

Terms & Conditions of sale for CTC-UK (a division of Enertech Ltd)

1. DEFINITIONS

In these conditions, except where the context otherwise requires, the following words have the following meaning:-

“Seller” shall mean Enertech Ltd.

“Buyer” shall mean the person, firm or company with whom the Seller contracts.

“Contract” means the contract made or to be made between the Seller and the Buyer subject to these Conditions.

“Goods” shall mean the articles or things (if any) and “Services” shall mean the services (if any) which are the subject matter of the Contract.

2. THE CONTRACT

2.1 Any quotation submitted by the Seller is an invitation to treat not an offer. The placing of any order by the Buyer orally or in writing and whether or not a quotation has been submitted shall constitute an offer by the Buyer and a Contract shall be affected if and when such an offer is accepted in writing by the Seller and not at any earlier time. The Seller will only accept such offers subject to these terms and conditions. However, quotations shall only be open for the making of an offer within the period stated therein or where no period is specified within 30 days from the date thereof. Any orders placed by the Buyer with a salesman or other employee or representative of the Seller are subject to written acceptance by the Seller in accordance with this Clause.

2.2 All orders are accepted only on the following terms and conditions. No terms and conditions put forward by the Buyer in conflict with these terms and conditions shall be incorporated into the Contract.

3. DRAWINGS AND REPRESENTATIONS

3.1 Any specifications, data, photographs, drawings and other descriptive matter submitted by the Seller to the Buyer and all descriptions, illustrations and other matter contained in the Seller's catalogues, price lists, circulars and other sales promotion matter are intended merely to present a general idea of the Goods and Services described therein and shall not be construed as forming part of the Contract. All such drawings, data and other matter referred to above remain the property of the Seller and must not be copied or reproduced without the Seller's written authority.

3.2 No communication, statement or representation from the Seller or any of its employees or agents (other than the Seller's standard contractual documentation) is of any contractual effect or is to be treated as a representation, condition or warranty affecting the contractual obligations of the Buyer and/or the Seller unless incorporated in writing and signed by a Director of the Seller as a specific term of the Contract.

4. DESPATCH

All times quoted for despatch date from the Seller's acceptance of the Buyer's offer or (if later) from the date of receipt by the Seller of all information required to enable it to proceed with the Buyer's order. All such times are estimates only and the Seller will not be liable for any failure to comply with any such estimate of for any direct or consequential loss resulting therefrom.

5. DELIVERY

Unless otherwise provided in the Contract the price of the Goods excludes the cost of delivery. Delivery shall be deemed to have taken place when the Seller notifies the Buyer that the Goods are available for collection.

6. LOSS OR DAMAGE IN TRANSIT

The Seller accepts no liability for damage, shortage or loss in transit where the price of the Goods does not include the cost of delivery as aforesaid. Where the price of the Goods does include such cost, the Seller accepts no liability for damage, shortage or loss in transit unless:-

6.1 Damages or shortages are recorded on the delivery sheet at the time of delivery and are confirmed in writing to the Seller within 3 days thereafter.

6.2 Where the Goods are not received (in the case of total loss) the Seller is notified in writing within 10 days of despatch.

7. STORAGE

If the Buyer is unable to accept delivery or to collect (as the case may be) the Goods when they are due and ready then if the Seller's storage facilities permit the Goods shall be placed into storage at the cost and risk of the Buyer, otherwise the Buyer shall forthwith arrange for storage. This shall not affect the due date for payment of the Seller's invoice for the Goods in storage which will be subject to normal payment terms from the date invoiced. In addition the Buyer shall be liable to the Seller for the full cost (including insurance and carriage) of storage of any Goods of which the Buyer is unable to take delivery or to collect (as the case may be).

