

TERMSANDCONDITIONSOFSALE

1.DEFINITIONS

In these terms and conditions the following words shall have the following meaning
'The Company' shall mean Industrial Maintenance Engineers (IME Contracts) Ltd.
'The Goods' shall mean the products or services supplied by the Company.
'The Buyer' shall mean the Company or Person that purchases the goods.

2.MAKINGTHECONTRACT

2.1 Any quotation which comprises an invitation to treat is open for a period of 30 days only providing the Company has not previously withdrawn it. Any order issued by the Buyer is subject to acceptance by the Company and a contract will only be formed when the Company has accepted the Buyer's offer to buy.
2.2 All orders are accepted under these terms alone.
2.3 These terms and conditions exclude any other terms and conditions inconsistent with them which a Buyer might seek to impose even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms and conditions inconsistent with them or may be contained in any offer accepted or counter offer made by the Buyer.
2.4 No variation of these terms and conditions is permitted unless expressly accepted by a Director of the Company in writing.

3.CANCELLATION

3.1 No cancellation by the Buyer is permitted except where expressly agreed by a Director of the Company in writing.

4.PRICE

4.1 All prices quoted are those ruling at the date of delivery.
4.2 Unless otherwise stated all prices are ex-works exclusive of VAT.

5.TERMSOFPAYMENT

5.1 All sums become due and payable under these terms and conditions not later than 30 days after the month of invoice.

6.DELIVERY

6.1 Delivery will be deemed to have been effected when the Goods leave the premises of the Company or where carriage is undertaken by the Company when the goods arrive at the Buyers premises but prior to unloading.
6.2 Time of delivery is not of the essence.
6.3 The Company shall not be liable for any loss whatsoever or howsoever arising caused by its non-delivery or by the failure to make Goods ready for collection on the due date.
6.4 The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.

7.RISKOFPASSINGOFPROPERTY

7.1 Risk in the Goods shall pass to the Buyer when the Goods are delivered to, or collected by the Buyer or its agents.
7.2 Notwithstanding risk in the Goods passing in accordance with clause 7.1 hereof title in the Goods shall not pass to Buyer until whichever shall be the first to occur in the following.
7.2.1 Payment being received by the Company for the Goods and no other amounts then being outstanding from the Buyer to the Company in respect of other Goods supplied by the Company and
7.2.2 The Company waiving the rights under clause 7.2 in respect of specific Goods where upon title to the said Goods shall forthwith invest in the Buyer.
7.3.1 Until the title of the Goods passes
7.3.2 The Goods shall be kept separate and distinct from all other property of the Buyer and third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to the Company.
7.3.3 The Buyer's power to sell the Goods shall automatically cease if the Buyer has a petition presented for the winding up or for an administration order under the insolvency Act 1986, or passes a resolution for its voluntary winding up other than the purpose of bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed of all or any part of its assets or becomes bankrupt or insolvent, or enters into any arrangements or creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law.
7.3.4 Upon determination of the Buyer's power of sale and use pursuant to clause 7.3.3 the Buyer in respect of any Goods in its possession or under its control and unsold at the disposal of the Company and the Company shall be entitled to enter upon any premises or the Buyer for the purpose of removing such Goods.
7.4 The Company shall at any time be entitled to appropriate any payment made by the Buyer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary of the Buyer.

8.RIGHTTOWITHHOLDDDELIVERY

Until such times as the title in the Goods has passed to the Buyer the Company has the right to withhold delivery if the Buyer (being a Company) has a petition presented for its winding up or for an administration order under the Insolvency Act 1986 or passes a resolution for voluntary winding up otherwise than for the purpose of bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed of all or part of its assets or (being an individual) becomes bankrupt or insolvent or enters into an arrangement with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law.

