

**MACHINE SALES LTD**  
**GENERAL CONDITIONS OF SALE**

**1. GENERAL**

- 1.1 These General Conditions, together with any Special Conditions endorsed on or appended to our Confirmation of Order overleaf, shall constitute the entire agreement between us and the Buyer as to the Contract of Sale and shall override any representation, warranty or other statement and any other terms and conditions of whatsoever kind and howsoever formulated, whether written or oral, expressed or implied any general or special terms and conditions of purchase proposed by the Buyer shall not become binding on us unless accepted by us in writing and expressly incorporated into our Special Conditions. Whether or not the buyer shall confirm in writing its acceptance of our General and Special Conditions the Buyer's conduct in performance or purported performance of the Contract shall constitute its unconditional acceptance of our General and Special Conditions.
- 1.2 In the event of any conflict between any General and any Special Conditions, the Special Conditions shall prevail.
- 1.3 No variation to these Conditions shall be binding unless agreed in writing between authorised representatives of the Buyer and us of any of our General and/or Special Conditions shall be of any effect unless expressly agreed in writing by us. No waiver or indulgence by us shall prejudice us in the full exercise of our rights and remedies under the Contract.
- 1.4 The Buyer may not assign any of its rights or obligations under the Contract without our prior consent in writing.
- 1.5 All trade terms used in the Contract shall have the meanings ascribed thereto in the current version of INCOTERMS for the time being in force, which is hereby incorporated into the Contract. In the event of any conflict between these Conditions and the INCOTERMS then these Conditions shall prevail.
- 1.6 Our employees or agents are not authorised to make any representations concerning the Goods unless confirmed by us in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations, which are not so confirmed.
- 1.7 Any advice or recommendation given by us or our employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by us is followed or acted upon entirely at the Buyer's own risk, and accordingly we shall not be liable for any such advice or recommendation which is not so confirmed.
- 1.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on our part.

**2. QUOTATIONS**

- 2.1 Our quotation shall not constitute an offer to sell but merely an invitation to treat. Accordingly, no binding Contract shall be created until the Buyer shall have placed the Order and we shall have issued our written Confirmation of Order.
- 2.2 All our quotations are valid for 30 days and subject to availability of the goods at the date of issue of our Confirmation of Order. Drawings, dimensions and weights quoted must be taken as approximate only and so not form part of the Contract.
- 2.3 Orders must be placed for goods as quoted by us. All extra and accessories ordered but not specified in our quotation will be charged for separately as will the costs of all tests, alterations, additions and other work undertaken at the Buyer's request.
- 2.4 No order which has been accepted by us may be cancelled by the Buyer except with our agreement in Writing and on terms that the Buyer shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation.

**3. CHANGES IN SPECIFICATION AND SPECIAL MACHINES**

- 3.1 We reserve the right to make changes at any time and with or without notice in the materials, dimensions and designs of any of the goods and such changes shall not affect the validity of any Contract relating thereto.
- 3.2 Where the Buyer requires goods to be supplied to its own specification, we enter into the Contract on the basis that the drawings or samples of parts to be manufactured for such goods together with particulars of the intended presentation of parts to the machine and of the tooling to be used, where made available to us prior to the issue of our quotation and the final manufacturing drawings and/or samples and other details will be made available to us within 7 days of the date of our Confirmation of Order. If the Buyer fails to observe these conditions, we shall supply the goods in accordance with our standard specification and shall not be liable (a) for any discrepancy between such specifications and the Buyer's requirements or (b) the machine's performance.
- 3.3 Unless otherwise agreed in writing the supply of tooling is the responsibility of the Buyer. Where we do supply tooling the responsibility for ensuring that the specification for the tooling meets the Buyer's requirements shall lie with the Buyer.
- 3.4 Any changes to the specification and any goods required by the Buyer after the date of our Confirmation of Order shall not be binding on us unless we have given written consent to the same which consent may be subject to agreeing additional charges and/or delay in delivery of the goods.
- 3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by us in accordance with a specification submitted by the Buyer, the Buyer shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us 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 our use of the Buyer's specification.

**4. PRICES**

- 4.1 Unless otherwise stated in the Contract, all prices quoted are on an Ex-works basis. We will at your request arrange for delivery to such address as the Buyer notifies to us and the costs of transport (including insurance) shall be payable by the Buyer.
- 4.2 Our prices are fixed from date of our acceptance of Order. Should any significant fluctuations occur in the cost of labour or material in the course of manufacturing the goods and (where applicable) of alterations in Customs Duties, import charges and any other applicable duties, taxes, levies and charges, which may occur between the date of our order acceptance and the date of delivery we reserve the right to notify the Buyer of a necessary change in price.
- 4.3 We shall be entitled to adjust the price to take account of any delay on the Buyer's part in supplying information required to perform the contract or of any alteration by the Buyer to specifications or other information supplied by the Buyer.

