



## TOMAH ENGINEERS LIMITED STANDARD CONDITIONS OF SALE

### 1. SELLER'S CONDITIONS TO PREVAIL

All contracts of sale incorporate these conditions so far as such conditions are not varied by any special terms or conditions agreed in writing between the parties, and any terms and conditions in the Buyer's order which are inconsistent with these conditions, or which purport to provide that the delivery of any goods or the commencement of any work by the Seller under a contract with the Buyer shall constitute acceptance of the Buyer's conditions, shall have no effect.

### 2. DELIVERY

- (a) Dates or periods of delivery named by the Seller are given and intended as estimates only and, whilst every endeavour will be made to adhere to such estimates, the Seller shall not be liable to make good any damage or loss arising directly or indirectly out of delay in delivery whether or not such delay is caused by the fault of the Seller.
- (b) If the Buyer is unable or unwilling to accept delivery of the goods at the time when the goods are due and ready for delivery the Seller may, at its discretion, store the goods on its premises and the Buyer shall be liable to the Seller to pay its reasonable charges, including insurance, for so doing, but without prejudice to any other claim which the Seller may have in respect of the Buyer's failure to accept delivery.

### 3. FORCE MAJEURE

- (a) Performance of the contract is subject to cancellation or variation by the Seller if the manufacture or delivery of any of the goods is prevented or hindered directly or indirectly by fire, the elements, war, civil commotion, strikes or lockouts, industrial dispute, shortage of raw materials or fuel notwithstanding that the Seller has taken all reasonable steps to procure the same, shortage of labour, breakdown or partial failure of plant or machinery; late receipt of the Buyer's specifications or other necessary information, acts, orders or regulations of Government, delay on the part of any independent sub-contractor, or supplier, or any other cause whatsoever beyond reasonable control of the Seller. In any such event, no liability shall attach to the Seller by reason of cancellation or variation of any contract.
- (b) Deliveries may be wholly or partially suspended and the time for such suspension added to the original contract in the event of stoppage, delay or interruption of work during the delivery period as a result of any of the causes set out in the preceding subparagraph (a) or any cause whatsoever beyond the control of the Seller.

### 4. CONSEQUENTIAL LOSS

The Seller shall not be liable for loss of profit, damage to plant or for any expenditure incurred on goods supplied or any consequential or special loss or damage sustained by the Buyer by reason of any breach of the contract by the Seller.

### 5. QUALITY & CONDITION

The Seller shall not be liable for

- (a) Any defect in the quality or state of the goods (except for discrepancy in weight) which would be apparent on a reasonable examination unless the Buyer shall have given to the Seller within 14 days after receipt of the goods a written notice specifying the matters complained of and shall thereafter afford the Seller a reasonable opportunity of inspecting the goods before they have been used or processed.
- (b) Any defect in the quality state of the goods which would not be apparent on a reasonable examination, unless such defects shall have been discovered within 12 months after receipt of the goods and the Buyer shall have given to the Seller within 7 days of such discovery a written notice specifying the matters complained of and shall thereafter afford to the Seller a reasonable opportunity of inspecting the goods in their alleged defective state, or
- (c) Any discrepancies in weight unless the Buyer shall have given to the Seller a written notice thereof within 14 days after the receipt of the goods and also thereafter a reasonable opportunity of witnessing a re-weight thereof before they have been used, processed or sold.

Any dispute as to whether any goods are defective in quality or state or otherwise not in accordance with the contract shall be referred in accordance with the provisions of the Arbitration Act 1950, or any statutory modification or re-enactment thereof for the time being in force, to a single arbitrator to be agreed between the Seller and the Buyer or in default of agreement to be nominated by the President for the time being of the Law Society of England and Wales.

### 6. DEFECTIVE GOODS

Provided that the Buyer has complied with the requirements as to notice in condition 5, if the goods or any part thereof are defective in quality or state or (save for discrepancy in weight) otherwise not in accordance with the Contract then, if the Seller and the Buyer do not agree that the Buyer should accept the goods at an agreed value or that the goods should be made good at the Seller's expense, the Seller undertakes to accept a return of the relevant goods and at the Buyer's option either to

- (a) repay or allow the Buyer the invoice price thereof (including freight) and any reasonable transport costs incurred by the Buyer in returning the relevant goods from the place of delivery of such goods to the Seller or
- (b) replace them as soon as may be reasonably practicable.

This undertaking is given and shall be acceptable by the Buyer in lieu of any other legal remedy.

### 7. IMPLIED WARRANTIES

Any condition warranty or statement as to the quality of the goods or their fitness for any purpose, whether express or implied by statute, custom of the trade or otherwise, is hereby excluded unless expressed in writing by the Seller.

