

**TERMS AND CONDITIONS OF SALE**  
**ROTEC ENGINEERING LTD**

**1. APPLICATION QUOTATION AND ACCEPTANCE**

- (1) These conditions apply to all contracts for the sale or supply of goods or services by Rotec Engineering Ltd ("the seller") to any purchaser ("the buyer"). The acceptance by the seller of any order from the buyer shall be deemed to incorporate these conditions. No term contained in any order or other document issued by the buyer and no variation to these conditions and no other term or conditions which is not contained herein shall have any effect whether as part of or collateral to the contract save only where the seller has expressly agreed thereto in writing (which writing shall be other than and shall not be sufficiently constituted by the term of any printed form) or except insofar as statute may require.
- (2) Quotations and tenders given or made by the seller are not offers and may be withdrawn or revised at any time prior to the seller's acceptance of the buyers order. No order placed by the buyers shall be binding unless and until the same is accepted by the seller in writing upon its official acknowledgement form ("order acknowledgement document").

**2. SPECIFICATION AND IMPROVEMENTS**

- (1) Samples submitted indications of performance and descriptions specifications illustrations forecasts or other information whether in trade literature or brochures or otherwise ("descriptions") shall be treated as showing type class and general character of goods or services only and not as importing terms or warranties as to substance, productivity performance, colour, quality or dimension. Any failure of goods or services to conform to such samples or descriptions shall not constitute a breach by the seller.
- (2) The seller reserves the right to make specification changes necessary to conform to applicable health and safety and other statutory or regulatory requirements.
- (3) Except where the seller and the buyer have expressly agreed in writing (which writing shall be other than and shall not be sufficiently constituted by any printed form) the buyer is deemed to have satisfied itself as to the suitability of the goods or services for the purpose for which the buyer requires them and it is not a term of contract that the goods or services are fit for that purpose.
- (4) The seller accepts no responsibility for any errors, omissions or other defects in any drawings, designs, or specifications prepared by or on behalf of the buyer and the seller shall be indemnified by the buyer against any and all liabilities costs and expenses incurred by the seller arising therefrom.
- (5) The goods are subjected to continuous technical improvement and the seller therefore reserves the right from time to time to review modify or vary the technical specifications and designs of any goods provided the quality and finish of the goods as delivered shall be at least equivalent in all material respects to that of the goods contracted for.

**3. PRICES**

- (1) Quotations are valid for 14 days from the date of issue.
- (2) Prices for goods and services are agreed on the basis of costs at that time and also in the case of goods subject to such goods not being previously sold. The seller shall be entitled to adjust the price at the date of invoice by such amount as may be necessary to cover any increase sustained by the seller after the date of the quotation or contract in any direct or indirect cost of making, obtaining, handling, or supplying the goods or service or (with regard to imported goods) due to exchange rate fluctuations.
- (3) Unless otherwise specified by the seller prices for goods (other than spare parts or consumables) are inclusive of delivery to the delivery point stated in the contract of sale. Prices quoted for spare parts or consumables are ex works Evesham packaging and delivery to the buyer's works will be charged separately to the buyer's account.
- (4) VAT and other tax or duties payable by the buyer shall be added to the price

**(4) INSTALLMENTS**

- (1) The seller may deliver by instalments.
- (2) Where delivery is made by instalments each instalment shall be treated as a separate contract and payment for each instalment shall accordingly be made by reference to the price of the goods comprised in such instalment.
- (3) Delay, default or non-delivery in respect of any instalment on the part of the seller shall not entitle the buyer to cancel the remainder of the contract.

**(5) DELIVER**

- (1) Delivery will be made by the seller at the delivery point specified in the contract of sale
- (2) The buyer must:
- (a) Immediately notify the seller in writing if any goods have not been received within 7 days of the date of the seller's advice note or the despatch not of the seller's carrier.
- (b) If any goods are not inspected on delivery endorse the carrier waybill "Unexamined" and notify the seller and the carrier within 2 days or receipt of goods if there is any damage, shortage or breakage.
- (3) If the buyer fails to accept delivery of any goods or provision of any services when tendered or if delivery of goods or provision of services is delayed at the buyer's request or if the buyer fails to make any payment for goods or services when its due, without prejudice to the seller's other rights and remedies the buyer shall be liable to the seller for all additional handling, storage, transport or other costs and charges thereby incurred by the seller in relation to any such goods or services or to any other goods and services delivery or supply of which the seller is then entitled to suspend or withhold.

