

P. & W. NASH (Engineering Services) Ltd.

Vicarage lane Hoo Rochester Kent ME3 9LB

STANDARD CONDITIONS OF SALE

1. GENERAL

The following conditions issued by P & W Nash [Engineering Services] Limited ('the Seller') apply to any awarded order or contract, to the exclusion of any conditions of order or purchase of the Buyer or any other standards, specifications, conditions or particulars of or adopted by the Buyer unless expressly accepted in writing by the Seller as part of the contract.

'Goods' means the subject matter of the contract including (but not limited to) raw materials, finished or semi-finished materials or articles, machinery, parts, spares, commodities. etc. and whether one or a number of items whether or not identical or similar.

2. QUOTATIONS

Quotations do not constitute an offer by the Company to supply the goods or carry out the work referred to therein and no order placed in response to a quotation will be binding unless accepted by the Company in writing. All such acceptances by the Company will be subject to availability of the necessary materials and to the Company being able to obtain any necessary authorisation and or licenses and the same remaining valid.

3. PRICES

- (1) Where the goods are sold by reference to the Sellers published price list the price payable for the Goods shall be in the ruling price as published in the price list current at the date of despatch of the Goods from the "Sellers" works.
- (2) In other cases the price stated in the contract is based on the cost to the Seller of materials, fuel and power, transport and labour at the date of acceptance of the order or quotation (whichever is earlier). If at the date of despatch of the Goods from the Sellers works there has been any increase in all or any of such costs the price payable for the Goods may at the option of the Seller be increased accordingly.
- (3) Where the price for the Goods is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give other party any option of cancellation.
- (4) There shall be added to the price for the Goods any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the goods (whether initially charged on or payable by the Seller or the Buyer).
- (5) The price excludes packing and free delivery unless otherwise stated by method of transport of the Sellers choice to the destination stated in the quotation such destination is on the mainland of Great Britain. If such destination stated in the contract is not on the mainland of Great Britain the Goods will be delivered F.O.B. or any other commercial terms as may be agreed shall be in accordance with the definitions and rules in INCOTERMS 1950, except as expressly provided for in these conditions or in the contract. If the contract stipulates or the Buyer requests special packing and/or transport arrangements the extra cost will be for the account of the Buyer.
- (6) All prices are quoted in pounds sterling unless otherwise specified and all payments must be made in pounds sterling unless otherwise expressly agreed.

4. TERMS OF PAYMENT

- (1) Prices quoted are net. Subject to credit being approved accounts are due for payment on a strict net cash 30 DAY account basis unless otherwise agreed. When deliveries are spread over a period each consignment will be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly. Failure to pay for any Goods or for any delivery or instalment shall entitle the Seller to suspend further deliveries and work both on the same order and on any other order from the Buyer without prejudice to any other right the Seller may have. The Seller also reserves the right to charge interest on overdue accounts at the rate of 2% per month. The Seller reserves the right where genuine doubts arise as to a Buyer's financial position or in the case of failure to pay for any Goods or any delivery or instalment as aforesaid to suspend delivery of any order or any part instalment without liability until payment or satisfactory security for payment has been provided.
- (2) In the cases of sales F.O.B. United Kingdom port unless otherwise agreed the Buyer shall upon request by the Seller nominate a vessel willing to receive the Goods. Failing such a nomination within thirty (30) days (or such longer period as may be agreed by the Seller) the Seller shall be entitled to require immediate payment for the Goods and to place the Goods in store at the risk and expense of the Buyer or to treat the contract as discharged and dispose of the Goods.
- (3) If the contract stipulates that payment is made by letter of credit it shall be an express condition of the contract that the letter of credit is irrevocable and is drawn on or confirmed by a first class United Kingdom bank paid over United Kingdom counter and all the appropriate documentation is presented to the Seller when requested by the Seller or otherwise in accordance with the contract.

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5. DELIVERY AND COMPLETION DATES

- (1) The delivery or performance dates specified in the contract are approximate only and, unless otherwise expressly stated time is not of the essence for delivery.
- (2) The Seller will not be liable in any circumstances for the consequences of any delay or failure to deliver if the duration of the delay is not substantial or if the delay or failure is due to an act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Sellers premises or elsewhere), hostilities, breakdowns, shortage or labour materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or subcontractors, governmental order or intervention (whether or not having the force of law) export restrictions (whether or not existing at the date of the contract) or any other cause whatever beyond the Sellers control or of an unexpected exceptional nature.
- (3) No delay shall entice the Buyer to reject a delivery or any further installment or part of the order or any other order from the Buyer or to repudiate the contract or the order.
- (4) The Sellers cannot undertake to meet any schedule of the Buyer's requirements supplied after the date of the contract and will have no liability whatever for delay in meeting or failure to meet all or any such requirements (howsoever such failure or delay may arise) unless and to the extent that the Seller expressly agrees to meet such requirements. In which event paragraph (2) of this condition shall apply.