**5. PAYMENT**

- 5.1 Unless otherwise expressly agreed in writing the terms of payment in respect of all sales for delivery within the United Kingdom shall be cash with order.
- 5.2 If the Buyer fails to pay the price for the goods on the due date for the payment thereof, we shall be entitled (without prejudice to any other right or remedy we may have) to:
- (a) cancel or suspend any further delivery to the Buyer under any order; and/or
- (b) sell or otherwise dispose of any goods which are the subject of any order by the Buyer, whether or not appropriated thereto, and apply the proceeds of sale to the overdue payment; and/or
- (c) charge the Buyer interest on the price at the rate of two percent per annum (2% p.a.) above National Westminster Bank Plc's base rate in force from time to time from the date the payment became due until actual payment is made (irrespective of whether the date of payment is before or after any judgement or award in respect of the same).
- 5.3 The Buyer shall make all payments without deduction or set-off and in particular (but without limitation), shall not be entitled to set-off against any monies owed to us under the Contract any monies owed or alleged to be owed by us to the Buyer whether under the Contract or otherwise howsoever.

**6. TIME OF DELIVERY AND/OR INSTALLATION/FORCE MAJEURE**

- 6.1 Any times quoted by us for delivery and/or installation are approximate only and are to be computed from the date on which both the following conditions are satisfied:-
- (a) We have despatched our Confirmation of Order to the Buyer;
- and
- (b) We have in our possession all the information which we require to enable us to perform the Contract.
- 6.2 Whilst we will use all reasonable endeavours to comply with quoted dates for delivery and/or installation, we shall not be liable (other than any liability for personal injury or death arising from our negligence) for not being required to indemnify the Buyer against any loss, damage, injury or expense, either direct or indirect and including but not limited to loss of profit or liability to third parties, suffered or incurred by the Buyer by reason of late delivery and/or installation of the goods from whatsoever cause such late delivery and/or installation may arise. Unless otherwise agreed in writing by us time shall not be of the essence in relation to delivery or installation.
- 6.3 Without prejudice to the generality of the foregoing, we shall be in no way liable for any loss or damage of any kind caused by or resulting from inability to deliver or delay in delivery arising from any circumstances beyond our control, including in particular but without limitation; war (whether declared or not); wartime hostilities or armed conflict (whether internal and international); insurrection; riot; civil commotion; rebellion; flood; storm; tidal wave; peril of sea; earthquake; fire; ice; lightning; or any other similar or dissimilar nature phenomenon or Act of God; explosion; strike; lock-out; labour dispute; embargo; blockade; breakdown or prevention of working of machinery; unavailability, loss, delay, detention or interruption of a carrying vessel or any other similar or dissimilar means of transportation; delay in loading or discharging material; requirements or regulations of any governmental or quasi-governmental or public or statutory authority or state, city, municipal or to al authority or political subversion; prohibition or export or import; non-availability of export or import licence; cancellation or suspension of other non-performance (except if caused by our unjustifiable act or omission) of any contract on which we depend for fulfilment of the Contract of Sale; accident; or any other similar or dissimilar circumstance (including any circumstance affecting, or affecting the availability of, any raw material required for production of the goods) whatsoever and howsoever preventing or hindering the delivery of the goods.
- 6.4 In the event or our inability to affect delivery by reason of any of the above-mentioned circumstances, we shall be at liberty to give notice in writing to the Buyer to postpone delivery or, at our option, to terminate the Contract of Sale in whole or as to any unfulfilled part thereof, in which event our liability shall absolutely cease and determine. Any delivery thus postponed shall if we do required, be accepted by the Buyer at the same rate of delivery and upon the same terms and conditions as are specified in the Contract of Sale, such resumption of delivery to commence within a reasonable time after the serve of notice in writing by us on the Buyer.
- 6.5 If by reason of any of the above-mentioned circumstances, we do not have or are unable to obtain sufficient available supplies of the goods to enable us to fulfil all our contracts, we may allocate our available supplies amongst any or all purchases on such basis as we deem fair and practical, without any liability for failure to comply with the provisions of the Contract of Sale.
- 6.6 Any duly authenticated certificate issued by any recognised Chamber of Commerce in any country in which the above-mentioned circumstances occurred shall be accepted by the Buyer as conclusive proof of the occurrence and duration of such circumstances.

