

Terms and Conditions of Sale

May 1st 2012

Any contract for the sale of goods including any quotation, tender, sale or acknowledgement of order issued by Michael Smith Engineers Ltd. ("the Company") shall unless otherwise specifically agreed in writing by a director of the Company, be subject to the following terms and conditions:-

1. **Conditions:** These conditions of sale together with the specific conditions and terms set out shall constitute the entire contract between the Company and the purchaser of any goods from the Company ("the Customer"). These conditions shall supersede any previous agreements or arrangements (whether written oral or implied) between the Company and the Customer in relation to the subject matter of the contract and shall override and exclude any conditions at any time imposed by the Customer save to the extent that such conditions may be incorporated herein. By accepting any tender or quotation for or placing any order for goods the Customer shall be deemed to have accepted these conditions.
2. **Variations to Conditions:** No variation of these conditions shall be effective or binding upon the Company unless it is accepted in writing by a director of the Company.
3. **Quotations and Prices:**
 - (a) Quotations only refer to goods and articles specified therein and available at the time of quotation. Quotations shall only be binding on the Company if confirmed in writing. Notwithstanding any quotation the contract price shall be the price ruling at the date the order is received and shall be subject to increase between that date and the date of delivery in respect of the matter referred to in sub-clause (b) hereof.
 - (b) In addition the Company shall have the right to increase the contract price to take into account any increase in costs arising after the date the order is received as a result of:
 - (i) Any alteration in the Customer's requirements;
 - (ii) The Customer's instructions or lack of instructions;
 - (iii) Any interruptions, delays, overtime work, mistakes or any other cause over which the Company has no control;
 - (iv) Any increase in any tax duty or levy imposed on goods or services or affecting the contract price in any manner, including VAT.
4. **Catalogues and Drawings etc:** Unless otherwise agreed by the Company in writing any data, printed matter, designs, drawings, specifications or catalogues supplied to the Customer before or after the date of order are intended merely to represent a general idea of the goods described therein, and shall not be deemed to be a representation or warranty or to form the basis of any contract. The Company will not accept responsibility or liability for or in regard to inaccuracy or omission of any kind.
5. **Limitation of Liability:**
 - (a) The liability of the Company in respect of any defect in or failure of goods supplied shall be limited to the replacement of such goods or repair (at the Company's premises) of defects in such goods which, under proper use, arise therein solely from faulty design, materials or workmanship, provided that the defect arise and notice thereof is given to the Company within twenty-eight days of delivery.
 - (b) The Company shall not be liable for any consequential loss (whether direct or indirect), expense or damage of whatever kind arising as a result of or in connection with the supply of goods hereunder or their use or anything done or omitted to be done in connection therewith.
 - (c) The Company shall not be under any liability in respect of goods which are altered, modified or repaired without the Company's consent or defects which arise wholly or partly as a result of negligence or improper handling by any person or any other cause outside the control of the Company.
6. **Delivery:**
 - (a) Any times quoted for delivery shall not constitute a term of contract between the Company and the Customer and any delay in delivery shall not constitute a breach of such contract.
 - (b) In addition the Company shall in no event be liable for any indirect or consequential losses, costs or penalties incurred or suffered by the Customer as a result of the Company's inability or failure for any reason to meet specified delivery dates.
 - (c) We reserve the right to make part deliveries unless otherwise specified.
7. **Goods in Transit:** No claim in respect of any loss or damage to goods in transit or any shortage on delivery will be accepted unless the Customer shall have notified the Company in writing of such loss, damage or shortage within 14 days of delivery.
8. **Terms of Payment:**
 - (a) Payment of the contract price and any delivery or other charges shall (unless otherwise agreed in writing) be made to the Company promptly on a nett 30 day basis. In the event of the Customer failing to make any payment within such period the Company shall, without prejudice to any other right or remedy available to it, be entitled to suspend or cancel any further deliveries to the Customer, and to cancel this contract and/or any other contract then subsisting between the Company and the Customer.
 - (b) The Company shall be entitled to charge interest on any account which is overdue for payment at a rate equal to 3 per cent above the National Westminster Bank base rate for the time being.
9. **Passing of Property and Retention of Title:**
 - (a) Notwithstanding delivery the property in the Goods shall not pass to the Buyer until the Buyer has paid in full the price of the Goods.
 - (b) Furthermore the property in the Goods shall not pass to the Buyer unless and until the full price of any other delivered goods the subject of any other business transaction between the Buyer and the Seller has been paid. Such price and the price of the Goods shall hereinafter together be called "the value" and shall where the context so permits include in addition thereto any costs of repossession incurred pursuant to paragraph (iv) of Clause (c) hereof.
