

GENERAL

- 1.1. All quotations are made and all orders are accepted subject to the following terms and conditions (the "Terms") and these Terms embody the entire understanding of the parties. All other terms conditions or warranties whatsoever (including the Customer's own standard terms) are excluded from the contract or any variation thereof unless expressly accepted by HT Bringham & Company Limited ("the Company") in writing.
- 1.2. Any quotation or estimate given by the Company is subject to these Terms. Quotations shall be available for acceptance for a maximum period of 30 days from the date thereof and may be withdrawn by the Company within such period at any time by written or oral notice.
- 1.3. All quotations are for the whole of the Goods for which the same are issued by the Company and the Company reserves the right to refuse acceptance of any order which constitutes part only of the Goods forming the subject of the quotations.
- 1.4. Any quotation or estimate provided by the Company serves as an invitation to the Customer to confirm the order in writing to the Company. No Order shall be deemed to be accepted by the Company until the Customer receives written confirmation of the order. If any statement or representation has been made to the Customer by the Company, its servants or agents upon which the Customer relies other than in the documents enclosed with the Company's quotation or acknowledgement of order then the Customer must set out the statement or representation to be attached to or endorsed on the order and in any such case the Company may confirm, reject or clarify the point and submit a new quotation.
- 1.5. If an order is not placed the Customer is liable to reimburse any expenses incurred by the Company at the Customer's request.

DELIVERY

- 2.1. Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in the delivery of the Goods however caused. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated. Time for delivery shall not be of the essence of the Contract unless previously agreed with the Customer in writing.
- 2.2. The date of delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Alterations by the Customer in design specifications or quantities required may result in delay in delivery.
- 2.3. Where Goods are delivered in instalments, each delivery shall constitute a separate contract and in the unlikely event that the Company fails to deliver one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of one or more of the instalments shall not entitle the Customer to treat the contract as a whole as repudiated. Failure by the Customer to take delivery of or to make payment in respect of any one or more instalments of Goods delivered hereunder shall entitle the Company to treat the whole contract as repudiated by the Customer.
- 2.4. The Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed other than due to default by the Company the Customer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and payment for the Goods shall be made in accordance with these conditions.
- 2.5. Any packaging supplied by the Company unless otherwise expressly agreed is intended to provide adequate protection throughout normal conditions of transit of usual duration.
- 2.6. The cost of delivery of Goods or instalment of Goods of up to the value of £1,000 shall incur an additional delivery charge. Orders or part orders of £1,000 and over shall be delivered free in the United Kingdom.
- 2.7. If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the costs to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 2.8. If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's control or by reason of the Company's fault) then, without limiting any other right or remedy available to the Company, the Customer may;
- 2.8.1 store the Goods until actual delivery or make appropriate arrangements if outside the UK, and charge the Customer for the reasonable costs (including insurance) of storage; or
- 2.8.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract.

RISK AND TITLE

- 3.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the Goods:-
- 3.1.1 if the Company delivers the Goods by its own transport or in accordance with a specific contractual obligation arranges transport for the Goods at the time when the Goods or a relevant part thereof arrive at the place of delivery, or
- 3.1.2 in all other circumstances at the time when the Goods or a consignment or other part thereof leave the premises of the Company.
- 3.2 Title to the Goods or any relevant part thereof shall only pass to the Customer upon the happening of any one of the following events:-
- 3.2.1 the Customer has paid to the Company all sums due and payable by it to the Company under this contract and all other prior contracts between the Company and the Customer, or
- 3.2.2 when the Company serves on the Customer notice in writing specifying that title in the Goods or such part thereof has passed.
- 3.3 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licenses the Company, its officers, employees and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that condition 3.4 below is being complied with by the Customer or of recovering any Goods in respect of which property has not passed to the Customer.
- 3.4 Until title to the Goods has passed to the Customer pursuant to the terms hereof it shall possess the Goods as a bailee of the Company on the terms of this contract. If the Company so requires the Customer shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company.

CANCELLATION

- 4.1 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of the cancellation.
- 4.2 In the case of discreet orders unless written notice of cancellation thereof is given to the Company within three working days of receipt all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.

