

# C & P ENGINEERING LTD (“The Company”) CONDITIONS OF SALE

## 1. GENERAL

All products are sold and services supplied subject to the following terms and conditions which unless and to the extent otherwise expressed to be agreed in writing by the Company's authorised representatives, shall prevail to the exclusion of all terms and conditions put forward by the customer which shall be of no contractual effect whatsoever.

## 2. VALIDITY

The Company's quotation is open for acceptance within the period specified on the face of the quotation, after which the Company reserves the right to withdraw the offer or vary any of its terms at any time prior to acceptance.

## 3. INSPECTION

Visual inspection by the customer's representative can be arranged by the company on request and without charge. Special functional tests witnessed by the customer's representative can be arranged at extra charge if specified on the order. Seven days notice will be given of such tests and if the customer fails to attend, the equipment will be delivered and the tests will be deemed to have been waived.

## 4. PRICE

- (i) Prices are exclusive of VAT and also where appropriate of packaging, carriage and insurance. Prices are based on raw materials and labour costs current at the date when the Company notifies the customer that the goods will be leaving the Company's premises ("acknowledgement date"). If there is a delay of more than six months between acknowledgement date and the date the goods are actually despatched and there occurs any increase in any way of such costs, the Company shall have the right to increase the price of the products.
- (ii) Orders are subject to a minimum charge as current at the date of delivery.
- (iii) Commissioning of the equipment is not included in the price unless specifically referred to in the quotation. The services of the Company's representative to commission the equipment can be provided when required at the Company's standard daily charge plus expenses.
- (iv) Quotations in currencies other than £ sterling, are subject to variation in prices based on the exchange rate applicable at or before delivery.

## 5. ACCEPTANCE

Adequate information instructions and where applicable materials and special equipment must be made available to the Company by the customer in sufficient and reasonable time prior to despatch dates to enable the Company to execute the order. Any cost incurred as a result directly or indirectly of delays in, lack of variation of, such instructions, information, materials or equipment shall be borne by the customer.

## 6. CANCELLATION

Orders cannot be cancelled or varied except with the Company's written consent and on terms which will indemnify the Company against all loss.

## 7. TRANSFER RISK AND INSURANCE

The risk in the product shall pass to the customer as follows:-

- (i) Where products are to be despatched by the Company to an address in the U.K. the risk will pass when the products leave the Company's premises.
- (ii) When products are to be collected by the customer the risk shall pass when the product has been loaded onto the transport of the customer or his carrier, or if the customer fails to collect the products within a period of 10 days after the customer has given the customer written notice that the products are ready for delivery and collection.

## 8. PASSING OF PROPERTY

- (i) The Products shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the customer shall have paid to the Company the agreed price of all the products supplied and any carriage charges.
- (ii) If the payment for the products is overdue in whole or in part together with the full price of any other product subject to any other contract with the Company the Company may (without prejudice to its other rights) recover its products and may for the purpose of recovery of its products 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 Company becomes the owner of the goods, the customer will store them on his 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 Company.
- (iv) Until the Company is paid in full for all or any of the products supplied to the customer the relationship of the customer to the Company shall be fiduciary in respect of the products or products into which the product has been incorporated and if the products are sold by the customer the Company shall have the right to trace the proceeds thereof according to the principles in *Re Halletts Estate*. A like right for the Company shall apply where the customer uses the products in any way so as to be entitled to payment from a third party.

## 9. DESPATCH

- (i) The date for despatch is the date when the products are ready to leave the Company's premises.
- (ii) Unless otherwise specifically agreed in writing with the customer by the Company's authorised representative the Company shall be under no liability whatsoever for failure to meet any scheduled despatch date.
- (iii) Without prejudice to any other right the Company may have, if the customer refuses or neglects to take delivery of or to collect any of the products following despatch the customer shall pay the Company's reasonable charges for storage of the products in question.

## 10. PART DELIVERIES

In the case of a contract for delivery of products by installments, every installment shall be deemed to be the subject matter of a separate contract and, unless otherwise agreed in writing by the Company's authorised representative, failure in delivery of any one or more of the said installments shall not, subject to the other provisions of these conditions, entitle the customer to treat such failure as a repudiation of the whole contract. Provided always, that if the customer shall fail to make payments in respect of any installment on a due date, the Company shall, at its option, be entitled to determine the contract in respect of installments then to be delivered or to make delivery only on such terms as to payment as it shall consider acceptable.

