

T.E.L. ENGINEERING LTD

T/A TROLEX ENGINEERING

TERMS AND CONDITIONS OF SALE (2007)

- 1.1 Subject to clause 5.4 the Seller shall sell and the Buyer shall purchase the goods in accordance with any written order of the Buyer, which is accepted by the Seller in writing subject to these Terms and Conditions which shall apply to the exclusion of any other Terms and Conditions subject to which any such order is made or purported to be made by the Buyer. Such accepted written order subject to these Terms and Conditions and together with any other documents referred to therein (together the "Contractual Documents") constitutes the entire agreement between the Seller and the Buyer.
- 1.2 Any written quotation of the Seller constitutes an invitation to treat and not an offer capable of acceptance by the Buyer.
- 1.3 No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 1.4 Any advice or recommendation given by the Seller or its 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 the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 1.5 The Seller's employees or agents are not authorised to make any representation concerning the goods unless confirmed by the Seller in writing. In entering into the Contractual Documents the Buyer acknowledges that it does not do so in reliance upon, any such, representation concerning the goods not so confirmed.
- 1.6 The only remedies available to the Buyer in respect of the Contractual Documents are damages for breach of contract and, for the avoidance of doubt, the Buyer hereby waives any right to rescind or terminate any Contractual Document either for breach of contract or for negligent or innocent misrepresentation or otherwise.
- 1.7 This clause shall not exclude any liability which the Buyer would otherwise have to rescind this agreement in respect of any statements made fraudulently by the Seller prior to the execution of the Contractual Document or any rights which the Buyer may have in respect of fraudulent concealment by the Seller.
- 2.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of an 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.
- 2.2 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, damages, 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 Seller's use of the Buyer's specification.



- 3 The Seller reserves the right to make any changes in the specification of the goods which are required to conform with any applicable safety or other statutory or E.U. requirements or where the goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.
- 4.1 Except as otherwise stated in any Contractual Documents or otherwise agreed in writing between the Buyer and Seller all prices are given by the Seller on an ex-works basis and [net/gross] of VAT. Where the Seller agrees to deliver the goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance save that in the case of goods supplied for export from the United Kingdom the Seller's price includes charges for transport packaging and insurance.
- 4.2 The Seller reserves the right, by giving written 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 foreign exchange fluctuation, currency regulation, alteration of duties, significant 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 Where the Seller agrees to deliver the goods to a site nominated by the Buyer the Buyer shall provide a reasonably firm roadway and proper means of access to that site.
- 4.4 Packing cases used are not returnable and no allowance will be made in respect of returned cases.
- 4.5 Delivery of the goods shall be made by the Buyer collecting the goods at the Seller's 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.
- 4.6 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.
- 4.7 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 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 cost (including insurance) of storage.
- 4.8 If the Seller fails to deliver the goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the goods.
- 4.9 Any dates quoted for delivery of the goods are approximate only and 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. The goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 5.1 Save as set out in 5.2 the Seller shall be entitled to invoice the Buyer for the price of the goods on or at any time after the Seller has notified the Buyer that the goods are ready for collection or (as the



case may be) on or at any time after delivery of the goods or if the Buyer wrongly fails to take delivery of the goods on or after the Seller has tendered delivery of the goods. The Buyer shall pay the invoice price of the goods within 30 days of the date of the Seller's invoice notwithstanding that delivery may not have taken place and the property and the goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the contract.

- 5.2 Where goods are supplied for export from the United Kingdom the Seller shall invoice the Buyer for the price of the goods when they are ready for despatch and the Buyer shall pay such invoice before despatch. The Seller shall be entitled for refrain from despatching the goods until payment has been made by 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:
 - 5.3.1 cancel the contract or suspend any further deliveries to the Buyer and/or
 - 5.3.2 charge the Buyer interest (both before and after any Judgement) on the amount unpaid at the rate of 4% over the Royal Bank of Scotland base rate from time to time until payment in full is made such interest to be calculated on a daily basis.
- 5.4 In the case of a first purchase by a Buyer from the Seller the Seller's acknowledgement of the Buyer's order is subject to credit status approval and to confirmation in writing by the Seller to the Buyer that such approval has been given.
- 6 Risk of damage to or loss of the goods shall pass to the Buyer:
 - 6.1 in the case of goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the goods are available for collection; or
 - 6.2 in the case of goods to be delivered otherwise than at the Seller's 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.
- 7.1 Notwithstanding delivery and the passing of risk in the goods or any provision of these conditions the property in the goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.2 Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the Seller's 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 Seller's property, but the Buyer may resell or use the goods in the ordinary course of its business.
- 7.3 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 may at any time require the Buyer to deliver up the goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the goods are stored and repossess the goods.
- 7.4 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 limiting any other right or remedy of the Seller) forthwith become due and payable.



