

DEFINITIONS.

"The Company" means ECM Developments Ltd whose registered office is at

Enfield Barn,
Spalford Road,
North Scarle,
Lincoln,
LN6 9HF.

"The customer" means the person, firm, Company or corporation purchasing the Goods or Services.

"Goods" means the articles or things or any of them described in the order.

"Services" means work done or Services supplied or, Goods installed whether or not in connection with incidental to the supply of Goods.

"Order" means an offer made by the customer for the manufacture and/or supply to it of Goods by the Company.

"The price" means the price of Goods or Services prevailing at the time of delivery or execution together with VAT thereon and also the cost of transporting the Goods from the Company's works to the customer's place of business and any Insurance premium paid by the Company on behalf of the customer.

"The "Contract" means the Order which is accepted by the Company on these terms and conditions.

"Due Payment Date" means a date expiring 30 days after the invoice date.

1. GENERAL.

All quotations are made and all orders are accepted by the Company subject to the following terms and conditions and additions or variations shall be made or applied unless expressly agreed in writing by the Company and the customer and no other printed or standard conditions shall be applied other than the within written terms and conditions.

2. DESCRIPTION.

All Goods are sold subject to the reasonable availability to the Company of materials. The Company reserves the right without notice to substitute materials, components and units other than those specified in the contract. All Services are rendered subject to the reasonable availability of personnel. The Company reserves the right to sub-contract the fulfilment of any contract (either as a whole or in part)

3. ORDERS.

a) The Company reserves the right to refuse any order.

b) All orders must be accompanied by sufficient information to enable the Company to proceed with the order.

c) The customer shall inspect the Goods or items created from a Service immediately on their delivery or execution and shall within 14 days give notice in writing to the Company of any matter or thing by reason of which the customer believes that the Goods or items created as a result of a Service have not been delivered or executed in accordance with the Terms of the Contract. If the customer fails to give such notice, the Goods or items created as a result of a Service shall in all respects be deemed to have been provided in accordance with the contract and the customer shall be bound to accept and pay for the Goods or items created as a result of Services in accordance with Clause 7 below.

4. DELIVERY.

Delivery shall be ex-works. The risk in the Goods passes from the Company to the customer ex-works. The mode of delivery shall be at the Company's discretion. The cost of delivery shall be payable by the customer unless agreement in writing is reached to the contrary. The Company shall insure the Goods against loss or damage in transit on behalf of the customer and at the customers cost. Any times quoted for delivery are to be treated as estimates only and the Company shall not be liable in any manner whatsoever for failure to deliver within such quoted time.

5. PRICE VARIATION.

All Goods are sold at the Company's price ruling at the date of delivery and all Services are priced at the Company's price in force at the date of execution. These may vary from those originally stated in the original quotation.

6. PAYMENT.

Unless otherwise agreed, payment shall be made within 30 days from the date of invoice for Goods delivered or Service received. If payment is not received by the Company at the expiry of such period then, without prejudice to any other remedy available to the Company, interest shall be chargeable at 5 per cent above the Bank of England Base rate for the time being in forced calculated on a day to day basis on the amount for time being unpaid until such sums shall be paid in full. All payments shall be made without deduction or set off. Time shall be of the essence in this respect.

7. RETENTION OF THE TITLE.

a) Notwithstanding that the risk in the Goods shall pass to the customer in accordance with clause 5 above the Goods shall remain the property of the Company until payment in full by the customer of the price has been made.

b) Until such payment in full has been made then:-

i) The customer shall as fiduciary owner only on behalf of the Company keep the Goods separate from all other Goods in his possession in such a manner that they shall be clearly identifiable as the Company's Goods and only sell such Goods as agent for the Company.

ii) The customer shall on the Company's request promptly inform the Company of the Goods whereabouts.

iii) The customer shall upon the Company's request deliver up the Goods to the Company at the Company's place of business and at the customer's expense.

iv) The company may retake possession of all or any part of the Goods and enter the Company's premises for that purpose (or authorise others to do so) which the customer hereby authorises.

c) Notwithstanding that the property in the Goods has not passed to the customer, the Company reserves the right to sue for such Goods.

d) Each sub-clause of this clause 8 is separate, severable and distinct and, accordingly, in the event of any of them being for any reason whatsoever unenforceable according to its terms, the others shall remain in full force and effect.

8. INSTALMENTS.

- a) Where Goods are delivered by instalments, each instalment shall be treated as a separate contract.
- b) Each instalment shall be paid for in accordance with clause 7 hereof. All payments shall be made on the due payment date as a condition precedent to further deliveries.
- c) The failure of the Company to deliver Goods to the customer shall not entitle the customer to repudiate the contract unless clause 18 hereof shall apply to such failure.
- d) Where Goods are delivered by instalments, any defect in any one instalment shall not be sufficient grounds for the customer to refuse to accept delivery of the remaining instalments.

9. WARRANTY: LIMIT OF RESPONSIBILITY.

The company warrants that it will (at the company's choice) either repair or replace, or refund the full purchase price of any goods which are accepted by the company as being defective or not in accordance with the contract or any express description or representation given or made by or on behalf of the company in respect of the goods within a period of 3 (three) months from despatch of such goods from the company's works (the "warranty period") save that this warranty shall not apply where the defect or fault is attributable to defective materials supplied by third parties where the customer's only remedy will be against that third party. In respect of services, if the company accepts within the warranty period that it has failed to execute the services in accordance with the express terms of the contract the company may at its option perform again such of the services as have not been carried out in accordance with the express terms of the contract or repay the customer the charge for such services as have not been so performed (provided such charge shall have been paid to the company by the customer). The customer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the goods or services or any workmanship in relation to them (whether or not involving negligence on the part of the company) shall in all cases be limited to repair, replacement, re-performance or refund of the purchase price as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the warranty period; and the company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusions prohibited by any rule of law. A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or instalment of any order or any part of them shall not entitle the customer to cancel or refuse delivery of or payment for any other order, delivery or instalment or any part of the same order, delivery or instalment.