8. CANCELLATION

Subject to Clause 18.2 the Contract may not be cancelled without the prior written consent of the Seller which will only be given on terms that the Seller is to be indemnified against all costs incurred up to the date of such cancellation. In the event that the Buyer shall cancel the Contract, whether in whole or in part, in accordance with Clause 18.2, the Buyer shall as regards any such Goods in relation to which cancellation occurs reimburse to the Seller the amount or amounts of all work undertaken, time expended and costs incurred by it in connection with the Buyer's order, together with a reasonable profit margin.

9. PRICE

All prices quoted are the Sellers prices ruling at the date the quotation is given and are based on current production costs. Orders are accepted only on the basis that the actual price payable under the Contract shall be the Seller's price ruling at the date of the invoice and the Seller shall therefore be entitled to vary the price quoted at any time prior to the date of the invoice.

10. EXTRA COST

If any extra cost is incurred by reason of any additional instructions or any errors or omissions in instructions submitted by the Buyer or if the Buyer requests any special testing of the Goods or any variation in the specification or design or any modifications to the Goods then the Buyer shall bear such extra cost.

11. DATE FOR PAYMENT

11.1 Payment must be made at the time or times specified in the Seller's quotation. If no such time is specified then payment for all Goods must be made in full within 30 days of the end of the month after the Goods are due and ready for delivery or collection (as the case may be) and payments for all Services must be made in full within 30 days after the end of the month in which the Services were performed.

11.2 Where payment is agreed to be made by instalments any delay or failure in payment of any one instalment shall render all the remaining instalments due forthwith.

12. DELIVERY BY INSTALMENTS

Where Goods are to be delivered or collected (as the case may be) in instalments each instalment shall be deemed to be a separate and distinct Contract and no default by the Seller in respect of any instalment shall entitle the Buyer to reject or withhold payment for any other instalments.

13. DISPUTES AND SET-OFF

Any liability upon the Seller is subject to the terms of payment and all other obligations upon the Buyer being strictly observed. The Buyer shall not be entitled to withhold payment of an amount payable to the Seller under any contract or otherwise because of any disputed claim against the Seller.

14. PASSING RISK

Subject to condition 6, the risk of loss of or damage to the Goods or any of them shall pass to the Buyer:-

14.1 in respect of such of the Goods as are delivered to the Buyer, upon delivery as aforesaid;

14.2 in respect of such of the Goods as are collected by the Buyer, upon collection as aforesaid;

14.3 in respect of such of the Goods as may be stored in accordance with condition 7, upon the Goods being due and ready for delivery, the Company having no obligations to insure any such of the Goods notwithstanding anything in condition 7.

15. PASSING OF PROPERTY

15.1 Notwithstanding the passing of the risk in the Goods as referred to in Clause 14 of these Conditions until full payment has been received by the Seller for all Goods whatsoever supplied and all Services rendered at any time by the Seller to the Buyer:-

15.1.1 Property in the Goods shall remain in the Seller.

15.1.2 Should the Buyer convert the Goods (or any of them) into a new product whether or not such conversion involves the admixture of any goods or thing whatsoever and whatever proportions the conversion shall be effected by the Buyer solely as agent for the Seller who shall have the full legal and beneficial ownership of the new products.

15.1.3 The Buyer shall store the Goods and the new products separately and in such a way that they can be readily identified as being the property of the Seller.

15.1.4 Subject to 15.1.5 and 15.1.6 below the Buyer shall be at the liberty to sell the Goods and the new products referred to in 15.1.2 above in the ordinary course of business on the basis that the proceeds of sale shall be the property of the Seller to whom the Buyer shall account on demand. Provided that the Buyer shall have no authority to enter into any contract of sale on behalf of the Seller and any contract of sale shall accordingly be concluded in the name of the Buyer,

15.1.5 The Seller may at any time revoke the Buyer's power of sale by notice to the Buyer if the Buyer is in default for longer than seven days in the payment of any sum whatsoever due to the Seller (whether in respect of the Goods or any other goods supplied or services rendered at any time by the Seller to the Buyer or for any other reason whatsoever) or if any Bill of Exchange, cheque or other negotiable instrument drawn or accepted by the Buyer in favour of the Seller is dishonoured on presentation for payment or if the Seller has bona fide doubts as to the solvency of the Buyer.

