totally valueless to the Customer.

C. Subject to the provisions of 4B above delivery may be made by instalments and failure by the customer to accept or pay for any instalments may be treated by the Company as repudiation of the contract.

D. The Company shall (if agreed and unless otherwise agreed) deliver to the place provided for the Customers order. Where no definite place of delivery or no time for collection (whichever is applicable) has been agreed by the time Goods are ready for delivery or collection (as applicable) the Company shall give the Customer seven days of notice of availability of Goods if no place of delivery or time for collection (as applicable) shall have been agreed within the said period of seven days the in such Goods shall pass to the Customer and the Company will be entitled (but not bound) to store such goods at any available place at the expense of the Customer.

5. LOSS OR DAMAGE IN TRANSIT

Where the Company is responsible for delivery the Company will repair or at the Company's option replace free of charge any Goods lost or damaged in transit to the place stated for delivery in the Company's acknowledgement of order provided that the company and the carrier if applicable are given notice of such loss or damage within the time required by the carrier's conditions of carriage (or where delivery is made by the Company's own transport within three days of receipt of Goods or of the day upon which Goods would have been reasonably likely to arrive had they or part thereof not been lost) and provided that any such damaged Goods or part thereof are (if requested by the Company) returned carriage paid by the Customer to such place as the Company may reasonably determine and provided further that nothing in this Clause shall make the Company liable for the repair or replacement of Goods lost or damaged in transit where the Customer is responsible for insurance of the goods during transit (or for any liability where delivery is by a carrier exceeding the amount recovered from such carrier or for any liability exceeding the insurance cover secured by the Company) and in the event of such a shortfall any repair or replacement shall be at the Company's discretion and be subject to the Customer making up any shortfall required.

6. FREIGHT CHARGES

If included in the quotation freight and (if applicable) insurance charges will be based on the Company's quotation but may be varied without any requirement for the company to notify the Customer in accordance with the rates ruling at the time of dispatch and any such rate chargeable at that time will be payable by the Customer.

7. DIMENSIONS AND SPECIFICATIONS

A. Unless specified otherwise in writing all the Company's drawings weights dimensions specifications and other descriptions of Goods are approximate only and do not form part of the contract. In any event the Company shall be entitled to make modifications to any contract description of Goods provided that these modifications do not materially or substantially affect performance or cost.

B. all specifications drawings technical descriptions and other material or information supplied to the Customer by the Company or relating in any way to goods are confidential and copyright. Without the Company's prior written consent no such material or information shall be disclosed to any third party.

8. PAYMENT TERMS

All sums due as shown on the Company's invoice must be paid

(i) in the case of Goods comprising new or used machinery on or before delivery and

(ii) in the case of other goods on or before the 23rd of the month following the month of invoice and the Company reserves the right to charge interest from the date of invoice which shall accrue at the rate of four per cent over the base lending rate of Barclays Bank PLC as shall be in force at the date that interest becomes due (such sum to be calculated per annum, from day to day on all amounts due but unpaid) this right shall be exercisable without prejudice to any other right of the Company.

9. WARRANTY

A. For new equipment manufactured by the Company and supplied in the UK (excluding components thereof not manufactured by the Company) the Company will make good either by repair or by the supply of replacement parts (at the Company's option) defects which arise which are attributable to faulty materials or workmanship during the period of six calendar months from the date of delivery provided that no liability is accepted for installation charges or other damages that may be incurred.

B. For new equipment or components supplied in the UK not manufactured by the Company the Company will pass on to the Customer where possible the warranty given by the original manufacturer.

C. The Company shall be at liberty (without prior authority) to entrust to other Companies firms or individuals the performance or part performance of any contract for the supply of Goods or any installation repairs or adaptations the subject of any Order and the Company shall (save as provided by these conditions) not be liable to the Customer (provided it exercised reasonable care and Judgement in selecting the same) for any default or negligence on the part of such parties or for any defect or unsuitability of any parts plant or work supplied or carried out by such parties.

D. Goods subject to claims shall not be returned to nor will be accepted by the Company without its written consent.

E. the above above warranty shall not be available to the Customer:

(i) if Goods or part thereof have been rendered faulty by alteration treatment or processing by either the or the installer or ultimate consumer other than in the ordinary course of installation or in ordinary use and/or

(ii) if the Company does not receive notification of the fault within fourteen days of its occurrence and/or

(iii) if the Company or manufacturer's trade mark or serial number has been removed, defaced or altered.

F. The company's warranty does not apply to damage sustained in transit save as specifically provided.

10. TITLE/RISK

A. Until payment in full for Goods supplied under this contract is made by the Customer to the Company upon the due date therefore (and for the purposes of this contract time of payment of the price shall be deemed of the essence) the ownership (legal and beneficial) of such goods shall remain with the Company; and

(i) the Company's ownership of Goods shall subsist until payment therefor by the Customer as aforesaid notwithstanding that the Customer incorporates the same or part thereof with (or affixes or attaches the same to)

any other goods or property (whether real or personal) in the ownership or possession of the Customer and this

being the expressed intention of the parties hereto any such use by the Customer of goods supplied under this contract shall not by operation of law or otherwise divest the Company of its legal and beneficial title thereto howsoever the same may be so incorporated with or affixed or attached to other goods or property and

(ii) the Customer shall be fiduciary bailee of the Company with respect to Goods supplied by the Company under these conditions and shall until use of the same by the Customer as aforesaid keep and store the same separate and distinct from goods which are the property of the Customer or any third party and in such manner as enables the same to be identified as the property of the Company and the Customer shall not remove obscure

or

tamper with any identifying marks thereon; and

(iii) the Customer shall not process or use in any manufacturing operation, sell, agree to sell, hire or make any other

disposition of Goods or any part thereof nor, without prejudice to the generality of the foregoing, pledge, charge

or create any other form of security over or, part with possession of Goods supplied hereunder or any part thereof, without the express written consent of the Company and the Company may give or withhold its consent

thereto in writing as it thinks fit.

