

COGNE UK LTD
of Uniformity Steel Works, Don Road, Sheffield, S9 2UD
General Conditions of Contract

THE CONDITIONS BELOW EXCLUDE OR LIMIT OUR LIABILITY, FOR US TO INSURE AGAINST UNLIMITED LIABILITY WOULD INCREASE THE COST OF OUR GOODS AND SERVICES. WE CONSIDER IT REASONABLE TO LIMIT OUR LIABILITY TO THE INVOICE VALUE OF THE GOODS AND SERVICES. ACCORDINGLY, PLEASE NOTE THAT, OUR MAXIMUM LIABILITY UNDER ANY CONTRACT WILL BE LIMITED TO THE INVOICE VALUE OF THE GOODS AND SERVICES IN RESPECT OF WHICH LIABILITY ARISES. IF YOU CONSIDER ANY LIMITATION OF LIABILITY OR OTHER PROVISION OF THESE CONDITIONS TO BE UNREASONABLE YOU MUST NOTIFY US BEFORE ENTERING INTO THE CONTRACT GIVING REASONS WITH A VIEW TO SPECIAL TERMS BEING NEGOTIATED. OTHERWISE, YOU ARE ADVISED TO TAKE OUT APPROPRIATE INSURANCE COVER. ACCEPTANCE BY US OF AN OFFER OR ACCEPTANCE BY YOU OF OUR COUNTER-OFFER ON THE GENERAL CONDITIONS OF CONTRACT WILL BE DEEMED TO BE YOUR WARRANTY THAT THE CONDITIONS ARE REASONABLE FOR THE PURPOSE OF THE UNFAIR CONTRACT TERMS ACT.1977,

1. DEFINITIONS

“the Customer” means the person, firm or organisation to whom the Company supplies or has agreed to supply goods - **“Delivery”** means physical delivery of the Goods to the Customer (or to such place as the Customer may direct) or if the Customer fails to accept physical delivery of the Goods or if the Goods are to be collected, the time at which delivery is tendered or the Customer is notified that the Goods are available, for collection as the case may be - **“Goods”** and **“Services”** means the product, materials or services contracted to be supplied by the Company to the Customer pursuant to the Customer's order - **“the Conditions”** means these General Conditions of Contract - **“Liability”** shall include without prejudice to the generality of the expression, liability in tort (including negligence), contract, breach of statutory duty and any other liability, including liability in each and every case for consequential loss (including loss of profit) or damages of any kind howsoever caused or arising - **“Performance”** means performance of the Services, whether or not it is alleged that such performance is wholly or partly defective.

Reference to statutes or statutory provisions shall include those statutes or statutory provisions as from time to time amended, re-enacted or replaced. - The headings in the Conditions have no effect upon interpretation. - The interpretation of International Commercial Terms such as C.I.F., F.O.B., etc. is that given by the latest version Incoterms, published by the International Chamber of Commerce.

2. GENERAL

- 2.1 Contracts and orders are entered into, made or accepted subject to the Conditions. If the Conditions differ in any respect from those of any offer made or order placed by the Customer this document does not constitute an acceptance of such offer or order but a counter-offer. The giving by the Customer of any delivery instructions for Goods or any part thereof, or the acceptance by the Customer of delivery of Goods or any part thereof or any other conduct of the Customer in confirmation of the transaction set out on the face hereof shall constitute an unqualified acceptance by the Customer of the Conditions.

- 2.2 No modification or amendment of the Conditions shall be binding upon the Company unless agreed to in writing on behalf of the Company by a duly authorised person.
- 2.3 No other terms and conditions shall apply notwithstanding any provisions to the contrary which may appear on the order form or purchase order or any other document issued by the Customer whether or not the same shall be signed by or on behalf of the Company and whether issued either before or subsequent to the acceptance by the Company of the Customer's order.

