

CONDITIONS FOR THE SUPPLY OF GOODS AND ASSOCIATED SERVICES BY MODGATE LIMITED

I. DEFINITIONS AND FORMATION OF CONTRACT

- 1.1 In these conditions
- "the Company" means (Modgate) Limited
- "the Customer" means the individual firm, company or other party with whom the Company contracts
- "Trade Customer" means a Customer to whom the Company supplies goods for the purposes of re-sale by that Customer
- "the Contract" means the contract between the Company and the Customer for the supply of goods and/or services by the Company to the Customer
- "the Contract Price" means the price or prices specified in the Contract
- "the Contract Works" means the supply of goods and/or services by the Company to the Customer pursuant to the Contract

1.2 No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. The Contract shall be subject to these conditions and save as aforementioned no representative or agent of the Company has authority to agree any terms or take any representations inconsistent with them or enter into any contract except on the basis of them; any such term representation or contract will bind the Company only if in writing and signed by a director of the Company.

1.3 Unless otherwise agreed in writing by the Company these conditions shall override any terms and conditions stipulated or referred to by the Customer in his order or pre-contract negotiations.

1.4 Any description contained in the Company's catalogues, samples, price lists or other advertising material is intended merely to present a general picture of the Company's products and shall not form a representation or be part of the Contract.

1.5 The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.

2. SPECIFICATIONS

2.1 Where goods are made to the Customer's specification, instructions or design, the Customer undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and undertakes to indemnify and keep indemnified the Company against any infringement of any patent, registered design, trade mark, trade name or copyright and any loss, damage or expense which it may incur by reason of such infringement in any country.

2.2 Without prejudice to sub-clause 1.4 hereof all specifications, designs drawings submitted by the Company to the Customer are for guidance purposes only and shall not be binding as to their accuracy.

3. PRICES

3.1 Subject to any agreement to the contrary the Company's quotations are provisional and may be altered to take account of any changes taking place between the date of quotation and the Company's acceptance of the Customer's order in the price of raw materials, rates of wages and other costs of production or in the Customer's specification, instruction or design or in the event that the Customer orders part only of the quantity referred to in any quotation.

3.2 The Company shall be entitled to increase the Contract Price at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing working on or supplying any goods (including any such increase arising by the Customer or any modification carried out by the Company at the Customer's request) and such increased prices ruling at the date of despatch by the Company shall be substituted for the previous Contract Price.

3.3 All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes, duties and other government charges payable in respect of the goods.

4. DELIVERY AND INSTALLATION

4.1 Should the Company be delayed in or prevented from making delivery of any goods or completing the Contract Works due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of the goods, breakdown of machinery, shortages of labour or of raw materials or Act of God or due to any other cause whatsoever beyond the reasonable control of the Company the Company shall be at liberty to cancel or suspend the order placed by the Customer without incurring any liability for any loss or damage arising therefrom.

4.2 While the Company will endeavour to deliver the goods or complete the Contract Works by any date or within any period agreed upon, such dates and periods are estimates only and the Company shall not be liable for any failure to deliver the goods or complete the Contract Works by such a date or within such a period.

4.3 The Company shall be entitled to defer delivery of goods or completion of the Contract Works until all monies due from the Customer (whether under the Contract or otherwise) have been received.

4.4 Where the Contract provides that the Company is to be responsible for the delivery of goods to the Customer's premises or to the Customer's order the Customer shall be responsible for unloading the same.

4.5 Where the Contract provides for the installation of goods by the Company the Customer shall ensure that a suitable electricity supply properly earthed and satisfactory to the Company is available within 20 feet of the place of work.

4.6 The Customer shall be responsible for ensuring that the use and performance of goods supplied by the Company complies with all statutes, bye-laws and other lawful requirements of the Government Local Authority or other competent authority or body (including without prejudice to the generality of the foregoing the obtaining of any licence permit or consent) and the Company shall have no liability whatsoever therefor.

5. PAYMENT

5.1 Unless specified otherwise in the Contract the due dates for payment shall be as follows:

5.1.1 where the Company has contracted to supply goods only the Contract Price shall be payable thirty days from the delivery of the goods by the Company either to the Customer or as the Contract otherwise provides.

