

All contracts entered into by Barkers Engineering Limited are subject to the conditions of sale set out overleaf. On the reverse side should appear the following:-

## **BARKERS ENGINEERING LIMITED**

### **CONDITIONS OF SALE**

In these conditions "the Company" means Barkers Engineering Limited "the Buyer" means the purchaser of the Goods pursuant to the contract of which these conditions form part and "the Goods" or "Goods" means the goods items materials and/or services to be supplied pursuant to the contract of which these conditions form part.

#### **1. General**

- (1) Any quotation is not an offer, and no contract shall come into existence unless and until the Company has accepted in writing the Buyer's signed official order to supply the goods specified in any quotation.
- (2) If on any point these general conditions are inconsistent with the express terms of this contract the express terms shall prevail subject only to clauses 6 and 7 hereof.
- (3) If, subsequent to this contract, any contract for sale is concluded with the Buyer by any method whatsoever without express reference to these conditions of sale, it shall be a term of such a contract that these conditions of sale apply to such contract.
- (4) Notwithstanding anything contained in any Buyer's conditions of contract relating to any contract between themselves and the Company the Company's conditions of sale shall apply and take precedence over all other conditions.

- (5) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- (6) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, in any event, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- (7) The Buyer acknowledges that the Company's employees and agents are not authorised to make any representations concerning the Goods and that it does not rely on any such representations that are not expressly confirmed by the Company in writing.

2. **Prices**

- (1) Where fixed prices have not been expressly agreed by the Company the price payable by the Buyer shall be based upon the Company's list price at the date of despatch of each delivery.
- (2) Where prices have expressly been agreed the Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in insurance costs, significant increase in the labour, materials or other costs of

manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions).

- (3) Prices include delivery unless otherwise stated and are subject to the addition of VAT

### 3. **Payment**

- (1) Payment is due by the end of the month following the month of delivery unless otherwise agreed in writing at the time of entry into the contract.
- (2) In the case of sums paid to the Company by cheque, banker's draft or direct inter-bank transfer, payments shall be deemed to have been made when the Company's bank account has been credited with the full amount, and not before.
- (3) The Company reserves the right to charge interest on a monthly basis at a figure equivalent to the current base rate of Barclays bank Plc plus six per cent (6%) on all monies due but unpaid until such payment has been made.
- (4) In no circumstances shall the Buyer be entitled to withhold payment of the price of the goods or any other agreed payments which have fallen due or to raise any deduction set off or counterclaim in respect thereof relating to this or any other contract.

### 4. **Security**

The Company shall be entitled, without prejudice to the Company's other rights and remedies, to require the Buyer to supply to it such security for the Buyer's liabilities

under this contract as the Company shall require including, without limitation, a letter of credit, guarantee, bill of exchange or any other security.

5. **Termination**

The Company shall be entitled, without prejudice to the Company's other rights and remedies, either to terminate the contract or to suspend any further deliveries in any of the following events:-

- (a) Non-compliance by the Buyer with the Company's terms of payment;
- (b) Failure by the Buyer to provide a letter of credit or guarantee, bill of exchange or any other security requested by the Company.

6. **Insolvency of buyer**

If:

- (a) the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) a Petition for his bankruptcy is presented or (being a company) becomes subject to an application for an administration order or a petition for liquidation is presented (otherwise than for the purposes of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (c) the Buyer ceases, or threatens to cease, to carry on business; or
- (d) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the Contract or 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 shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

7. **Title**

- (1) Until payment has been made to the Company of all monies owing to the Company from the Buyer for all Goods (or batches thereof) supplied under the contract
  - (a) the Goods so supplied shall be held by that Buyer as bailee for the Company and it shall be an express term of this Contract that all legal and equitable title in the goods shall remain in the Company until such payments have been made. All express terms of the contract shall be read subject to this clause and in the event of any of the express terms being inconsistent with this clause, this clause shall prevail
  - (b) The Buyer shall permit the servants or agents of the Company to enter on the Buyer's premises (or any other location where the goods are located, insofar as the Buyer is entitled to or is able to procure such access) and to repossess the goods at any time prior to such payment.
  - (c) Although title to the goods shall not pass to the Buyer until the Buyer has paid their price to the Company, the Company shall be entitled to sue for their price once payment has become due.

