

1. Definitions

In these terms and conditions 'The Company' means Electro Mechanical Systems Limited. 'The Customer' means the person, firm or company to whom this document is addressed and 'The Goods' means the goods to be purchased by the Customer as referred to in the relevant quotation or acceptance of order or invoice issued by the Company. 'The Contract' means the contract between the Company and the Customer for the sale and purchase of the Goods into which these conditions of sale shall be incorporated. 'The Services' means the design services carried out by the Company which include both the selection and proposal of 'catalogue' products and the design of bespoke equipment to meet application requirements.

2. Application

- In relation to the sale of the Goods or the provision of the Services, no terms or conditions other than these Conditions of Sale shall be binding on the Company unless expressly agreed by it in writing.
- The Customer reserves the right to accept or reject any order and no binding contract shall exist until the Customer's order is accepted by the Company in writing.

3. Variation of Prices

- The Company reserves the right to vary prices quoted according to increases in the cost of labour, materials, manufacture, transport and any other matters outside its control taking effect between quotation and delivery. The price as so varied shall be the price payable for the Goods.
- If the rate of exchange of the pound sterling at the date of delivery of the Goods differs from the rate specified in any quotation or acceptance of order, the product of that difference will be shown on the invoice delivered in respect of the Goods and shall be payable by the Customer as an addition to or (as the case may be) credited to the Customer as a deduction from the price of the Goods.
- The Customer acknowledges that this Contract was not entered into in reliance on any representation (whether written or oral) other than any incorporated in the Contract, the Company's quotation (if any) or any documents annexed to the Contract.

4. VAT and other Indirect Taxes

All prices and other sums stated are exclusive of Value Added Tax, which shall be payable by the Customer in addition to such stated prices or other sums at the rates prevailing at the date of delivery.

5. Terms of Payment

- The Customer will pay the price of the Goods, strictly net, by the end of the month following the month of invoice, on approved account and failure on the part of the Customer to pay within the said period shall entitle the Company at its option to do either or both of the following:
 - to withhold further deliveries until such payment has been made and further payments secured to its satisfaction.
 - to charge interest in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.
- For non-approved accounts payment must be received by the Company before delivery of the Goods is made ("proforma payment").
- The Customer will make all payments in full without deduction or set off.

6. Delivery

- The Company will endeavour so far as is reasonably possible to meet quoted delivery dates but such dates are estimates given in good faith and are not guaranteed. Time shall not be of the essence of the Contract.
- Delays in shipment or delivery by the Company shall not entitle the Customer to cancel the order or any balance thereof and the Company shall not be liable for any damage or loss suffered by the Customer arising out of delay in delivery.
- If the Customer requests a change in the delivery schedule the Customer must notify the Company in writing at least 60 days in advance of the first changed delivery date.
- For the purposes of the Contract, delivery shall be deemed to be made:-
 - subject to sub-paragraph ii) below, when the Goods are made available to the Customer at, or dispatched to the Customer from, the Company's premises.
 - unless otherwise stated in the Contract, when the Goods are delivered to the Customer's premises on the United Kingdom mainland.
- Unless the Customer shall notify the Company in writing of the non-delivery of any Goods within ten days from the date of their dispatch as notified to the Customer, the Customer will be deemed conclusively to have received delivery of them.
- The Company will consider claims for shortage or pilferage only if both the Company and the carriers receive written notification within ten days of delivery. The packing and the contents should be retained for examination.
- Customers must inform the Company within ten days of receipt if any goods are damaged and return them complete and securely packaged in the original package, carriage paid, quoting the Company's invoice number and date and giving in writing the reasons for the return.
- Each delivery or part delivery of an order is to be considered a separate contract and failure on the part of the Company to make any delivery or part delivery shall not entitle the Customer to treat the Contract as repudiated.
- If the Customer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for delivery then without limiting the Company's available remedies the Company may store the Goods at the Customer's expense or sell them at the best price readily obtainable and after deducting such costs of storage and sale, account for the excess over the Price or recover the shortfall as a debt due from the Customer.

