

ELSTER JEAVONS CONDITIONS OF SALE

1. New Customers

Opening orders from new customers should be accompanied by two trade references.

2. Contract Terms

Unless other terms and conditions are expressly accepted by the Seller by means of a specific written amendment hereto signed by the Seller or a director of the Seller the contract will be on the terms and conditions set out below and overleaf ("the Contract Terms") to the exclusion of any other terms and conditions (except those implied in favour of a seller which are not inconsistent with the Contract Terms) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the Buyer to the Seller. Any reference overleaf to the Buyer's order, specification or like document will not be deemed that any terms or conditions endorsed upon, delivered with or referred to in such order, specification or like document will have effect to the exclusion or amendment of the Contract Terms.

3. Quotation

Any quotation is given on the basis that no contract will come into existence until the Seller despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date provided that the Seller has not previously withdrawn it.

4. Delivery.

4.1 The Seller will endeavour to deliver the goods to be supplied under the contract ("the Goods" which expression includes any of them or any part of them) within the time agreed and if no time is agreed, within a reasonable time, but in no circumstances will the Seller be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the delivery of the Goods. nor unless such delay exceeds 90 days will any delay entitle the Buyer to terminate or rescind the contract.

4.2 Delivery will be made ex the Seller's works and the contract price is calculated on that basis. The Seller may make delivery by instalments.

4.3 No claim for damage or shortages will be considered unless the Seller is advised in writing within 14 days of delivery. In the absence of such the Buyer will be deemed to have accepted the Goods. No claim for non-delivery will be considered unless the Seller is advised in writing within 14 days of the date on the Seller's invoice. Any claim for damage, shortage or non-delivery shall be notified to the carriers by the Buyer in the manner and in the appropriate time limit prescribed by the carrier's terms and conditions.

4.4 In the event of failure by the Buyer to give the appropriate notice as specified in clause 4.3, the Buyer's claim will be deemed to have been waived and will be absolutely barred.

5. Blanket Orders

The following provisions will apply where the Seller supplies the Goods under a blanket order received from the Buyer.

5.1 If the order is a scheduled order where the maximum quantity of Goods required and the approximate dates (including the terminal date) on which the requirements will be called off are specified, the whole order will be treated as a single contract upon the Contract Terms.

5.2 If the order is a non-scheduled order where the maximum quantity of goods required or where the appropriate call off dates are not specified, each call off will be deemed to conclude a separate contract upon the Contract Terms.

5.3 If the order is a non-scheduled order where the appropriate call off dates are not specified, the Seller may require the Buyer to accept delivery of the maximum quantity of Goods required within twelve months of the date of the contract. Without limiting the generality of any of the other Contract Terms the Seller will not be under any liability to the Buyer if at the time of any call off by the Buyer the Seller is unable for whatever reason to supply Goods in accordance with the Buyer's requirements.

6. Guarantee and exclusion clauses

6.1 Where the Seller is not the manufacturer of the Goods the Seller will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given by the manufacturer.

6.2 In respect of Goods manufactured or machined by the Seller the Seller will free of charge within a period of 12 months from the date of despatch repair or at its option replace any Goods which are proved to the reasonable satisfaction of the Seller to be defective in material or workmanship provided that this obligation will not apply where:

6.2.1 the Goods have been altered in any way whatsoever or have been subjected to misuse or unauthorised repair ; or

6.2.2 the Goods have been improperly installed or connected (unless the Seller carried out such installation or connection) ; or

6.2.3 the Buyer has failed to observe any maintenance requirements relating to the Goods ; or

6.2.4 the Buyer has failed to notify the Seller of any defect or suspected defect within 14 days of the same coming to the knowledge of the Buyer ; or

6.2.5 the Buyer is in breach of contract made with the Seller.

Any Goods replaced will belong to the Seller. Any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the twelve month period.

6.3 Save as provided in clauses 6.1 and 6.2 the Seller will be under no liability under the contract for any personal injury, death, loss or damage of any kind whatsoever (other than death or personal injury resulting from the Seller's negligence) whether consequential or otherwise including but not limited to loss of profits and the Seller hereby excluded all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which but for such exclusion would or might subsist in favour of the Buyer except that such exclusion will not apply to any implied condition that the Seller has or will have the right to sell the Goods when the property is to pass.