5.1.2 where the Company has contracted to supply services only the Contract Price shall be payable seven days from the date of submission of an invoice or a claim by the Company to the Customer.

5.1.3 where the Company has contracted to supply goods and services the following provisions shall have effect.

(a) payment shall be made at the rate of 90% of the total value of the goods delivered to site and the work in progress (such value to be determined by the Company) such payment to be made within seven days following the date of submission of an invoice or a claim by the Company to the Customer.

(b) the Company shall be entitled to submit a further interim invoice or invoices at any time during the execution of the Contract Works.

(c) the balance of the Contract Price shall be payable to the Company within seven days of the date of the final invoice following practical completion of the Contract Works.

5.2 Time for payment shall be of the essence of the Contract and in default of payment in full on the due date the Customer shall pay interest on all sums outstanding at the rate of 4% over the base lending rate of Lloyds Bank PLC for the time being (accruing on a daily basis) from the due date until the actual date of payment in full.

5.3 The Contract Price shall be paid in full upon the terms herein recited and the Customer shall not be entitled to exercise any right of set-off or lien against the Contract Price or any part thereof.

6. SUSPENSION AND CANCELLATION

6.1 If the Customer shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated company shall have a receiver appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the Customer of any of the terms and conditions of the Contract (of which these conditions form part) the Company may at its option defer or cancel any further deliveries and treat the Contract as determined but without prejudice to its right to the full purchase price for goods delivered or damages for any loss suffered in consequence of such determination.

6.2 A charge will be made for any costs incurred by the Company due to suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting, or giving instruction for the delivery of, any goods.

7. WARRANTY

7.1 No claim for damage in transit, shortage or delivery or loss of goods will be entertained unless the Customer shall have given to the Company written notice of such damage, shortage or loss with reasonable particulars thereof within seven days of such damage, shortage or loss with

reasonable particulars thereof within seven days of receipt of the goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Company's liability, if any, shall be limited to replacing or (in its discretion) repairing such goods and it shall be a condition precedent to any such liability that the Customer shall if so requested have returned damaged goods to the Company within fourteen days of such request. The Customer shall not be entitled to make any claim against the Company for consequential loss arising out of such damage shortage or loss as aforesaid.

7.2 Save as otherwise provided in these conditions the Company's liability in respect of any defect or failure of the goods supplied or the Contract Works is limited to replacing or (in its discretion) repairing or paying for the repair or replacement of goods which within twelve months of delivery to the Customer are found to be defective by reason of faulty or incorrect design workmanship parts or materials on the part of the Company.

7.3 The following provisions shall apply (to the exclusion of those contained in clause 7.2) as regards any heat-exchanger or combustion chamber manufactured by the company, namely:

7.3.1 The company shall only be liable in respect of any defect which arises by reason of faulty or incorrect design, workmanship, parts of materials on the part of the company.

7.3.2 The customer shall notify the company immediately it becomes aware of the defect.

7.3.3 The Company shall as soon as reasonably possible after notification inspect the defective item. If the Company is of the opinion that it is capable of repair it shall do so; if not the Company shall replace the item.

7.3.4 In the case of repair the Customer shall pay the full cost of all labour together with the appropriate percentage of the cost of materials supplied. If the item fails in the first year after the date of supply the appropriate percentage is nil. In the second year it shall be 20% and for each year (or part of year) thereafter an extra 10% shall be added. For example if the item fails during the fourth year the appropriate percentage shall be 40%.

7.3.5 In the case of replacement the Customer shall pay the full cost of installation together with the appropriate percentage of the cost of manufacturing and supplying the replacement item. This percentage shall be calculated in the same manner as specified in clause 7.3.4.

7.4 No claim shall be made against the Company under Clauses 7.2 or 7.3 which arises by reason of:

7.4.1 failure of the Customer to properly and diligently service and maintain the goods or Contract Works.

7.4.2 any modification or attempted modification by the Customer its servants agents or employers of any of the goods or the Contract Works.

7.4.3 in the case of a Contract for the supply and installation of goods the change of location of the goods or the change of the operating conditions in which the goods were first installed.