**(6) TIME**

Whilst the seller will endeavour to meet the buyers delivery requirements dates quoted by the seller or included in the contract are estimates only and not of contractual effect.

**(7) PAYMENT**

- (1) Unless otherwise specified by the seller in the contract of sale document and subject to condition 7(5) below:
- (a) Payment in respect of goods or services shall be made within 30 days after provision of each of the goods or services is (in the opinion of the seller) complete
- (2) If the buyer shall fail to pay any amount when its due or shall fail or refuse to accept delivery of any goods when they are tendered for delivery or to permit any services to be performed or if the buyer shall become bankrupt or shall pass resolution for its winding up or have a receiver appointed in respect of any of its assets or shall make any application to the court for the appointment of an administrator or if circumstances arise which entitle the court to make a winding up order in respect of the buyer or if the buyer shall take or suffer any other action or process in consequence of debt or insolvency, then the purchase price of all services and all goods invoiced delivered or tendered for delivery the seller shall become forthwith due and payable by the buyer and the seller shall further be entitled without liability and without prejudice to its other rights to treat as cancelled this contract and/or any other contract made between the seller and the buyer and/or suspend the delivery of goods or provision of services (including the provision of remedial maintenance or warranty services under any such contract).

- (3) Interest shall accrue on all sums due and outstanding at the rate of 2% per month or part of month from the due date until payment in full whether before or after judgement
- (4) All amounts due to the seller shall be paid in full without deduction or set off
- (5) Any extension of credit allowed to the buyer may be changed or withdrawn by the seller at any time.

**(8) TITLE AND RISK**

- (1) Full title of goods or services supplied by the seller shall remain vested in the seller until the purchase price and other monies owing by the buyer to the seller in relation to those goods or otherwise are paid in full. Until such payment the buyer shall have possession of the goods as fiduciary agent for the seller and shall store the goods in such a way as to enable them to be identified as the property of the seller. The seller reserves the right to repossess any goods in respect of which payment is overdue and thereafter to re-sell the same and for this purpose the buyer hereby grants to the seller an irrevocable licence to enter upon any of the buyer's premises.
- (2) Where the title in any goods has not passed the seller may nevertheless maintain an action against the buyer for the purchase price and all other monies owing by the buyer in relation to the goods notwithstanding section 49 Sale of Goods Act 1979.
- (3) The risk in the goods shall pass to the buyer upon delivery of the goods or upon the goods being tendered for delivery at the delivery point. Until payment is made the buyer shall keep the goods insured for their full replacement value.

**(9) TEST AND INSTALLATION ACCEPTANCE CERTIFICATE**

- (1) Unless otherwise specified in the seller's quotation or contract of sale document goods will be subject to the seller's standard geometric and practical tests prior to delivery. If the buyer requires any additional tests to be carried out, full details must accompany the buyer's order. If the seller agrees to carry out such tests the Seller shall be entitled to make additional charges in respect of the costs thereof. Where tests are to be carried out prior to delivery the buyer shall ensure that all necessary components or materials required in connection with such tests are made available by such date as the seller may require. Components or materials supplied by the buyer to enable the tests to be carried out must be in a condition suited to the requirements of the tests concerned.

**(10) CONFIDENTIAL INFORMATION**

All technical data, drawings, reports, documents and information whatsoever which the seller submits to the buyer in connections with the contract are confidential and such information and the copyright therein shall remain the seller's property, and must neither be copied nor shown to any third party without the seller's prior written consent. Such information shall not be provided to a third party unless that third party is bound by a confidentiality obligation in similar terms.

**(11) PATENTS**

The seller warrants that so far as it is aware goods manufactured by third parties and supplied by the seller do not infringe any intellectual property rights but subject thereto no warranty is given by the seller that goods manufactured by third parties do not infringe any such rights. In the event of any claim being made or brought against the buyer in respect of any infringement or alleged infringement or such rights by the use or sale of such goods the buyer shall notify the seller immediately. Thereupon the seller shall so far as it is able to extend to the buyer the benefit of any indemnity given by the manufacture of the goods in respect of such claims. Where such indemnity is provided the seller shall be entitled to conduct through its own lawyers and experts all negotiations relating to the claim or any litigation that may arise therefrom including the conclusion of a settlement thereof.

