

# Terms & Conditions of Sale

## CONDITIONS OF THE SALE

The conditions set out in this document ('the Conditions') shall govern the terms of the contract ('the Contract') whereby Controlsforce Limited ('the Seller') agrees to sell goods or services ('the Goods') to the person ('the Buyer') who has ordered them to the exclusion of any other terms and conditions purported to be made by the Buyer.

All orders must be in writing and are accepted subject to these Terms and Conditions of Sale. No terms or condition put forward by Buyer and no representations, warranties, guarantees or other statement not constrained in Seller's quotation nor otherwise expressly agreed in writing by Seller shall be binding on Seller.

The contract shall become effective only upon the date of acceptance of Buyer's order by the Seller. Or upon the fulfilment of all conditions precedent stipulated in the contract whichever is the later.

Where the Buyer seeks in any way to alter the terms of a proposal or quotation he shall be deemed to propose a counter-offer which will then be conditional on its acceptance by the Seller.

No variation or alteration to these Conditions shall be deemed binding unless confirmed and agreed in writing between an authorised party of the Buyer and the Seller.

The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claims for breach of any such representations which are not so confirmed.

Any advice or recommendation given by the Seller or its employees or Agents to the Buyer or its employees or agents as to the storage application or use of the Good which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk

and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

## ORDERS AND SPECIFICATIONS

No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

The Buyer shall be responsible to the Seller for ensuring the completeness and accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within sufficient time to enable the Seller to perform the Contract in accordance with its terms.

The description of the Goods contained in any quotation given by the Seller is believed to be correct as to weights, dimensions, quantity of items, capacity, performance, operation, procedure and otherwise. Any error, omission or misstatement found therein shall not affect the validity of the sale shall not entitle the Buyer to be discharged from the Contract or to claim any compensation in respect thereof.

Notwithstanding the Buyer shall not be obliged to accept any Goods which differ substantially in weight, dimension capacity, performance, operation, procedure and otherwise from the Goods agreed to be sold if the Buyer would be materially prejudiced by reason of such difference in which event the Buyer shall be entitled to rescind the Contract and to claim repayment of the price.

The Seller reserves the right to make any changes in the specification of Goods which are required to conform to any applicable safety or other statutory requirements.

No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss

(including loss of profit and the cost of all labour and materials used) damages charges and expenses incurred by the Seller as a result of cancellation.

## PRICE AND TERMS OF PAYMENT

The price of the Goods shall be the Seller's quoted price and is based on the cost in sterling to the Seller of goods, materials, labour services and transport as at the date of the Contract. In the event that the date of despatch is more than six months after the date of the Contract and there shall be any material increases in such costs during such six month period which are due to any factor beyond the control of the Seller, the Seller shall be entitled to add to the price such sum as may be necessary to cover the amount of such increase.

Payment shall be made in net cash thirty days from the date of the Seller's invoice notwithstanding that delivery may not have taken place (otherwise than in consequence of a breach of contract or delay on the part of the Seller) or that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

If payment has not been made in full within the said period of thirty days the Seller reserves the right to charge interest (both before and after any judgement) on the amounts then outstanding (including interest payable under this provision) at the rate of 0.1% per day until payment in full is made.

If the Buyer fails to make any payment under this or any other contract for the sale of goods between the parties on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

- cancel the contract or suspend any further deliveries to the Buyer;
- appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer).

## EXTRAS

If the Buyer shall subsequent to the date of the Contract require any additions, alterations or tests

then the Seller shall be entitled to make an extra charge in respect thereof.

In the event of delays or suspension of work on the Buyer's instructions or resulting from the failure of the Buyer to give instructions the price shall be increased to cover any extra expense thereby incurred by the Seller.

## STORAGE

If the Seller shall not receive delivery instructions within seven days of its notification to the Buyer that the Goods are ready for despatch there shall be added to the price a charge for storage and fire insurance from the expiration of such period of seven days until the date on which the Seller is instructed to despatch the Goods and during such periods the Goods shall be at the Buyer's risk (save for loss or damage by fire).