6.4 In no circumstances will the Seller or its employees, agents or subcontractors be liable for any loss or damage of any kind whatsoever (other than death or personal injury resulting from the Seller's negligence) whether consequential or otherwise caused directly or indirectly by any negligence or other tortious act or breach of statutory duty on the part of the Seller or on the part of any of its employees, agents or subcontractors in connection with or arising out of the manufacture or supply of the Goods or in connection with any statement given or made (or advice not given or made) by or on behalf of the Seller.

7. Risk

Risk in the Goods shall pass to the Buyer when the Goods are delivered to the Buyer or its agent.

8. Property in the Goods

8.1 In this clause the following expressions have the following meaning:

"The New Goods" means goods produced by the Buyer converting, incorporating or mixing the Goods with other goods prior to the property in the Goods passing to the Buyer and includes any of them and any part of them.

"The supplied Goods" means the Goods and the New Goods and includes any of them and any part of them.

8.2 The property (both legal and equitable) in the Goods shall not pass to the Buyer until

8.2.1 the purchase price of the Goods has been paid in full; and

8.2.2 payment to the Seller of any sum which is at the date of the contract or may thereafter become due or owing from the Buyer to the Seller.

8.3 The Buyer may convert or incorporate the Goods into or mix the Goods with other goods to produce the New Goods prior to the property in the Goods passing to the Buyer but in such event the property in the New Goods (whether the other goods into which the Goods have been converted or incorporated or with which the Goods have been mixed belong to the Buyer or not) shall be and remain with the Seller immediately upon such conversion, incorporation or mixture until

8.3.1 the purchase price of the Goods has been paid in full; and

8.3.2 payment to the Seller of any sum which is at the date of the contract or may thereafter become due to or owing from the Buyer to the Seller.

8.4 Until property in the Supplied Goods has passed to the Buyer or until delivery of the Supplied Goods to a third party pursuant to the permission given below, the Buyer will hold the Supplied Goods to a third party pursuant to the permission given below, the Buyer will hold the Supplied Goods in a fiduciary capacity, will not obliterate any identifying mark on the Supplied Goods or their packaging and (save where the Goods are being converted or incorporated into or mixed with other goods to create New Goods) will keep the Supplied Goods separate from any other goods.

8.5 Prior to the property in the Supplied Goods passing to the Buyer the Seller permits the Buyer to deliver the Supplied Goods to a third party pursuant to a bona fide and arms-length agreement to sell the Supplied Goods but such liberty will cease upon the termination of the contract.

8.6 The Buyer's liberty to convert or incorporate the Goods into or mix the Goods with other goods and the Buyer's liberty to deliver the Supplied Goods to a third party shall cease upon the termination of the contract.

8.7 Where the Seller is unable to determine whether any goods are the Goods the Buyer shall be deemed to have converted incorporated mixed or sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer and any new goods so created shall be deemed to have been delivered to the Buyer's customers in the order in which they were created.

8.8 8.8.1 The Seller may at any time after payment for the Goods has become due take possession of the Supplied Goods (which for the avoidance of doubt will include the right to stop the Goods in transit) and remove them and the Buyer shall be deemed to have granted irrevocable authority to the Seller to enter upon the Buyer's premises or other premises where the Supplied Goods may be by its employees or agents to take possession of the Supplied Goods and (if necessary) to dismantle the Supplied Goods from anything to which they are attached.