PRICES

- 5.1 All prices are unless otherwise stated quoted net ex works but exclusive of VAT and are subject to fluctuation in the event of any increase in the cost of labour due to local or national awards or increases in the cost of materials and overheads and bought out finishing. Any increase in such costs during the period of the contract will be added to the quoted price.
- 5.2 In the event of any alteration or variation being requested by the Customer and agreed by the Company in design, specification or quantities required the Company shall be entitled to make an adjustment of the contract price corresponding to such alteration or variation.
- 5.3 Prices quoted are for the total quantities shown and the Company may not offer the rates or prices quoted for smaller quantities.

TERMS OF PAYMENT

- 6.1 Unless otherwise agreed by the Company in writing payment is to be made in full within 30 days from the end of month of invoice. The Company shall be entitled to submit its invoice with its delivery advice note or at any time thereafter save that where delivery has been postponed at the request of the Customer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default as aforesaid.
- 6.2 Payment is to be made in pounds sterling unless otherwise agreed in writing with the Company. Subject to agreement, if the Company receives an invoice payment that is not in pounds sterling, the Customer shall be liable for any bank charges incurred by the Company in converting the payment.
- 6.3 An invoice in respect of tools purchased by the Company pursuant to the order placed by the Customer shall be submitted to the Customer at the time of delivery of the production sample and Sample Inspection Report referred to in condition 8 hereof and payment will be due within one month of the date of invoice.
- 6.4 Where tools have been manufactured or supplied by the Company pursuant to an order placed by the Customer such tools will be maintained by the Company at the Company's cost to the required standard throughout the tools' normal life expectancy provided that the Company reserves the right to require the Customer to meet the costs of the replacement of such tools beyond that period.
- 6.5 Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these conditions.
- 6.6 No disputes arising under the contract nor delays beyond the reasonable control of the Company shall interfere with prompt payment in full by the Customer.
- 6.7 In the event of default in payment by the Customer the Company shall be entitled without prejudice to any other right or remedy to suspend all further deliveries on any contract or contracts between the Company and the Customer without notice and to charge interest on any amount outstanding at the rate of 4% per annum above the Base Rate of Lloyds Bank Plc in force at the time when payment was due.

DIMENSIONS

- 7.1 All weights and dimensions quoted are subject to the tolerances provided by the appropriate British Standards.
- 7.2 Where materials are ordered by reference to numerical quantities or specified weights the Company reserves the right to under or over deliver the quantity ordered by ten per cent in accordance with trade custom.
- 7.3 If the Customer requires an alteration in the quantity of an order including suspension or reduction of 'firm' schedules then all Goods already in progress may be delivered in accordance with the earlier instructions of the Customer and shall be paid for by the Customer.
- 7.4 If and so far as work has been necessarily commenced in advance of 'firm' schedules in order to provide in accordance with a normal process time cycle for deliveries indicated by a 'tentative schedule' the Customer shall be liable to accept delivery of such Goods at the times and in the quantities so indicated and to pay therefor.

SAMPLES

- 8.1 The Company may at its discretion submit a sample together with an initial Sample Inspection Report to the Customer for approval before executing the bulk of the order, which will only be commenced on receipt of such approval in writing. All Goods in respect of which a sample is so approved shall be deemed to have been satisfactorily tested by the Customer and to be suitable for the purposes for which the Customer requires them.
- 8.2 Notwithstanding that samples may be or have been submitted by the Company the sale to the Customer is not and shall not be deemed to be a sale by sample for the purposes of Section 15 of the Sale of Goods Act 1979. Any samples submitted to the Customer are intended to indicate only the substance and the general character of the materials and the Customer shall have no claim if the colour composition of the bulk supplied fails to correspond with the sample in such respect unless the particular requirement is specified by the Customer and accepted by the Company in writing.

SHORTAGES AND DEFECTS APPARENT ON INSPECTION

- 9.1 The Customer shall have no claim for shortages or defects apparent on visual inspection unless:-
- 9.1.1 the Customer inspects the Goods within three working days of arrival at its premises or other agreed destination and
- 9.1.2 a written complaint (including by e-mail) is made to the Company and to the carrier within fourteen days of receipt of the Goods or such shorter period as the carrier's conditions (if applicable) require specifying the shortage or defect together with photographic evidence and
- 9.1.3 The Company is given an opportunity to inspect the Goods and investigate any shortage or defect together with or alteration to or interference with the Goods.
- 9.2 If a complaint is not made to the Company as herein provided then the Goods shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to pay for the same accordingly.
- 9.3 The Company may within 15 days of receipt of a written complaint (or 28 days where the Goods are situated outside the United Kingdom) inspect the Goods and the Customer if so required by the Company shall take all steps necessary to enable the Company to do so.

