

GENERAL CONDITIONS OF SALE

Where equipment is for use in the United Kingdom
[Including erection or supervision of erection]

1. GENERAL. *The acceptance of our tender includes the acceptance of the following terms and conditions: -*

2. VALIDITY. *Unless previously withdrawn, our tender is open for acceptance within the period stated therein or, when no period is stated, within thirty days only after its date.*

3. ACCEPTANCE. *The acceptance of our tender must be accompanied by sufficient information to enable us to proceed with the order forthwith; otherwise we shall be at liberty to amend the tender prices to cover any increase in cost which has taken place after acceptance.*

4. LIMITS OF CONTRACT. *Our tender includes only such equipment, accessories and work as are specified therein.*

5. DRAWINGS, ETC. *All specifications, drawings and particulars of weights and dimensions submitted with our tender are approximate only and the descriptions and illustrations contained in our catalogues and other advertisement matter are intended merely to present a general idea of the equipment described therein and none of these shall form part of the contract. Designs and information supplied by us whether contained in drawings or otherwise, are confidential and must not be used for any purpose other than that for which they are supplied or disclosed to a third party at any time without our prior consent in writing.*

6. INSPECTION AND TESTS. *Our products are carefully inspected and where practicable, submitted to our standard tests before despatch. If, before the equipment is despatched, tests other than those specified in our tender or tests in the presence of your representative are required, these will be charged for as an extra and in the event of any delay on your part in attending such tests after seven days notice that we are ready, the tests will proceed in your absence and shall be deemed to have been made in your presence.*

7. DELIVERY. *Unless otherwise specified in our tender, the price quoted includes delivery by any method of transport at our option. Delivery shall commence at the time the equipment is despatched. If delivery is not made by our own transport the Conditions of Carriage of the carriers used shall apply to the delivery from the time that the equipment is delivered to the carriers. Unless otherwise specified, we shall not be responsible for offloading.*

8. STORAGE. *If we are unable, by reason of your instructions or lack of instructions, to deliver all or any of the equipment when ready, you shall take delivery when offered or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to arrange storage, either at our own Works or*



elsewhere, on your behalf and all charges for storage, for insurance or for demurrage, shall be payable by you. If we are unable to deliver for the reasons stated, the equipment shall, for the purpose of payment, be deemed to have been delivered.

9. ERECTION.

[a] You shall, at your expense. provide suitable access to and possession of the site, proper foundations ready to receive the equipment, suitable protection for the equipment from the time of delivery, all water, steam, compressed air, electric power, gas, fuels and lubricants required by us for the erection, preparation for operation and testing of the equipment and all lighting, heating and facilities necessary on the site. We shall provide all skilled and unskilled labour and all tools, tackle and apparatus including, unless specific arrangements be made to the contrary, all lifting facilities and scaffolding, necessary for such erection.

[b] Where our tender covers for supervision of erection only, you shall provide all the services, facilities, skilled and unskilled labour, tools, tackle and apparatus, including lifting facilities and scaffolding, mentioned in paragraph (a) of this Clause and we shall provide only the services of an Engineer or Engineers, for the purpose of such supervision.

10. INSURANCE. *Where we have tendered for complete erection, we shall insure and keep insured until the equipment has been taken over pursuant to Clause 14, such equipment as may be on the site against destruction or damage by fire, lightning, earthquake, flood and tempest for the full value thereof and shall. if so required by you, produce to you the policy and premium receipts in respect of such insurance. All monies received under such policy shall be applied in or towards the replacement or repair of equipment destroyed or damaged as aforesaid.*

Our insurance policies do not grant cover for damage to work at site occasioned by acts of terrorism.

11. TESTS ON SITE. *All tests on site shall be carried out within one month after completion of erection and to enable such tests to be carried out you shall, in addition to those things to be provided by you under Clause 9, also provide any necessary feedstocks. Where we have carried out complete erection, we will give you reasonable notice of our intention to carry out tests and in the event of failure by you to attend such tests, the same will be carried out in your absence and shall be deemed to have been made in your presence. Where we have supervised erection only, due notice in writing shall be given to us so that we may witness such tests if we so desire. Should the result of the tests not come within the specified or agreed tolerances the tests shall, if required by us, be repeated.*

12. EXTRA COST. *Should we incur extra cost due to variation or suspension of the work by your instructions or lack of instructions, interruptions, mistakes or work for which we are not responsible, such extra cost shall be added to the contract price and paid for accordingly.*

13. LIABILITY FOR PERFORMANCE. *If we have specifically guaranteed performance figures for the equipment and if on any test provided for in the contract*



the figures obtained are outside any tolerances specified or agreed to by us, we will, within a reasonable time, use all reasonable efforts to rectify the equipment so as to achieve the performance thus guaranteed.

