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THE ENGINEERING WORKS • DUNPHAIL • IV36 2QQ

ALISTAIR YOUNG ENGINEERING LTD
ESTABLISHED IN 1981

TERMS & CONDITIONS OF TRADE

DEFINITIONS :

1.1
'BUYER' MEANS THE PERSON WHO BUYS OR AGREES TO BUY THE GOODS FROM THE SELLER

1.2
'TERMS' MEANS THE TERMS & CONDITIONS OF SALE SET OUT IN THIS DOCUMENT

1.3
'GOODS' MEANS THE ARTICLE(S), WHICH THE BUYER AGREES TO BUY FROM THE SELLER

1.4
'PRICE' MEANS THE PRICE OF THE GOODS BEFORE, CARRIAGE, PACKING, INSURANCE AND VAT

1.5
'THE SELLER' MEANS :
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TERMS OF PAYMENT :

2.1
THE BUYER SHALL PAY FOR THE GOODS SUPPLIED IN FULL WITHIN 30 DAYS OF THE DATE OF INVOICE TOGETHER WITH THE VAT PAYABLE THEREON. FOR WHOLEGOODS THE TERMS ARE STRICTLY PAYMENT ON COLLECTION OR WITHIN 7 DAYS OF THE DATE OF INVOICE TOGETHER WITH THE VAT PAYABLE THEREON.

2.2
WE RESERVE THE RIGHT TO CHARGE INTEREST ON OVERDUE ACCOUNTS WILL BE CHARGED UNDER 'THE LATE PAYMENT OF COMMERCIAL DEBTS (INTEREST) ACT 1998' AT 2% PER MONTH FROM THE DUE DATE TO THE DATE OF PAYMENT AND IF PAYMENT IS BY CHEQUE, UNTIL SUCH TIME AS FUNDS ARE CLEARED TO THE SELLERS ACCOUNT.

OUTSTANDING DEBTS :

3.1
ANY ACCOUNT OUTSTANDING BEYOND THE SELLER'S CREDIT TERMS AS SET OUT IN CLAUSE 2 ABOVE, MAY BE PASSED TO OUR SOLICITOR AND THE BUYER WILL ADDITIONALLY BE RESPONSIBLE FOR ANY FURTHER COSTS INCURRED INCLUDING SOLICITOR CHARGES AND ANY COURT FEES.

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RETENTION OF TITLE :

4.1
IN SPITE OF DELIVERY HAVING BEEN MADE, PROPERTY IN THE GOODS SHALL NOT PASS FROM THE SELLER UNTIL 4.1.1, THE BUYER HAS PAID THE PRICE PLUS VAT IN FULL; AND

4.1.2
NO OTHER SUMS WHATEVER SHALL BE DUE FROM THE BUYER TO THE SELLER.

4.2
UNTIL PROPERTY IN THE GOODS PASSES TO THE BUYER IN ACCORDANCE WITH CLAUSE (4.1), THE BUYER SHALL HOLD THE GOODS AND EACH OF THEM ON A FIDUCIARY BASIS AS BAILEE FOR THE SELLER. THE BUYER SHALL STORE GOODS (AT NO COST TO THE SELLER) SEPARATELY FROM ALL OTHER GOODS IN ITS POSESSION AND MARKED IN SUCH A WAY THAT THEY ARE CLEARLY IDENTIFIABLE AS THE SELLERS PROPERTY.

4.3
NOTWITHSTANDING THAT THE GOODS (OR ANY OF THEM) REMAIN THE PROPERTY OF THE SELLER, THE BUYER MAY SELL OR USE THE GOODS IN THE ORDINARY COURSE OF THE BUYERS BUSINESS AT FULL MARKET VALUE FOR THE ACCOUNT OF THE SELLER. ANY SUCH SALE OR DEALING SHALL BE A SALE OR USE OF THE SELLERS PROPERTY BY THE BUYER OR ON THE BUYERS OWN BEHALF AND THE BUYER SHALL DEAL AS PRINCIPAL WHEN MAKING SUCH SALES OR DEALINGS. UNTIL PROPERTY IN THE GOODS PASSES FROM THE SELLER, THE ENTIRE PROCEEDS OF SALE OR OTHERWISE OF THE GOODS, SHALL BE HELD IN TRUST FOR THE SELLER, THE ENTIRE PROCEEDS OF SALE OR OTHERWISE OF THE GOODS, SHALL BE HELD IN TRUST FOR THE SELLER AND SHALL NOT BE MIXED WITH OTHER MONEY OR PAID INTO ANY OVERDRAWN BANK ACCOUNT AND SHALL BE AT ALL MATERIAL TIMES, IDENTIFIED AS THE SELLERS MONEY.