- 8.8.2 If prior to the expiry of 7 days from date when the Seller has taken possession of the Supplied Goods the Buyer pays all sums then due or owing to the Seller together with the costs of taking possession of the Supplied Goods, the Seller will re-deliver the Supplied Goods to the Buyer at the Buyer's expense. If within the 7 day period the Buyer fails to pay all sums then due or owing to the Seller, the Seller may sell the Supplied Goods and shall pay to the Buyer the balance of any sums received upon the sales of the Supplied Goods after deducting all sums due to or owing from the Buyer to the Seller and the costs taking possession of and selling the Supplied Goods save that if the sums so received by the Seller do not exceed all sums due or owing from the Buyer to the Seller and the costs of taking possession of and selling the Supplied Goods the Buyer will pay to the Seller any shortfall.
- 8.9 If the Buyer sells the Supplied Goods before the property in them passes to the Buyer, the Buyer will hold the debt due to the Buyer resulting from the sale of the same in a fiduciary capacity and will promptly account to the Seller for the proceeds of any such sale and, prior to paying such proceeds to the Seller, the Buyer will hold the same in a fiduciary capacity keeping the same separate from its other moneys. On receiving such proceeds the Seller will return to the Buyer any sum received in excess of the total of all sums due or owing from the Buyer to the Seller at the date of receipt by the Seller of such proceeds of sale.
- 8.10 The Seller will have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that property in the Goods has not passed.
- 8.11 Nothing in the contract will constitute the Buyer the agent of the Seller in respect of any sale of the Supplied Goods by the Buyer so as to confer upon a third party rights against the Seller.
- 8.12 For the avoidance of doubt, the Supplied Goods shall be at the Buyer's risk.
9. Price
- 9.1 The contract price is based on the costs of materials, labour, sub-contracts, transport, taxes, duties and currency exchange rates ruling at the date of the quotation. The Seller reserves the right to amend the contract price to take account of any variations in these costs or the imposition of any new taxes or duties occurring from whatever cause before delivery of the Goods.
- 9.2 Unless expressly stated otherwise all prices are exclusive of V.A.T. which shall be charged at the rate and in the manner prescribed by law from time to time.
10. Payment
- 10.1 The price will become payable upon delivery and payment will be made by the Buyer within 30 days of the date of the Seller's invoice.
- 10.2 Interest at an annual rate of 5% above National Westminster Bank plc Base Rate from time to time will accrue daily and be calculated on a daily basis on overdue accounts from the date of invoice will accrue daily and be calculated on a daily basis on overdue accounts from the date of invoice until payment.
- 10.3 Notwithstanding any Contract Term allowing the Buyer credit payment shall become due and payable to the Seller immediately upon the termination of the contract.
- 10.4 Where the Buyer makes default under the contract or any other contract with the Seller in payment on the due date of any sum due to the Seller, without liability may postpone any delivery or may cancel the contract or any other contract between the Seller and the Buyer but without prejudice to any right or remedy which the Seller may have against the Buyer in respect of such default.
- 10.5 The Seller shall at any time be entitled to appropriate any payment made by the Buyer in respect of any goods in settlement of such invoices or accounts in respect of such goods as the Seller may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.
11. Lien
- The Seller will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Buyer a general lien on all goods (whether or not the property of the Buyer) in the possession of the Seller for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 days notice in writing to the Buyer to dispose of such property and to apply the proceeds towards the satisfaction of such debts.
12. Cancellation
- 12.1 If the Buyer cancels, extends or delays or purports to cancel, extend or delay the contract or part thereof, or fails to take delivery of any Goods at the time agreed (if any) or if no time is agreed within a reasonable time, then the Buyer will be liable (without prejudice to any other rights of the Seller to claim damages) to indemnify and keep indemnified the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the supply or non-supply of the Goods including the cost of any material, plant or tools used or intended to be used therefore and the cost of labour and other overheads including a percentage in respect of profit.
- 12.2 If the Seller is unable (whether) temporarily or permanently) to procure any services or goods necessary to enable it to supply the Goods or if the supply of the Goods is prevented or hindered by reason or any cause beyond the Seller's reasonable control including without prejudice to the generality of the foregoing labour disputes involving the work force or

any part thereof of the Seller. The Seller may cancel the contract by notice in writing to the Buyer so far as it relates to Goods not then supplied or work not then done and such cancellation shall not give rise to any claims by the Buyer provided that the Buyer shall remain liable to pay for Goods delivered prior to the date of such cancellation.

13. Storage

If the Buyer fails to take delivery of the Goods when they are ready for delivery the Seller may, at its option, either store them itself or have them stored by third parties on such terms as the Seller may in its absolute discretion think fit. In any event the cost of storage will be borne by the Buyer and insofar as the storage is done by the Seller then such cost will be the Seller's storage charges current at the time of storage. The cost together with any additional insurance or double handling charges will be added to and form part of the price for the Goods.

14. Specification or Design

14.1 Where the Goods are manufactured in accordance with information or drawings supplied by the Buyer or to his design or specification or where standard goods of the Seller are altered in accordance with the Buyer's instructions:

14.1.1 no guarantee or warranty is given by the Seller as to the practicability, efficiency, safety or otherwise of the Goods (this being without prejudice to any other of the Contract Terms).

