

Mechanical Design & Development Ltd

TERMS & CONDITIONS OF TRADE

1. Interpretation

1.1 In these conditions:

- (a) "the Company" means Mechanical Design & Development Ltd;
- (b) "the Client" means the person, firm or company purchasing the Goods from the Company;
- (c) "the Goods" means engineering drawings, machinery, equipment or any other product being purchased by the Client from the Company which are the subject of the Contract;
- (d) "the Contract" means a formal and legally binding agreement between the Company and the Client; and
- (e) "the Contract Price" means the price of the Goods as agreed between the Company and the Client, subject to clauses 2 or 3.

1.2 These conditions are entered into on behalf of and are intended to bind and be for the benefit of the Company and the Company's successors and assigns.

2. Price

2.1 Stated, estimated or quoted prices:

- (a) are exclusive of GST;
- (b) are based upon rates and costs as at the date of the Contract or where the Contract arises from an estimate or quotation given by the Company, as at the date of estimate or quotation;
- (c) may be increased by the amount of any increase in the cost of any such items or any other factors (including any change in exchange rates) affecting the cost of supply, production and/or delivery of the Goods between the abovementioned date and the date of delivery; and
- (d) may be altered by the Company without notice prior to acceptance by the Client.

3. Payment

3.1 If the Goods are engineering drawings with an estimated or quoted total cost of \$5,000 or less, the Client must pay for the Goods in full by the 20th of the month following issue of a tax invoice by the Company, time being of the essence ("the due date"). However if the estimated or quoted total cost of the engineering drawings exceeds \$5,000, payment terms are:

- 50% upon acceptance of the estimate or quote and/or placement of an order by the Client, and
- 50% upon completion and prior to release of the engineering drawings to the Client.

3.2 If the Goods are machinery, equipment or any other product other than engineering drawings with an estimated or quoted total cost of \$50,000 or less, payment terms are:

- 50% upon acceptance of the estimate or quote and/or placement of an order by the Client,
- 40% upon completion and prior to shipment of the machinery, equipment or any other product, and
- 10% upon commissioning, or upon delivery if no commissioning is required.

3.3 If the Goods are machinery, equipment or any other product other than engineering drawings with an estimated or quoted total cost of \$50,000.01 or more, payment terms are:

- 80% upon acceptance of the estimate or quote and/or placement of an order by the Client,
- 15% upon completion and prior to shipment of the machinery, equipment or any other product, and
- 5% upon commissioning, or upon delivery if no commissioning is required.

3.4 Interest may be charged on any amount owing after the due date at the rate of five percent (5%) per month or part month.

3.5 If the Company considers the credit of the Client to be unsatisfactory or the estimated or quoted cost of the Goods exceeds \$20,000, the Company may require security for payment and/or suspend performance of its obligations under the Contract.

3.6 The Client will pay all costs, expenses and disbursements including legal costs on a solicitor/client basis incurred by the Company in relation to obtaining payment of any outstanding amount.

- 3.7 The Client is not entitled to withhold payment or to make any deductions from the Contract price without the prior written consent of the Company.
- 3.8 Receipt of a cheque, bill of exchange, or other negotiable instrument by the Company will not constitute payment and the Client remains liable for the full contract price until such negotiable instrument is paid in full.

4. Risk and Delivery

- 4.1 Delivery is to be made at the place indicated in the Contract or, if no place is indicated in the Contract, the delivery address of the Client. If the Client fails or refuses to take or accept delivery, then the Goods are deemed to have been delivered when the Company was willing to deliver the Goods.
- 4.2 The Client shall be responsible for the cost of delivery.
- 4.3 Risk of any loss or damage to the Goods is to be borne by the Client from the date of delivery of the Goods.
- 4.4 Although the Company will endeavour to meet any stated delivery date, it is not liable for and the Client is not entitled to cancel its order for non delivery or late delivery, howsoever caused.

5. Liability

- 5.1 All Goods are sold subject to all conditions and warranties implied by law being excluded to the extent they can be excluded.
- 5.2 To the extent permitted by law the Company will not be liable to the Client for loss, either direct, indirect or consequential, caused by anything beyond the Company's reasonable control or loss suffered by the Client which may be caused by breach of these terms, the Company's negligence, or any other act of omission of the Company.
- 5.3 If the Company is liable then their liability is limited to the value of the Goods supplied. The Company may either replace defective Goods or refund the price (excluding GST) paid by the Client.
- 5.4 The Company will not accept responsibility for any defective Goods unless the Client notifies the Company of the defect within twenty one (21) days of its receiving the Goods and allows the Company to investigate the Client's claim.

6. Acceptance

- 6.1 Where these conditions of sale form part of a written estimate or quotation, the estimate or quotation is open for acceptance for a period of thirty (30) days from the date of estimate or quotation.
- 6.2 The estimate or quotation may be withdrawn by the Company at any time before acceptance.
- 6.3 Acceptance occurs upon receipt of the Client's written acceptance by the Company, and/or payment of a deposit, unless the Company agrees otherwise.

7. Use of Information

- 7.1 The Company may obtain information about the Client from the Client or any person (including any credit or debt collection agency) and the Client consents to any person providing that information.
- 7.2 The Client must provide the Company with true and correct information and must notify the Company of any change in circumstances that may affect the accuracy of the information provided.