Our liability hereunder is conditional on the equipment stipulated by you being sufficient and suitable for your purpose, [save insofar as your stipulations are in accordance with our advice] and on the equipment having been maintained and used in accordance with the manufacturers instructions and not having been damaged by you or any third party.

14. TIME OF TAKING OVER. *The equipment shall be deemed to have been taken over by you when erection has been completed and has passed the tests on site, or one calendar month after it shall have been put into commercial use [whichever may be the earlier]. Provided that, in any case, the equipment shall be deemed to have been taken over at the expiration of two calendar months after we shall have given you written notice that erection has been completed. unless in the meantime tests shall have been made showing that it does not comply with the terms of the contract.*

The time of taking over shall not be delayed on account of additions, minor omissions or defects which do not materially affect the commercial use of the equipment.

15. LIABILITY FOR DELAY. *Any time quoted for delivery or completion of erection is to date from receipt by us of a written order to proceed and of all necessary information and drawings to enable us to put the work in hand. We shall be under no liability for failure to deliver or complete erection within such time, unless you have suffered loss arising from such failure and the amount payable in respect thereof shall have been agreed in writing as liquidated damages, in which case our liability shall be limited to the amount so agreed to be paid or where not agreed beforehand liquidated damages are to be 0.5% per week with a 5% cap. Our aggregate liability for whatever cause shall not exceed 10% of our Contract Value. In all cases, whether a time be quoted or not, the time shall be extended by a reasonable period if delay is caused by instructions, or lack of instructions from you or by industrial dispute or by any cause whatsoever whether similar or dissimilar beyond our reasonable control.*

16. LIABILITY FOR DEFECTS AFTER TAKING OVER. *We will make good with all possible speed any defects arising from faulty design [other than a design made, furnished or specified by you] materials or workmanship or from any act or omission by us that may, under the conditions provided for by the contract and under proper use, develop in the equipment within a period of twelve calendar months after the equipment has been taken over Provided always that defective parts are promptly returned by you to our Works unless otherwise arranged. Clause 7 shall apply to the delivery of parts repaired or replaced pursuant to this Clause.*

17. LIABILITY FOR ACCIDENTS AND DAMAGE. *We will indemnify you against direct damage or injury to your property or person or that of others occurring while we are working on site to the extent caused by the negligence of ourselves, our subcontractors or agents but not otherwise, by making good such damage to property or compensating personal injury Provided that: -*



[a] our total liability for damage to your property shall not exceed the contract price, and

[b] we shall not be liable to you for any loss of use or profit or of contracts or, save as aforesaid, for any loss, damage or injury of any kind whatsoever, and

[c] we shall not be liable for any damage or injury occurring after our completion of work on site, and

[d] our insurance policies do not grant cover for damage to work at site occasioned by acts of terrorism.

In the event of any claim being made against you arising out of the matters referred to in and in respect of which we may be liable under this clause, we shall be promptly notified thereof, and may at our own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. You shall, at our request, afford all available assistance for these purposes, and shall be repaid any out-of-pocket expenses incurred in so doing. You shall not, unless and until we shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto.

18. LIMITATION OF LIABILITY. *Our liability whether by way of indemnity or otherwise under Clauses 13, 15, 16, 17 and 21 [which shall all be subject to this Clause] shall be the total extent of our liability and neither we nor our subcontractors, vendors or agents shall be under any other liability whether in contract tort or otherwise in respect of any of the matters covered by those clauses or otherwise [subject to the provisions of the Unfair Contract Terms Act 1977, in the case of liability for death or personal injury resulting from our negligence as defined in that Act] or for any loss of use or profit or contracts and/or any consequential loss or damage howsoever arising. Your remedies under those said clauses shall be exclusive of any other remedy and our total liability thereunder shall not in any event exceed the Contract Price. Our liability under Clauses 13, 16 and 17 shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the equipment or of the work or services that we provide.*

