

RDM ENGINEERING CONDITIONS OF TRADING

1. Definitions

In these Conditions:-

- "Seller" means RDM Engineering
"Buyer" means the person, firm or company to whom the quotation is addressed or by or on behalf of whom the order is placed.
"Goods" means the items of equipment and ancillary articles or things described overleaf and any goods supplied in substitution for or in replacement of or in addition to such goods and any services supplied or work done in connection with the Goods or with the said replacement substitute or additional goods.
"Work" means any work the subject of the quotation overleaf which is to be performed by the Seller or any subcontractor of the Seller.

2. General

Unless otherwise specifically agreed in writing by a Director of the Seller, these Conditions which supersede any earlier sets of conditions appearing on the Seller's quotations or elsewhere shall override any terms or conditions stipulated incorporated or referred to by the Buyer whether in the order or in any negotiations, and no verbal quotation or undertaking will be binding on the Seller.

3. Quotations

This quotation constitutes an invitation on the part of the Seller which must be accepted in writing by the Buyer within 30 days of the date of the quotation and if not accepted will lapse. The Seller reserves the right to withdraw any quotation at any time within the said 30 day period. Any order from the Buyer which constitutes the Buyer's acceptance of the Seller's quotation may not be withdrawn by the Buyer and must be confirmed in writing by the Seller and no contract shall be deemed to have been concluded until there has been such confirmation by the Seller or the Seller has delivered the Goods.

4. Specifications

All specifications, drawings and illustrations accompanying the quotation or contained in the Seller's catalogues, price lists or advertisements are approximate only and shall not form part of the contract unless expressly so stated in the quotation. Without prejudice to the generality of the foregoing, any such specifications, drawings and illustrations are subject to such variations as may from time to time be made by the manufacturers. All dimensions, measurements and other particulars of any work to be done by the Seller are stated in good faith as being approximately correct, but deviations therefrom shall not vitiate the contract or be made the basis of any claim against the Seller except as provided in Clause 5 hereof.

5. Warranty

The Seller warrants that the Goods will comply with the description provided by the Seller and that they will remain serviceable for the Warranty Period. In these conditions "Warranty period" shall mean in respect of new Goods manufactured by the Seller, and materials, a period of twelve calendar months from the date when the Goods are delivered by the Seller or received by the Buyer (whichever is the later) or the Work is done ("the Warranty Date") and in the case of second hand goods, three months from the Warranty Date (or such other period as may be stated overleaf). In the event that the Goods are not manufactured by the Seller the Seller's obligation under this Clause shall be limited to passing on to the Buyer the benefit of such Warranties if any as the Seller may receive from the manufacturer of the Goods.

In the event that the Buyer alleges that any of the Goods are not in accordance with the description or have become unserviceable by reason of faulty design or defective material or manufacture the Buyer must notify the Seller in writing within seven days of delivery and the Buyer's claim shall be subject to the following provisions:-

- The Buyer shall promptly return the Goods or any part thereof to the Seller or at the Seller's option allow the Seller reasonable access to the site.
- The Seller will at its option make good by replacement or repair at the Seller's Works the defects arising from faulty workmanship of the Seller or defects in the quality of the Goods.
- The Buyer shall have no claim if the unserviceability of the Goods has been caused by carelessness of the Buyer or its servants or agents or by improper treatment or inadequate lubrication or maintenance or lack of protection against the elements.

6. Exclusion of Conditions and Representations

The warranties contained in Clause 5 hereof are given in lieu of any other conditions or warranties whether statutory or otherwise, expressed or implied, and no such conditions or warranties are made by the Seller relating to the Goods or their suitability for any particular purpose or under any specific conditions notwithstanding that such purpose or conditions may be known by or made known to the Seller. Prospective buyers should satisfy themselves using their knowledge of the circumstances in which and the purpose for which the Goods may be used or the Work may be done that the Goods or the Work meet their requirements. The Seller does not make nor is any servant or agent of the Seller authorised to make any representation relating to the Goods or the Work or their suitability for such purpose or conditions.

7. Exclusion of Liability

Except as provided in Clause 5 hereof the Seller shall not be liable to the Buyer in respect of any loss or damage or liability whatsoever suffered or incurred by the Buyer in any circumstances and howsoever caused and whether as a consequence or arising out of or caused directly or indirectly by any breach by the Seller of this contract or any term or terms thereof or as a consequence or arising out of or caused by the negligence of the Seller its servants or agents or otherwise howsoever.