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RETENTION OF TITLE :

4.4
THE SELLER SHALL BE ENTITLED TO RECOVER THE PRICE (PLUS ANY VAT) NOTWITHSTANDING THAT PROPERTY IN ANY OF THE GOODS HAS NOT PASSED FROM THE SELLER.

4.5
UNTIL SUCH TIME AS PROPERTY IN THE GOODS PASSES FROM THE SELLER, THE BUYER SHALL UPON REQUEST DELIVER UP SUCH OF THE GOODS AS HAVE NOT CEASED TO BE IN EXISTENCE OR RESOLD TO THE SELLER. IF THE BUYER FAILS TO DO SO, THE SELLER MAY ENTER UPON ANY PREMISES OWNED, OCCUPIED OR CONTROLLED BY THE BUYER WHERE THE GOODS ARE SITUATED AND REPOSSESS THE GOODS. ON THE MAKING OF SUCH REQUEST THE RIGHTS OF THE BUYER UNDER CLAUSE (3) SHALL CEASE.

4.6
THE BUYER SHALL NOT PLEDGE OR IN ANY WAY CHARGE BY THE WAY OF SECURITY FOR ANY INDEBTEDNESS, ANY OF THE GOODS, WHICH ARE THE PROPERTY OF THE SELLER. WITHOUT PREJUDICE TO THE OTHER RIGHTS OF THE SELLER, IF THE BUYER DOES SO ALL SUMS WHATEVER OWING BY THE BUYER TO THE SELLER, SHALL FORTHWITH BECOME DUE AND PAYABLE.

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RETENTION OF TITLE :

4.7
THE BUYER SHALL INSURE AND KEEP INSURE THE GOODS TO THE FULL PRICE AGAINST 'ALL-RISKS' TO THE REASONABLE SATISFACTION OF THE SELLER, UNTIL THE DATE THAT PROPERTY IN THE GOODS PASSES FROM THE SELLER AND SHALL WHENEVER REQUESTED BY THE SELLER, PRODUCE A COPY OF THE POLICY OF INSURANCE. WITHOUT PREJUDICE TO THE OTHER RIGHTS OF THE SELLER, IF THE BUYER FAILS TO DO SO, ALL SUMS WHATEVER OWING BY THE BUYER TO THE SELLER, SHALL FORTH WITH BECOME DUE AND PAYABLE.

LIEN OVER GOODS :

5.1.1
THE SELLER SHALL HAVE A LIEN OVER ALL GOODS OF THE BUYER IN THE POSSESSION OF THE SELLER FOR ANY SUM DUE TO THE SELLER FROM THE BUYER.

SHORTAGES, LOSS OR DAMAGE :

6.1
THE SELLER WILL ACCEPT NO RESPONSIBILITY FOR SHORTAGES, LOSS OR DAMAGE UNLESS:

I) ANY SHORTAGE OR DAMAGE IS NOTED ON THE DELIVERY SHEET AND/OR CARRIERS CONSIGNMENT NOTE
II) ALL CARRIERS CONDITIONS HAVE BEEN COMPLIED WITH IN FULL BY THE BUYER OR CONSIGNEE
III) A CLEAR SIGNATURE HAS BEEN GIVEN ON THE DELIVERY SHEET AND/OR CONSIGNMENT NOTE AND/OR NOTIFICATION OF ANY DAMAGE OR SHORTAGE IS SENT TO THE SELLER AND ALSO TO THE CARRIERS IMMEDIATELY
IV) NOTIFICATION IN WRITING OF NON-DELIVERY IS SENT TO THE SELLER WITHIN 7 DAYS OF THE INVOICE DATE

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SHORTAGE, LOSS OR DAMAGE :

6.2
THE COMPANY SHALL NOT BE LIABLE FOR ANY EXPENSE, LOSS OR DAMAGE CAUSED BY LATE PERFORMANCE OR DELAY IN DELIVERY.

RETURNS AND HANDLING CHARGE :

7.1
GOODS, WHICH ARE TO BE RETURNED, MUST HAVE THE SELLERS' CONSENT BEFORE THEY ARE RETURNED. CARRIAGE AND ADMINISTRATION CHARGES WILL BE INCURRED IF THE GOODS ARE RETURNED AFTER 14 DAYS FROM THE DELIVERY DATE SAVE FOR THE ABOVE GOODS MAY NOT BE RETURNED UNLESS THEY ARE DEFECTIVE.