**7. UNLOADING AND INSTALLATION**

- 7.1 the Buyer shall be responsible for :-
- (a) unloading the machine from carrying vehicle on its arrival at the Buyer's premises and moving the machine in readiness for its installation, in each case whether within or without the Buyer's premises;
- (b) providing all necessary foundations and holding down bolts, guarding (other than the guarding supplied with a standard machine), lifting tackle, skate wheels, electrical power, dust extraction equipment and compressed air machinery and when required by our engineers;
- (c) supplying and laying all necessary electrical cables and the connections to the main electrical distribution box and the factory dust extraction system; and
- (d) undertaking all necessary builder work, including (but not limited to) cutting away, making good and any other additional work required in connection with the installation and commissioning of the goods; and for providing all labour to effect the foregoing.

**8. PASSING OF RISK/RETENTION OF TITLE**

- 8.1 The risk in the goods shall pass to the Buyer upon the delivery of the goods to the Buyer in accordance with the Special Conditions and, the relevant INCOTERMS PROVIDED THAT :
- (a) where the goods are sold on an "EX WORKS" basis, the risk in the goods shall pass to the Buyer upon the goods being made available to the Buyer and before the goods are loaded;
- (b) where the goods are sold on a "DELIVERED" basis, the risk in the goods shall pass to the Buyer upon the arrival of the goods at the boundary of the Buyer's premises and before the goods are unloaded, subject to Clause 9.
- 8.2 The property in goods sold by us will not pass to the Buyer until we have received payment of the price in full. Until that time :
- (a) The Buyer will hold the goods as bailee for us and will not pledge, transfer by way of security nor otherwise deal with the goods except by way of sale for full consideration in the ordinary course of the Buyer's business. If the Buyer shall so sell the goods, then until we shall have received the full price payable to us for those goods, the Buyer will receive the proceeds of any such sale by the Buyer in a fiduciary capacity for us and shall promptly account to us thereof and the Buyer shall hold and exercise for our benefit all claims arising against the purchaser under such sale. At our request the Buyer will assign to us all its rights the purchaser to whom the Buyer has sold the goods.
- (b) The Buyer will store the goods in a manner which makes them readily identifiable as our goods and we may at all reasonable times enter upon any premises where they are stored for the purpose of repossession them.
- 8.3 Without prejudice to the generality of Condition 8.2, the Buyer's right to possession of the goods shall cease if the Buyer, not being a company, commits any act of bankruptcy or if the Buyer, being a company does anything which would entitle a receiver to take possession of any assets or which would enable any person to present a petition for the winding-up of the Buyer or for the appointment of an administrator in respect of the Buyer.
- 8.4 If the Buyer fails to make any payment to us on its due date, we shall be entitled (without prejudice to any other rights or remedies which we may have against the Buyer) to claim payment of the unpaid amount and/or require immediate re-delivery of the goods.

**9. PACKING**

- 9.1 Unless otherwise agreed in writing, packaging is not included. Where goods are sold packed, the extent of packaging and/or protection necessary will be at our discretion. Any special packing stipulated by the Buyer will be charged to the Buyer's account. Any goods sent unpacked at the Buyer's request will be at risk of the Buyer, from the moment of being loaded onto the relevant transport at our premises whether or not sold on an "ex-works basis".

**10. STORAGE**

- 10.1 If within 7 days after we despatch our notification to the Buyer that goods sold EX WORKS, F.O.B or F.A.S are ready the Buyer does not make arrangements for the collection or storage of the goods, we shall be entitled to arrange on the Buyer's behalf storage of the goods either at our Works or elsewhere and/or insurance of the goods against such risks as we shall think fit and all charges for storage and/or insurance shall be for the account of the Buyer.

## 11. LOSS OR DAMAGE IN TRANSIT

11.1 We accept no liability for loss or damage in transit except in the case of goods sold "DELIVERED" and in such case any liability which we may have will be limited to replacing or repairing the missing or damaged goods or, at our option, refunding the purchase price. In any event, no claim will be considered unless both the carriers and ourselves are notified in writing within the following time limit :-

- (a) goods by Rail;  
In the case of damaged goods within 3 days after receipt; and in the case of non-delivery within 21 days after the date of despatch as notified by us.
- (b) goods by Road Transport ;  
In the case of damaged goods, immediately on receipt and in the case of non-delivery within 7 days after the date of despatch as notified by us.

