

# Terms and Conditions of Sale

## 1. VARIATIONS AND CONDITIONS

(a) Any Contract made by T.D. Cross Ltd. (hereinafter called 'the Seller') for the supply of its products to a Purchaser or Customer (hereinafter called 'the Buyer') shall be subject to the following Conditions of Sale which shall supersede any earlier sets of conditions appearing in the Seller's catalogues or elsewhere. It is agreed that only these Conditions shall apply to Contracts between the Seller and the Buyer and any documents emanating from the Buyer which contain printed or standard conditions which have been or shall be sent by the Buyer are received by the Seller on the understanding that they appear on the Buyer's documents because they are printed thereon but have no legal effect whatsoever and the Buyer waives any right which the Buyer otherwise might have to rely on such Conditions.

(b) The Seller reserves the right to add to, amend or vary the Conditions as herein set out by appending such additions, variation or notification to the quotation or in any written correspondence effected between the parties.

## 2. PRICE AND VARIATION

Any price recorded in the Order or Contract is subject to alteration without notice and the Seller's price for the products ruling at the date of despatch of the Products will be the Contract price. All prices stipulated are subject to additional carriage and packing charges, whether delivered in U.K. or ex-U.K. All prices quoted are exclusive of Value Added Tax which, if applicable, shall be added to the price at the rate prevailing at the date of Tax point.

## 3. PAYMENT AND EFFECT OF NON-PAYMENT

(a) Credit will be granted at the Seller's discretion and the following terms for payment will then apply. Otherwise Products must be paid for by the Buyer at the time of order.

(b) Payment at Net Invoice Value is due thirty days from date of invoice no cash discount is granted.

(c) Goods will be invoiced when ready for despatch and where progress payments are the agreed terms then the provisions of sub-clause (b) hereof will apply to the final instalment only of the price.

(d) Without prejudice to all other rights available to it at Common Law the Seller reserves the right in the event of the Buyer not complying with the agreed provisions as to payment made at the time of entering into the Contract to suspend work upon the Contract until the agreed Terms of Payment have been fully undertaken by the Buyer to the Seller's satisfaction. In the event of such suspension of work operating the Buyer shall have no claim against the Seller for late delivery or late completion of the Contract and furthermore the Seller shall be entitled to charge the Buyer the cost of 'waiting time' and any other expenses incurred as a direct result of the suspension of work or for the breach or non-observance by the Buyer of the conditions as to payment herein set out.

## 4. QUANTITY

Where Products are made to the Buyer's specification the Buyer agrees to accept a quantity of such Products up to ten per cent in excess of the quantity ordered ('an overrun') or up to five per cent less than the quantity ordered ('an underrun'). In the event of an overrun each unit or item of the Products in excess of the quantity ordered will be paid for by the Buyer at the price per item or unit charged for the quantity ordered. In the event of an underrun each unit or item of the Products which the Buyer has agreed to accept as herein provided will be paid for by the Buyer at the price per item or unit charged for the quantity ordered.

## 5. DRAWINGS AND DESCRIPTIONS

All drawings, photographs, illustrations, specifications, performance data, dimensions, weights and the like, whether contained in the Contract or made by way or representation, have been provided by the Seller with the intent that they are as accurate a description of the Products, shall not be taken to be representations made by the Seller and are not warranted to be accurate. Weights listed are approximate and sufficiently accurate for most purposes. Where exact dimensions and weights are critical additional information should be requested by the Buyer.

## 6. ADVICE BY THE SELLER

The Seller may, if requested, be prepared to assist the Buyer in deciding which types of Products are suited to a particular application. However, any such advice and assistance which is given by the Seller is given on the understanding that the Seller is under no liability for any loss or damage arising therefrom and the Buyer must conduct all necessary tests on the Products in their intended application before commencing use thereof and the onus is on the Buyer so to do.

## 7. STORAGE

(a) If for any reason the Buyer is unable to collect or accept delivery of the Products at any time when the Products are due and ready for collection or delivery the Seller shall invoice the Products due for collection or delivery and, if its storage facilities permit, store the Products, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery or sale under clauses 7(b) hereof and the Buyer shall be liable to the Seller for the reasonable cost (including insurance) of its so doing.

(b) If the Buyer does not collect or accept delivery of any Products which have been stored by the Seller under Clause 7(a) hereof for a reasonable period then the Seller may after giving to the Buyer seven days written notice of its intention so to do and without prejudice to any other remedies the Seller may have to re-sell the Products elsewhere without any liability to the Buyer whatsoever.

## 8. SPECIFICATIONS

(a) Where specifications are to be supplied the Buyer shall apply such specification within seven days after date or order.