7.2
A 15% HANDLING CHARGE WILL BE MADE IN RESPECT OF CURRENT STOCK ITEMS RETURNED AS INCORRECTLY ORDERED FROM THE BUYER. THE SELLER WILL NOT ACCEPT RETURN OF ANY GOODS SPECIFICALLY ORDERED BY THE BUYER.

7.3
ONLY UNUSED GOODS IN GOOD CONDITION WILL BE CONSIDERED FOR RETURN.

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SPECIAL ORDERS :

8.1
NO RESPONSIBILITY CAN BE ACCEPTED FOR GOODS MADE TO THE BUYERS DIMENSIONS UNLESS DETAILED DRAWINGS OF SUCH GOODS ARE PROVIDED AT THE TIME OF THE ORDER AND THE GOODS DO NOT CORRESPOND WITH SAID DETAILED DRAWINGS.

8.2
MACHINERY ORDERS MAY BE PLACED VERBALLY OR IN WRITING. THE BUYER SHALL HAVE A PERIOD OF 14-DAYS FROM THE DATE THE ORDER IS PLACED TO CANCEL THE ORDER WITHOUT CHARGE. IF THE BUYER CANCELS THE ORDER AFTER THE 14-DAY COOLING-OFF PERIOD HAS EXPIRED, THE SELLER RESERVES THE RIGHT TO CHARGE THE FULL PURCHASE PRICE OF THE MACHINE. THE SELLER ALSO RESERVES THE RIGHT TO RECOVER FROM THE BUYER ANY INTEREST, FINANCE CHARGES, STORAGE FEES OR OTHER COSTS INCURRED IN CONNECTION WITH THE MACHINERY FOLLOWING THE EXPIRY OF THE COOLING-OFF PERIOD.

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DELIVERY AND RISK :

9.1
NO GUARANTEE IS GIVEN THAT THE GOODS WILL BE DELIVERED AT THE TIME REQUESTED, ALTHOUGH EVERY EFFORT WILL BE MADE TO DO SO. THE BUYERS SHALL MAKE ALL ARRANGEMENTS NECESSARY TO TAKE DELIVERY OF THE GOODS WHENEVER THEY ARE TENDERED FOR DELIVERY. THE GOODS SHALL BE AT BUYERS RISK FROM DELIVERY OR WHEN COLLECTED BY THE BUYER PERSONALLY.

QUOTATIONS & ESTIMATES :

10.1
QUOTATIONS AND ESTIMATES INCLUDE ANY GOODS AND WORK SPECIFIED THEREIN. BUYERS WILL BE NOTIFIED OF ANY ADDITIONAL REPAIRS THAT ARE FOUND NECESSARY ON THE DISMANTLING OF GOODS, WHICH CAN BE THE SUBJECT OF A SUPPLEMENTARY ESTIMATE, IF THE BUYER SO INSTRUCTS.

10.2
LABOUR CHARGES IN QUOTATIONS AND ESTIMATES ARE SUBJECT TO ANY INCREASES IN WAGE RATED BETWEEN THE DATE OF QUOTATION OR ESTIMATE AND COMPLETION OF THE WORK.

10.3
MATERIAL PRICES ARE SUBJECT TO ALTERNATION BY THE MANUFACTURERS WITHOUT NOTICE GIVEN AND THE PRICES RULING AT THE TIME OF FITTING AND/OR DESPATCH WILL BE CHARGED.