15.1.6 The Buyer's power of sale shall automatically cease if a Receiver is appointed over any of the assets or the undertaking of the Buyer or a winding-up order is made against the Buyer or the Buyer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or calls a meeting of or makes any arrangements or composition with creditors or commits any act of bankruptcy.

15.1.7 Upon determination of the Buyer's power of sale under 15.1.5 or 15.1.6 above the Buyer shall place the Goods and the new products at the disposal of the Seller who shall be entitled using only such force as may be necessary to enter upon any premises of the Buyer for the purpose of removing such Goods and new products from the premises (including severance from the realty where necessary).

15.2 Where payment is made by means of a Bill of Exchange, cheque or other negotiable instrument the Seller shall be deemed not to have received payment for the purpose of 15.1 until the Bill of Exchange, cheque or instrument has been honoured on presentation for payment notwithstanding that the Seller may have negotiated and received value therefor.

16. TERMINATION AND SUSPENSION

The Seller shall be entitled without prejudice to its other rights and remedies (including in particular but without prejudice to the generality its rights under condition 15) either to terminate wholly or in part any or every Contract between the Seller and the Buyer or to suspend any further deliveries under any or every such Contract in any of the following events:-

16.1 If any sum owing from the Buyer to the Seller for any reason whatsoever is unpaid after the date for payment.

16.2 If the Buyer refuses to take delivery of or to collect (as the case may be) any Goods.

16.3 If the Seller has any reason to doubt the credit worthiness of the Buyer.

16.4 If the Buyer commits any act of insolvency.

16.5 If the Buyer commits any breach of any contract between the Buyer and the Seller.

The Seller shall be entitled to exercise its rights of termination or suspension at any time during which the event or default giving rise thereto has not ceased or been remedied and in the event of any such suspension the Seller shall be entitled as a condition of resuming delivery to require pre-payment of or such security as it may require for the payment of the price of any further delivery.

17. DESIGN AND SPECIFICATION

The Seller reserves the right to alter the design specifications, material and construction of the Goods at any one time without prior notice and to supply Goods as altered in the performance of any Contract.

18. PERFORMANCE

18.1 Any performance facts or figures given by the Seller are based upon its experience and are such as the Seller expects to obtain on test. The Seller accepts no liability if these figures are not obtained unless they are specifically guaranteed in writing. The Buyer must ensure that the capacity and performance of the Goods are sufficient and suitable for its purpose and that its premises are safe and suitable for the installation and operation of the Goods.

18.2 In the event of the performance of the Goods failing to fulfil the terms of any such guarantees reasonable time and opportunity shall be given to the Seller to secure compliance. If the Seller fails to do so after such reasonable time and opportunity the Buyer may cancel the Contract only as regards such of the Goods as fail to fulfil the terms of the Guarantee.

19. DEFECTIVE GOODS AND SERVICES

19.1 The Seller will make good by reimbursement of the whole part of the price, or by repair, or by replacement (at its option) any defects developing under normal use in the Goods due solely to faulty design, materials or workmanship and will remedy any defects in any Services provided that:-

19.1.1 Written notice of any such defect is given to the Seller forthwith upon such defect or the possibility of the existence of such defect becoming apparent, and in any event within twelve months of the Goods being due and ready for delivery or collection (as the case may be) or performance.

19.1.2 All instruction and/or requests of the Seller as to return of all or any of the Goods, inspections, testing, remedial and other action to be taken and other matters are promptly complied with in full.

19.1.3 No attempt is made by any person to remedy any defect or to dismantle or otherwise tamper in any way with any of the Goods except in accordance with specific instructions and/or requests of the seller under 19.1.2.