## 11. TERMS OF PAYMENT

- (i) Terms of payments are:-  
Domestic Sales (Except where otherwise specifically agreed):-  
Payment in full within 30 days from the date of invoice  
Overseas Sales (Except where otherwise specifically agreed):-  
Net cash payable in full by irrevocable documentary letters of credit opened by the customer with a first class UK bank in London to be approved by the Company and payable against delivery of the relevant bill of lading/airway bill in favour covering the products. All prices quoted are the actual amounts payable to the Company free of all deductions whatsoever and are FOB the port or airport nearest to the factory from which the products are supplied.  
Stipulations as to the time of payment shall be deemed to be the essence of the contract.
- (ii) If the customer fails to make payment on the due date the Company shall be entitled, without prejudice to any other rights it may have, to charge interest on any amount outstanding (both before and after any judgement) at the rate of 2% per month from the date payment was due to the date of payment.
- (iii) Default by the customer in making any payment on the due date will entitle the Company to refuse to do any further work and to refuse to make delivery of any further products (whether ordered under the same contract as that under which the default was made or not) without thereby incurring any liability whatsoever to the customer.
- (iv) That customer shall not be entitled to make any deductions from sums due to the Company in respect of any set off or counter claim.

## 12. INSOLVENCY

If the customer shall in any way default in his obligations to the Company under this or any other contract or if distress or execution shall be levied upon the customer's property or if the customer shall make or offer to make an arrangement with creditors or commit any act of bankruptcy or if any petition in bankruptcy shall be presented against him or in the case of a company any petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a receiver of the customer's undertaking or any part thereof shall be appointed, the Company shall have the right to suspend or determine the contract or any unfulfilled part of the contract and to cancel any outstanding delivery and to stop any products in transit and notwithstanding any other provisions payment in respect of any delivery already made shall be immediately due.

## 13. FORCE MAJEURE

The Company shall not be liable to the customer for any failure to execute any order where such failure can be reasonably attributed to circumstances beyond the Company's control including but not limited to unforeseen technical difficulties, labour shortages or industrial action.

## 14. WARRANTY

- (i) The customer assumes responsibility that products stipulated by the customer are sufficient and suitable for its purpose and save insofar as specific mention thereof is made in any quotation or offer the customer shall not rely upon the Company's skill or judgement as to whether the products are fit for any purpose or as to the manner in which the products shall be used, irrespective of any advice which may be given by the Company, our servants or agents in good faith.
- (ii) Unless the Company's authorised representative shall have otherwise agreed in writing with the customer the Company will at its option either repair or replace without charge, any part or parts of the products which are shown to the Company's satisfaction to be or which have become defective (other than as a result of fair wear and tear) within 12 months from the date on which the original goods shall first have been despatched from the Company's factory and which are carefully packed and returned at the customer's expense to the Company's factory; provided that notice of such defects and satisfactory proof thereof is given by the customer promptly after discovery and provided further that the defect is not due in whole or in part to mistreatment, lack of or improper maintenance or failure to observe any operating instructions issued by the Company in connection therewith.
- (iii) Save as is provided in the condition above and except in those cases where the absolute prohibition against exclusion or restriction of liability contained in Sections 2(i) 6(i) and 6(ii) of the Unfair Contract Terms Act 1977 apply, the Company shall not be under any liability whatsoever howsoever arising (including without prejudice to the generality of the foregoing liability whether founded in common law or statute arising from the Company's negligence or that of any person for whom the Company is vicariously liable) in respect of or in connection with:-  
(a) Any defect in the products which should reasonably have been discovered by the customer on inspection or test prior to acceptance.  
(b) Any loss or injury or damage including without prejudice to the generality of the foregoing any loss of profit or other consequential loss of any description with the products or any work done in connection therewith.

THE CUSTOMER IS ADVISED TO OBTAIN APPROPRIATE INSURANCE COVER TO PROTECT HIMSELF AGAINST SUCH RISKS AS ARE SET OUT ABOVE AND FOR WHICH THE COMPANY'S LIABILITY IS EXCLUDED.

## 15. PATENT

The Company shall not be liable for any damages, costs, charges or expenses awarded against, or any losses or liabilities incurred by the customer arising out of any infringement of any patent, registered design, trade mark or copyright belonging to third parties

## 16. JURISDICTION

The contract between the Company and the customer shall in all respects be governed and construed in accordance with English Law and the English Courts shall have exclusive jurisdiction.