6. DELAY ACCEPTANCE

If for any reason the Buyer is unable to accept delivery of the Goods when the Goods are due and ready for delivery the Seller may arrange storage of the Goods and the Buyer shall be liable to the Seller for the reasonable costs (including insurance) or such storage. This provision is without prejudice to any other right which the Seller may have in respect of the Buyer's failure to take delivery of the Goods or to pay for them in accordance with the contract.

7. PASSING OF TITLE AND RISK:

- (1) The risk in the Goods shall pass to the Buyer:
 - (i) When the Goods are delivered at the destination specified in an order.
 - (ii) If the Goods are appropriated to the Buyer but kept at the Sellers permission upon collection of the Goods by the Buyer or upon the expiry of 7 days from the Seller's written notice to the Buyer that such goods are ready for delivery whichever is the earlier.
- (2) Notwithstanding sub clause (1) above absolute property in and title to the Goods shall remain vested in the Seller and the Buyer shall keep the Goods as bailee and trustee for the Seller (returning the same to the Seller upon request) until the price thereof has been paid in full together with any interest and all other sums due in respect thereof from the Buyer in accordance with the order.
- (3) If the Buyer:
 - (i) Manufactures another article or articles from the Goods with or without the addition of other materials and/or:
 - (ii) Mixes the Goods in any way whatsoever with other materials and/or
 - (iii) Incorporates the Goods into any other article as a component part. The property in the products of such manufacture mixing or incorporation ('The Products') shall be transferred to the Seller at any time of such manufacture mixing or incorporation and the Buyer shall keep the Products as bailee and trustee for the Seller until the price of the Goods comprised therein has been paid in full together with any interest and all other sums due in respect thereof from the Buyer.
- (4) Pending payment for Goods as aforesaid the buyer shall (subject to sub clause (3) above) store them separately and in such a way that they can be identified as the property of the Seller and the Seller shall be entitled to direct the Buyer not to resell the same or remove them from where they are located without consent. Any Goods in the Buyer's possession shall be presumed not to have been paid for unless the Buyer can prove otherwise and the Seller shall have the right to appropriate any payment made by the Buyer to any invoice or invoices (whether or not due at the time of payment) in the Sellers absolute discretion
- (5) If pending payment for Goods as aforesaid the Buyer shall Sell or otherwise dispose of the Goods or products or make any insurance claim in respect thereof the Buyer shall not give any warranties or incur *any* liabilities on behalf of the Seller and the proceeds of any such sale or other disposition (or claims thereto) or any such insurance proceeds (or claims thereto) shall belong to the Seller and be held by the Buyer as trust funds to the extent of all sums due to the Seller in respect of such goods, and the Buyer shall pay such proceeds into a separate account.
- (6) At any time prior to payment (whether or not payment is then overdue) the Seller may (without prejudice to any of its other rights) retake possession of the Goods or any part thereof and may enter on the Buyers premises by its employees or agents for that purpose or for the purpose of ascertaining whether the Buyer is complying with the provisions of this condition 7.
- (7) Any Goods repossessed by the Seller may be resold on such terms as the Seller may determine and the Buyer shall remain liable to the Seller for the difference between the nett proceeds of such resale and all outstanding sums due to the Seller in respect of such Goods and for all the costs and expenses incurred by the Seller in repossessing, storing and reselling the same.
- (8) Nothing in this condition shall give the Buyer the right to return Goods sold by the Seller and the Seller may sue the Buyer for the price when due (without prejudice to its other rights) notwithstanding that property therein may not have passed to the Buyer.
- (9) The Buyer's right to use the Goods or to Sell them prior to full payment may be terminated forthwith by written notice given by the Seller to the Buyer and shall automatically terminate with or without such notice if a receiver is appointed over any or the assets of the undertaking of the Buyer or the winding up order is made against the Buyer or the Buyer goes into voluntary liquidation (otherwise than for the purpose of solvent reconstruction or amalgamation) or calls a meeting of or make any arrangement or composition with its creditors generally or commits any act of bankruptcy or allows execution or distress to be levied against its goods and in the event of a Receiver or Liquidator of the Buyer being appointed, such Receiver shall pay into a separate bank account any sums received from third parties in respect of sales to them of Goods or Products by the Buyer being appointed, such Receiver or Liquidator shall pay into a separate bank account any sums received from third parties in respect of sales to them of Goods or products by the Buyer up to the amount of any indebtedness of the Buyer to the Seller for the sole benefit of the Seller.

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8. WARRANTY: LIMIT OF RESPONSIBILITY

- (1) The Seller warrants that it will (at the Seller's choice) either repair, replace or refund the full purchase price of Goods which are found within a period of 3 months from despatch of such Goods from the Seller's works (-the warranty period") to be defective or not in accordance with the contract or any express description or representation given or made on behalf of the Seller in respect of the Goods. The Buyer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Goods or any workmanship in relation thereto (whether or not involving negligence on the part of the Seller) shall in all cases be limited to repair or replacement of the Goods or to a refund of the purchase price of the Goods as aforesaid and any condition or warranty implied by law shall cease to apply after the warranty period; and the Seller shall not in any circumstances be liable for any damages, compensations, costs, expenses losses or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in laws is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. A claim in respect of any defect or failure to comply with the specification or order or in respect of any delivery or installment or an order or any part thereof shall not entitle the Buyer to cancel or refuse delivery of or payment for any other order, delivery or installment or any part of the same order, delivery or installment. The Seller will require a reasonable period of time to carry out any repairs or replacements.
- (2) If any alteration or modification is made to the Goods without the Seller's written authorisation then the Seller shall be under no obligation to repair or refund the full purchase price of any Goods which are found within the warranty period to be defective or not in accordance with the contract or any express description or representation given or made on behalf of the Seller in respect of the Goods.