8. Patents, Copyright and Technical Information

- 8.1 Copyright in all drawings, specifications and other technical information provided by the Company in connection with the Contract is vested in the Company.
- 8.2 Any intellectual property, technical information, knowledge or processing methods at any time transmitted either orally or in writing by the Company will remain the property of the Company and will be considered confidential and will not be used for any purpose without prior written consent of the Company.
- 8.3 The Client will return any trade information, samples literature, promotional material or tooling supplied by the Company if requested to do so by the Company.

9. Contract

- 9.1 The items mentioned in the estimate or quotation (where the Contract arises from an estimate or quotation by the Company) or the items contained in the Company's confirmation of order (where the Contract arises from an order by the Client) together with these terms and conditions are the conditions of the Contract.
- 9.2 All other conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded.
- 9.3 In the case of any conflict between an order submitted by the Client and the Company's confirmation of order and these terms and conditions, the Company's confirmation of order and these terms and conditions prevail.

10. Waiver

- 10.1 All the original rights, powers, exemptions and remedies of the Company remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.
- 10.2 The Company is not deemed to have waived any condition unless such waiver is in writing under signature of the Company or its authorised officer and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.

11. Security

- 11.1 The Client grants to the Company a security interest in all present and after acquired Goods and their proceeds to secure all moneys owing to the Company now and in the future in respect of the Goods.
- 11.2 Property and ownership in the Goods does not pass from the Company to the Client until all moneys payable under the Contract have been paid in full.
- 11.3 The Client acknowledges that these terms create a security interest ("Security Interest") as that term is defined in the Personal Property Securities Act 1999 ("PPSA") in the Goods.
- 11.4 The Client will promptly execute any documents, provide all necessary information and do anything else required by the Company to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) and which will have priority over all other Security Interests in the Goods.
- 11.5 The Client agrees, to the extent permitted by law, that the Client shall have no rights under the following provisions of Part 9 of the PPSA to:
- (a) receive a notice under section 114(l)(a);
 - (b) receive a statement of account under section 116;
 - (c) surplus distributed under section 117;
 - (d) recover any surplus under section 119;
 - (e) receive notice of any proposal of the Company to retain collateral under section 120(2);
 - (f) object to any proposal of the Company to retain collateral under section 121;
 - (g) not have goods damaged in the event that the Company were to remove an accession under section 125;
 - (h) not be reimbursed for damage when a secured party removes an accession under section 126;
 - (i) refuse permission to remove an accession under section 127;
 - (j) receive notice of the removal of an accession under section 129;
 - (k) apply to the Court for an order concerning the removal of an accession under section 131;
 - (l) redeem collateral under section 132;
 - (m) reinstate the contract under sections 133 and 134.
- 11.6 The Client further agrees that where the Company has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
- 11.7 The Client waives its right under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).
- 11.8 The Client agrees not to consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of the Company's Goods (whether an accession or otherwise).

- 11.9 The Client hereby irrevocably gives the Company, its agents and servants, leave and licence, at any time after the purchase price of the Goods has become due and has not been paid, and without the necessity of giving any notice, to enter on and into any premises occupied by the Client to search for and remove any of the Goods supplied to the Client or in which the Company has ownership as aforesaid without in any way being liable to the Client or any person or company claiming through the Client.

12. Early Termination of Contract

- 12.1 If any of these terms and conditions are breached by the Client or the Client rescinds and/or withdraws its order to purchase the Goods at any time, which must be made in writing to and accepted by the Company ("Notice of Termination"), before the Company supplies or is in the process of supplying the Goods, then the Company reserves its rights:
- (a) in relation to engineering drawings - to invoice the Client for the time spent by the Company up until the Notice of Termination was received by the Company, or
 - (b) in relation to any other Goods – to obtain an independent valuation from a mutually agreed third party (whose fees if any will be paid by the Client) to ascertain the value of the Goods already purchased, ordered and/or supplied by the Company under the Contract, such value to be paid by the Client to the Company immediately upon the receipt of the valuation by the Client and the Company. In the event that the moneys paid by the Client exceeds the valuation then the Company will refund the amount in excess of the valuation to the Client within seven (7) business days of the Company's receipt of the valuation.
- 12.2 If any of these terms and conditions are breached by the Client and the Company rescinds and/or withdraws its agreement to supply the Goods at any time, which will be made either orally or in writing by the Company ("Notice of Termination"), before the Company supplies or is in the process of supplying the Goods, then the Company reserves its rights:
- (a) in relation to engineering drawings - to invoice the Client for the time spent by the Company up until the Client was advised of the Notice of Termination, or
 - (b) in relation to any other Goods – to obtain an independent valuation from a mutually agreed third party (whose fees if any will be paid by the Client) to ascertain the value of the Goods already purchased, ordered and/or supplied by the Company under the Contract, such value to be paid by the Client to the Company immediately upon the receipt of the valuation by the Client and the Company. In the event that the moneys paid by the Client exceeds the valuation then the Company will refund the amount in excess of the valuation to the Client within seven (7) business days of the Company's receipt of the valuation.