

## TERMS AND CONDITIONS

- 1) **Formation of contract**  
The contract shall not be concluded until the order of the buyer is accepted by the Seller in writing on the Order Confirmation form of the Seller save that during any postal strikes the Seller shall be at liberty to accept the order of the Buyer orally and in such event any reference herein to the Order Confirmation form shall be construed to the said oral acceptance.
- 2) **Description of Machinery**  
Any description of the machinery made by the Seller whether orally or in writing or contained in any drawing photograph or other illustration with reference to the weight measurements or dimensions thereof is approximate only.
- 3) **Representations**  
While all representations as to the quality and fitness of the machinery whether orally or in writing made by the Seller are made in good faith no such representation shall form a term of the contract nor shall the Seller be held liable for any inaccuracy therein.
- 4) **Warranties**  
No warranty is given by the Seller as to the machinery nor shall any warranty be taken to have given or implied from anything said or written in negotiations between the Buyer and the Seller and any statutory or other warranty conditions or description express or implied as to the state quality or fitness of the machinery is expressly excluded.
- 5) **Price**  
All prices are Ex-works Wigston or F.O.B United Kingdom Port and are based on the cost of labour materials and transport obtaining when the contract is concluded. The Seller shall be entitled to pass on to the Buyer any increase in the said cost arising after the contract has been concluded but before the machinery has been delivered.
- 6) **Payment**
  - a) Payment of the deposit and the balance of the price shall be made in accordance with the Order Confirmation form and shall be made in cash before delivery of the machinery.
  - b) Payment shall be made by the Buyer opening an irrevocable confirmed Letter of Credit in favour of the Seller. The Buyer shall open the said Letter of Credit not later than seven days after the contract has been concluded.
- 7) **Delivery**
  - a) Unless otherwise agreed orally or in writing the Seller shall deliver the machinery to the place or places and in the manner specified in the Order Confirmation form.
  - b) Any time or date named by the Seller for delivery is given and intended as an estimate only and the Seller shall not be liable to make good any damage or loss whether directly or indirectly out of delay in delivery.
  - c) Delivery shall be taken by the Buyer within the period (if any) named in the Order Confirmation form and such full details as may be necessary (or required by the Seller) to enable the Seller to complete delivery within such period shall be supplied by the Buyer. If for any reason the Buyer is unable to take delivery of the machinery when they are ready for delivery the Seller shall be entitled to treat the Buyer's failure to take delivery as a repudiation of the contract and in any event the Buyer shall be liable to the Seller for the reasonable cost (including insurance) or storing the machinery and taking all reasonable steps to prevent their deterioration from the time of the Buyer's failure to take delivery until the actual delivery or disposal of the machinery. These provisions shall be in addition to not in substitution of any other payment or damages for which the Buyer may become liable or remedy to which the Seller may become entitled by reason of the Buyer's failure to take delivery at the appropriate date.
  - d) In the case of orders for more than one machine the Seller shall be entitled to make part-deliveries.
  - e) Defects in quality or dimensions on any delivery shall not be a ground for cancellation of the remainder of the order or contract.
- 8) **Risk and property**
  - a) Risk of damage to or loss of the goods shall pass to the buyer
    - i) In the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the goods are available for collection or
    - ii) In the case of Goods to be delivered otherwise than that at the Seller's premises at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods.
  - b) Notwithstanding delivery and the passing of risk in the Goods or any other provision of these conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
  - c) Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the goods as the Seller's fiduciary agent and bailee and shall keep the Goods separated from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.
  - d) Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been re-sold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or third party when the Goods are stored and repossess the Goods
  - e) The Buyer shall not be entitled to pledge or in any way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9) **Guarantee**
  - a) Save as hereinafter provided the Seller at its own cost shall repair or at its discretion replace any machine which is or becomes faulty reason only of defective materials or workmanship within a period of three calendar months from the date of delivery provided that the machine is operated in daily eight-hour shifts. If such machine is operated for longer shifts the guarantee period shall be reduced proportionately.
  - b) The Seller shall not be bound by this guarantee if:
    - i) The Buyer has not made payment in full for the machinery.
    - ii) The Buyer fails to comply with sub-paragraph c) and d) of this clause.
    - iii) The Buyer permits any person other than the Seller or those approved or authorised by the Seller to effect any replacement or parts maintenance adjustment or repairs to the machinery.
    - iv) The Buyer has not properly maintained the machinery in accordance with instructions pamphlets or directions given or issued by the Seller from time to time; and
    - v) The Buyer uses any spare parts or replacements not supplied or approved by the Seller or fails to follow the Seller's instructions for the use of the same.
    - vi) If any defect arises from wear and tear, wilful damage, negligence in operation, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) misuse, alternative or repair of the goods without the Seller's approval.
  - c) The Buyer shall notify the Seller in writing as promptly as possible of any faults that have appeared and if required shall give the Seller such access as may be necessary for inspecting and remedying them.
  - d) Save where the nature of the fault is such that in the Seller's opinion it is appropriate to carry out repairs on site the Buyer shall return to the Seller any machine or part of a machine in which a fault covered by the Guarantee has appeared for repair or replacement by the Seller and the Buyer shall bear the cost and risk of transport between the premises of the Buyer and the works of the Seller of faulty machines and parts and of repaired machines and parts and of machines and parts supplied in replacement of such faulty machines and parts.
  - e) Faulty machines and parts which have been replaced under the Guarantee shall become the property of the Seller.

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**10) Limits on Seller's Liability**

- a) The Seller shall not be responsible for commercial loss or damage injury or loss of any kind whatever to any property or person however caused arising from the assembly installation or use of the machinery or from the use of electricity in connection with the assembly installation or use of the machinery and this clause shall apply to any breach of contract by the Seller however fundamental.
- b) Subject as expressly provided by these conditions all guarantee warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**11) Non-Assignment by Buyer**

The Buyer shall not be entitled to assign its rights under the contract without the consent in writing of the Seller.

**12) Insolvency of the Buyer**

This clause applies if:

- a) The Buyer makes any voluntary arrangement with its creditors or becomes subject to administration order or (being an individual or firm) become bankrupt or (being a Company) goes into liquidation (otherwise than for the purpose of amalgamation or re-construction) 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 Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel 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 prices shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller may enter upon any premises of the Buyer or any third party where the goods are stored and repossess the Goods.

**13) Interpretation**

In these conditions "Seller" shall in all cases include any servant or agent of the Seller and "Machinery" means the machine or machines the subject-matter of the contract

**14) Variation**

Neither the Buyer nor the Seller shall be bound by any variation waiver of or addition to these conditions save as agreed by the Buyer and the Seller in writing and signed by them or on their behalf.

**15) Place of Jurisdiction and Proper Law**

The place of jurisdiction for any dispute uncertainty or proceedings in connection with the contract shall be England and the proper law of the contract shall be the law of England.