8. Delivery and Risk

- 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 arising directly or indirectly out of delay in delivery.
- The risk in the Goods shall pass to the Buyer at the point of delivery as specified in these Conditions and the Seller shall have no responsibility for the safety of the Goods thereafter, or in the event that delivery is delayed in any of the circumstances referred to in subparagraph (3) hereof at the commencement of such delay and the Seller shall have no responsibility in respect of the safety of the goods thereafter.
- Unless otherwise specified in the quotation delivery will take place by delivery to the Buyer his servants or agents at the Buyer's Works save that the Seller shall not be obliged to make delivery until full payment has been made in respect of any outstanding accounts on any other contracts between the parties hereto.
- Any delay arising as a result of the instructions or lack of instructions of the Buyer or by reason of any act or omission of the Buyer or by any cause whatsoever beyond the control of the Seller (including strikes, lockouts, fire, explosion, shortage of raw materials, delay in delivery of materials by the Seller's suppliers, state of war, civil strife or sabotage) shall give rise to a reasonable extension of time and the contract price shall be increased to cover any extra expense incurred by the Seller and due thereto. This provision shall be addition to and not in substitution for any payment or damages for which the Buyer may become liable in respect of his failure to take delivery at the appropriate date.
- After the passing of property in accordance with Clause 13 hereof the Buyer shall be responsible for any loss or damage to the goods howsoever caused whilst at the Seller's works or elsewhere.

9. Erection of Plant

Where the quotation or tender includes for erection, the Buyer shall be responsible for all foundations building work main services and suitable access to site. Unless otherwise stated in writing by the Seller, the Buyer shall be responsible for the cost of all electrical and other work not of the Seller's trade which is required to implement to Seller's quotation. The Seller shall have no liability towards the Buyer's employees nor will the Seller accept any responsibility for any accidental damage which may occur during the progress of work at the Buyer's premises or in connection with the property of any third party. The Buyer shall provide proper storage accommodation to ensure the safe keeping on site of all items owned by the Seller and shall permit free access to the Buyer's premises to implement the terms of this quotation. The Buyer shall indemnify the Seller against all or any loss or damage relating to the Seller's property on site.

10. Tests

The Seller shall commission plant to ensure that it is in working order and may try out the Goods at the request of the Buyer but the Seller shall not be obliged to carry out any special tests not specified in the quotation. Any tests carried out shall be at the cost of the Buyer and if tests are to be carried out in the presence of the Buyer any delay in attending such tests after notification that the Seller is ready to carry out the tests shall entitle the Seller to proceed with the tests in the absence of the Buyer and the Buyer shall be deemed to have been present at such tests.

11. Safety Standards

The Seller shall provide for usual guard and safety equipment which complies with all applicable regulations and recommendations and is in accordance with normally acceptable commercial standards. If any changes are made in such regulations recommendations or standards after the date of the Seller's quotation the cost of carrying out the extra work shall be the responsibility of the Buyer. In the event that the Goods are second hand the Buyer shall be responsible for ensuring that the Goods comply with the relevant safety standards. The Buyer shall take all necessary steps to ensure that the Goods are used properly and without risk to the operators and the Buyer shall indemnify and keep indemnified the Seller against any claims liabilities and expenses arising out of the Buyer's failure to comply with this obligation.

12. Price

The price quoted for the Goods or Work is exclusive of value added tax or any other fiscal duties and may be varied by the Seller to take account of any variations before delivery to meet increases in prices by the manufacturer or in the rates of exchange of currency or in the cost of materials or in the rates of wages and in any other expenses incurred by the Seller. If for any reason outside the control of the Seller, overtime charges are incurred, the Buyer shall be responsible for such changes.

13. Payment

Payment of the price shall be made as specified on the face hereof. Payment by cheque shall not be deemed to constitute payment for the purposes of this contract until the cheque is honoured.

14. Drawings

All drawing models or descriptive data supplied to the Buyer shall remain the sole property of the Seller and shall not form part of this contract. The Buyer shall not publish or communicate to a third party the content thereof nor any particulars of the Goods supplied by the Seller without the previous consent in writing of the Seller.

15. Patents, Designs, Copyright and Trade Marks

The Seller shall not in any circumstances be liable for any loss liability or expense suffered or incurred by the Buyer by reason of any use or resale of the Goods which constitute an alleged or actual infringement of a patent design copyright or trade mark, foreign or domestic, vested in a third party.