- (d) The Goods shall not be fixed into the ground or attached to or incorporated into (in any way) any other property or goods until title has passed to the Buyer.
- (2) The Buyer shall only be at liberty to resell the goods purchased from the Company prior to the passing of title on the understanding that if it does resell the goods then it will hold on trust (and in a separate bank account) for the Company so much of the proceeds of sale received by it and will hold on trust for the Company an action for the sale proceeds thereof, under contracts which include any of the goods hereby sold either in their original or altered state, as are equal to the amount payable.
- (3) The Buyer shall keep the Goods separate and distinct from all other goods and property and shall only be at liberty to mix the goods with others or use them in the process of manufacture prior to the passing of title with the consent of the Company in writing, which consent shall not be unreasonably withheld providing that suitable guarantees are given by the Buyer to discharge payment in full at the due date under this contract for sale to the Buyer
- (4) The Buyer shall keep the goods insured to their full replacement value with the Company's interest noted on the policy.

**8. Time of Delivery**

- (1) Any date specified by the Company or the Buyer for delivery is not in any way a guaranteed delivery date;
- (2) Delivery will be to the place of delivery agreed and specified by the Company and the Buyer will ensure that delivery is accepted at such place of delivery, and will

- indemnify the Company in respect of all costs and liabilities incurred by the Company as a result of any delay in or refusal of acceptance of delivery or unloading;
- (3) Time shall not be of the essence of the contract;
  - (4) The Buyer shall not be entitled to serve any notice purporting to make time of the essence. Any such notice will be ineffective.
  - (5) The Buyer shall have no right to damages or to terminate the contract for failure for any cause to meet any delivery date
  - (6) The Company will endeavour to comply with any reasonable request by the Buyer for postponement of delivery but shall be under no obligation to do so and the customer is obliged to take delivery as agreed under the contract. Where postponement is agreed by the Company in writing the Buyer shall if required pay all costs and expenses occasioned thereby including a reasonable charge for storage and any increased costs of delivery and any costs incurred by the Company in relation to any insurance payments reasonably made by it.

9. **Limitation on Liability**

- (1) Every effort is made to ensure sound material and good workmanship, but there shall be no condition, warranty or other term either express or implied, as to material, workmanship or fitness of goods for any particular purpose, whether such purpose be known to the Company or not (save for any statutorily implied terms).
- (2) In the event of any material or workmanship proving defective the Company will rectify or replace such material at the place of delivery and in the condition

- originally specified, or if rectification or replacement is not practicable, will credit the value of the goods at the invoice price, if required in writing to do so, provided always that the claim is made and admitted and the material is returned within 6 months from the date of invoice.
- (3) Save that the Company does not seek to exclude liability for death or personal injury resulting from the negligence of itself, its servants or its agents, the Company shall not be liable for any direct or indirect costs, loss, damages or expenses or consequential loss relating to damage to property or injury or loss to any person, firm or Company, or for any loss of profits or production arising out of or occasioned by any defect in or failure of materials or workmanship and the Buyer shall indemnify the Company in respect of all claims made or proceedings taken against the Company by any third party in respect thereof
  - (4) For the avoidance of doubt the Company's liability in respect of or consequent upon any such defect, whether in original or replaced material or workmanship, is limited as aforesaid and does not extend in any circumstances to cover any other expenditure incurred nor any consequential damages or loss of profit.
  - (5) The Company accepts no liability of any kind where any goods have been misused or damaged by any person in any manner following delivery
  - (6) Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

- (7) Without limitation to the preceding provisions hereof in no circumstances shall the Company's liability whether in respect of one claim or all claims arising out of any contract exceed the purchase price payable under that contract

10. **Risk**

Risk in respect of the Goods shall pass upon delivery.