**(12) FORCE MAJEURE**

If the seller is prevented, hindered or delayed from the making delivery of any goods or from performing any services by reason of any cause or circumstance or whatsoever nature beyond the seller's reasonable control, the seller shall not be regarded as being in breach of contract and shall not be liable to the buyer for any loss or damage thereby suffered.

**(13) BUYERS DELAY – CANCELLATION**

If the seller is prevented, hindered or delayed from making delivery of any goods or performing any services by reason of delay or default on the part of the buyer or if the buyer refuses to take delivery of goods or to permit performance of services or cancels, determines or rescinds the contract or purpose so to do then the seller shall not be liable for any loss or damage whatsoever arising out of any such circumstances and the seller may, on giving notice to the buyer regard the contract as completed in it's then partial state of completion in which case the seller will be entitled to:

- (1) stop all work as soon as reasonably possible;
- (2) retain any deposit paid by the buyer to the seller or set the same off against sums due to the seller;
- (3) store all finished goods for 14 days and at the end of such period sell all finished and unfinished goods in mitigation of the seller's losses;
- (4) invoice the buyer for all finished and unfinished goods in an amount equal to the full cost of all finished and unfinished goods including all overheads plus 20% less the amount received pursuant to any sale of finished and unfinished goods undertaken by the seller pursuant to the terms of this condition; and
- (5) save in cases of cancellation, determination of rescission by the buyer, whether actual or purported, offer to reinstate the contract at the earliest practical date subject to the buyer and the seller agreeing prices and terms.

**(14) LIMITATION OF LIABILITY**

- (1) The seller maintains Public and Product Liability insurance in an amount of not less than £1,000,000 in respect of any one occurrence. Copies of the policies are available on request.
- (2) Nothing in these conditions shall apply to exclude or restrict any liability which under sub sections 2(1), (6)1, (6)2 and 7(2) of the Unfair Contract Terms Act 1977 cannot in the relevant circumstances be excluded or restricted.
- (3) Where loss or damage is incurred by the buyer whether from breach of contract, negligence or otherwise howsoever neither the seller nor its employees or its appointed agents (on whose behalf the seller contracts for this purpose) shall be under any liability:
  - (i) for any loss or profit or consequential or in direct loss or damage however arising
- (4) The buyer shall indemnify the seller and its employees and agents (on whose behalf the seller contracts for this purpose) against all third party claims relating in any way to goods or services supplied by the seller or arising from breach of contract, negligence or otherwise to the extent that there are no proceeds of the seller's public and product liability insurances available (after meeting any liability to the buyer covered thereby) for such claims.
- (5) The buyer shall procure that goods supplied by the seller shall only be used in conjunction with comprehensive monitoring, measuring, checking and inspection procedures under which all items produced using such goods are fully tested for compliance with specification before being processed, used or delivered and that upon any deviation being shown by any such tests all proper remedial action is forthwith taken. Any liability, which could reasonably have been avoided but for a breach of this paragraph is hereby excluded.
- (6) The seller's pricing structure is based upon limitations of liabilities and indemnities contained in these conditions and the buyer is advised to obtain insurance cover for any claims for which the seller is (pursuant to this condition or otherwise) not liable and for any indemnity liability, which may arise hereunder.
- (7) The foregoing provisions set out the full extent of the seller's liabilities and warranties and subject thereto all conditions warranties and representations expressed or implied by statute common law or otherwise in relation to the goods and services are hereby excluded.

**(15) GENERAL**

- (1) Any provision of these conditions held by a court to be invalid shall be severable.
- (2) These conditions shall remain in full force and effect notwithstanding that obligations under the contract may have been performed or discharged.
- (3) The waiver of any breach of these conditions or the non enforcement of any of these conditions shall not prevent the subsequent enforcement of that condition or the exercise of any right arising from that breach and shall not be deemed a waiver of any subsequent breach.
- (4) Notices shall be deemed to have been duly given if sent by pre paid first class post, facsimile transmission (confirmed by pre paid first class post) or personal delivery. Notices given by post shall be deemed to have been given 12 business days after despatch and notices given by facsimile transmission or personal delivery on the date of transmission of delivery.
- (5) All contracts are deemed to be made in England and shall be governed by and construed in all respects in accordance with English law and the buyer hereby submits to the non exclusive jurisdiction of the English courts.