## 12. TRADE MARKS

12.1 No trade mark or name carried on goods supplied by us may be erased or replaced without our consent.

## 13. GUARANTEE

13.1 Upon and subject to the terms and conditions hereinafter contained, we hereby guarantee that any part or parts of goods sold by us (other than goods in relation to which clause 13.3 below applies) which are proved to be defective through faulty electrical and/or mechanical materials and/or workmanship will, at our option, be either replaced or repaired free of any charges (including delivery charges) on condition that :-

- (a) notice in writing specifying full particulars of the alleged defect and the serial number of the machine is given to us :-
  - (i) in the case of notice to be given by a Buyer of the goods from us (being either our distributor or a user of the goods), before the expiry of a period of twelve months from delivery of the goods to such Buyer or before the machine has been used for 2000 working hours, whichever first occurs ;
  - (ii) in the case of notice to be given by a user of the goods who has purchased from our distributor, before the expiry of a period of twelve months from delivery of the goods to such user or before the machine has been used for 2000 working hours, whichever first occurs, provided that this is not more than twenty-four months after delivery of the goods to our distributor; and
  - (iii) in the case of mechanical spare parts before the expiry of six months from their delivery to the Buyer; and
  - (iv) in the case of electronic spare parts before the expiry of three months from their delivery to the Buyer
- (b) the parts complained of are returned to our works carried paid ; and
- (c) in the case of a claim by a user of the goods :-
  - (i) our certificate of guarantee, giving particulars of this guarantee, is passed on to such user, without any alteration or addition thereto, upon delivery of the goods to such user; and
  - (ii) our guarantee registration card, duly completed, is received by us for registration within 10 days of delivery of the goods to such user.

13.2 The guarantee contained in paragraph 13.1 of this Condition does not extend to proprietary articles which are not manufactured by us but which are supplied with or incorporated goods sold by us. Such articles carry only the manufacturers' guarantee (if any) and the Buyer or, as the case may be, the user is entitled to the benefit of that guarantee only so far as we have power to transfer it.

13.3 Unless otherwise specified in Writing, used goods or "second hand" are sold as seen and inspected by the Buyer and all conditions warranties and obligations, whether express or implied by law trade custom or practice or otherwise as to merchantability or fitness for purpose or otherwise are excluded.

13.4 the warranties above are given by the Seller subject to the following conditions:

13.4.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

13.4.2 the Seller 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 Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

13.4.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

13.4.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

13.5 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

13.6 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

13.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

13.8 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

13.9 Any goods which are sold to the Buyer and which have been used by another party prior to that sale shall not have the benefit of the above guarantee or any other express or implied term which are hereby excluded to the fullest extent permissible by law with regard to condition, quality, performance or standard of the goods or any part or function thereof.

13.10 In the event that the Buyer owes a debt to us and seeks to enforce any applicable guarantee or any other express or implied term against us, we will not be obliged to comply with any of the said obligations until all outstanding payments have been received in full.

## 14. LIABILITY

14.1 In no event shall we be liable for nor be required to hold the Buyer harmless from or indemnify the Buyer against any loss of use, loss of profit or loss of future contracts or any special indirect or consequential damage whether arising as the result of breach of contract, negligence or other tort, breach of statutory duty or otherwise howsoever.

## 15. NOTICES

15.1 Where a notice is required to be served on us by the Buyer by us such notice must be served in writing. Any notice to us shall be sent to us at our registered office, and any notice to the Buyer shall be sent to the Buyer at the address given by the Buyer's Order. Where in these Conditions a period is specified within which notice is to be given such notice must reach the party to which it is addressed within that period.

## 16. GOVERNING LAW AND JURISDICTION

16.1 These Conditions and the Contract of Sale shall be construed in accordance with and governed by English Law and the Buyer hereby submits to the non-exclusive jurisdiction of the English Courts.

## 17. INDEMNITY

17.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

- 17.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 17.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 17.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 17.1.4 the Buyer shall do nothing which would or might violate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 17.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 17.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

## 18. INSOLVENCY OF BUYER

18.1 This clause applies if:

- 18.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 18.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 18.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 18.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

18.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, 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.

## 19. EXPORT TERMS

19.1 In these Conditions "INCOTERMS" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of INCOTERMS shall have the same meaning in these Conditions, but if there is any conflict between the provisions of INCOTERMS and these Conditions, the latter shall prevail.

19.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions).

19.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

19.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered fob the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

19.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's 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 is made after shipment, or in respect of any damage during transit.

## 20. GENERAL

20.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

20.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

20.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.