7. Passing of risk and property

- Unless otherwise agreed in writing, risk in the Goods shall pass to the Customer on delivery and the Company will not be liable to the Customer for any loss of or damage to the Goods howsoever occurring after their delivery to the Customer. Where Goods are dispatched by the Company after risk has passed to the Customer, the Customer will be responsible for insuring them..
- Notwithstanding delivery of and the passing of risk in any Goods, property in them shall remain with the Company until the Company has received in cash or cleared funds payment of all sums due to the Company on any account whether in respect of the Goods, any other goods or services supplied, the VAT or other taxes thereon, or otherwise howsoever.
- The Company shall be entitled to sue for the price of the Goods even though property in them has not passed to the Customer.
- So long as property in the Goods remains with the Company, the Company shall have the right at any time with or without prior notice to the Customer to retake possession of the Goods and for that purpose to go upon any premises occupied by or under the control of the Customer or any premises of a third party where the Goods are stored. The Customer shall in the meantime keep the Goods separate from the goods of others; properly stored, protected, and insured and identified as belonging to the Company.

8. Testing and Inspection

- Any tests required by the Customer other than those normally carried out by the Company must previously be agreed separately in writing and any costs incurred by the Company in making these other tests will be charged in addition to the price of the Goods.
- Where the Contract provides that the Goods shall pass any prescribed tests the Goods shall be tested by the Company before delivery for compliance with these tests. If the Customer requires such tests to be made in the presence of its representative the Company will upon request give 14 days notice of the date and place at which any of the Goods will be ready for testing to enable the representative to be present. Should the representative fail to give the Company not less than 48 hours' notice in writing appointing a day within 7 days after the date specified in the Company's notice or fail to attend on the date appointed the tests will proceed and shall be deemed to have been made in the Customer's presence.

9. Cancellation or Variation

- The Customer has no right to cancel an order. The Company may agree but on terms which indemnify the Company against all loss.
- In the event of the Customer seeking to vary the Contract after instructions have been received by the Company, the Company reserves the right to amend the delivery time and to charge for any costs incurred as a result of the alteration.

10. Return materials

All returns must be shipped pre-paid and properly packaged and must be authorised for return in writing by the Company. The Company reserves the right to refuse all returned Goods not previously authorised. All Goods returned shall be at the risk of the Customer until received by the Company at the Company's premises. Non-defective (like-new) re-saleable material, still within the product warranty, returned for credit is subject to a re-stocking charge. Goods returned which are the Company's own products, but no longer under warranty, will not be accepted for 'return for credit'.

11. Guarantee

- The Company guarantees the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship for a period of [12] months from the date of delivery provided that:-

- the Customer shall have notified the Company of any such defects and returned the Goods (at its own risk and expense) to the Company within twelve months from the date of delivery;
 - the Company's only obligation under such guarantee shall be, at its option, to repair or replace the defective item or to refund to the Customer the purchase price paid in respect of that item;
 - the Company's obligations shall not extend to defects attributable to rough or incorrect use or abnormal electrical or mechanical operating conditions.
 - the Company shall be under no liability in respect of any defect in the Goods arising from any drawing/design or specification supplied by the Customer.
 - the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval.
- The Company shall be under no liability under the above guarantee or any other warranty, condition or guarantee if the total price for the Goods has not been paid by the due date for payment.
 - In the case of any of the Goods which are supplied by the Company in the same state as that in which they were received by the Company from its own supplier, the Company will, make available to the Customer the benefit of any conditions warranties undertakings and/or guarantees made or given to the Company by the Company's own supplier but the Customer shall discharge all the Company's costs and expenses and pay the Company's reasonable administrative charges for so doing.
 - The foregoing states the entire liability of the Company in respect of any defects in the Goods. Save as aforesaid, no warranty condition undertaking or term express or implied statutory or otherwise as to the condition quality of performance, merchantability, durability or fitness for any purpose of the Customer will (unless expressly assumed by the Company in writing prior to the date of the Contract) be given or assumed by the Company and (save as aforesaid) all such warranties conditions undertakings and terms are hereby excluded.
 - The Company's liability (if any) in respect of any loss sustained by the Customer under or arising from or in connection with the supply of the Goods shall be limited to its obligations to repair or replace the defective Goods or to refund the purchase price paid in respect of such Goods. The Company shall not be liable for any death personal injury loss damage or deterioration of any kind whatsoever to persons or property consequent upon or arising out of the delivery installation operation and/or use of any of the Goods save that nothing shall restrict the Company's liability for death or personal injury arising from its negligence.
 - In this clause 11, reference to the Goods, shall be deemed to include reference to all packaging of the Goods.
 - If the Company fails to deliver the Goods or any instalment for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