- 8.1 Subject to the following provisions the Seller undertakes that goods manufactured by them shall be of satisfactory quality and that the Seller will make good or replace any defects or defective parts therein which may appear within 12 months of first use or 18 months of delivery whichever comes first and are due solely to the use of defective materials or bad workmanship (any replaced parts to be the property of the Seller). The Seller will make good any defect ascertained under the Seller's Standard Mechanical and Electrical Tests and Inspections or any other test which the Seller is required to perform under the Contractual Documents.
- 8.2 The above warranty is given by the Seller subject to the following conditions.
- 8.2.1 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.
- 8.2.2 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 following the Seller's instructions (whether oral or in writing) misuse or alteration or repair of the goods without the Seller's approval.
- 8.2.3 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.
- 8.2.4 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.
- 9.1 Subject as expressly provided in these conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.2 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 loss of profits or for any indirect, special or consequential loss or damage costs expenses or other claims for compensation whatsoever (and 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 (including any delay in supplying or any failure to supply the goods in accordance with the Contractual Documents or at all) or their use or resale by the Buyer except as expressly provided in these conditions.
- 9.3 Except in respect of liability for death, or personal injury caused by the Seller's negligence the Seller shall not be liable for any direct or indirect damage howsoever caused which arises in connection with any defect which was not ascertained under the Seller's Standard Mechanical and Electrical Tests and Inspections or under any other test which the Seller is required to perform under the terms of the contract.
- 9.4 Any claim by the Buyer which is based on any defect in the quality and 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 seven days from the date of delivery or tender 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 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.

- 9.5 Without prejudice to the foregoing limitation of the Seller's liability for damages in the event of any breach of or failure to perform this contract will not unless otherwise agreed in the Contractual Documents exceed the purchase price or proportionate part thereof in respect of the goods concerned. Enhanced liability can be offered as a cost option (available on request).
- 10 Where any valid claim in respect of any goods which is based on any defect in the quality and 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 the Buyer the price of goods or a proportionate part thereof, but the Seller shall have no further liability to the Buyer.
- 11 Foundations for machinery clearing and all structural alterations to buildings, cutting and drilling of floors and walls, and all other builders or joiners work in preparing or making good are not included in the contract price. If no further quotation is given in respect of such work then the Seller shall invoice the Buyer therefore at the current builder's rates.
- 12 All plans submitted by us for foundations or structural alterations are based upon our experience but must be revised and adapted to local conditions and the building materials available by the Buyer who is solely responsible for such foundations and structural alterations.
- 13 Unless otherwise specifically stated all skilled and unskilled labour for erection and engineer's time commissioning the goods or attending thereto after starting (in the case of machinery) of in conducting trials thereof (in the case of machinery) will be charged extra. The purchaser shall provide suitable lifting tackle for erection and all fuel stores materials or instruments required for commissioning and/or trials. Should any of these be provided by the Seller the same will be charged extra.
- 14 Where the Seller has quoted for fixing or erection this is based on the work being executed during ordinary working hours and overtime working will be charged extra.
- 15 When machines are to deal with liquids, matter in suspension, acids, fabrics etc. full particulars must be given by the Buyer to the Seller prior to the Buyer placing an order and also instructions must be given regarding any special materials to be used and a description of peculiarities observed during the use of existing machinery under similar conditions.
- 16 The goods comply with supplier's obligations as laid down in the Factories Acts but do not include any fences or guards that may be required to enable the Buyer to comply with the said Act.
- 17 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 Seller's obligation in relation to the goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following should be regarded as causes beyond the Seller's reasonable control:
- 17.1 Act of God, explosion, flood, tempest, fire or accident
- 17.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition, terrorism or threat of terrorism
- 17.3 Acts restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental parliamentary or Local Authority

- 17.4 Import or export Regulations or embargoes.
- 17.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or a third party)
- 17.6 Difficulties in obtaining raw materials, labour, fuel parts or machinery.
- 17.7 Power failure or breakdown in machinery.
- 18 The Buyer shall indemnify the Seller against any breach of patent copyright design trademark or other industrial or intellectual property rights of any other person which infringement arises from the Seller's compliance with any drawing design or specification supplied by the Buyer such indemnity to extent to all loss damages costs and expenses awarded against or incurred by the Seller in connection with any such claim or paid or agreed to be paid by the Seller in settlement of such claim.
- 19.1 This clause applies if: -
- 19.1.1 The Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986);
- 19.1.2 An encumbrancer takes possession or a Receiver is appointed of any of the property or assets of the Buyer or
- 19.1.3 The Buyer ceases or threatens to cease to carry on business
- 19.1.4 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
- 19.2 If this clause applies then without prejudice to any other right of 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.
- 20.1 Where the goods are supplied for export from the United Kingdom the provisions of the clause shall apply notwithstanding any other provision of these conditions.
- 20.2 In these terms and 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.
- 20.3 Unless otherwise agreed in Writing between the Buyer and the Seller where the Seller is to deliver the goods abroad 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.
- 20.4 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 thereon.

- 20.5 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. Shipping specifications and weights, outline drawings and dimensions given with quotations are approximate only.
- 21 If a 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 a 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:
- 21.1 the Seller is given full control of any proceedings or negotiations in connection with the claim;
- 21.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 21.3 except pursuant to a final award, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 21.4 the Buyer shall do nothing which would or might vitiate 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);
- 21.5 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
- 21.6 without limiting any duty of the Buyer at common law, the Seller may 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.
- 22 The Contractual Documents do not create any right enforceable by any person not a party to them.
- 23 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 of any other provision.
- 24 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 the conditions and the remainder of the provision in question shall not be affected thereby.
- 25 Any dispute arising under or in connection with these conditions or the sale of the goods shall be referred to Arbitration by a single Arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Institution of Electrical Engineers.
- 26 The contract shall be governed by the laws of England.