Where the Company is under no contractual obligation to provide any technical advice or assistance as to the storage, handling, fitting, or use of Goods supplied, then, if the Company provides any such technical advice or assistance, this shall be given gratuitously and without expectation that such advice or assistance shall be relied upon.

10. TERMINATION.

If the customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a Company) it shall pass a resolution or the Court shall make an order that the customer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the customer or if the customer suffers the appointment or the presentation of a petition for the appointment of an administrator or if circumstances shall arise which entitle the court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the Court to make a winding up order or if the customer takes or suffers any similar action in consequence of debt or if the financial responsibility of the customer shall, in the opinion of the Company, become impaired or if the customer shall commit any breach of any part of the contract the Company may without prejudice to its rights and remedies under these conditions stop all Goods in transit and suspend further deliveries and by notice to the customer may terminate the contract immediately.

11. TOLERANCES AND TESTS.

- a) Gauges, weights, chemical composition and analysis, quantities and sizes will so far as possible be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the customer, who shall not be entitled to reject any Goods or to require replacement of any Goods on the ground that they are not precisely as specified.
- b) Unless otherwise specifically agreed all tests, test prices and inspections whatever required by the customer will be charged extra. All tests and inspections (whether or not being tests of chemical composition) shall take place under the company's standard testing arrangements, and such test shall be final. All tests are subject to analytical tolerances.

12. PATENTS.

The customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design right, copyright, trademark or other industrial or intellectual property rights resulting from compliance by the company with the customer's instructions, whether express or implied.

13. INDEMNITY.

The customer agrees upon demand to indemnify the company against all losses, damages, injury, costs and expenses of whatever nature suffered by the Company to the extent that the same are caused by or related to.

- a) designs, drawings or specifications given to the Company by the customer in respect of the Goods;
- b) defective materials or products supplied by the customer to the Company and incorporated by the Company in the Goods; or
- c) the improper incorporation, assembly, use, processing, storage or handling of Goods by the customer.

14. NON-STANDARD ORDERS.

Where the customer orders Goods or materials of a type, size or quality not normally produced by the company or Services not normally performed by the Company, the Company will use all reasonable endeavours to execute the order, but if it proves impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the uncompleted balance of it, in which event the customer will only be liable to pay for the part of it actually delivered or performed.

15. PATTERNS, DIES, TOOLS, DRAWINGS AND EQUIPMENT.

- a) Where the customer supplies patterns, dies, tools, drawings or equipment, the Company shall be entitled to assume that the same are in good condition, true to drawing and entirely suitable to the Company's methods of production, and for the production of the Goods in the quantities required
- b) While the Company uses all reasonable endeavours to verify patterns, dies, tools, drawings and equipment supplied by the customer no responsibility is accepted by the Company for their accuracy
- c) All replacements, alterations and repairs to the customer's patterns, dies, tools, drawings and equipment shall be paid for by the customer
- d) Where the patterns, dies, tools, drawings and equipment are not supplied by the customer only those which are specially made by the Company and separately charged to the customer in full, shall, when paid for by the customer, become the property of the customer.
- e) Carriage on patterns, dies, tools and equipment supplied by the customer will be paid by the Company in one direction only.
- f) The Company will take all reasonable care of the customer's patterns, dies, tools, drawings and equipment while in the Company's possession but does not accept liability for loss or damage thereto, however arising, except where neglect on the part of the Company or its agents was the direct cause of loss or damage and in those circumstances the company's liability shall be limited to the actual cost of replacement or repair to the exclusion of all other expenses, consequential losses, loss of profits and other expenses, liabilities and losses however arising.
- g) The Company reserves the right to destroy or otherwise dispose of patterns, dies, tools, drawings and equipment in its possession or custody (whether or not the property of the customer) from which the customer has not required Goods to be made for a period of 12 months or more in the case of patterns, and three years or more in all other cases.

16. INTELLECTUAL PROPERTY.

The parties agree that any intellectual property rights of whatever nature arising in the Goods or in relation to or as a result of Services carried out under the contract shall, unless specifically agreed to the contrary in writing by the parties, vest in the Company.

17. NOTICES.

- a) Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by pre-paid first class letter post or facsimile transmission
- b) Any notice or document shall be deemed served, if delivered, at the time of delivery, if posted, 48 hours after posting, and if sent by facsimile transmission at the time of transmission.

18. INVALIDITY.

The invalidity, illegality or unenforceability of any provision of these conditions should not affect the other conditions.

19. LAW AND JURISDICTION

The contract (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English Law and the parties hereby submit to exclusive jurisdiction of the English Courts.

20. DISCLAIMER

Any project that contains an element of development is by its very nature uncertain in duration, content and outcome. Whilst ECM Developments Ltd will make every effort to maintain any schedules, budgets or specifications, it may not always be possible. The client during this phase of a project has to accept that development of any kind carries a risk and that risk is entirely that of the client. During a development phase of the project, invoices will be raised monthly against all time expended or costs incurred.