16. Reservation of Title

- Notwithstanding delivery of the Goods to the Buyer, ownership of the Goods (both legal and equitable) will not pass but will remain with the Seller. However immediately on delivery to the Buyer or into custody on the Buyer's behalf (whichever is the sooner) the risk in the Goods will pass to the Buyer. Property in the Goods will pass to the Buyer when all outstanding debts owed by the Buyer in respect of the Goods the subject of this contract have been paid in full. Until that date the Buyer is to hold the Goods in a fiduciary capacity. (2) Notwithstanding that the Buyer may hold the Goods in a fiduciary capacity only, the Seller will allow the Buyer the power to use the Goods in its normal course of business and to sell the Goods to third parties and to deliver to them, on the condition that so long as the Buyer is indebted to the Seller, the Buyer may only deliver the Goods to third parties after obtaining from such third parties an enforceable undertaking to be bound to the Seller by these Conditions and the Buyer shall assign the benefit of any claims against such third parties to the Seller; and in any event, if the Buyer receives the proceeds of such sales from third parties, such proceeds are to be held by the Buyer for the account of the Seller (who shall be permitted to trace such proceeds) to the extent that the Buyer is indebted to the Seller under this contract.
- If payment by the Buyer under this contract becomes overdue, in whole or in part, or if the Buyer shall commit any other breach of this contract or any act of insolvency (as hereinafter defined), the Seller shall be entitled (without prejudice to any of its other rights) to treat this contract as discharged, and to repossess the Goods the subject of this contract, or the mixed goods, or any of them, as the case may be, and to enter upon any premises where the Goods may be situated, for that purpose.
- The Buyer shall, for the purposes of this Clause and Clause 17 hereof, be deemed to commit an act of insolvency if any distress or execution shall be levied upon its property or assets, or if it shall make or offer to make any arrangement or composition with creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against it, or if the Buyer is a limited company any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or re-constitution) shall be passed or presented, or if a receiver of such company's undertaking property or assets or any part thereof shall be appointed: or if in the sole discretion of the Seller it appears to the Seller that the financial position of the Buyer has become unsatisfactory or impaired.
- In the event of the Seller repossessing the Goods the Buyer shall be liable (notwithstanding the discharge of the contract) to pay the difference between the price of the Goods and their value on repossession, and in the event of the Seller being entitled to repossess the Goods, but being unable to do so for any reason whatsoever, the Buyer shall pay to the Seller the full price thereof, less in each case any amount previously paid by the Buyer for the goods under this contract.
- Any receiver or liquidator appointed over the assets of the Buyer shall pay into a separate bank account any sums received from third parties in respect of sales to them of the goods by the Buyer, up to the amount of any indebtedness of the Buyer to the Seller under this contract, for the sole benefit of the Seller.

17. Cancellation of the Contract

- The Buyer may not cancel any order except with the written consent of the Seller and upon terms which will indemnify the Seller against all loss.
- The Seller may refuse to supply the Goods in the event of the Buyer committing any breach of this contract or any act of insolvency or if in the sole discretion of the Seller it appears to the Seller that the financial position of the Buyer has become unsatisfactory or impaired but such refusal shall not constitute cancellation of this contract.
- If performance by the Seller of its obligations under this contract shall be hindered or prevented by industrial dispute accident breakdown of machinery shortage of materials exports or import restrictions or any other cause whatsoever beyond the reasonable control of the Seller the Seller shall be entitled by notice in writing to the Buyer to terminate the contract but without prejudice to the liabilities of either party accrued before the date of termination.

18. Assignment

The Buyer shall not without the written consent of the Seller assign this contract or any part thereof.

19. Waiver

Any waiver or waivers of one or more of these conditions shall not constitute a permanent waiver of any condition so waived or a general waiver of this condition as a whole.

20. Notices

Any notices given hereunder by the Seller may be served personally or left at the residence or place of business of the Buyer or may be sent by post in which case notice shall be deemed to have been received in the course of the post.

21. Arbitration

If any dispute or difference shall arise between the Seller and the Buyer under these conditions such dispute or difference shall, if the Seller shall so agree, be referred to arbitration in accordance with the Arbitration Act 1950 before a single arbitrator to be nominated in default of agreement by the President for the time being of the Manchester Chamber of Commerce.

22. Proper Law and Jurisdiction

The terms and conditions of this contract shall be subject to and interpreted and construed in accordance with English law including the English conflicts of law and subject to Clause 17 hereof of the English Courts shall have exclusive jurisdiction in any dispute which may arise save that the Seller may institute and maintain proceedings in respect of this contract in any country. In the event of any action in respect of this contract being taken the Seller may serve any writ or other process upon the Buyer by posting it to the Buyer's last known place of business.