

## **CONDITIONS OF SALE - MACHINE SPARES LIMITED**

### **1. DEFINITIONS**

In these Conditions, the following expressions mean:

<b>"Buyer":</b>	the person who agrees to purchase Goods from the Seller;
<b>"Goods":</b>	products which are to be sold to the Buyer by the Seller (including any ancillary services or other supplies);
<b>"Price":</b>	the price for Goods;
<b>"Seller":</b>	Machine Spares Limited whose registered office is at Brook House, Moss Grove, Kingswinford, West Midlands BY6 9HS.

### **2. THESE CONDITIONS PREVAIL**

- 2.1 These Conditions apply to all offers, tenders, quotations, acceptances, estimates or contracts for the sale or supply of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions (including any terms or conditions which may be included or incorporated in any Buyer's purchase order, confirmation of order or other document or acknowledgement) .
- 2.2 All orders for Goods received by the Seller from the Buyer shall be deemed to constitute an offer to purchase Goods by the Buyer subject to these Conditions.
- 2.3 The Buyer's receipt of delivery of the Goods will be conclusive evidence of the Buyer's unqualified and unconditional acceptance of these Conditions.
- 2.4 No variation, amendment or waiver of these Conditions, nor any special terms or conditions, will be effective unless notified to the Buyer by the Seller or otherwise agreed in writing by the Seller.

### **3. PRICE**

- 3.1 Subject to Condition 3.2, the Price shall be the Seller's quoted price and (unless otherwise agreed in writing by the Seller) shall exclude all packing, loading, delivery, unloading, carriage and insurance charges, installation charges, Customs & Excise duties and/or tariffs and VAT. Quoted Prices shall be inclusive only of the Goods, accessories and work specified in the quotation.
- 3.2 Quotations shall be open for acceptance for 30 days. The Seller may increase the Price by written notice at any time before it receives the Buyer's acceptance of a quotation.
- 3.3 All Prices quoted for Goods are ex works. If the Seller agrees to arrange for Goods to be sent to (or to the order of) the Buyer, the Buyer shall be responsible for all packing, loading, delivery, unloading, carriage and insurance charges.

4. **PAYMENT**

- 4.1 Unless otherwise specified or agreed, payment of the Price (together with any applicable charges, duties and/or tariffs and VAT) shall be due, in the currency specified by the Seller, without any withholding, set-off or counterclaim, on or before delivery of Goods ex works. If the Seller (in its entire discretion) does agree to extend credit, payment of the Price and any additional sum stated in the preceding sentence shall be due 30 days following delivery ex works. Time for payment shall be of the essence.
- 4.2 Interest on overdue sums shall accrue and be payable (before and after judgement) and shall be calculated under and in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and any regulations under that Act and/or any replacement or modification of that Act from time to time.
- 4.3 If the Buyer fails to pay any sum due to the Seller on or before the due date for payment, then (without prejudice to the Seller's other rights and remedies) the Seller may in its entire discretion:
- 4.3.1 suspend or cancel delivery of any Goods to the Buyer; and/or
- 4.3.2 appropriate any payment made by the Buyer to such of the Goods (whether supplied under that or any other contract) as the Seller may decide.

## **5. SPECIFICATIONS, INTELLECTUAL PROPERTY AND PERFORMANCE**

### **5.1 Specifications, Designs or Configurations**

5.1.1 If any Goods are subject to the Seller's specifications or configurations, they shall be manufactured and/or supplied in accordance with those specifications.

5.1.2 If any Goods are manufactured and/or supplied in accordance with any specification, design or configuration specified or supplied by the Buyer, the Seller shall not give any warranty as to the quality or fitness for any purpose of the Goods and the Buyer shall indemnify the Seller against any action, claim or demand by any other person that the Goods do not perform any function, are not fit for any purpose or otherwise perform in a defective manner.

5.1.3 The Seller may make changes in the specification, design or configuration of Goods which the Seller considers are necessary or desirable so as to ensure compliance with any relevant safety or statutory requirements or which do not otherwise materially affect the quality or fitness for purpose of the Goods.

### **5.2 Intellectual Property**

5.2.1 The specifications and design of Goods (including all copyrights, design rights and other intellectual property rights) generated by the Seller shall be and remain the Seller's property. Where any design or specification is supplied by the Buyer, the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods by the Seller does not infringe or conflict with the rights of any other person and the Buyer shall indemnify the Seller against any action, claim or demand by any such person in that regard.

5.2.2 The only right granted to the Buyer under these Conditions in respect of any patent, trademark, copyright, registered design, design right or other

intellectual property right relating to Goods owned by the Seller or any supplier to the Seller is the right to use or resell the Goods.

### **5.3 Performance**

Any performance figures or predictions contained in tenders, estimates, quotations, sales specifications, catalogues, brochures or other materials are based upon the Seller's experience and are indicative only of the performance the Seller would expect to obtain under normal operating conditions. Only where the Seller specifically states certain performance figures and where the Seller specifically accepts that the Goods will perform in accordance with those figures shall the Seller be responsible for supplying Goods which meet this specification.