 - (c) Until the value has been received by the Seller the Buyer will hold the Goods as bailee on behalf of the Seller and the Buyer hereby acknowledges that there shall accordingly subsist a fiduciary relationship in respect of the Goods between the Buyer and the Seller. Subject thereto:
 - (i) The Buyer will store the Goods on its premises separately from its own goods or those of any other person in such a way that they can be readily identified as the goods of the Seller;
 - (ii) Until payment as aforesaid the Buyer will take all necessary measures for the protection of the Goods including the insurance thereof against all usual risks with an insurance company approved by the Seller for the full replacement value of the Goods. The Buyer will procure that the interest of the Seller is noted upon any policy of insurance effected pursuant hereto and that copy of the same is supplied to the Seller on the creation thereof;
 - (iii) The Buyer is authorised by the Seller to agree to sell on the Goods at a price which shall nevertheless be no less than the purchase price of the Goods hereunder subject to the express condition that the entire proceeds thereof are held in trust for the Seller and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Seller's money. The Buyer shall keep records (to be produced to the Seller whenever required) of the name and address of any such sub-purchaser and the date and contract price of each delivery and shall if the Seller so requires in writing assign such claims as the Buyer has against such sub-purchasers as emanate from this transaction;
 - (iv) The Seller may, at any time if payment is overdue in whole or in part without prejudice to any other right arising pursuant to or consequent upon this Agreement, for the purpose of recovery of the Goods, enter upon any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess the same. All costs and expenses reasonably incurred by the Seller in connection with such recovery shall be paid by the Buyer;
 - (v) It is declared for the avoidance of doubt without prejudice to the generality of the foregoing that the Seller may recover the Goods and payment shall become due if:
 - (a) The Buyer does or fails to do anything which would entitle an Administrator or Administrative Receiver to take possession of any of its assets or which would entitle any person to present a petition to wind up the Buyer; and/or
 - (b) The Buyer passes any resolution to wind itself up or publishes a notice convening a meeting of its creditors pursuant to section 98 of the Insolvency Act 1986 or any statutory modification or replacement thereof; and/or
 - (c) The Buyer if an individual has a Bankruptcy Order made against it or enters into any arrangement for the benefit of its creditors generally.
 - (d)
 - (i) The Buyer may admix the goods with other property not belonging to the Seller. However if goods the property of the Seller are admixed with goods the property of the Buyer or are processed with or incorporated therein the product thereof shall become and/or deemed to be the sole and exclusive property of the Seller. If Goods the property of the Seller are admixed with Goods the property of any person other than the Buyer or reprocessed with our incorporated therein the product thereof shall become or shall be deemed to be owned in common with that other person;
 - (ii) The provisions of Paragraph (iii) of Clause (c) hereof shall apply mutatis mutandis to the proceeds of sale of any product referred to in Paragraph (i) of this Clause.
 - (e) Each of the preceding Clauses and sub-paragraphs shall be construed and shall take effect separately and in the event of one or more such Clauses or sub-paragraphs being held ineffective this shall not affect the validity of the remaining Clauses or sub-paragraphs.
 - (f) Certain packaging and transport materials including but without limitation thereto containers, cans, drums, crates, pallets remain the property of the Seller and the Buyer shall return all such materials to the Seller without delay in good and proper condition. The Seller reserves the right to charge the Buyer for any materials not returned.
10. **Risk:** Risk in the goods will pass to the customer on delivery.
11. **Cancellation of Orders:** The Customer shall not be entitled to cancel any order or part order which has been accepted by the Company. In the event of such cancellation the Customer shall remain liable to pay to the Company the full contract price unless the Company shall in its absolute discretion otherwise agree in writing.
12. **Copyright:** Any drawings, designs or information of any nature whatsoever submitted by the Company remain Company property and must not be shown nor made available to a third party nor must they be used for purpose detrimental to the Company interests.
13. **Waiver:** Any express or implied waiver by the Company of any term or condition of this contract or of any other breach or default by the Customer may be terminated by the Company at any time. No such waiver shall constitute a continuing waiver, nor shall it prevent the Company from acting upon that or any subsequent breach or default or from enforcing any of the provision of this contract.
14. **Proper Law:** This contract and these conditions shall be construed according to and governed by the Law of England, and the parties hereby submit to the jurisdiction of the English Courts.
15. **General:**
 - (a) The Customer agrees to indemnify and keep indemnified the Company against all reasonable fees, costs and other expenses incurred by the Company in enforcing these conditions or any of its terms or provisions.
 - (b) All paragraphs and other headings contained in these conditions are for reference purposes only and shall not in any way affect the meaning or interpretation of this contract.