3. DELIVERY OF GOODS AND COMPLETION OF SERVICES

- 3.1 The Company will use its best endeavours to comply with delivery commencement and completion dates but such dates are estimates only and are not guaranteed neither shall they under any circumstances be deemed to be a term or condition of the contract. The Company shall accept no Liability for failure to meet such dates and such shall not entitle the Customer to repudiate or cancel the contract.
- 3.2 Acceptance of Goods shall be deemed to take place on Delivery. Signature of any delivery note by any agent, employee, nominee or representative of the Customer shall be conclusive proof of Delivery.
- 3.3 The Company shall have the right to deliver the Goods by installments and to invoice the Customer therefore. Each installment so delivered shall for the purpose of payment be deemed to be a separate Contract to which all the provisions of the conditions shall apply and if so invoiced shall be paid for accordingly.
- 3.4 If the Customer refuses or fails to take delivery of any Goods tendered in accordance with the contract, the Company shall be entitled to store any such Goods at the risk of the Customer and the Customer shall pay all costs of such storage and any additional costs of carriage incurred as a result.
- 3.5 The risk in the Goods shall pass to the Customer on Delivery. At its discretion the Company will repair or replace free of charge Goods, wholly or partly, lost or damaged in transit provided the carriers and the Company receive written notification of such damage within seven days of Delivery and provided the Goods have been signed for by the Customer as unexamined but not otherwise. The Company's Liability in any event shall be limited to the invoice price of the lost or damaged Goods.
- 3.6 Materials offered from stock are subject to prior sale.

4. PAYMENT

- 4.1 The full amount of all invoices shall be paid in sterling to the Company at the address shown above before Delivery unless otherwise agreed in writing.
- 4.2 A Customer may be required to furnish references before any credit facilities are allowed and until such time as credit facilities are allowed the Customer shall pay the amount due before Delivery. Where credit facilities have been agreed with the Customer the price shall be payable no later than the last day of the month following the month in which Delivery occurs. The Company may in its absolute discretion and at any time withdraw, alter or suspend any credit facilities made available to the Customer.

- 4.3 If payment is not made when due the Company shall be entitled to interest from the date due until payment is made at the rate of 3% above the base rate for the time being of Lloyds TSB Bank plc or at the rate for the time being recoverable on High Court Judgement whichever is the greater, before as well as after judgment.
- 4.4 In addition to the Company's other rights if any payments due to the Company by the Customer are not made by the due dates the Company may cancel or suspend any other contract existing between the parties at the date of such default without being liable for consequential loss. The Company shall also be entitled to require immediate payment for all Goods delivered or ordered under any other contracts.
Time of payment is of the essence.

5. RESERVATION OF TITLE

- 5.1 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 Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods sold or agreed to be sold by the Company to the Customer for which payment is then due.
- 5.2 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business.
- 5.3 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 5.4 The Customer 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 Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

6. PRICES & QUOTATIONS

- 6.1 Prices quoted are those ruling at the date of issue by the Company of its quotation or, in the event of no quotation being issued, the date of acceptance of order. In the event of the Company incurring any increase in any costs which are beyond its control after submission of its quotation, or where none, after acceptance of the order, and prior to Delivery, it reserves the right upon giving notification to the Customer to increase the price accordingly.
- 6.2 Prices are (unless otherwise stated) quoted net of all taxes imports and levies which are or may from time to time be levied by government statutory or local authority upon the sale of the Goods and such additions (if any) shall be charged at the rates prevailing at the date of Delivery or invoice as the case may be. Prices do not include carriage, which shall be chargeable according to the Company's current schedule unless otherwise agreed. Special carriage charges incurred at the Customers request will be charged to the Customer.

6.3 Any tender or quotation given to the Customer may be withdrawn without notice and otherwise shall not be open for acceptance later than seven days from the date thereof unless otherwise agreed in writing.

7. DESCRIPTION AND SUITABILITY

7.1 The Company shall be deemed to have no Knowledge of the purpose for which Goods are intended unless the Customer has notified the Company in writing of such purpose prior to Delivery.

7.2 Any statements, recommendations and advice given (whether before or after execution of the contract) by the Company, its servants or agents to the Customer, its servants or agents, relating to the Goods or Services are given without responsibility and shall not give rise to any Liability on the part of the Company, The Customer acknowledges that no representation has been made to it by or on behalf of the Company that has in any way induced the Customer to enter into this Contract.