### 8. QUANTITY VARIATION

The seller shall be deemed to have fulfilled the contract by delivery of a quantity within 10% either way of the quantity ordered and the Buyer shall pay at the contract rate for the quantity actually delivered.



## 9. RISK AND DAMAGED IN TRANSIT

- (a) From the time of despatch of the goods by the Seller until their arrival at the address of the Buyer the risk of any loss or damage to or deterioration of the goods from whatever cause or any costs charges or expenses incurred by the Seller as a result of vehicle or wagon detention or demurrage of ships shall be borne by the Buyer.
- (b) If the Seller undertakes to transport the goods to the Buyer it shall not be liable for:
  - (i) any loss or damage deviation delay or detention of the goods in the course of transit, or misdelivery or short delivery, unless the Buyer gives to the Seller and to the carrier within 3 days of receipt of the goods a written notice of the Buyer's complaint.
  - (ii) non-delivery or non-arrival of the whole of any consignment of the goods or any separate package, unless the Buyer shall give to the Seller and to the carrier a written notice thereof within 14 days of the date of notification of the despatch of the goods.

## 10. PART DELIVERIES

Each part of the delivery or instalment of the goods shall be deemed to be sold under a separate contract.

## 11. PASSING OF PROPERTY AND SERVICES

No property in the goods shall vest in the Buyer unless or until the Buyer makes full payment to the Seller for the goods. The Seller shall be entitled to enter any premises to inspect the goods and, if the Buyer shall fail to make due payment, to retake and reclaim the goods.

Upon delivery the goods shall be at the risk of the Buyer.

## 12. TERMINATION OF THE SELLER

The Seller shall be entitled, without prejudice to its other rights and remedies, either to terminate wholly or in part any or every contract between itself and the Buyer or to suspend any or every such contract in any of the following events:

- (a) if any debt is due and payable by the Buyer to the Seller but is unpaid
- (b) if the Buyer has failed to take delivery of the goods under contract between it and the Seller otherwise than in accordance with the Buyer's contractual rights.
- (c) if the Buyer becomes insolvent or being a body corporate passes a resolution for voluntary winding up except where solely for the purpose of reconstruction, or suffers an Order of the Court for its winding up to be made, or has a Receiver appointed (or carry out or undergo any analogous act or proceeding under foreign law) or being an individual or partnership suspends payment of his or their debts in whole or in part or proposes or enters into any composition or arrangement with his or their creditors or have had a Receiving Order in Bankruptcy made against him or them.

The Seller shall be entitled to exercise its aforesaid right of termination or suspension at any time during which the event or default giving rise thereto has not ceased or been remedied and, in the event of any suspension, the Seller shall be entitled as a condition of resuming delivery under any contract between it and the Buyer to require prepayment of or any such security as it may require for the payment of the price of any further delivery.

## 13. WITHHOLDING PAYMENT AND SET-OFF

The Buyer shall not be entitled to withhold payment of any amount payable under a contract to the Seller because of any disputed claim of the Buyer in respect of faulty goods or any other alleged breach of contract, nor shall the Buyer be entitled to set off against any amount payable under the contract to the Seller any monies which are not then presently payable to the Seller or for which the Seller disputes liability.

## 14. PRICE & PAYMENT

- (a) Unless the contract expressly provides otherwise, the price payable by the Buyer for each delivery shall be at the Seller's ruling price as published in its price list current at the date of despatch to which shall be added V.A.T. and any other tax or duty relating to the sale or delivery of the goods chargeable to the Seller and (where appropriate) the appropriate freight and other charges as specified in the relevant carriage tariff current at the date of despatch. Unless otherwise expressly stated in the contract, the price of such delivery (including such freight and other charges) shall be paid in full and received by the Seller by the last day of the month following the month in which the goods were despatched. The Seller shall be entitled to charge interest on any sums not so paid. Such interest shall be calculated on a day-to-day basis on the amount outstanding at the rate of 2% above the base rate for lending of Royal Bank of Scotland PLC.
- (b) Payment shall be made in the currency specified in the contract. All prices are quoted net and the amount to be paid shall not be subject to any discount or deduction except as agreed in writing by the Seller.

## 15. PATENTS, TRADEMARKS, ETC.

The Buyer shall indemnify the Seller against all damages penalties costs expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specification or instructions which involves infringement of any letters patent, trade mark or registered design, or which constitutes the tort of passing off.

## 16. PATTERNS, DRAWINGS, DIES, TEMPLATES

The Seller accepts no responsibility for the accuracy of any goods patterns, drawings, dies, moulds, templates, specifications and other such items supplied by the Buyer.

## 17. WAIVER OF RIGHTS

The rights of the Seller and the Buyer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

## 18. PROPER LAW