19.1.4 The Goods are serviced and maintained properly and in accordance with the Seller's recommendations and are not fitted or used in connection with any parts, components, accessories or ancillary equipment other than those manufactured or recommended by the Seller or stated by the Seller to be suited for use in connection with the Goods.

19.1.5 Where any such defect is due to a fault in any item of Goods or parts not manufactured by the Seller the Buyer shall (subject to compliance by the Buyer with all conditions, stipulations and provisos contained in such guarantee or warranty with the terms of the Conditions) be entitled to the full benefit of any guarantee or warranty given to the Seller by the manufacturer or supplier of such item or part and the Seller will notify the defect to such manufacturer or supplier and will attempt to procure for the Buyer the benefit of such guarantee or warranty but the Seller shall be under no further liability to the Buyer in respect of such defect.

The Seller will, in addition, pay for all labour (at the Seller's rate current on the locality concerned) needed for the performance of any instructions and/or requests of the Seller under 19.1.2 above and expressly authorised by the Seller. In default of any claim being made under this clause and in compliance with the conditions set out above within twelve months of the Goods being due and ready for delivery or collection (as the case may be) or performance the Goods and any Services shall be deemed to comply with the terms of the Contract and be in all respects satisfactory.

19.2 The Seller's liability is limited to reimbursement of the price, or repair, or replacement of the Goods, remedying any defects in any Services, and any payment in respect of labour under this clause 19 and is subject to compliance with the conditions of 19.1 above. Apart from such reimbursement, replacement, repair or remedial work the Seller and its employees and agents shall be under no liability for any injury, loss or damage of any kind, whether direct, consequential or special, and howsoever caused resulting from or arising out of or incidental to:-

19.2.1 Any negligence on the part of the Seller or its employees (except insofar as the same causes death or personal injury); or

19.2.2 The Seller's performance of or failure to perform or breach of any of its express or implied obligations under any contract; or

19.2.3 The supply, installation, repair and/or maintenance of any Goods or performance of any Service; or

19.2.4 Any defects in any Goods or Services; or

19.2.5 Any advice given or representations made by the Seller or on its behalf in relation to the quality, performance, use or installation of the Goods or any part thereof.

19.3 The guarantee contained in this clause 19 is given in place of all conditions, warranties, representations, statements, liabilities and other terms whatsoever implied by common law, statute or otherwise, all of which shall accordingly be excluded and the Seller will have no obligation to the Buyer either in tort or under any contract other than the express obligations contained in these conditions or in any other document expressly incorporated into the Contract in writing.

20. EMPLOYEES OF THE SELLER

These Conditions are stipulated by the Seller on its own behalf and on behalf of all its employees and agents and apply for the protection of all its employees and agents as for the Seller. The Buyer undertakes not to sue or make any claim whatever against any employee or agent of the Seller in respect of any alleged negligence or other default of that employee or agent in relation to the carrying out, failure to carry out or breach of any contract.

21. SERVICES

If the Contract is for or includes Services to be performed by the Seller whether of installation, commissioning, repair, rectification or improvement, then unless the Contract otherwise provides the following provisions shall apply thereto:-

21.1 The Seller will be obliged to carry out such Services only during normal working hours. If the Buyer requests that overtime be worked and the Seller agrees thereto, such overtime shall be paid for by the Buyer at the Seller's standard rates current in the trade and locality concerned.

21.2 If the Services are to be performed by the Seller at the premises of the Buyer or at its request at the premises of any other person, firm or company then the Buyer undertakes to provide or to procure the provision of:-

21.2.1 Proper and safe storage and protection of Goods, tools, plant, equipment, materials and property of the Seller or its employees on site.

21.2.2 Free and safe access to the site and to the point at which the Services are to be performed.

21.2.3 The ready availability of all services, facilities, plant, equipment, skilled labour and other items necessary to enable the services to be performed safely and expeditiously and (if applicable) any testing to be carried out forthwith on completion of the Services.

