

CONDITIONS OF SALE

The acceptance of this tender or quotation includes the acceptance of the following terms and conditions:

1. PERFORMANCE

We will accept no liability for failure to attain any performance figures quoted by us unless we have specifically guaranteed them, subject to any tolerances specified or agreed to by us, in an agreed sum as liquidated damages.

If the performance figures obtained on any test provided for in the contract are outside the acceptance limits specified therein, you will be entitled to reject the plant save that before you become so entitled to claim liquidated damages or to reject the plant we are to be given reasonable time and opportunity to rectify its performance.

You assume responsibility that plant stipulated by you is sufficient and suitable for your purpose save in so far as your stipulations are in accordance with our advice.

2. EXTRA COST

Should we incur extra cost owing to suspension of the work by your instructions or lack of instructions, interruptions, delays, overtime, unusual hours, mistakes or work for which we are not responsible, a reasonable sum in respect of such extra cost, as well as the cost incurred by keeping any of our men on the site after completion of erection, shall be added to the contract price and paid for accordingly.

3. TIME OF TAKING OVER

The plant shall be deemed to have been taken over by you when erection has been completed and the plant has passed tests on site when these are included, or one calendar month after it shall have been put into commercial use (whichever may be the earlier): Provided that in any case the plant shall be deemed to have been taken over at the expiration of two calendar months after we shall have given you written notice that erection is complete, unless in the meantime tests shall have been made showing that it does not comply with the terms of the contract.

The time of taking over shall not be delayed on account of additions, minor omissions or defects which do not materially affect the commercial use of the plant.

4. Minor defects in the plant, not of such importance as to affect materially its commercial use, shall entitle you to retain from the payment only such sum as represents the value of such incomplete or defective details, and any sum so retained shall be paid upon such omissions or defects being remedied, which will be done by us at the earliest opportunity.

If we are unable by reason of your instructions or lack of instructions or from causes beyond our control, to deliver all or any of the plant when ready, or to proceed with the supervision of erection of such plant as we have already delivered, you shall take delivery or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to arrange storage either at our own works or elsewhere on your behalf and all charges for storage, for insurance or for demurrage shall be payable by you. In any case, you will make the payments as provided for in the quotation.

5. LIMITATION ON CONTRACTORS LIABILITY

We will indemnify you against damage or injury to your property or person or that of others occurring before the plant is taken over to the extent directly caused by the negligence of ourselves, our sub-contractors or agents, or by defective design, (other than a design made, furnished or specified by you for which we have disclaimed responsibility in writing), workmanship or materials, but not otherwise, by making good such damage to property or compensating personal injury. Provided that:

a) Our total liability for damage to your property (including damage caused by our breach of contract, tort or breach of statutory duty) shall not exceed £2,000,000 or the contract price, whichever sum is the greater, and

b) We shall not be liable to you for any loss of profit or of contracts or, save as aforesaid, for any loss or damage of any kind whatsoever and whether caused by our breach of contract, tort, breach of statutory duty or otherwise howsoever.

Save as provided in the next following paragraph and in Clause 6, we shall not be liable for any damage or injury occurring after the plant has been taken over. If we, our agents or sub-contractors are on site after taking over for the purpose of remedying a defect pursuant to Clause 6 or for any other purpose of the contract, the provisions of Clause 5 shall apply as though the plant had not yet been taken over.

Save as provided in Clause 6 we shall not be liable for any damage or injury after the completion of work on site as aforesaid.

6. DEFECTS AFTER TAKING OVER

We will make good, by repair or by the supply of a replacement, defects which, under proper use, appear in the plant within a period of twelve calendar months after the plant has been taken over and arise solely from faulty design (other than a design made, furnished or specified by you for which we have disclaimed responsibility in writing) materials or workmanship: provided always that defective parts have been returned to us if we shall have so required.

Our liability under this Clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the plant, and save as provided in this Clause we shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in plant taken over or for any injury (other than personal injury caused by our negligence as defined in Section 1 of the Unfair Contract Terms Act 1977), damage or loss resulting from such defects or from any work done in connection therewith.

7. RISK AND THE PASSING OF PROPERTY

a) Risk in the plant and equipment shall pass to you on delivery.

b) The plant and equipment shall remain our sole and absolute property as legal and equitable owner (and we reserve the right to dispose thereof) until such time as the price plus VAT thereon and of plant and equipment supplied under any other contract, shall have been received by us. The said amounts shall not be treated as received until our bank account has been credited therewith in cleared funds.

c) Until such time as you become the owner of the plant and equipment you will keep them in good condition and store them separately from your own or any other persons goods and in a manner which makes them readily identifiable as ours.

d) You hereby acknowledge that all goods are until passing of property therein to you held in your possession solely as fiduciary for us. In the event of a sale or any other disposition or use of plant and equipment by you prior to such passing of property you shall hold on trust for us:

i. If plant and equipment have not been mixed with or incorporated into other goods or processed the whole of the proceeds of sale and your right thereto or

ii. If the plant and equipment have been mixed or incorporated into other goods or processed a just proportion of the proceeds of sale and your right thereto.

The said proceeds of sale shall not be mingled with other monies or paid into any overdrawn bank account and shall at all times be our monies and identifiable as such.

The right to such proceeds of sale shall belong exclusively to us notwithstanding any purported assignment thereof by you.

e) If payment is overdue in whole or in part, or if there is a commencement of any act or proceeding in which insolvency is involved, we shall be entitled to the immediate return of the plant and equipment referred to in all contracts between you and us (without prejudice to any of our other rights) and you hereby authorise us to recover possession of goods to the extent of your total indebtedness and to enter on your premises by servants or agents for that purpose.

8. GENERAL

These are the only terms or conditions applicable to any sale or supply of goods by us to you and, unless specifically agreed in writing by us and you, no additional or other terms or conditions shall apply.

A contract (including these conditions) binding you to purchase plant and equipment and services shall exist when we accept in any manner whatsoever your order for such plant and equipment and services which shall constitute an offer to purchase them. The intimation of your order number shall be deemed to be confirmation of the existence of such a contract.

9. These terms and conditions shall be deemed incorporated in any contract which follows an acceptance of any tender or quotation or any counter offer following thereon.**10. We shall be entitled to rely on any communication from you (including by facsimile or otherwise and intimations of any order number) as confirmation from you of your ordering goods and equipment in terms of this tender or quotation.****11. LEGAL CONSTRUCTION**

Unless otherwise agreed in writing the contract shall in all respects be construed and operate as an English contract and in conformity with English law.