11. **Delivery**

- (1) When the Goods or any of them are delivered by the Company's own transport, delivery shall be deemed to take place at the moment the goods are lifted from the delivery vehicle. When the Goods or any of them are delivered by other means of transport delivery shall be deemed to take place when they are loaded on to the vehicle used.
- (2) Delivery shall at all times be on hard roads or rail, only to the address stated on the Buyer's order.

12. **Defective Delivery and Damage in Transit**

- (1) No claim for damage to the Goods in transit will be considered by the Company unless:-
- (a) Any appropriately qualified signature, e.g. "Material received damaged, (signed)" is clearly made by the Customer on the delivery note; and
- (b) The Company is advised in writing of the precise particulars of the damage, in addition to (a) above, within seven days of receipt of material.
- (2) Claims will not be considered for short weight measure or delivery or unsuitability unless the Company is notified in writing and given an opportunity for verifying the same within three days.

13. **Force Majeure**

The Company shall not be liable to the Buyer or be deemed to be in breach of any 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. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:-

- (1) Act of God, explosion, flood, tempest, fire or accident;
- (2) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (3) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any European Union, governmental, parliamentary or local authority;
- (4) import or export regulations or embargoes.
- (5) labour disputes, strikes, lock-outs, fuel shortages, contagious diseases.

14. **Indulgence to Buyer**

- (1) Any indulgence or forbearance to the Buyer or any waiver by the Company of any breach of contract by the Buyer shall only be of legal effect if expressly stated in writing.
- (2) The Company's rights and remedies shall not be prejudiced by an indulgence or forbearance to the Buyer and no waiver by the Company of any breach of the contract by the Buyer shall operate as a waiver of any subsequent breach.

15. **Despatch Abroad**

- (a) Goods despatched abroad shall be deemed to have been inspected by the Buyer's agent or representative prior to despatch from the Company's works as no responsibility can be accepted by the Company after goods are consigned for shipment and the Company shall be under no obligation to give the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979
- (b) 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 on them.

16. **Sub Contractors**

The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any contract

17. **Indemnity**

The Buyer shall indemnify the Company against all actions, costs, (including the cost of defending any legal proceedings) claims, proceedings, accounts and demands in respect of any infringement or alleged infringement of patent rights, registered design or similar protective rights resulting from compliance with the Buyer's instructions requirements or specifications, whether express or implied.

18. **Lifting and Unloading**

- (1) Bundling of materials is carried out only as a means of identification and/or separation and for safety reasons the bundling wires or strapping must not be used for lifting purposes

- (2) The Company will not be liable for any loss or damage arising from the use of the bundling wires or strapping for lifting purposes

19. **Testing and Inspection**

- (1) The Buyer acknowledges that it cannot require testing of the Goods or any of them unless it is purchasing the Goods from and for delivery outside the United Kingdom and only if specified prior to or at the time the contract for the supply of Goods is entered into.
- (2) Testing and inspection if specified by the Buyer or his agent shall be at the Company's works and such testing and inspection shall be final and conclusive as to the results thereof.
- (3) The Company shall not be obliged to produce test and performance certificates or safety critical certificates unless requested (in advance of the testing or inspection) by the Buyer and accepted by the Company in writing. The Company may charge a reasonable fee for any such certificate supplied.
- (4) The Buyer shall pay for all test pieces which comply with specification.
- (5) Testing shall be carried out in such manner as the Company shall specify and any other testing shall only be carried out by the Company at the Buyer's cost and paid for prior to such testing regardless of result.

20. **Literature**

Illustrations, weights, measures, performance capabilities, application suitability information and other data set out in the sales literature of the Company are statements of opinion and are provided for information only and form no part of the Contract.

21 **Cancellation**

Cancellation of orders cannot be accepted without the consent in writing of the Company and on condition that all costs and expenses incurred by the Company up to the time of cancellation, and/or all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be reimbursed by the Buyer to the Company forthwith

22     **Applicable Law and Jurisdiction**

This agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto each expressly submits to the exclusive jurisdiction of the Courts of England and Wales.