DEFECTS NOT APPARENT ON INSPECTION

- 10.1 The Customer shall have no claim in respect of defects not apparent on the visual inspection at the time of delivery envisaged by these conditions unless:-
- 10.1.1 a written complaint is sent to the Company as soon as reasonably practicable after the defect is discovered and no use is made of the Goods thereafter and no alteration made thereto or interference made therewith before the Company is given an opportunity to inspect the Goods in accordance with this condition and
- 10.1.2 the complaint is sent within 12 months of the date of delivery of the Goods or in the case of an item not manufactured by the Company within the guarantee period specified by the manufacturer of such item.
- 10.2 The Customer shall not be entitled to any claim in respect of any repairs or alterations undertaken by the Customer without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair, wear and tear or damage due to accident, neglect or misuse nor in respect of any Goods to which alterations have been made without such consent or to which replacement parts not supplied by the Company have been fitted.
- 10.3 The Company shall not be liable for loss or damage suffered by reason of use of the Goods after the Customer becomes aware of a defect or after circumstances, which should reasonably have indicated to the Customer the existence of a defect.

10.4 The Company may within 15 days of receiving such a written complaint (or 28 days where the Goods are situated outside the United Kingdom) inspect the Goods and the Customer if so required by the Company shall take all steps necessary to enable the Company to do so.

GUARANTEE CONDITION

- 11.1 Save as otherwise provided by the other conditions of these conditions Sections 12 to 15 of the Sale of Goods Act 1979 are to be implied into this contract.
- 11.2 In the event of the condition of the Goods being such as might or would (subject to these conditions) entitle the Customer to claim damages or to rescind the contract the Customer shall not then do so but shall first ask the Company to repair or supply satisfactory substitute Goods and the Company shall thereupon be entitled at its option to repair or take back the defective Goods and to supply satisfactory substitute Goods free of cost and within a reasonable time. If the Company does so repair the goods or supply satisfactory substitute Goods the Customer shall be bound to accept such repaired or substituted Goods and the Company shall be under no liability in respect of any loss or damage whatsoever arising from the initial delivery of the defective Goods or from the delay before the defective Goods are repaired or the substitute Goods are delivered.
- 11.3 In the case of Goods manufactured by the Company the Company gives no assurance or guarantee whatsoever that the sale or use of the Goods will not infringe patent, copyright or other industrial property rights of any other person, firm or company.

EXPORT TERMS

- 12.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agreed in Writing between the Customer and the Company) apply notwithstanding any other provisions of these Terms.
- 12.2 The Customer 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 on them.
- 12.3 The Company shall have no liability for any damage caused to the Goods during overseas shipment once the Goods have left the Company premises.

LIABILITY

- 13.1 Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.
- 13.2 A claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 13.3 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Terms, the Company may replace the Goods (or the part in question) free of charge, or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability to the Customer.
- 13.4 The liability of the Company for any breach or series of breaches in connection with these Terms (except in relation to death or personal injury or fraudulent misrepresentation) shall not exceed the amount recovered by the Company from its Insurers in connection with the particular breach concerned.

CONFIDENTIAL INFORMATION

- 14 All drawings, documents, confidential records, computer software and other information supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not without the written consent of the Company either give away, loan, exhibit or sell any such drawings, documents, records, software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are issued.

