

CONDITIONS OF SALE

1. In these Conditions 'BUYER' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller; 'Goods' means the goods or services which the Seller is to supply in accordance with these Conditions; 'SELLER' means **Electra Engineering Services (Midlands) Limited** whose registered office is at **Charlton Drive, Cradley Heath, West Midlands**; 'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller; 'CONTRACT' means the contract for the purchase and sale of the Goods.

Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.3 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 the Seller shall be subject to correction without any liability on the part of the Seller.

3. 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Sellers quotation (if accepted by the Buyer) or the Buyers order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damage, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller 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 Sellers use of the Buyers specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or EC requirements or, where the Goods are to be supplied to the Sellers specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 the Seller as a result of cancellation.

4. **Price of the goods**

4.1 The price of the Goods shall be the Sellers quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Sellers published price list current at the date of acceptance of the order. All prices quoted are valid for 7 days unless otherwise stated at the time of quotation, or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods otherwise than at the Sellers premises, the Buyer shall be liable to pay the Sellers charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.5 Carriage may be charged on orders worth less than £200.00.

5. **Terms of payment**

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods within 30 days from the end of the month of invoicing (time being of the essence), and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer.

5.3 If the Buyer fails to make any payment on the due date 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 to the Buyer; appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 3 per cent per annum above NatWest Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 This contract is divisible. Each invoice for work performed shall be payable in full within 30 days of invoice date without reference to and notwithstanding any defect or default in the work performed or to be performed subsequently.

6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Sellers premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 The Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyers reasonable control or by reason of the Sellers fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.4.1 On all 'special' items we reserve the option to supply a quantity that is within 10% of the amount ordered.

6.5 All discrepancies must be reported in writing within 7 days of delivery.

6.6 Any material considered by the buyer to be defective must be reported to the seller within 28 days of delivery. Claims for credit may not be considered outside this period.

7. 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer: in the case of Goods to be delivered at the Sellers premises, at the time when the Seller notifies the Buyer that the Goods are available for collection: or in the case of Goods to be delivered otherwise than at the Sellers premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received the payment in full of the price of the Goods.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Sellers fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Sellers property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Extent of Liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from delivery.

8.2 The Seller shall not be liable under the above warranty in respect of: any defect in the Goods arising from any drawing, design or specification supplied by the Buyer: any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Sellers instructions, misuse or alteration or repair of the goods without the Sellers approval.

8.3 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 of common law are excluded to the fullest extent permitted by law.

8.4 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.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.6 In respect of any valid claim 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 Sellers 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.

8.7 Except in respect of death or personal injury caused by the Sellers negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), 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.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Sellers obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Sellers reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Sellers reasonable control: Act of God, explosion, flood, tempest, fire or accident: war or threat of war, statutory restrictions, regulations or prohibitions; industrial action or trade disputes; difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

8.9 If 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 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business, 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.

8.10 When goods/products are made to the Buyer's pattern or specification, the Sellers shall have the right to supply either 10 per cent more or less than the exact quantity ordered. Any such excess or shortage will be charged for, or deducted, based upon the price payable.

9. **Cancellation**

Orders for goods which have to be made or ordered especially for the Buyer shall be charged in full unless written notification of cancellation is received before raw material has been ordered and/or manufacture of them or any components for them has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time before the goods are allocated to the Contract but, if a cancellation notice is received after the goods have been allocated to the Contract then a packing and handling charge will be payable by the Buyer. In the event that orders for stock items have been delivered a transport charge will be made in addition to a handling charge.

10. **General**

10.1 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.

10.2 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.

10.3 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.

10.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.