10.4
ACCEPTANCE OF A QUOTATION OR ESTIMATE DOES NOT CONSTITUTE A CONTRACT UNTIL CONFIRMED IN WRITING BY THE SELLER.

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ORDER NUMBER :

11.1
RESPONSIBILITY FOR THE RECORDING AND ACCURACY OF ORDER NUMBERS LIES SOLELY WITH THE BUYER WHEN PLACING ANY ORDER.

EXAMINATION OF GOODS AND LIABILITY :

12.1
IT IS THE RESPONSIBILITY OF THE BUYER TO EXAMINE THE GOODS IMMEDIATELY UPON DELIVERY.

12.2
ANY GOODS SUPPLIED AND CLAIMED TO BE DEFECTIVE MAY BE RETURNED BY PRIOR ARRANGEMENT WITH THE SELLER AND IF ADMITTED TO BE DEFECTIVE, WILL BE REPLACED FREE OF CHARGE AT THE PRICE OF THE ORIGINAL DELIVERY, BUT SHALL NOT FORM THE SUBJECT OF ANY DAMAGE, WHETHER CONSEQUENTIAL OR OTHERWISE.

12.3
EXCEPT IN THE CASE OF DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OF THE SELLER OR HIS EMPLOYEES, THE SELLERS LIABILITY UNDER THIS AGREEMENT FOR ANY DIRECT LOSS HOWEVER IT IS CAUSED, SHALL BE LIMITED TO THE VALUE OF THE GOODS ORDERED. THE SELLER SHALL NOT INCUR ANY LIABILITY FOR ANY CONSEQUENTIAL LOSS EG - LOSS OF PROFIT OR CONTRACTS TO THE BUYER.

12.4
THE SELLER SHALL NOT BE LIABLE FOR LOSS OR DAMAGE ARISING FROM THE INCORRECT USE OR ALTERATION OF THE GOODS.

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EXPORT TERMS :

16.1
WHERE THE GOODS ARE SUPPLIED FOR EXPORT FROM THE UNITED KINGDOM, THE PROVISIONS OF THIS CLAUSE (16) SHALL APPLY SUBJECT TO ANY OTHER TERMS AGREED IN WRITING BETWEEN THE BUYER AND SELLER.

16.2
THE BUYER SHALL BE RESPONSIBLE FOR COMPLYING WITH THE LEGISLATION OR REGULATIONS GOVERNING THE IMPORTATION OF THE GOODS INTO THE COUNTRY OF DESTINATION AND FOR THE PAYMENT OF ANY DUTIES THEREON.

16.3
THE BUYER SHALL BE RESPONSIBLE FOR ARRANGING FOR TESTING AND INSPECTION OF THE GOODS AT THE SELLERS PREMISES BEFORE SHIPMENT. THE SELLER SHALL HAVE NO LIABILITY FOR ANY CLAIM IN RESPECT OF ANY DEFECT IN THE GOODS WHICH WOULD BE APPARENT ON INSPECTION AND WHICH ARE MADE AFTER SHIPMENT, OR IN RESPECT OF ANY DAMAGE DURING TRANSIT.

16.4
THE BUYER IS RESPONSIBLE FOR ENSURING THE SELLER RECEIVES CONFIRMATION OF GOODS TO BE EXPORTED BY AN OFFICIAL ORDER IN WRITING SIGNED BY AN AUTHORISED SIGNATORY AND MADE AVAILABLE BEFORE RELEASE OF GOODS. THIS CAN BE SENT VIA POST, FACISMILE OR E-MAIL. THE SELLER ACCEPTS NO LIABILITY FOR DELAYS IN ORDERS WITHOUT THE SAID OFFICIAL ORDER. THE BUYER WILL OWE ANY ADDITIONAL COSTS FOR DELAYS IN SHIPMENT TO THE SELLER.

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FORCE MAJEURE :

17.1
NEITHER PARTY SHALL BE LIABLE FOR ANY FAILURE OR DELAY IN PERFORMANCE OF THIS AGREEMENT, WHICH IS CAUSED BY CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF THE PARTY.

GENERAL :

18.1
ALL CONTRACTS OF SALE MADE BY THE SELLER ARE DEEMED TO BE SUBJECT OF THESE TERMS OF TRADE, WHICH CANNOT BE VARIED, ALTERED, SUSPENDED OR ADDED TO EXCEPT BY WRITTEN CONSENT OF THE SELLER, SUCH CONSENT TO BE SIGNED BY AN AUTHORISED SIGNATORY.

18.2
THE CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF SCOTLAND AND YOU AND WE AGREE THAT ANY COURT ACTION RELATING TO THE CONTRACT WILL TAKE PLACE EXCLUSIVELY IN THE COURTS OF SCOTLAND.