(b) Products are supplied in accordance with the specification (if any) submitted to the Buyer and any additions and alterations shall be subject to an extra charge. Any parts not so specified shall be in accordance with the Seller's printed catalogue or the catalogue of the Seller's suppliers (subject to any modifications made since publication). If the Seller adopts any changes in construction or design of the products or the specification thereof the Buyer shall accept the products so changed in fulfilment of the Order.

## 9. ACCEPTANCE OF QUOTATIONS

(a) No binding Contract between the Buyer and Seller shall be deemed to have been effected except in accordance with any quotations submitted by the Seller and until the Order constituted by such acceptance has been confirmed in writing by the Seller.

(b) Subject to the provisions of sub-clause (a) hereof no Quotation undertaken by the Seller shall be available for acceptance by the Buyer more than 30 days after the same shall have been submitted by the Seller to the Buyer.

(c) The Seller reserves the right to amend or alter any quotation submitted by the Seller to the Buyer prior to the issue of the Order by the Buyer to the Seller by notice in writing at any time.

## 10. CANCELLATION OF ORDER

Where the Buyer cancels an order after it has been previously accepted by the Seller the Seller reserves the right to charge the Buyer with all costs relating to the Contract which is cancelled and which have been incurred prior to the Seller receiving notification of the cancellation. The charge will include, but not be restricted to, any costs of material which have been purchased for the Contract.

## 11. SUB-CONTRACTING

The Seller shall be permitted without prior consent of the Buyer to sub-contract the whole or any part of the Contract or to employ any independent Contractor to perform its obligations under any such Contract. In so doing none of the obligations accepted hereunder by the Seller shall in any way be negated or varied.

## 12. ALLIED CONTRACTS

The remedies available to the Seller for the breach or non-observance of the Conditions of Contract to be performed by the Buyer shall be available to the Seller in the event of the Buyer breaching any of such obligations on any collateral or separate Contracts between the same parties in force at any time and such rights available to the Seller shall apply in the event of a breach by the Buyer or any Associated or Subsidiary Company of the Buyer at any time in a contractual relationship with the Seller. Likewise, the same benefits available to the Seller hereunder shall apply to any Associated or Subsidiary Company of the Seller who may be in a contractual relationship with the Buyer.

## 13. DELIVERY AND TITLE PASSING

(a) Any time or date needed by the Seller for delivery is given and intended as an estimate only. The Seller shall not be liable to make good any damage or loss whether arising directly or indirectly out of the delay in delivery.

(b) Without prejudice to any of the Company's other rights under the Agreement between the parties notwithstanding delivery of any goods the property in the goods shall remain in the Company until you have paid in full in cash therefor. If such payment is overdue in whole or in part the Company may (without prejudice to any of its other rights) recover or re-sell the goods or any of them and may enter upon your premises for that purpose, a licence for which purpose is hereby granted, if any of the goods are incorporated in other goods before such payment the property in the goods delivered by us shall nevertheless be and remain with us until such payment has been made PROVIDED THAT where any goods delivered under this Contract have been sold by you either in their original form or after further processing or incorporation in some other products then you shall be trustee for us of the proceeds off sale thereof or of any claim by you in respect of such goods. Notwithstanding the above, risk in the goods shall pass to you upon delivery (and you should therefore insure).

## 14. TOOLING

Tool, die and pattern charges, if any, are in addition to the price of the Products and will be invoiced for and are due and payable upon completion of the tooling. The property of such tools, dies and patterns shall remain vested in the Seller and the Buyers shall have no right to remove such tools, dies and patterns from the Seller's factory nor to prevent their use for or by other Buyers, except under special agreement in writing by both the Buyer and the Seller.

## 15. PRODUCTS SOLD F.O.B.

Where products are sold Free on Board the responsibility of the Seller shall cease immediately the products are placed on board ship or other form of transport and the Seller shall be under no obligation to give the Buyer the Notice specified in Section 32(iii) of the Sale of Goods Act 1893 as amended or any statutory re-enactment thereof.

## 16. PARTIAL DELIVERY

(a) In the event of an outbreak of hostilities (whether War is declared or not) in which the United Kingdom is involved or in the event of National Emergency or if the Seller's works should be either directly or indirectly so engaged on Government Orders or Orders under priority directions so as to prevent or delay work on other Orders the Seller shall be entitled at any time on notice to the Buyer to make partial deliveries only or to determine the Contract without prejudice in either case to rights accrued in respect of deliveries already made.

(b) In the case of partial completion of an Order the Seller shall be entitled to a quantum seruit claim in respect to the rights should non-completion be occasioned by the Buyer.