## TESTS OR INSPECTION

If the Contract provides that a test or inspection of the Goods shall be made in the presence of the Buyer or its agent such tests shall take place at the Seller's works unless specifically agreed by the Seller at the expiration of not less than seven days written notice by the Seller to the Buyer and if the Buyer or its agent shall not duly attend at the appointed time such tests shall proceed in its absence but shall be deemed to have been made in its presence and the Seller's report thereof shall be accepted by the Buyer as a true and accurate account of such test.

## DELIVERY

Any dates or times quoted for delivery of the Goods are approximate only and although the Seller shall use its best endeavours to despatch or provide within the stated time it shall not be liable for any delay in delivery of the Goods howsoever caused.

Unless otherwise stated the price covers delivery to the Buyer at the Seller's premises but does not include packing or transport charges. If required the Goods will be despatched in accordance with the Buyer's instructions and at its risk and cost.

Where it is provided by the Contract that the price includes delivery this shall be affected by such method of transit as the Seller may determine provided that the

provisions of the Passing of Property and Risk clause applies.

## **PASSING OF PROPERTY AND RISK**

The ownership of the Goods shall remain in the Seller until payment in full in cash or cleared funds has been made to the Seller for them.

The ownership of the Goods shall remain with the Seller until payment for all Goods whatsoever and whensoever supplied under this and all other Contracts between the parties has been received by the Seller in accordance with the terms of each such contract or until such time as the Buyer sells any such Goods to its customers by way of a bona fide sale in the ordinary course of business at full market value.

If such payment is overdue in whole or in part the Seller may (without prejudice to any of its other rights) recover or resell the whole or part of the Goods supplied under the Contract and may enter upon the Buyer's premises by its servants or agents for the purpose of recovering the goods. The Seller shall however account to the Buyer for any sum in excess of that required to discharge the total liability of the Buyer to the Seller under the Contract less all costs and fees incidental to and resulting from the exercise of the powers contained in this Clause.

Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and Controlsforce Limited shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller.

The Goods shall be at the Buyer's risk immediately on delivery to the Buyer, on being appropriated to the Contract by being consigned to a carrier nominated by

the Seller or requested by the Buyer (whichever shall first occur) or, in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection and on each such event the Buyer will insure the Goods for their full replacement value against all usual risks.

## **LIABILITY TO THE CUSTOMER**

If any defect in the Goods appears under proper use and arising solely from faulty design, materials or workmanship attributable to the Seller within a period of twelve calendar months after the date of despatch, the liability of the Seller shall be limited to the repair or replacement of the Goods or the refund of the purchase price, at the discretion of the Seller.

Except where the Seller gives notice to the Buyer that it wishes to inspect any allegedly defective Goods at the premises of the Buyer the Seller shall be under no liability for defective unless the Goods are returned to the Seller without alteration or addition. In the event that the Seller acknowledges that the Goods are defective the Seller will refund any costs of delivery incurred by the Buyer in returning the Goods to the Seller.

The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, (including damaged caused by corrosive or other destructive liquids unless the use giving rise to such damage has been specified by the Buyer and accepted by the Seller in writing), failure to follow the Seller's instructions for installation or use, misuse or alteration or repair of the Goods without the Seller's approval.

The Seller shall be under no liability in respect of defective parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer thereof to the Seller.

The seller does not guarantee that equipment it undertakes to repair, service or otherwise maintain or test can be successfully repaired, serviced or otherwise maintained or tested. The Seller shall be under no liability whatsoever in respect of such circumstances. In such circumstances the Seller shall invoice for the work carried out as originally quoted.

Subject as expressly provided in these Conditions, and except where the Goods are sold under a Consumer Sale (as defined by the sale of Goods act 1979), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

Where the Goods are sold under a Consumer Sale (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions.

The Company shall not be liable for any damage or loss arising from defective working of equipment the subject of repair or manufacture by the Company unless arising from the negligence on the part of the Company or its employees or agents.

Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss or damage (including any claims for consequential loss or for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer..