14.1.2 the Buyer will indemnify and keep the Seller indemnified against all liability incurred by the Seller as a result of

14.1.2.1 such goods infringing any intellectual property right including without prejudice to the generality of the foregoing patents registered designs and copyright or the provision of any statute, statutory instrument or regulation.

14.1.2.2 any impracticability, inefficiency or lack of safety or other defect in the Goods where such defect is due (whether in whole or in part) to faults or omissions in such information, drawings, design, specification or instructions.

14.2 No variation in the specification or design of any Goods which in the reasonable opinion of the Seller does not affect the suitability of the Goods for the purpose for which they are supplied by the Seller will constitute a breach of contract or impose upon the Seller any liability whatsoever.

14.3 The Seller will be under no liability whatsoever to the Buyer in respect of any loss damage or claim incurred by or made against the Buyer should any goods supplied by the Seller infringe any intellectual property right including without prejudice to the generality of the foregoing patents registered designs and copyright or the provision of any statute statutory instrument or regulation.

14.4 Unless otherwise agreed in writing all patterns, drawings, tools or other similar items produced or other property (whether intellectual property or not) owned or created by the Seller will remain the property of the Seller and must not be used or copied by the Buyer.

14.5 Where it is agreed that ownership in any data, patterns, drawings, tools or other similar items is to pass to the Buyer property shall only pass when such items have been paid for by the Buyer in full.

15. Promotional material

No drawings, descriptive matter, weights, dimensions or shipping specifications issued by the Seller or the manufacturer of the Goods, nor the descriptions and illustrations contained in the Seller's or manufacturer's catalogues, price lists or other promotional material will form part of the contract nor be regarded as a warranty or representation relating to the Goods.

16. Right of re-sale

If the Buyer defaults in accepting delivery of or paying for the Goods, the Seller reserves the right to re-sell the Goods or any of them to a third party without giving notice to the Buyer of the Seller's intention to re-sell.

17. Set-off

The Buyer will have no right of set-off, statutory or otherwise.

18. Packing

Packing is non returnable and supplied free of charge for UK sales and at a cost for export sales.

19. Termination

- 19.1. The contract will terminate immediately upon the happening of any one or more of the following, namely, that the Buyer has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver manager administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution has been passed or a petition to any Court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings have been commenced relating to the insolvency of the Buyer.
- 19.2. The contract will terminate upon service of written notice of termination by the Seller on the Buyer on the happening of any one or more of the following, namely, that the Buyer has suffered or allowed any execution whether legal or equitable to be levied on his/its property or obtained against him/it or has failed to observe or perform any of its obligations or duties under the contract or any other contract between the Seller and the Buyer or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Buyer has ceased to trade.
- 19.3. The Seller's rights contained in the clause headed "Property in the Goods" (but not the Buyer's rights) shall continue beyond the discharge of the parties' primary obligations under the contract consequent upon its termination.
- 19.4. The termination of the contract howsoever arising will be without prejudice to the rights and duties of either party accrued prior to termination.

20. Export

Where the goods are to be exported to the Buyer the following additional terms apply:

- 20.1. The Uniform Laws on International Sales Act 1967 shall not apply to the contract.
- 20.2. Payment will be made in Pounds Sterling in England. The Buyer will establish and maintain in favour of the Seller an irrevocable letter of credit in English confirmed by a U.K. clearing bank payable on drafts drawn on sight upon presentation to the bank by the Seller of a certified copy of the Seller's invoice. Such letter of credit shall be established at least 30 days prior to anticipated shipment date and shall cover the full price of the Goods (including applicable taxes) and such letter of credit shall be transferable. All bank charges and other expenses in relation to the letter of credit shall be paid by the Buyer.
- 20.3. The Goods will be sold F.O.B. or C.I.F. at the option of the Seller and the Seller will be under no obligation to give the Buyer notice as specified in Section 32(3) of the Sale of Goods Act 1979.

21. General

- 21.1. The Seller will be entitled to assign sub-contract or sub-let the contract or any part thereof.
- 21.2. Failure by the Seller to enforce any of the Contract Terms will not be construed as a waiver of any of its rights hereunder.
- 21.3. In relation to all obligations of the Buyer under the contract, the time of performance is of the essence.
- 21.4. The legal construction of these clauses shall not be affected by their headings which are for convenience of reference only.

22. English Law

The formation, interpretation and operation of the contract will be subject to English Law and the Buyer submits himself to the non-exclusive jurisdiction of the English Courts.