12. Insolvency of Customers

This clause 12 applies if:

- the Customer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or
- an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- the Customer ceases, or threatens to cease, to carry on business; or
- the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

If this clause applies then without limiting any other right or remedy available to the Company, the Company may cancel the contract or suspend any further deliveries under the contract without any liability to the Customer, and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. Illustrations of the Goods

Illustrations in any catalogue, brochure or other sales material, other than application specific technical drawings & CAD models, indicate only the general appearance of the relevant Goods and form no part of the specification or description by reference to which the Goods are sold pursuant to the Contract.

14. Equipment offered

The Company reserves the right to make amendments in matters of detail if an improvement in facilities or performance may be achieved thereby or to include items of equivalent performance if the Goods referred to in the quotation should no longer be available.

15. Buyer's Specification

a) If the Goods are to be manufactured or any processes to be applied to the Goods by the Company in accordance with the specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification. b) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any application statutory or EU requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

16. Contract Notice

Any notice purported to be given under the Contract shall be deemed to have been duly served and have been received by the Customer in the course of post if sent by the Company by pre-paid letter addressed to the Customer at the Customer's last known address.

17. Legal Construction

The Contract shall be governed by English Law and the Customer hereby irrevocably submits to the jurisdiction of the English courts.

18. Headings

The headings to these clauses do not form part of these Terms and Conditions of Sale and shall not be taken into account in their interpretation.

19. Product Validation & Design Liability

- Where the Company provides Services, the Customer will provide the Company with all information and technical specifications to enable the Company to agree the design brief with the Customer and also such further information and technical specification as and when requested by the Company and/or in accordance with the agreed project timetable. The Company shall not be liable for any delays caused by the Customer's failure to do so.
- The Company will carry out the Services using all reasonable skill and care and where, upon completion of validation activities in clause 19(d), the Company then provides Goods to the design, it warrants that the Goods will be fit for the purpose agreed with the Customer but not any other purpose. The Company gives no other warranty in respect of the Services.
- The Customer must approve the stated design proposal including any associated product drawings and CAD models before the Company provides a prototype based upon them and any purchase order received will be deemed to be such approval. If the Customer wishes to change the scope of the brief and/or the design it acknowledges that this will necessitate a review of the price for the Goods or Services and the Company shall not be obliged to implement any such changes before the Customer has agreed the revised price.
- The Company will provide an agreed quantity of prototypes for an agreed price for testing by the Customer. It is the Customer's responsibility to fully validate the design by carrying out appropriate tests of the prototypes in the environment and with any other equipment with which it will be used or which it is to form a component verifying that it satisfies all application and safety requirements and that it meets all statutory and regulatory requirements applicable to the application or product.
- The Customer must satisfy itself that any equipment resulting from the Services provided by the Company complies with the Consumer Protection Act 1987. In respect of claims relating to any equipment in which such Goods are to be part or of which they are a component, the Customer shall fully and effectively indemnify the Company against all third party claims from end users of the equipment.
- The Company's liability for any defects in a bespoke design shall be limited to the rectification of the design drawings and modification of the existing prototypes it has supplied, to correct any errors or if this is not feasible the production of a revised prototype for testing. Any changes made necessary due to the Customer's failure to provide correct instructions or information shall be at the Customer's cost.
- All intellectual property rights created in the design drawings shall be the Company's property.
- Notwithstanding clause 11 of the Terms, in no circumstances will the Company's liability under this clause 19 exceed the amount paid by the Customer for the Services.