

TERMS AND CONDITIONS OF SALE

In the following Conditions of Sale “the seller” means EWM trading as E W Marshall Ltd. “the buyer” means any person, firm or company whom the Seller contracts for the supply of goods or service.

The following Standard Conditions of Sale shall govern all transactions except as otherwise specifically agreed in writing by the Buyer and the Seller.

1. Estimates and Quotations

- a) All estimates and quotations are subject to alteration by the Seller and may be withdrawn at any time prior to the Seller’s written acceptance of the Buyer’s order. Estimates and Quotations automatically become invalid after 30 days.
- b) After contract the Seller will have the right to increase the contract price by any amount attributed to:
 - (i) A suspension of or an alteration to work on the goods by reason of the Buyer’s instructions or lack of them.
 - (ii) Any variation of wage rates laxing statutes material costs or of contract and the date of delivery or completion of payment.

2. Acceptance of Order

Upon accepting an order from the Buyer the Seller reserves the right to enquire a reasonable time into the Buyers financial or trade status and in the light of any report considered in the absolute discretion the Seller to be adverse the Seller reserves the right to rescind the Contract without liability for compensation or damages.

3. Price

- a) Unless otherwise stated all estimates and quotations are nett of import duty, VAT tariffs or other duties of any taxing authority packing and installation and freight charges.
- b) Except where a price is stated to be fixed by the Seller on its written acceptance of the Buyer’s order any price quoted by the Seller or comprised in the order or contract is provisional only and the actual price to be paid by the Buyer shall be the Seller’s price ruling at the date of despatch.

4. Payment

- a) Goods invoiced shall be paid for not later than the 30 days from the invoice date except as otherwise agreed in writing the by Seller and the Buyer.
- b) If terms of payment are not complied with the Seller shall have the right to charge interest at the rate of 2% above Lloyds TSB’s minimum lending rate for the period between the due date of payment and settlement.
- c) If the Buyer shall fail to pay any amount when it is due under this or any other contract with the Seller, then the Seller shall have the right (without prejudice to any of its other rights against the Buyer) on notice in writing being given to the Buyer, to treat the purchase price that is unpaid on all goods invoiced or despatched by the Seller as having become forthwith due and payable by the Buyer and in substitution for the provision contained in sub-clause (a) of this Condition.

5. Value Added Tax

All prices quoted or accepted are exclusive of Value Added Tax and the contract price shall be such prices plus VAT.

6. Goods of the Contract

The Seller shall not be bound by any oral condition warranty or representation given or made on its behalf unless confirmed in writing nor by any express or implied team condition or warranty, whether arising by statute or common law or by usage, save and except a warranty that goods sold shall correspond with the contractual description.

7. Contracts

The Seller shall have the option (without prejudice to any of its other rights against the Buyer) by notice in writing to the Buyer to rescind any contract between the Seller and Buyer or to suspend delivery in the following events

- i) Should any sum owing by the Buyer to the Seller be overdue whether under the same contract or any other contract
- ii) Should the Buyer be in breach of any term of the same or any other contract with the Seller.
- iii) Should the Buyer enter into any composition or arrangement with or for the benefit of his creditors having a receiving order in bankruptcy made against him or if a corporate body should it have a resolution passed or petition presented to wind up its business (other than for the purpose of amalgamation or reconstruction) or if a Receiver be appointed of its undertaking, property or assets or any part thereof.

8. **Delivery**

- a) If no time for delivery is specified in the contract the Buyer shall be bound to accept the goods when they are ready for delivery by the Seller.
- b) The risk in goods contracted to be sold by the Seller shall pass to the Buyer (or to whom he shall direct) when the goods (or any part thereof when there is more than one delivery under the contract) are delivered to the Buyer, or in accordance with his instruction.
- c) Any complaint or short delivery or of damaged goods in transit must be notified within 24 hours of receipt of goods and confirmed in writing at that time by the Buyer to the Seller and any complaint of failure to deliver goods invoiced must be so notified within 10 days of the date of the invoice.
- d) Where the contract involves more than one delivery if default is made in payment on the due date in respect of any one delivery the Seller shall at its option (and without prejudice to any of its other rights) have thereunder or otherwise be entitled to treat the contract as repudiated and to claim damages accordingly. Each delivery will constitute a separate contract and any failure or defect in any one delivery will not vitiate the contract as to the remaining deliveries.
- e) Any time or date for delivery named by the Seller is an estimate only and the Seller shall not accept liability for any loss or damage or any consequential loss arising either directly or indirectly from delay in delivery however caused.

9. **Ownership**

- a) The Seller and the Buyer expressly agree that until the Seller has been paid in full (including any interest charged thereunder) for the goods comprised in the contract between them, the goods comprised in the contract remain the property of the Seller save as provided herein.
- b) The Seller may recover the goods (but excluding any goods ownership of which had already passed to the Buyer) at any time from the Buyer if in the Buyer's possession if the amount outstanding from the Buyer to the Seller in respect of the goods supplied has not been paid in full and for that purpose the Seller, its servants and agencies may enter upon any land or buildings upon which the goods are situated, provided that if the Seller shall resell the goods so recovered or any part thereof the Seller shall give the Buyer credit for any sum received by the Seller in excess of the unpaid price (including any interest charged thereunder) of such goods.
- c) The Buyer may dispose of the goods in the ordinary course of its business as principal (but any warranties, conditions, or representations given or made by the Buyer to any third party shall not be binding on the Seller who shall be indemnified

by the Buyer with respect thereto) and may pass good title in the goods to a third party being a bona fide purchaser for value without notice of the Seller's rights.

