

# Terms and Conditions

## Definitions

In these Conditions "the Company" means **Entaco Limited** or any subsidiary or associated company thereof, "the Customer" means the person, firm or company whose name appears on the face of the quotation, order or order acknowledgement and "Goods" means and includes those products the description of which are listed on the quotation or acknowledgement of order.

### 1. General

- (1) All quotations are made and all orders are accepted subject to the following conditions. All conditions of the Customer or other conditions whatsoever are excluded from any contract between the parties or any variation thereof, unless expressly accepted by the Company in writing.
- (2) Quotations shall only be available for acceptance for a maximum period of 30 days from the date thereof and may be withdrawn by the Company within such period at any time by written or oral notice.
- (3) If any statement or representation has been made to the Customer, other than in the documents enclosed with the Company's quotation, upon which the Customer relies, the Customer must set out that statement or representation in a document to be attached to or endorsed on its Order in which case the Company may confirm, reject or clarify the point and submit a new quotation.
- (4) Quotations, offers or tenders issued by the Company, which are subject in every case to written confirmation on receipt of order, are for the whole of the Goods referred to in the quotation, offer or tender and the Company reserve the right to refuse acceptance of any order which relates to only part of the Goods forming the subject of the quotation, offer or tender."

### 2. Prices

- (1) All prices are quoted ex works net and exclusive of value added tax and are subject to fluctuation in the event of any increase in the cost of labour or increases in the cost of materials and/or overheads. Any increase in such costs during the period of the Contract will be added to the quoted price.
- (2) In the event of any alteration being required by the Customer in design specification or quantities the Company shall be entitled to make an adjustment of the contract price corresponding to such alteration.
- (3) The cost of carriage if required by the Customer shall unless otherwise stated be charged extra.

### 3. Delivery

- (1) Time for delivery is given as accurately as possible but is not guaranteed. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.
- (2) Date of delivery shall in every case be dependent upon receipt of all necessary information, final instructions or approvals being obtained from the Customer. Alterations by the Customer in design specifications or quantities required may result in delay in delivery.
- (3) 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 otherwise 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.
- (4) Unless otherwise agreed in writing for the purpose of these Conditions delivery shall be deemed complete when the Customer is notified that the Goods or consignment or other part thereof is available for collection by the Customer from the Company.

### 4. Risk and Title

- (1) Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the Goods:-
  - (i) 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
  - (ii) in all other circumstances at the time when the Goods or a consignment or other part thereof leave the premises of the Company.
- (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:-
  - (i) the Customer has paid to the Company all sums due from it to the Company under this contract and under all other contracts between the Company and the Customer including (for the avoidance of doubt) any sums due under contracts made after this contract whether or not the same are immediately payable, or
  - (ii) when the Company serves on the Customer notice in writing specifying that title in the Goods or such part thereof has passed.
- (3) The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licences the Company, its officers, employees or agents to enter upon any premises of the Customer for the purpose either of satisfying itself that the Condition 4(4) below is being complied with by the Customer or of recovering any Goods in respect of which title has not passed to the Customer.
- (4) Until title to the Goods has passed to the Customer pursuant to this Condition 4 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.

### 5. Cancellation

- (1) Cancellation will only be agreed to by the Company on condition that 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 reimbursed by the Customer to the Company forthwith.
- (2) Goods returned to the Company without the Company's consent will not be accepted for credit.

### 6. Quantities

Orders for goods in Quantities in excess of 1,000 in the case of standard range goods of the Company or in excess of 100 in the case of goods manufactured to specific requirements of the Customer are accepted on the understanding that a surplus or shortage of up to  $\pm 5\%$  of the Quantity ordered will be accepted by the

Customer subject to a pro rata adjustment in the purchase price and the Customer shall accept the same. The contract shall thereupon be discharged on such basis.

### 7. Terms of Payment

- (1) Unless otherwise agreed by the Company in writing the terms of payment for the goods shall be due and payable by the Customer not later than the 20th of the month following the month in which the invoice was issued.
- (2) All accounts are payable to the Company's Head Office at Studley, Warwickshire.
- (3) No disputes arising under the contract nor delays beyond the control of the Company shall interfere with prompt payment by the Customer.
- (4) In the event of default in payment by the Customer in accordance with agreed terms the Company shall be entitled without prejudice to any other right or remedy to suspend all further deliveries and the charge interest on any amount outstanding at the rate of 5% per annum above National Westminster Bank Plc's Base Rate in force at the relevant time.
- (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.

### 8. Loss Shortages & Defects Apparent on Inspection

- (1) The Customer shall have no right or claim for loss, shortages or defects apparent on inspection unless:-
  - (i) the Customer inspects the goods within three days of delivery, and
  - (ii) a written complaint specifying the loss, shortage or defect (otherwise than by a qualified signature on a delivery note) is made to the Company and, where appropriate, to the Carrier within 7 days of delivery or, if applicable, within 14 days of the notified date of despatch in the event of non-delivery of a whole consignment or, in either event, within such shorter period as the carrier's conditions (if applicable) require.
- (ii) the Company is given an opportunity to inspect the goods and investigate any complaint before any use is made of the goods.