9.INSPECTION-SHORTAGES

9.1 The Buyer is under a duty where possible to inspect the Goods on delivery or on collection as the case may be.
9.2 Where the Goods cannot be examined the carrier note or such other note as appropriate shall be marked 'Goods received unexamined'
9.3 Where the Goods are collected from the Company's premises by the Buyer, the Buyer is responsible for examining the Goods before collection and the Company shall not be liable for any damaged discovered after collection.
9.4 The Company shall be under no liability for defects or shortages that would be apparent on careful inspection if the terms of this clause are not complied with, and in any event will be under no liability if a written complaint is not delivered to the Company within 3 days of the delivery detailing the alleged defect or shortage. Where Goods are delivered by the Company's own carriers, notice of complaint must be given to the Company within 24 hours of delivery as a claim has to be notified within 3 days under the terms of their contract.
9.5 In all cases where defects or shortages are complained of, the Company shall be under no liability in respect thereof unless an opportunity to inspect the Goods is supplied to the Company before any use is made thereof or any alteration or modification is made thereto by the Buyer.
9.6 Subject to clause 9.4 and 9.5 the Company shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonably able to do so, but otherwise shall be under no liability whatsoever arising for such shortage or damage

10.WARRANTY

10.1 The Company warrants that it has title to and the unencumbered right to sell the Goods.
10.2 The Company shall assist the Buyer in its choice of Goods which meet its requirement but no representation or warranty is given as to the suitability or fitness of the Goods for any or any particular purpose and the Buyer shall satisfy himself in this respect and shall be totally responsible therefore.
10.3 If the Goods are in such a state as would but for this condition entitle the Buyer to repudiate the contract and/or claim damages from the Company the Company reserves the right to repair or replace the Goods.

11.LIABILITY

11.1 Introduction
11.1.1 Nothing in clause 11 shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from negligence
11.1.2 Each of the sub-clauses in clause 11 is to be treated as separate and independent.

11.2Exclusions

11.2.1 Clause 11.2 only covers defects caused by the faulty design, manufacture, materials or workmanship. It does not cover defects caused by abnormal use, misuse or neglect and the Buyer must ensure that all wiring diagrams and other instructions are fully complied with and any installation works are carried out by qualified personnel.
11.2.2 The Company agrees that if any defect covered by clause 11.2 is discovered within 12 months commencing with the date of despatch, the Company will either repair the Goods at its own expense, or if it chooses to do so, replace them.
11.2.3 The Buyer cannot claim the benefit of this clause unless the Company is informed in writing within 7 days of discovering it and he shall return the Goods to the Company at his own expense without being dismantled.
11.2.4 The risk of accidental loss whilst the Goods are being returned will be borne by the Buyer

11.3Exclusionofconsequentialloss.

The Company shall not be liable for any consequential loss suffered by the Buyer, whether this loss arises from breach of contract or tort or in any other way (including loss arising from the Company's negligence) non-exhaustive illustrations of consequential or direct loss would be: -

- Loss of profits
- Loss of contracts
- Damage to property of the Buyer or anyone else,
- Personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Company's negligence)

11.4Limitation

The Company's total liability for any one claim or for the total of all claims arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed the value of the Goods in respect of which the claim arises.

12.FORCEMAJEURE

12.1 The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside of the Company's control
12.2 Non-exhaustive illustrations of such circumstances would be act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, Government action or regulation (UK or otherwise), delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.
12.3 Should the Company be prevented from delivering in the above circumstances, it shall give the Buyer written notice of this fact as reasonably practical after discovering it.
12.4 If the circumstances preventing delivery are still continuing six months after the Buyer receives the Company's notice, then either party may give written notice to the other cancelling the contract.
12.5 If the contract is cancelled in this way, the Company will refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the Buyer) but the Company will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

13.SALESLITRATURE

Whilst the Company takes every precaution in the preparation of its product price list and literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound by them.

14.NOTICE

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as the party may from time to time notify in writing and shall be deemed to have been served if sent by post 48 hours after posting.

15.ASSIGNMENT

Neither the Company or the Buyer shall assign or transfer or purport to assign or transfer the contract or the benefits thereof to any person without the prior written consent of the other.

16.PROPERLAWANDJURISDICTION

The contract shall be governed by and constructed in accordance with the law of England.

17.WAIVER

The rights and remedies of the Company under the contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by the failure of or delay by the Company in asserting or exercising any such rights or remedies

18.HEADINGS

The headings of these conditions are for convenience only and shall have no effect on the interpretation thereof.

03/12/2004