7.3 Finished machine size must be stated by the Customer in its order, failing which, the Goods will be deemed to be the size ordered. Usual industry tolerances apply.

7.4 The weight or quantity of the Goods printed upon the Company's despatch note shall be conclusive evidence of the weight or quantity supplied unless the Customer shall have given notice of any discrepancy within fourteen days after Delivery and has thereafter given the Company a reasonable opportunity of verifying the Goods before they have been used, processed or sold.

7.5 The Company may supply the Goods from any of its premises and the method of carriage of the Goods shall be at the discretion of the Company.

8. WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out below the Company 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 12 months from the date of their initial use or 24 months from Delivery, whichever is the first to expire.

8.2 The above warranty is given subject to the following conditions:

8.2.1 the Company shall be under no Liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;

8.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;

8.2.3 the Company 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 Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 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 or 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 Customer are not affected by these Conditions.
- 8.5 Any claim by the Customer 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 Customer) be notified to the Company within 7 days from 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 Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 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 Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer.
- 8.7 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer 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 Company, 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 Customer, and the entire Liability of the Company 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 Company shall not be liable to the Customer 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 Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control;
- 8.8.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

- 8.8.4 import or export regulations or embargoes;
- 8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.8.7 power failure or breakdown in machinery.

9. DEFAULT OR INSOLVENCY OF CUSTOMER

9.1 This clause applies if:

- 9.1.1 the Customer 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
- 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- 9.1.3 the Customer ceases, or threatens to cease, to carry on business; or
- 9.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly,

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

9.3 In the event of any order being cancelled by the Company in the above circumstances or being cancelled by the Customer, the Customer shall indemnify the Company against all loss (including profits) costs (including labour and overheads) and all other expenses and damages incurred by the Company in connection with the order and its cancellation.

10. RIGHT OF SET OFF OR APPROPRIATION

10.1 The Company may apply any payment made by the Customer in or towards payment of any sum owing to the Company hereunder, notwithstanding any purported appropriation made by the Customer. For this purpose reference to the Company or the Customer includes any company which is for the purpose of the Companies Act 1985 a holding company or subsidiary of the holding company of the Company or the Customer respectively. The Customer shall not be entitled:-

- 10.1.1 to withhold payments of any amount payable pursuant to this Contract because of any disputed claim of the Customer in respect of defective Goods or workmanship or any other alleged breach, of Contract; or
- 10.1.2 to set off against any amounts payable pursuant to the Contract any monies which are or may be payable to the Customer by the Company.

11. SUB-CONTRACTS

The Company reserve the right to sub-contract the performance of the contract or any part thereof.

12. ASSIGNMENT

The Customer shall not assign or transfer or purport to assign or transfer any contract to which the Conditions apply or the benefit thereof to any other person without the Company's written consent.

13. WAIVER

The omission to exercise or any delay in exercising any of its rights or remedies under any contract to which the Conditions apply shall not constitute a waiver of any such rights or remedies by the Company.

14. ENGLISH LAW

Every contract to which the Conditions shall apply shall be construed in accordance with and governed in all respects by the Laws of England and the Company and the Customer agree to submit to the jurisdiction of the English Courts provided always that the Schedules to the Uniform Laws on International Sales Act 1967 are hereby excluded.

15. SEVERANCE

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 thereby.

16. APPLICATION OF CONDITIONS TO SERVICES

Where the Contract is for the provision of Services rather than or in addition to the supply of Goods, the Conditions shall apply mutatis mutandis and, without prejudice to the generality of the foregoing, subject to the following:-

16.1 in relation to Services, where the context permits, any reference to 'Delivery' shall be deemed to be a reference to 'Performance';

16.2 condition 8.1 shall be replaced in respect of Services with a warranty that the Services shall be carried out with reasonable care and skill; and

16.3 condition 8.6, shall be replaced with the following:-

"where any Services (or part thereof) have been improperly performed, the Company shall be entitled at its sole discretion either to refund the price of the Services (or a proportionate part) or to perform again or remedy the Services free of charge but the Company shall have no further liability to the Customer and in particular shall not be liable for the cost of replacing any materials upon which the Services were originally performed.