- d) If the Buyer incorporates the goods into other products (with the addition of its goods or those of others) or uses such goods as material for the other products (with or without such additions) the property in those other products is upon such incorporation or use and by that event transferred to the Seller and the Buyer will store the same or the Seller in a proper manner without change to the Seller in the event of such incorporation or use as is envisaged by this sub-clause the provisions of sub-clauses (b) and (c) shall apply mutatis mutandis to those other products in place of the goods provided that if the Seller shall sell such other products or any part thereof (without being under any duty to obtain the best price therein) the Seller shall give the Buyer credit for any sum received by the Seller in excess of the unpaid price (including any interest charged thereunder) of such goods.

10. Disposal before payment

If the goods or any part thereof whether or not incorporated into other products or used as material for other products, are resold by the Buyer before he has made full payment to the Seller as aforesaid, the Buyer shall hold upon trust for the Seller from the proceeds of such resale such sum as shall be equal to the amount then owing to the Seller in respect of the goods provided that if the Buyer has not received the proceeds of such resale in full the Seller shall be subjugated (without the need for further documentation) to the Buyer's rights against its customer to the extent of any balance still remaining due to the Seller in respect of the goods. Nothing contained herein shall affect any other rights the Seller may have against the Buyer's customer.

11. Claims

- a) Unless expressly agreed in writing the Seller gives no warranty that the goods are suitable for any particular purpose or for use under any specific conditions, notwithstanding that such purpose or conditions may be known to the Seller.
- b) Claims in respect of any alleged defect in the contractual quality of the goods delivered, where the defects would have been revealed by reasonable examination of the goods on arrival, must be made in writing within 14 days after delivery, or if related to the transport of the goods within such time as will enable the Seller to comply with the time limit and procedure laid down by the carrier by whom the goods were transported if the Buyer shall make any complaint within the time stipulated the Seller shall, after it has had a reasonable time to investigate the same and examine the goods in dispute, be entitled as its option
- i) To replace the goods (if defective) or
 - ii) To accept the return of the goods (if defective) and credit the Buyer with the price thereof or,
 - iii) To make to the Buyer (if the goods are defective) an allowance representing difference between the value of the goods at the time of the complaint by the buyer and the value they would have had if they had been in accordance with the contract providing the Buyer pays the balance no in dispute according to normal terms.
- c) The return of goods shall not be made without prior agreement between the Buyer and the Seller. No claim can be entertained after the goods or any part thereof has been processed in any way.

12. Statutory requirements and infringement of goods

- a) Every effort is made that the goods meet known statutory requirements and that they do not infringe any patents or trademarks belonging to third parties, but no warranty is given that the design construction and quality of the goods to be supplied under the contract comply with all relevant requirements of any Statute

statutory rule, or order or other instrument having the force of law which may be in force at the time of supply.

- b) The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specification which involves the infringement of any industrial property rights and whether registered or not.

13. Limitation of the Seller is liability

- a) Except as otherwise expressly mentioned in these Conditions, the Seller shall have no liability of any kind to the Buyer in respect of any loss or damage (whether direct, indirect or consequential) suffered by the Buyer whether in contract or negligence or otherwise howsoever whether for loss or damage to property or for death or bodily injury or otherwise howsoever in respect of any goods supplied or work done by the Seller. The Buyer shall indemnify the Seller against any claim made against the Seller by a third party arising out of any goods supplied to or work done for the Buyer.
- b) No forbearance or indulgency by the Seller shown or granted to a Buyer whether in respect of these Conditions or otherwise shall in any way affect or prejudice the rights of the Seller against the Buyer or be taken as a waiver of any of these Conditions.

14. Force Majeure

The performance of all contracts is subject to variations or cancellation by the Seller owing to any act of God, War, Strikes, Governmental Regulations or Orders, National Emergencies, Lock-outs, Fire, Flood, Drought, Tempest or any other cause (whether or not of a like nature) beyond the control of the Seller or owing to any inability by the Seller to procure materials or articles required for the performance of the Contract and the Seller shall not be held responsible for any inability to deliver caused by any such contingency.

15. Application of these Conditions

By ordering any goods from the Seller, the Buyer will be deemed to accept that these Conditions take precedence over any other Conditions contained on or in any letter, order form, acceptance form, receipt or the like received by the Seller in connection with the goods so ordered and that any such other Conditions will not form part of the Contract between the Seller and the Buyer unless specifically agreed in writing.

16. Local Representation

The terms "Agents" or "Representatives" means only those appointed to receive enquiries for onward transmission to and to be dealt with by the Seller. No such "Agents" or "Representatives" are authorised by the Seller to incur any liability, give any guarantee or warranty or make any representations or transact any business on the Seller's behalf.

17. Severability

If any provision of these conditions is declared invalid by a court having competent jurisdiction thereunder the invalidity of such provisions shall not be deemed to avoid the remaining conditions.

18. Entire Agreement

Save as expressly agreed in writing these conditions embody all the terms and conditions of the Contract between the parties hereto and replace all antecedent representations or proposals not embodied herein. Amendments to the terms and conditions herein set out shall not be valid unless reduced into writing and properly executed on behalf of both parties to the agreement.

19. Interpretation

In these conditions words and phrases importing the masculine gender shall include the feminine or neuter as appropriated and words importing the singular the plural and vice versa.

20. **Governing Law**

The law of England shall govern the validity construction and performance of any contract to which these Conditions apply.