21.2.4 All building operations, cutting away, making good and other site preparations and preparatory work necessary to facilitate the performance of the Services.

21.3 The Buyer must at all times take all necessary steps to ensure the safety of all employees and agents of the Seller concerned with the performance of any of the Services at the premises of the Buyer or of any other person, firm or company, and the Buyer will indemnify the Seller against any claim by any such employee or agent for any injury, damage or loss suffered while engaged in performing the Services at such premises.

21.4 The Buyer will bear all extra expenses which may be incurred by virtue of any failure by the Buyer to comply with its obligations under this clause 21, but this shall be without prejudice to any right of the Seller to recover any further damage therefor.

22. THIRD PARTY CLAIMS

The Buyer shall indemnify the Seller against any liability whatsoever (including any liability based on the negligence of the Seller) which it may incur resulting from any claim made against the Seller by any third party (including without limitation any employee or agent of the Buyer or any subsequent buyer or hirer or other Bailee of the Goods or any of them) arising or arisen directly or indirectly out of the performance or non-performance or breach of the Contract or otherwise out of or connected with the manufacture or supply of the Goods or any of them or the provision of Services.

23. INDUSTRIAL PROPERTY RIGHTS

In the event of any claim being made or any action brought against the Buyer in respect of infringement of patents or of any copyright or confidential information or claim for passing off by reason of the manufacture or sale by the Seller of the Goods the Buyer will notify the Seller immediately and the Seller shall be at liberty to conduct any litigation that may arise therefrom but without the Seller being responsible to the Buyer for any claim whatsoever and howsoever arising except that the Seller will at its option where it is decided or agreed that there has been any infringement of patents or copyrights or confidential information or any passing off give credit to the Buyer for such Goods or make such alterations to the Goods as will mean that no infringement come about. The Buyer agrees to provide such facilities and assistance as required by the Seller to investigate and deal with any such claim for infringement without cost to the Seller. If Goods are manufactured and sold by the Seller to the Buyer in accordance with the specifications provided by the Buyer then the Buyer will indemnify the Seller against all actions, claims, costs and demands of whatsoever description and howsoever arising in relation to any claim or alleged claim in respect of infringement of patents or infringement of copyrights or of confidential information or any action for passing off.

24. COMPLIANCE WITH REGULATIONS

The Seller assumes the Buyer has complied with every applicable statute, bye-law and other requirements of the Government or any local authority. The obtaining by the Buyer of all necessary licences, permits and consents that may be required is a condition precedent to the performance by the Seller of any of its obligations under the Contract.

25. FORCE MAJEURE

The Seller accepts no liability for delay or non-fulfilment of any term of the Contract caused wholly or in part by force majeure which expression shall be deemed to include war, strikes, lock-outs, accident, fire, scarcity of materials or any other cause or causes not within the Seller's direct control.

26. WAIVER

No failure or delay on the part of the Seller to exercise its rights under the Contract shall operate as a waiver thereof nor shall any single nor partial exercise of any such right exclude any other or further exercise thereof. Any waiver of a breach of any provision of the Contract shall not affect the Seller's rights in the event of any further or additional breach or breaches.

27. EFFECT OF TERMINATION

Notwithstanding termination of the Contract, these conditions shall continue in full force and effect for so long as it necessary after such termination to give full effect to the provisions contained in these Conditions.

28. LAW AND JURISDICTION

The Contract shall be construed in accordance with English Law which shall be the proper law of the Contract and the English Courts shall have sole jurisdiction in relation to any dispute arising out of the Contract.

29. CLAUSE HEADINGS

The clause headings in these Conditions are for the convenience only and shall not affect the interpretation hereof in any way whatever.

30. SEVERABILITY

Each and every obligation contained in any clause or sub-clause of these Conditions shall be treated as a separate obligation and shall be severally enforceable as such and the non-enforceability at any time of any clause or sub-clause of these Conditions shall not prejudice the enforceability of the remainder.

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