7.4.4 in the case of a Contract for the supply only of goods the installation of the same in an unsuitable manner or in an unsuitable location or in unsuitable operating conditions which (without prejudice to the generality of the foregoing) shall include locations or operating conditions where a corrosive atmosphere or a fire risk is or may be present.

7.5 In the case of Trade Customers the Company's obligations under Clauses 7.2 and 7.3 shall be limited to providing a replacement part or parts and the Company shall be under no obligation to install or otherwise provide any service in relation thereto.

7.6 Conditions precedent to the Company's liability under Clauses 7.2 and 7.3 shall be that as soon as reasonably practicable the Customer:

7.6.1 shall have given to the Company reasonable notice of the defect.

7.6.2 shall have either returned the goods to the Company or (at the Company's option) provided authority for the Company's servants or agents to inspect them.

7.7 The Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any such defect or failure.

7.8 All goods sold by the Company are supplied with the benefit of the terms implied by Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982 (where applicable). Subject thereto, all other conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded save insofar as contained herein or as otherwise expressly agreed by the Company in writing PROVIDED that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this clause will not apply to any such term.

7.9 Save as hereinbefore provided and subject to the provisions of Section 2(1) of the Unfair Contract Terms Act 1977 the Company shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or wilful goods or the design or manufacture thereof or in the carrying out of the Contract Works.

7.10 Sub clauses 7.2 and 7.3 shall not apply to any goods which are not manufactured by the Company. Save as otherwise provided in these Conditions the Company shall have no liability in respect of goods which it has not manufactured itself but will use its reasonable endeavours to pass to the Customer (so far as this is possible) the benefit of any warranty or guarantee received by it from the supplier of the goods in question.

7.11 The Company shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or wilful goods or the design or manufacture thereof or in the carrying out of the Contract Works.

8. TITLE AND RISK

8.1 Title to and property in the goods supplied under the Contract (save in respect of an International Supply Contract as described in Section 26 of the Unfair Contract Terms Act) shall remain vested in the Company until payments in full to the Company of all sums due in respect of the goods.

8.2 So long as title to and property in the goods remains vested in the Company the Customer shall hold the goods solely as bailee for the Company and the following provisions shall apply:

8.2.1 the Customer is licensed by the Company to incorporate the goods in any other products.

8.2.2 the Customer is licensed by the Company to sell on the goods and any products incorporating them. To the extent of any sum owed to the Company by the Customer in respect of the goods the Customer shall account to the Company from the proceeds of any such re-sale forthwith upon receipt (and whether or not payment has become due pursuant to Clause 5 hereof) and until such amount has been remitted the Customer shall hold such amount as trustee and agent for the Company.

8.2.3 the Customer shall store the goods separately from other goods and clearly identified as the Company's property.

8.2.4 the Company may at any time on giving prior notice enter the premises of the Customer for the purposes of inspecting the goods and identifying them as the Company's property or repossessing the goods and the Customer irrevocably authorises the Company to enter upon its premises for those purposes.

8.2.5 if goods are repossessed in accordance with the foregoing provisions the Company shall repay to the Customer any sums received from the Customer in part payment of the price of the goods up to a maximum amount equal to the current market value of the goods repossessed in their condition at the time and after deducting all costs and expenses of the Company in having the goods repossessed and subject also to any right to set off the Company may have in respect of other sums owing by the Customer to the Company.

8.2.6 The Customer shall maintain all appropriate insurance in respect of the goods from the date or dates on which the risk therein passes to him. In the event of any loss or damage occurring while the goods remain the property of the Company the Customer shall, immediately on receipt of the insurance monies (and whether or not payment has become due pursuant to Clause 5 hereof), remit to the Company the full purchase price of the goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent of the Company.

8.2.7 The licences granted under sub-clauses 8.2.1 and 8.2.2 above shall be terminable forthwith at any time upon notice by the Company to the Customer.

8.3 Notwithstanding the above provisions regarding the passing of title to and property in the goods risk in the goods shall pass to the Customer upon delivery.

8.4 In the case of International Supply Contracts title to and property in the goods shall pass to the Customer on delivery.

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9. GOVERNING LAW

The proper law of the Contract shall be English Law which shall govern in all respects the construction and effect of these conditions. The Customer agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.

(Revised November 1997)