9. INDEMNITY

The buyer agrees upon demand to indemnify the Seller against all losses, damage injury, costs and expenses of whatever nature suffered by the Seller to the extent that the same are caused by or related to:

- (a) Defective materials or products supplied by the Buyer to the Seller and incorporated by the Seller in the Goods produced by the Seller for the Buyer. or
- (b) The improper incorporation, assembly, use, processing, storage or handling of the Goods by the Buyer.

10. MODIFICATIONS

Any extra work, requirement of modifications (including but not limited to foundation work) in relation to the Goods or their installation which is expressly specified in the contract or which is expressly excluded by these conditions and which the Buyer requests shall, if the Seller is able and willing to agree thereto, be charged extra (including an appropriate allowance for profit) to the extent that such extra requirement or modification increases to cost the Seller or performance of the contract, and the Seller shall be allowed a reasonable extension or postponement or performance or deliver} dates required to comply with any such request.

11. TESTING

- (1) The Seller shall only be obliged to carry out tests which are specified in the contract, and reasonable excesses and deficiencies thereof shall be accepted by the Buyer who shall not be entitled to reject any Goods on the grounds that they are not precisely as specified. Tests and inspections shall take place under the Seller's standard testing arrangements. Any additional testing which the Seller expressly agrees to carry out for the Buyer shall be charged extra to the Buyer and shall be undertaken subject to these conditions. Where the Buyer requires to be present at any tests or inspections the Seller shall give the Buyer as much notice as is reasonably possible of the date and time such tests and inspections shall take place and if the Buyer or any third party fails to attend such tests and inspections the Seller shall be permitted to undertake such tests and inspections without liability to the Buyer and shall notify the results thereof to the Buyer who shall not be entitled to request further test and inspection.
- (2) If any special arrangements have to be made to facilitate the requirements of the Buyer, then at the discretion of the Seller, a charge may be made for all costs incurred in facilitating the inspection of the goods.

12. CUSTOMER SPECIFICATIONS

- (1) The Seller is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Buyer to the Seller, whether written or verbal, are in all respect complete, accurate and entirely suitable for the Buyer's requirements.
- (2) Unless otherwise expressly agreed, the Seller shall have no responsibility for the performance, suitability or durability of any Goods or any materials or workmanship comprised therein to the extent that the same is manufactured in accordance with the Buyer's designs, drawings, standards or specifications.

13. CONFIDENTIALITY: PATENTS. ETC.

- (1) Any drawings, specifications or other technical information supplied to the Buyer by the Seller in connection with the contract are provided on the express understanding that the Buyer will not give, loan, exhibit or sell such drawings, specifications or technical information to any third party and that the Buyer will not use them in any way except in connection with the Goods or services provided hereunder. The copyright in all documents provided by the Seller will remain vested in the Seller.
- (2) The Buyer shall indemnify the Seller against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trademark or other industrial or intellectual property rights resulting from compliance by the Seller with the Buyer's specific requirements- designs or specifications.

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14. LOSS OR DAMAGE IN TRANSIT

The risk in the Goods passes to the Buyer when specified by condition 7, and the Seller accepts no responsibility for any damage, shortage or loss in transit thereafter. Claims for any damage shortage or loss in transit should be notified immediately by fax, a-mail or by telephone, subsequently confirmed in writing to the Carrier and to the Seller and the Carrier's conditions in relation to claims for damage shortage or loss in transit must be strictly complied with. If the Carrier's conditions are not strictly complied with, the Buyer will indemnify the Seller against all loss resulting there from.

15. SUB - CONTRACTING

The Seller reserves the right to sub-contract the whole or any part of the contract.

16. PERMITS. ETC.

Where appropriate the Buyer shall obtain within fourteen (14) days of making the contract or such other period as the Seller may agree and shall maintain in force all necessary permits:

- (a) To enable the Goods to be imported into the Country of destination and
- (b) To enable payment to be effected in accordance with the contract. Written confirmation thereof, including the permit number- date and period of validity, shall be furnished to the Seller which shall be under no obligation to manufacture or supply the Goods before receipt thereof. In the event of any breach of this obligation, the Seller shall be entitled without prejudice to any of their remedies to cancel the contract.

17. FORBEARANCE

No forbearance or indulgence by the Seller shown or granted to the Buyer whether in respect of these conditions or otherwise shall in any way effect or prejudice the rights of the Seller against the Buyer or be regarded as a waiver of any of these conditions.

The contract shall in all respects be governed by and considered in accordance with English law and the Buyer hereby submits to the non-exclusive jurisdiction of the English courts.

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