

# **Matrix International** Terms and Conditions

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## **1. GENERAL**

- 1.1 All quotations are made and all orders accepted subject to the following conditions. All other terms, conditions or warranties whatsoever, other than those which are guaranteed by current legislation, are excluded from the contract or any variation thereof, unless expressly accepted by the Company in writing.
- 1.2 Quotations shall be available for acceptance for a maximum period of 30 days from the date thereof and may be withdrawn by the Company at any period within such time by written or oral notice.
- 1.3 If any statement or representation has been made to the Customer by the Company, its servants or agents upon which the Customer relies, other than in the documents enclosed with the Company's quotation or acknowledgement or Order then the Customer must set out that statement or representation in a document to be attached to or endorsed on the Order and in any such case the Company may confirm, reject or clarify the point and submit a new quotation.
- 1.4 These terms and conditions may only be altered or qualified by a document signed by a director of the Company setting out in full all the relevant alterations and qualifications.
- 1.5 Acceptance of delivery of Goods shall constitute acceptance of these Conditions where acceptance has not previously been communicated by the Customer to the Company.

## **2. VARIATIONS AND CANCELLATIONS**

- 2.1 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 lost of profits and other loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.
- 2.2 All variations required by the Customer shall be in writing and the price shall be agreed prior to the performance of any additional Works by the Company.
- 2.3 If the Company agrees to make any variations in accordance with this condition then any dates quoted for delivery or completion of the contract will be extended appropriately.

## **3. DELIVERY**

- 3.1 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 due to any cause to meet any delivery time stated.
- 3.2 The date of delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Alterations by the Customer in design specifications or quantities required may result in delay in delivery.
- 3.3 Delivery on all contracts from Customers within the United Kingdom shall be on the basis of delivery ex works and for all export orders the Customers outside the United Kingdom delivery shall be F.O.B. UK port as defined by and in accordance with Incoterms 1990 edition.
- 3.4 Failure by the Customer to take delivery of or to make payments in respect of anyone or more instalments of Goods delivered hereunder shall entitle the Company to treat the whole contract as repudiated by the Customer.
- 3.5 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 and payment for the Goods and Works shall be made in accordance with these conditions.

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3.6 Any packaging supplied by the Company unless otherwise expressly agreed is intended to provide adequate protection for normal conditions of transit of usual duration throughout the United Kingdom.

## **4. RISK AND TITLE**

4.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the Goods:

4.1.1 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, in the case of a United Kingdom Order, when the Goods or a relevant part thereof arrive at the place of delivery or, in the case of an export Order, when the Goods or a relevant part thereof arrive at the appropriate United Kingdom port, or

4.1.2 In all other circumstances at the time when the Goods or a consignment or other part thereof leave the premises of the Company.

4.2 Title to the Goods or any relevant part thereof shall only pass to the Customer upon the happening of anyone of the following events:

4.2.1 the customer has paid to the Company all sums due from it 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.

4.2.2 when the Company serves on the Customer notice in writing specifying that title in the Goods or such part thereof has passed.

4.3 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licenses the Company, its officers, employees and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that Condition 4.4 below is being complied with or of recovering any Goods in respect of which property has not passed to the Customer.

4.4 Until title to the Goods has passed to the Customer pursuant to the terms hereof it shall possess the Goods as a bailee/custodian of the Company on the terms of these Conditions. 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. DIMENSIONS**

5.1 The Company reserves the right to alter or change dimensions of the Goods supplied within reasonable limits having regard to the nature of the Goods. Dimensions specified by the Company are to be treated as approximate only unless the Customer at the time of placing the order requests certified drawings.

5.2 Unless otherwise agreed in writing, Goods will be made within the Company's published manufacturing tolerances. If special limits are required the Customer may be required to supply appropriate gauges.

## **6. TOOLS**

All jigs and tools used in the manufacture of the Goods including special tools and jigs made specifically for the fulfilment of the contract shall remain the sole property of the Company which reserves the right to use such tools and jigs or dispose of them after completion of the contract unless the Customer shall have purchased such jigs and tools from the Company by separate contract and have made payment in full to the Company therefor or unless otherwise agreed.

## **7. LITERATURE AND INSTRUCTIONS**

- 7.1 The Company provides installation, maintenance and user instructions for the Goods and copies may be obtained from the Company free of charge. The Customer shall ensure that its employees and others authorised by it to install, maintain and use the Goods are properly trained and are fully conversant with the terms of such instructions. The Customer shall have no claim against the Company whatsoever where it can be shown that any loss or damage was caused by reason of the failure of its employees and others to follow the instructions produced by the Company.
- 7.2 The information contained in the advertising, sales and technical literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed, otherwise any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information shall form part of the contract unless the customer shall have complied with Condition 1.3 hereof relating to statements and representations.