## **6. DELIVERY**

### **6.1 Instalments**

6.1.1 The Seller may deliver Goods in instalments. The Seller may separately invoice each instalment.

6.1.2 Any failure on the Buyer's part to take delivery or pay for any instalment will entitle the Seller to:-

6.1.2.1 suspend further deliveries without notice;

6.1.2.2 store the Goods at the expense and risk of the Buyer;

6.1.2.3 demand payment for the Goods notwithstanding their non-delivery;  
and/ or

6.1.2.4 treat the contract for the supply of all of the Goods as having been repudiated by the Buyer.

6.1.3 Any defect, delay or omission in respect of any instalment shall not entitle the Buyer to cancel any remaining instalment(s).

## **6.2 Delays**

- 6.2.1 The Seller shall not be liable for any loss or damage whatsoever caused by any failure to deliver Goods (or any of them) promptly or at all.
- 6.2.2 Any time quoted for despatch or delivery shall be treated as an estimate only and despatch or delivery may be postponed or delayed by the Seller for any reason.
- 6.2.3 At any time after the expiry of any quoted despatch or delivery time or date and before actual despatch or delivery, the Buyer may cancel any outstanding order for Goods by agreement with the Seller and upon payment to the Seller of such amount(s) as may be necessary to compensate the Seller for any losses arising from the cancellation.
- 6.2.4 If any delay is caused by default of the Buyer or is at the Buyer's request for a period of 30 days or more, the Buyer shall pay the Seller for items and materials ordered and costs incurred by the Seller on demand.

## **6.3 Delivery at Seller's Premises**

- 6.3.1 Goods shall be delivered to the Buyer at the Seller's premises and risk in Goods shall pass to the Buyer on delivery.
- 6.3.2 The Seller may agree to arrange for delivery of Goods to the Buyer's premises. All packing, loading, unloading, carriage and insurance charges shall be for the Buyer's account and shall be due and payable with payment of the Price. Any carrier shall be deemed to be the Buyer's agent.

## **6.4 Export and Import Licences**

The Buyer must obtain all necessary export and/or import licences, clearances and other consents necessary for the purchase and export and/or import of the Goods. The Seller shall render all assistance and provide such documents as may reasonably be requested by the Buyer in this regard. If any licence, clearance or consent is not obtained for any reason, the Buyer shall reimburse to the Seller on demand all costs, outgoings or expenses incurred by the Seller in respect of the

Goods agreed to be supplied up to receipt by the Seller of notice of the failure to obtain the requisite consent.

**7. ACCEPTANCE AND RETURN**

7.1 If the Buyer properly rejects Goods which do not conform with the contract, the Buyer shall nonetheless pay the full Price for the Goods unless: -

7.1.1 the Buyer notifies the Seller of such rejection promptly (and in any event within seven days of delivery); and

7.1.2 the Buyer returns the Goods (at the Buyer's risk and cost) on or before the date when payment of the Price would otherwise be due.

7.2 No Goods which conform with the contract will be accepted by the Seller for return, except subject to such terms and conditions as the Seller may decide in its absolute discretion.

7.3 All returns must be in the original packing material and delivered (carriage paid) to such address as the Seller may nominate from time to time.

7.4 Any Goods returned without the Seller's prior written approval may (in the Seller's discretion and without prejudice to any other rights or remedies of the Seller) be returned to the Buyer, or stored by the Seller, at the Buyer's risk and cost.

7.5 If the Buyer does not notify the Seller of any rejection in accordance with Condition 7.1, the Goods will be assumed to comply with the contract on delivery and to be free of any obvious defect or damage which would be apparent on reasonable examination and the Buyer shall be deemed to have accepted them.

7.6 The Seller accepts no responsibility for defects in Goods which have been tested in accordance with the Buyer's express contractual requirements and have satisfied such tests or in respect of any apparent defect or damage on delivery which should

have been detected by the Buyer and which is not notified to the Seller in accordance with Condition 7.1.

7.7 If the Goods are spare parts for an item of equipment or machinery belonging to or used by the Buyer, the Seller accepts no liability and gives no warranty that such equipment or machinery will operate or will be capable of being used when the Goods are installed or fitted by the Buyer.

7.8 The Seller accepts no responsibility for:-

7.8.1 damage occurring in transit where delivery is not effected by the Seller;

7.8.2 Goods which have suffered or been subject to repairs not authorised or approved by the Seller or any manufacturer of the Goods, undue wear and tear, accident, mis-use, improper operations or application, neglect or overloading; or

7.8.3 consumable items.

7.9 The Buyer shall not rely upon any representation concerning any Goods supplied unless the same shall have been made by a person authorised by the Seller in writing.

7.10 In the case of Goods which are not manufactured by the Seller, the Seller will use all reasonable endeavours to make the benefit of any warranty provided by the manufacturer or distributor available to the Buyer.