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 the contract and the Customer shall be bound to pay for the same accordingly and in such circumstances Condition 9(5) hereof shall not apply.

- (2) Whether or not the Company arranges delivery the Company is in no way responsible for delivery of the goods and is in no way liable for claims for loss or damage in transit which must be made by the Customer against the Carrier in accordance with the Carrier's conditions.
- (3) Defects in quality or dimension in any instalment delivery shall not be a ground for cancellation of the remainder of the order.

### 9. Defects not Apparent on Inspection

- (1) The Customer shall have no claim in respect of defects in the Goods supplied which are not apparent on visual inspection following delivery unless:-
  - (i) a written complaint is sent to the Company as soon as is 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 these Conditions, and
  - (ii) the complaint is sent within one month of the date of delivery of the Goods save that in the case of an item not manufactured by the Company all claims must be made within the guarantee period specified by the manufacturer of such item.
- (2) The Customer shall not be entitled to make 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 defects 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.
- (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 the defect or after circumstances which should reasonably have indicated to the Customer the existence of a defect.
- (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.

### 10. Guarantee

- (1) Subject to the other provisions of these Conditions the conditions and warranties contained in Sections 12-15 of the Sale of Goods Act 1979 are to be implied into this contract.
- (2) In the event of the condition of the goods being such as might or would (subject to these Conditions of Sale) entitle the Customer to claim damages, or to repudiate the contract (whether or not the same be apparent on inspection), 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 substitute 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. Liability

- (1) Save where the Company is shown to have failed to exercise reasonable care in the manufacture and/or supply of the Goods and such failure results in death or personal injury, the Company shall not be liable in respect of claims arising by reason of death or personal injury. Further, under no circumstances whatsoever shall the Company be liable for consequential loss (including removal or rectification work required in connection with the installation of repaired or substitute Goods) loss of profits, damage to property or wasted expenditure.
- (2) The Company's liability, other than in the event of death or personal injury arising where it is proven that the

Company has failed to exercise reasonable care in the manufacture and/or supply of Goods and such failure results in death or personal injury, whether in respect of one claim or the aggregate of various claims arising under the Contract shall not exceed the purchase price payable by the Customer under this Contract.

### 12. Confidential Information

- (1) All drawings, documents, confidential records, computer software and other information supplied by the Company is 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:
  - (i) give away, loan, exhibit or sell any such drawings, documents, records, software or other information or extracts therefrom or copies thereof
  - (ii) use them in any way except in connection with the Goods for which they are issued.
- (2) All claims for alleged infringement in respect of patents, trademarks, registered design, design right or copyright received by the Customer must be notified immediately to the Company so that the Company can be kept fully informed of the conduct of such claims.

### 13. Customer's Drawings

- (1) The Customer shall be solely responsible for the accuracy of all drawings, information, advice and recommendations given to the Company by the Customer either directly (e.g. as part of a main contract document) or indirectly or by the Customer's own advisers or consultants. Examination or consideration by the Company of such drawings, information, advice or recommendations shall in no way limit the Customer's responsibility hereunder unless the Company specifically agrees in writing to accept responsibility.
- (2) The Customer shall indemnify the Company from and against all actions, claims, costs and proceedings, which arise due to the manufacture of Goods to the drawings and specifications of the Customer where such drawings and specifications shall be at fault or where it is alleged that they involve an infringement of a Patent Registered Design copyright or Design Copyright or design right or other exclusive right.

### 14. Data

Illustrations and specifications 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.

### 15. Sub-Contractors

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

### 16. Insolvency

If the Customer shall become bankrupt 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 proceedings are 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 by notice in writing without prejudice to any right or remedy accrued or accruing to the Company.

### 17. Force Majeure

The Company shall be under no liability for any delay, loss or damage caused wholly or in part by Act of God, governmental restriction condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves the Company's servants or not or by reason of any other act matter or thing beyond the reasonable control of the Company.

### 18. Consumer Protection Act 1987 ("the Act")

- (1) In circumstances where the Company supplies parts or products to the Customer for incorporation with, or use ancillary to, any composite or any other products to be produced, manufactured, processed or supplied to the Customer then:-
  - (i) the Customer shall forthwith on demand produce for inspection by the Company all written instructions, information and warnings to be supplied by the Customer in relation to the said composite or other 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
  - (ii) the Customer shall indemnify, reimburse and compensate the Company for any 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 or other products of the Customer 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 by 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 or other products or (iv) was supplied by the Company in accordance with the specification and/or design either stipulated or approved by the Customer.
- (2) For the purposes of this Condition only the word "defective" shall be interpreted in accordance with the definition of "defect" contained in part 1 of the Act.
- (3) The Customer hereby acknowledges 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.

### 19. Legal

The contract shall be governed and interpreted exclusively according to the Law of England and shall be subject to the jurisdiction of the English Courts only.

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