## **8. SAFETY DEVICES**

The Customer undertakes to ascertain the requirements of its local representative of the Health and Safety Executive as to the proper guarding of the goods supplied by the Company having regard to the position and the manner in which they are to be installed and used, and the Customer further undertakes to ensure that such guarding required by its local representative of the Health and Safety Executive is installed. Safety devices and guards supplied by the Company (otherwise than pursuant to a separate contract as hereinafter provided to supply guards to the requirements of the Customer's local representative of the Health and Safety Executive will not necessarily meet requirements of the Customer's local representative of the Health and Safety Executive and no warranty or representation is given or made that they comply with any statutory or other requirement and no liability is accepted by the Company in respect hereof.

## **9. CONSUMER PROTECTION ACT 1987**

- 9.1 In circumstances where the Company supplies Goods which represent component parts for incorporation with, or use ancillary to any composite product to be produced, manufactured or processed by the Customer then:
- 9.1.1 the Customer shall forthwith on demand produce for inspection by the Company copies of all written instructions, information and warnings to be supplied by the Customer in relation to the said composite 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
- 9.1.2 the Customer shall indemnify, reimburse and compensate the Company for all losses and damages (including costs, expenses and charges for litigation 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 relating to the Goods in so far as they form part of composite products of the Customer in circumstances in which the Goods were either (i) not the defective part of the said composite product, or (ii) were only rendered or became defective by reason of actions or omissions of the Customer or (iii) were only rendered or became defective by reason of instructions or warnings given by the customer or other supplier of the said composite products.
- 9.1.3 for the purpose of this condition only, the word 'defective' shall be interpreted in accordance with the definition of 'defect' contained in part 1 of the Consumer Protection Act 1987.
- 9.2 The Customer hereby acknowledges that it is under a duty to pass on to its employees and customers and all other persons authorised by it to use the Goods all instructions, information and warnings supplied to it by the Company with the Goods.

## **10. INSPECTION**

All testing and inspection, if specified by the Customer shall take place at Company's works. The Company shall give fourteen days' notice to the Customer of the availability of the Goods for inspection by the Company or specified Testing Agency. All fees incurred in connection with testing and inspection by any independent Testing Agency will be charged extra to the Customers' account. In the event of any delay on the part of the Customer or Testing Agency in attending such inspection, the tests will proceed in their absence and the Customer shall be deemed to have consented thereto and accept the results thereof.

## **11. PRICES**

- 11.1 All prices are unless otherwise stated quoted nett ex works exclusive of Value Added Tax and are subject to fluctuation in the event of any increase in duties or tariffs or in the cost of labour due to local or national awards or increases in the cost of materials, services and overheads. Any increase in such costs during the period of the contract will be added to the quoted price and the contract price shall be the price ruling at the delivery date.
- 11.2 In the event of any alteration or addition being requested by the Customer and agreed by the Company in design or specification the Company shall be entitled to make an adjustment to the contract price corresponding to such alteration.
- 11.3 The cost of carriage and packaging if required by the Customer shall unless otherwise stated be charged extra and is not refundable.
- 11.4 All sums payable to the Company shall be payable in Sterling.

## **12. TERMS OF PAYMENT**

- 12.1 Unless otherwise agreed by the company in writing the terms of payment shall be net cash monthly account due and payable thirty days from the date of the invoice. The Company shall be entitled to submit its invoice with its delivery advice note or at any time thereafter save that where delivery has been postponed at the request of or by default of the Customer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course of business but for the request or default as aforesaid.
- 12.2 Where Goods are delivered by installments the Company may Invoice each installment separately and the Customer shall pay such invoices in accordance with these Conditions.
- 12.3 No dispute arising under the contract nor delays beyond the reasonable control of the Company shall interfere with a prompt payment in full by the Customer.
- 12.4 Time for payment shall be of the essence of the contract and if for any reason payment is not made on the due date by the Customer on this or any other contract between the Company and the Customer then the Company may, without prejudice to any other right or remedy in respect of this contract or such other contract or contracts or any or all of them, do any of the following:
  - 12.4.1 determine the contract forthwith by written or oral notice, or
  - 12.4.2 postpone the fulfilment of its own obligations and suspend work until such overdue payment is made, or
  - 12.4.3 charge interest at the rate of two per cent per month on the amount outstanding.