19. TERMS OF PAYMENT. *Payment shall be made as set out in our tender or where not set out in our tender interim payments shall be made 14 days following commencement and at 14 day periods thereafter. Final payment of all amounts due shall be made within 14 days of completion. All interim payments shall be based upon an estimate of the value of the works carried out at the date when payment is due to be made.*

20. VARIATIONS IN COSTS AND TAX FLUCTUATIONS

[a]If, by reason of any rise or fall in the rates of wages payable to labour or in the cost of material or transport or of conforming to applicable laws, orders, regulations and bye-laws above or below such rates and costs ruling at the date of the tender, the cost to us of performing our obligations under this Contract shall be increased or reduced, the amount of such increase or reduction shall be added to or deducted from the Contract Price as the case may be, provided that no account shall be taken of any amount by which any cost incurred by us has been increased by our default or negligence. For the purposes of this clause "the cost of material" shall be construed as including any duty or tax by whomsoever payable which is payable under or by

virtue of any law or of any order or regulation having the force of law on the import, purchase, sale, appropriation, processing or use of such material.

[b] If, as a result of the coming into effect after the date of the tender of any change in the level or in the incidence of any labour-tax matter, including the imposition of any new such matter, or the abolition of any such matter previously existing the cost to us of performing our obligations under the Contract shall be increased or reduced, the amount of such increase or reduction shall be added to or deducted from the Contract Price as the case may be. In this paragraph "labour-tax matter" means any tax levy or contribution [including National Insurance contributions but excluding Income Tax and any levy payable under the Industrial Training Act 1982] which is by law payable by us in respect of labour and any premiums and refunds which are by law payable to us in respect of labour.

[c] We shall be entitled to incorporate in any subcontract made for the purpose of performing our obligations under the Contract, provisions which are mutatis mutandis the same as the provisions of this clause and in such event the addition or deduction to be made in accordance with any subcontract shall also be made under the Contract as if the increase or decrease of cost to the Subcontractor had been directly incurred by us.

21. LIABILITY FOR PATENT INFRINGEMENT. *We will indemnify you against any claim for infringement of British Letters Patent, Registered Design or Trade Mark [published at the date of our tender] arising solely by the use or sale of any article or material supplied by us to you and against all costs and damages for which you may become liable in any action for such infringement Provided always that this indemnity shall not extend to indemnify you against any loss of use, profits or of contracts and/or any consequential loss or damage howsoever arising, as a result of such claim for infringement and shall not apply to any infringement which is due to our having followed a design or instruction furnished or given by you or to the use of such article or material in a manner or for a purpose not specified by or disclosed to us and that we shall have the right to avoid any claim for infringement by modifying any such article or material provided that such modification does not diminish any performance which we may have specifically guaranteed or by procuring for you the right to continue using said article or material or by replacing same with non infringing articles or materials or by removing said articles or materials and refunding the purchase price, transportation and installation costs thereof And provided also that this indemnity is conditional on your giving to us the earliest possible notice in writing of any claim being made or action threatened or brought against you and on your permitting us at our own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. You on your part warrant that any design or instruction furnished or given by you shall not be such as will cause us to infringe any Letters Patent, Registered Design for Trade Mark in the execution of your order.*

22. FRUSTRATION. *We shall be relieved of all obligations incurred under this contract whenever and to the extent to which the fulfilment of such obligations is frustrated, prevented or impeded as a consequence of conforming to any statute, or any rule, regulation, order, directive or requisition made thereunder or by any frustrating event made or occurring, as the case may be, after the date of our tender.*



In the event of the contract or any obligation within it contained being discharged by any of the foregoing frustrating circumstances, we shall be entitled to recover from you the reasonable costs and expenses to which we have been put in the performance of our obligations under the contract up to the happening of such frustrating circumstances, notwithstanding that you have received no benefit therefrom and any statute of principle of Common Law which expressly or impliedly derogates from this entitlement is hereby excluded to the extent of such derogation.

23. ARBITRATION. *If at any time any question, dispute or difference whatsoever shall arise between you and ourselves upon, in relation to or in connection with the contract, either of us may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration of a person to be agreed upon or failing agreement within fourteen days of receipt of such notice, of some person appointed by the President for the time being of the Institution of Mechanical Engineers.*

We both agree to exclude the right of appeal to the High Court under Section 1 of the Arbitration Act 1979, and also agree to exclude the right to make an application to the High Court under Section 2 of the Arbitration Act 1996

24. LAW. *The contract shall in all respects be construed and take effect in accordance with the Laws of England.*