(iv) if payment is full for all Goods supplied under the provision of these conditions is not made by the Customer upon the due date therefore or an encumbrance takes possession or a receiver is appointed over any part of the assets of the Customer or a petition is presented or notice is given of a resolution to wind up the Customer

(other-

wise than for the purpose of reconstruction or amalgamation) or the Customer makes any arrangement or composition with its creditors or commits any act of bankruptcy or the Customer is unable to pay its debts within the meaning of Section 518 of the Companies Act 1985 or any statutory modification thereto or re-enactment thereof:

(a) the company shall be forthwith discharged from any obligation performing any of its obligations to the Customer hereunder then subsisting but shall (without prejudice to any other rights which the Company

may

have and arising from this contract or otherwise howsoever in law or in equity) become immediately entitled

to recover possession of any Goods hereunder supplied to the Customer; and

(b) the right and liberty of the Customer to sell or make use in anyway of Goods supplied under this contract by

the Company shall forthwith determine without the Company being required to give any notice to the Customer of any such determination.

(c) the Customer shall forthwith place any Goods hereunder supplied to it by the Company at the disposal of the

Company and hereby irrevocably licences the Company by its servants or agents (together with any requisite

vehicular transport) to enter upon all or any premises of the Customer and to use all such force against property (whether real or personal) in the ownership or possession of the Customer as may be reasonably requisite for the purpose of:

(1) locating any goods supplied by the Company hereunder and

(2) removing or securing to the Company's control all Good including detaching or removing the same from any other goods or property (whether real or personal) in the ownership or possession of the Customer with which the same have been incorporated or to which the same have been affixed or attached and

(d) the customer shall indemnify the Company against any claim for costs and/or for damages howsoever arising from the exercise by the Company of its right and/or licence as herein provided

B. The risk in Goods supplied to the Customer shall pass to the Customer on delivery.

11. LIABILITY

Except as may be provided by these Condition of Sale:-

1. (a) The Company shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with Goods or its/their use, or otherwise, except that which it is unlawful to exclude.

(b) Notwithstanding the generality of (a) above, the Company expressly excludes liability for consequential loss

or damage which may arise in respect of Goods, its/their use, or in respect of other equipment or property, or

for loss of profit, business, revenue, goodwill or anticipated savings

(c) In the event that any limitation or provision contained in these terms shall be held to be invalid for any reason and the Company becomes liable for loss or damage that would otherwise have been lawful to exclude, such liability shall be limited to the price of Goods the subject of such a claim

(d) The Company does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of the Company, its employees, agents or authorised representatives.

2. Any representation written or oral made to the Customer by the Company or by anyone on the Company's behalf

before the contract is made shall be of no effect and shall not be binding upon or affect the Company and is hereby expressly excluded from the contract unless is shall be specifically agreed in writing by the Company that

the said representation is or shall be a term of the contract.

3. The customer is responsible for the capacity and performance of any goods ordered by him being sufficient and suitable for his purpose.

4. Save where specifically agreed in writing by the Company, the Company gives no warranty and shall not be liable for any implied warranty otherwise presumed that Goods supplied by the Company are fit for any particular purpose.

5. The company will not be responsible for loss damage or deterioration sustained from any cause whatsoever by goods for shipment abroad beyond either the point of shipment or after Goods have been accepted on behalf of the Customer or by his agent in this country, as the case may be, nor will the Company unless specifically requested in writing, insure the Goods or any part thereof against any loss or risk. Orders must be accompanied by cheque or irrevocable credit on an English Clearing bank through which payment must be arranged against shipping instructions.

6. Customer's vehicles machines and property are received stored and driven only at customer's sole risk and the Company accepts no responsibility for loss or damage arising from any cause whatsoever whether or not involving negligence on the part of any person. The customer hereby authorises any person duly authorised by the Company to drive any such vehicle or machine on the Customer's behalf and at the Customer's risk and

responsibility.

12. LIEN

without prejudice to any other rights hereunder the Company shall have a general lien on all Goods or materials in possession custody or control for all sums due at any time from the Customer and shall be entitled to sell or dispose of Goods or materials as agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums on 28 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after disposal the Company shall be discharged of any liability whatsoever in respect of Goods or materials and in cases where Goods or materials are liable to deteriorate the Company's right to sell or dispose of the same shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring to the Customers attention its intention of selling or disposing of Goods or materials before doing so.

13. WAIVER

The rights of the Company shall not be affected or restricted by any indulgence or forbearance to the Customer. No waiver by the Company of any breach shall operate as a waiver of any later breach.

14. NOTICE

Notices documents and requests which are required under the terms of these Conditions will be sent by pre-paid registered or recorded post or cable or telex to the Company at its registered office and to the Customer at the address set out in the order or acknowledgement and any such notice document or request will be deemed to have been properly given or served when it would have been received in the normal course of transmission.

15. LEGAL CONSTRUCTION

Unless otherwise stated these Conditions of Sale and any contracts made thereunder shall be governed by and construed exclusively in accordance with the law of England and any litigation arising from the contracts shall take place in a court in England and not in any other country.