## **13. SHORTAGE AND DEFECTS APPARENT ON INSPECTION**

- 13.1 The Customer shall have no claim for shortages or defects supplied apparent on visual inspection unless:
- 13.1.1 The Customer inspects the Goods within three working days of arrival at its premises or other agreed destination, and
  - 13.1.2 a written complaint is made to the Company within fourteen days of receipt of the Goods or such shorter period as the carrier's conditions (if applicable) require specifying the shortage or defect, and
  - 13.1.3 the Company is given an opportunity to inspect the goods and investigate any complaint before any use of or alteration to or interference with the goods.
- 13.2 If a complaint is not made in accordance with the terms of Condition 13.1 above then the Goods shall be deemed to have been delivered in the correct quantity and free of defects apparent upon visual inspection and the Customer shall be bound to pay for the same accordingly.

## **14. DEFECTS NOT APPARENT ON INSPECTION**

- 14.1 Save as otherwise provided by the other Conditions of these conditions Sections 12 to 15 of the Sale of Goods Act 1979 are to be implied in this contract.
- 14.2 The Customer shall have no claim in respect of defaults not apparent on the visual inspection at the time of delivery unless:
- 14.2.1 a written complaint is sent to the Company as soon as reasonably practicable after the default is discovered and no use is made of the Goods thereafter and no alteration made thereto or interference made herewith before the Company is given an opportunity to inspect the goods in accordance with this condition, and
  - 14.2.2 the complaint is sent within 12 months of the date of delivery of the Goods or, in the case of an item not manufactured by the Company, within the guarantee period specified by the manufacturer of such item.
- 14.3 In the event of the condition of the Goods being such as might or would (subject to these Conditions) entitle the Customer to claim damages, or to rescind the contract, the Customer shall not then do so but shall first ask the Company to repair or 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 further 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.
- 14.4 The Customer shall not be entitled to 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 defect arising by reason of fair wear and tear or damage due to misuse.
- 14.5 The Company or its agents may within 15 days of receiving a written complaint in accordance with the terms of Condition 14.2 above (or 28 days where the Goods are situate 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.

## **15. LIABILITY**

- 15.1 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 installation of repaired or substituted Goods), loss of profits or damage to property.
- 15.2 The Customer shall indemnify the Company against all losses, liabilities, damages, expenses or claims incurred or suffered by the Company in relation to:
- 15.2.1 any use of the Goods as a component or raw material for a product which is of defective design or manufacture, or
- 15.2.2 any use of any the Goods other than strictly in accordance with the Company's operating instructions, if any.
- 15.3 The liability of the Company in respect of materials or parts supplied by the Customer for machining or processing shall be limited to the repetition of such machining or processing on further material or parts supplied free of charge by the Customer.
- 15.4 All products, materials, drawings or other items belonging to the Customer which are at any time in the possession of the Company shall be and remain at the sole risk of the Customer.

## **16. CONFIDENTIAL INFORMATION**

- 16.1 All drawings, models, documents, confidential records, software and other information supplied by the Company are supplied on the express understanding that all copyright and design right are reserved to the Company and that the Customer will not without the written consent of the Company either give away, loan, exhibit, or sell such drawings, models, documents, confidential records, computer software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are issued.
- 16.2 The Customer shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer's agents, servants or consultants or advisers are accurate, correct and appropriate. 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.
- 16.3 In the case of Goods not manufactured by the Company, the Company gives no assurance or guarantee whatsoever that the sale or use of the Goods will not infringe patent copyright or other intellectual property rights of any other person, firm or company. 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 or specifications are at fault or where it is alleged that they involve an infringement of a Patent Registered Design Copyright or Design Copyright or other exclusive rights

## **17. SUB-CONTRACTORS**

The company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under this contract.

## **18. INSOLVENCY**

If the Customer is sequestrated under the Bankruptcy (Scotland) Act 1985 or, under the provisions of Section 12,3 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 or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purposes of reconstruction or amalgamation) or if a Receiver or Administrator is appointed to all or any part of its assets or undertaking, the Company shall be entitled to cancel this contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Company.

## **19. EXPORT**

In the case of all contracts involving the export of the Goods to a country of destination outside the United Kingdom, the Customer shall be solely responsible for obtaining all necessary licences, clearances and consents and for complying with all regulations governing the export of the Goods in the country of destination and the remittance of the contract price to the Company in the United Kingdom. Further the Customer shall also be solely responsible for the payment of all customs duties, port dues, Imports and taxes thereby levied or charged in respect of the Goods.

## **20. FORCE MAJEURE**

Neither party shall be under any 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 its employees or not by reason of any other act, matter or thing beyond its reasonable control including failure by the other party to carry out the provisions of these conditions.

## **21. LEGAL**

Any claim or dispute between the Company and the Customer in relation to the purchase of Goods and Services by the Company pursuant to these Conditions shall be governed by the law of England and be subject to the jurisdiction of and be determined by the English Courts.