## **8. LIABILITY**

### **8.1 General Limitations**

8.1.1 If Goods supplied do not comply with the contract for any reason, or if the Goods are defective because of any faulty design, materials or workmanship which appear within 12 months following delivery, the Buyer's sole remedy (which shall be subject in all respects to these Conditions) shall be limited to the Seller repairing or replacing the Goods concerned or (at the Seller's option) refunding a proportionate part of the Price.

8.1.2 The Seller's liability to the Buyer (whether for breach of contract or otherwise howsoever) shall not under any circumstances exceed the Price paid for Goods delivered and the Seller shall have no liability for any direct, consequential or indirect loss or expense (including loss of profit, loss of opportunity, loss of marketability, loss of output or any interruption with the Buyer's business or operations) suffered or incurred by the Buyer or any other person having any dealings with the Buyer in connection with the Goods.

8.1.3 The Seller accepts no liability arising out of the installation of the Goods by the Buyer or its servants or agents or out of the use or operation of Goods which is unusual, exceptional or improper, which does not strictly conform with any installation, use or operation instruction or manual, or which arises from any alteration, repair or similar procedure carried out by the Buyer or its servants or agents.

8.1.4 Except as expressly provided by these Conditions (and subject to Condition 8.3), all warranties, undertakings and conditions, whether implied by statute or otherwise howsoever arising, are hereby excluded by the Seller, to the fullest extent permitted by law.

## **8.2 General**

8.2.1 Nothing in these Conditions shall exclude or restrict any liability for death or personal injury (if caused by the negligence of the Seller or its servants or agents).

8.2.2 Each term or provision of these Conditions is distinct and severable from every other term and condition and the invalidity or unenforceability of any term or provision shall not affect the validity or enforceability of any other term or provision.

## **9. RETENTION OF TITLE**

9.1 Notwithstanding delivery of Goods, no title to or property in Goods will pass to the Buyer until the Seller shall have received payment of the Price for those Goods (together with any applicable charges, duties and/or tariffs and VAT) in cleared funds and without any withholding, deduction or set-off.



- 9.2 Until such time as title to the Goods passes to the Buyer in accordance with Condition 9.1 the Buyer shall hold the Goods (and the proceeds of any sale or other dealing with them) on a fiduciary basis and as bailee and/or trustee for the Seller.
- 9.3 Notwithstanding that title to the Goods may remain the property of the Seller, until such time as the Seller notifies the Buyer to the contrary the Buyer may sell or use the Goods, in the ordinary course of business and at full market value. In any such sale or dealing, the Buyer shall act as a principal and on its own behalf.
- 9.4 Until such time as title to the Goods passes to the Buyer in accordance with these Conditions:-
- 9.4.1 the Buyer will immediately on request inform the Seller of the state, condition and location of the Goods and (if so requested) deliver up such of the Goods as may not have been sold or supplied to third parties (and for the purpose of enforcing this Condition, the Seller and/or its servants, agents or employees may enter upon any premises owned, used or occupied by the Buyer and repossess the Goods); and
- 9.4.2 the Buyer shall not charge, pledge or otherwise encumber the Goods (or any of them).
- 9.5 The Seller shall be entitled to demand and recover payment of the Price for any Goods notwithstanding that title to or property in them may not have passed to the Buyer at that time.
- 9.6 If the Buyer fails to comply with any of its obligations under this Condition then, without prejudice to any other right or remedy available to the Seller, all sums due, owing or incurred by the Buyer to the Seller on any account shall become due and payable immediately and without any demand.

## 10. **MISCELLANEOUS**

### 10.1 **Force Majeure**

- 10.1.1 The Seller shall not be liable for any delay or default caused by any failure, non-delivery or interruption in supplies to the Seller from the Seller's own

suppliers, any act of God, war, riot or civil commotion, strike, lock-out, industrial action, combination of workmen, fire, flood, drought, tempest, breakdown or any other event generally comprehended in the term "force majeure" or beyond its reasonable control (each an "Event of Force Majeure") .

10.1.2 The Seller shall notify the Buyer of any actual or anticipated occurrence of any Event of Force Majeure as soon as possible (and in any event within 48 hours of its occurrence). Such notice shall contain a description of the Event of Force Majeure and (if possible) an estimate of any consequential delay in performance.

## **10.2 Third Party Rights**

10.2.1 The benefit of these Conditions and any contract for supply of Goods and/or Services is personal to the Buyer and may not be assigned or transferred to any person without the Seller's prior written consent.

10.2.2 Under no circumstances shall the Buyer enter into any contract, agreement or understanding which has or might have the effect of imposing any duties, liabilities or obligations on the Seller which are more onerous or far-reaching than those contained in these Conditions. The Buyer shall indemnify the Seller against any debt, liability or obligation suffered or incurred by the Seller as a result of any breach of this Condition.

## **11. GOVERNING LAW AND JURISDICTION**

These Conditions and any contract between the Buyer and the Seller shall be governed by and construed in accordance with English Law and (for the exclusive benefit of the Seller) subject to the exclusive jurisdiction of the English courts.