## 17. FORCE MAJEURE

In the event of war, invasion, act of foreign enemy, hostilities (whether war has been declared or not) civil war, rebellion, revolution, insurrection or military power the Seller shall be relieved of liabilities incurred under this Contract wherever and to the extent to which the fulfilment of such obligations are prevented, frustrated or impeded as a consequence of any such event or by any statute rule regulation order or requisition issued by any Government Department, Council or other duly constituted authority or from strikes, lock-outs, or other industrial action, breakdown of plant or any other cause (whether or not of a like nature) beyond the Seller's control.

## 18. HEALTH AND SAFETY INDEMNITY

The Buyer shall indemnify the Seller in respect of any liability, monetary penalty or fine in respect of, or in connection with the Products incurred by the Seller under the Health and Safety at Work Act 1974 or any statutory modification or re-enactment thereof or any regulations, orders or direction made thereunder.

## 19. INFRINGEMENT OF INDUSTRIAL PROPERTY RIGHTS

The Buyer shall indemnify the Seller against damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specification which involves the infringement of any Letter, Patent, Trade Marks, Registered Designs or the infringement of Copyright or other industrial or intellectual property rights.

## 20. DETERMINATION OF CONTRACT

If the Buyer shall make default in or commit a breach of the Contract or of any of its obligations to the Seller or if any distress or execution shall be levied upon the Buyer's property or assets or if the Buyer shall make or offer to make any arrangements or composition with its creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against him or being a Limited Company or Corporation any Resolution or Petition to wind up such Company's business (other than for the purpose of a voluntary re-construction or amalgamation) shall be passed or presented or if a Receiver of such Company's assets, undertaking and property or any part thereof shall be appointed then the Seller shall have the right forthwith to determine any Contract then subsisting and upon written notice of such determination being posted to the Buyer or the Buyer's last known address or Registered Office any subsisting Contract shall be deemed to have been determined without prejudice to any claim or right the Seller may otherwise make or exercise.

## 21. GUARANTEE AND WARRANTY

(a) If within the period after delivery hereinafter stated (hereinafter called 'the Guarantee Period') the Buyer gives notice in writing to the Seller of any defect in the Products which shall arise under the proper use from faulty materials or workmanship then the Seller if it accepts that the Products are defective shall with all possible speed replace or repair the Products so as to remedy the defects without cost to the Buyer which remedy shall constitute an entire discharge of the Seller's liability under this Guarantee. If the Buyer shall carry out any repair, attempted repair or modification to the products without the authority in writing of the Seller then the Seller's liability under this Guarantee shall automatically cease.

(b) The Buyer shall as soon as practicable after discovering any such defect or failure return the defective products or parts thereof to the Seller at the Buyer's risk and expenses unless it has been agreed in writing between the parties that the necessary replacement or repair shall be carried out by the Seller on the Buyer's premises.

(c) The Guarantee period herein referred to shall be either a period of twelve months from the date of despatch of the Products or six months from the date of installation of the Products whichever period shall first expire.

## 22. DEFECTIVE PRODUCTS AND CONSEQUENTIAL LOSS

Items represented by the Buyer to be defective shall not form the subject of any claim for work done by the Buyer or for any actual or consequential loss, damage or expense whatsoever arising directly or indirectly from such defects but such products if returned to the Seller and accepted by it as defective will at the request of the Buyer and if practicable be replaced as originally ordered. Defects in quality or dimensions in any delivery shall not be a ground for cancellation of the remainder of the Order or Contract.

## 23. CLAIM FOR DAMAGE, SHORTAGE OR LOSS

No claim for damage in transit, shortage of delivery or loss of products will be entertained unless, in the case of damage in transit or shortage of delivery a separate notice in writing is given to the Carrier concerned, and to the Seller within fourteen days of the receipt of the Products followed by a complete claim in writing made within twenty-eights days of the date of consignment. Where Products are accepted from the Carrier concerned without being checked the delivery book of the Carrier concerned must be signed 'not examined'.

## 24. ARBITRATION

All disputes, differences or questions at any time arising between the parties as to the construction of the Contract or as to any matter or thing arising out of the Contract or in any way connected therewith shall be referred to the arbitration of a single Arbitrator who shall be agreed between the parties or who failing such Agreement shall be appointed at the request of either party by the President for the time being of the Mechanical Handling Engineers Association. The arbitration shall be in accordance of the Arbitration Act 1950 or any Statutory modification or re-enactment thereof for the time being in force.

## 25. LAW OF CONTRACT

Unless otherwise agreed between the parties in writing the Contract shall be subject to and construed in accordance with English Law.