CUSTOMER'S DRAWINGS

15. The Customer warrants:
- 15.1 the accuracy and suitability of the drawings, information, advice or recommendations given to the Company for the purposes of completing the order in accordance with these Terms;
- 15.2 that it shall at its own expense;
- a. provide the Company with the required drawings, information, advice or recommendations in sufficient time to enable the Company to complete its Order;
- b. retain copies of all drawings and information given to the Company;
- 15.3 that the drawings, information etc. will not infringe the intellectual property rights of any third party and that all necessary consents have been obtained before transferring the information to the Company.
- 15.4 The Customer shall indemnify the Company against any loss (including legal fees), damages, claims, charges and expenses incurred by the Company caused by:
- 15.2.1 any breach of the warranties contained in 15.1.1;
- 15.2.2 the accuracy of the drawings, information, advice or recommendations;
- 15.2.3 any claim by the Customer or third party due to the information not being provided by the Customer within sufficient time to complete the order;
- 15.2.4 any claim by a third party for infringement of intellectual property rights.

DATA AND TECHNICAL INFORMATION

- 16 The information contained in the advertising sales and technical literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed otherwise any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless the Customer shall have complied with condition 1.4 hereof relating to statements and representations.

INSOLVENCY

- 17 If the Customer shall become insolvent or under the provisions of Section 123 of the Insolvency Act 1986 is deemed to be unable to pay its debts or compounds with creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager is appointed of all or any part of its assets or undertaking the Company shall be entitled to cancel the contract in whole or in part or cancel without further deliveries under the contract by notice in writing without prejudice to any right or remedy accrued or accruing to the Company.

TOOLS

- 18.1 Subject to sub-condition 18.2 below and unless otherwise expressly agreed in writing tools shall remain the property of the Company notwithstanding that the Customer may have paid or be liable to pay part of the cost of them under condition 6.1 hereof.
- 18.2 Where tools or any of them are loaned to the Company by the Customer they shall remain the property of the Customer and shall where reasonably practicable be clearly identified as such. The Company shall not be liable in respect of damage to or the destruction of such tools save where it is shown to have been negligent in its custody or use of them when its liability shall be limited to the repair or replacement of the tools so far as may be necessary for the purposes of the contract or any future contract with the Customer.
- 18.3 Neither the Customer nor the Company shall disclose to any third party any measurements, dimensional or design details or any other information in respect of the tools owned by the other without previous consent in writing.

FORCE MAJEURE

- 19 The Company shall not be liable to the Customer 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 Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control but not limited to:
- 19.1 act of God, explosion, flood, tempest, fire or accident;
- 19.2 war or threat of war, terrorism or threat of terrorism, sabotage, insurrection, civil disturbance or requisition;
- 19.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority's
- 19.4 Import or export regulations or embargoes;
- 19.5 strikes, lock-outs or other industrial actions or trade disputes (whether including employees of the Company or of a third party);
- 19.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 19.7 power failure or breakdown in machinery.

CONSUMER PROTECTION ACT 1987 (THE ACT)

- 20.1 In circumstances where the Company supplies parts or products to the Customer for incorporation with, or use ancillary to, any composite products to be produced, manufactured, processed or supplied by the Customer then:-
- 20.1.1 the Customer shall forthwith on demand produce for inspection by the Company copies of all written instructions, information and warnings to be supplied by the Customer in relation to the said composite products provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval on the part of the Company of such instructions, information or warnings, and
- 20.1.2 the Customer shall indemnify, reimburse and compensate the Company for all losses and damages (including costs, expenses and charges for legal actions in which the Company may be involved) that the Company may incur in the event that any claim or claims are made against the Company pursuant to the Act relating to the said composite products of the Customer or products in circumstances in which the part or product supplied by the Company was either (i) not the defective part of the said composite product, or (ii) was only rendered the defective part or became a defective product by reason of actions or omissions of the Customer or (iii) was only rendered the defective part or became a defective product by reason of instructions or warnings given by the Customer or other supplier of the said composite products or products, or (iv) was supplied by the Company in accordance with a specification and/or design either stipulated or approved by the Customer;
- 20.1.3 for the purposes of this condition the word 'defective' shall be interpreted in accordance with the definition contained in the Act.
- 20.2 The Customer by his acknowledgement that it is under a duty to pass on to its customers (where appropriate) all instructions, information and warnings supplied to it by the Company with the Goods.

MISCELLANEOUS

- 21.1 A notice requiring or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 21.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 21.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 21.4 Any dispute arising under or in connection with the Contract or the sale of the Goods the parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties the mediator will be appointed by CEDR.
- 21.5 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.