Without prejudice to any other provision of these Conditions the Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Sellers reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-

- act of God, explosion, flood, tempest, fire or accident;
- war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

- import or export regulations or embargoes;
- strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- power failure or a break down in machinery;
- in any such case the Buyer shall have no claim against the Seller for loss or damage either direct or consequential which may be traceable to any such delay on the completion of the Contract.

## **LIABILITY IN RESPECT OF GOODS MANUFACTURED TO BUYER'S OWN DESIGN**

Where the Contract comprises any Goods to be manufactured, modified or supplied by the Seller in accordance with the design specification or instructions of the Buyer, the Buyer will have no claim against the Seller in respect of defects arising from any such design, specification or instructions which is or are faulty and shall indemnify the Seller against any liability which the Seller may incur as a result of:-

- the work carried out by the Seller in accordance with such design specification or instructions as aforesaid constituting any infringement of any letters patent or other protection subsisting in favour of any person; or
- the Goods so manufactured, modified or supplied by the Seller causing loss or damage to any person or property arising out of any defect in the design specification or construction thereof and the Seller's compliance with the design specification or instructions of the Buyer as aforesaid.

## **CANCELLATION OF PART ORDERS**

In the case of a Contract for delivery of a quantity of Goods over a period of time at intervals in accordance with the requirements of the Buyer the Seller reserves the right to cancel the outstanding part of any such order provided that the Seller shall not be entitled to give notice of cancellation in respect of any delivery already called for by the Buyer for delivery within the following six months.

## **BREACH OF CONTRACT BY OR INSOLVENCY OF THE BUYER**

This clause applies if:-

- the Buyer makes default in or commits any breach of any of its obligations under the Contract; or
- any distress or execution shall be levied upon the Buyer its property or its assets; or
- the Buyer makes any 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 purposes of amalgamation or reconstructions); or

- an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Buyer; or
- the Buyer ceases, or threatens to cease, to carry on business; or
- 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.

If this clause applies then without prejudice to any other right already available to the Seller, the Seller shall be entitled to cancel the Contract or to suspend any further deliveries under the Contract without any liability to the Buyer and, if the Goods have been delivered, but not paid for, the price payable for them shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **EXPORT TERMS**

The Buyer shall be responsible for 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.

Unless otherwise agreed in writing between the Buyer and the Seller, the price for the Goods shall be ex-works.

Unless otherwise agreed in writing payment of all amounts due to the Seller shall be made by irrevocable letters of credit opened by the Buyer in favour of the Seller and confirmed by a Bank acceptable to the Seller.

## GENERAL

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 at such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or of any other provision.

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.

Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to adjudication appointed by agreement or via The Royal Institute of Chartered Surveyors.

Where there is any conflict between these Conditions and a Buyer's conditions of purchase these Conditions shall prevail.

The Contract shall be governed by the Laws of England.

## RETURNS PROCEDURE

Returns procedure exists for items that fall into one of the following categories only:

- Incorrect Product
- Faulty goods
- Customer Cancellation

### Incorrect Product

If the part number or set pressure of the product sent to the customer is different to the specification selected by the customer this is deemed a valid rejection and the product will be replaced free of charge.

Incorrect quantity will be dealt as follows: Short quantity will be rectified and the product sent, if the

quantity sent exceeds the quantity required, these items should be returned to Controlsforce Limited and the carriage charge refunded.

### Faulty Product

Faulty product will be replaced on receipt of the faulty product originally supplied because there will be NO credit raised in this instance. The replacement product will be supplied free of charge. If a replacement product is required before return of the faulty item, an order will have to be placed with Controlsforce Limited, which will be credited after expertise of the returned item if it is found that the failure is due to a product defect.

If the fault is deemed due to site conditions such as carry over, pipe debris, foreign materials or general fabrication and pipework and otherwise Controlsforce Limited will not be liable for a replacement item.

### Customer Cancellation

Where a product has been purchased, but is no longer required due to customer cancellation, the product can be returned to Controlsforce Limited and a 30% restocking charge will be applied.

### Procedure and terms:

In all of the situations described above, returns can only be accepted if the returns form is completed and returned to Controlsforce Limited. All parts of the form must be completed and the reason for return must be clearly marked on the said form.