



1 Application

(A) Every offer quotation acceptance and contract for the sale or supply of goods by Engineering Appliances Limited ("the company") is subject to these terms to the exclusion of any terms proposed or referred to by Buyer. All orders hereafter made by Buyer shall be deemed to be made subject to these terms.

(B) A contract ("the Contract") for the sale of the Company's goods ("the Goods") shall be concluded on delivery by the Company in accordance with these conditions.

(C) Buyer acknowledges that there are no representations outside these terms, which have induced it to enter into the Contract (which expression shall include any contract of which these terms form part).

(D) No modification of these terms shall be effective unless made by an express written agreement between the parties. The signing by Company of any Buyer's documentation shall not constitute a modification of these terms.

(E) Notwithstanding any subsequent paperwork issued by the Buyer, these terms and conditions will remain in force for the duration of the contract.

2 Contract

(A) Any quotation by the Company shall not constitute an offer or tender, but shall be deemed to be an invitation to treat.

(B) A contract for the supply of goods and/or services is constituted by the Company's acceptance in writing of the Buyer's order.

(C) Orders placed verbally are accepted on the basis of the Company's understanding of requirements as communication by the Buyer at that time. Any variations additions and/or amendments detailed in any subsequently received confirmation order, are not accepted as part of the contract as defined in (B) above unless otherwise agreed by the Company in writing.

3 The Goods

(A) All descriptions and illustrations contained in the Company's catalogues, price lists and advertisements or otherwise communicated to Buyer are intended to present a general idea of the Goods described and shall not form any part of this contract.

(B) If a sample of the Goods has been exhibited to and inspected by Buyer it is hereby that such sample was so exhibited and inspected solely to enable Buyer to judge for itself the quality of the bulk and not so as to constitute a sale by sample. Buyer shall take the Goods at its own risk as to their corresponding with the said sample or as to their quality condition or sufficiency for any purpose.

4 The Price

(A) The Company reserves the right to increase the price of the Goods before delivery to that ruling at the date of despatch.

(B) If a firm price subject to escalation is agreed, price fluctuation shall be calculated in accordance with the contract price adjustment formula stated in the Company's order acceptance and such formula shall be applicable up to the date of dispatch.

(C) All prices quoted unless specifically stated to the contrary are exclusive of VAT and any excise duties and import levies where applicable all of which will be paid by the Buyer. In addition:-

(i) For orders over £2000 the price includes packing and delivery in the UK Mainland unless stated separately;

(ii) For orders under £2000 a surcharge of £25 will be made to cover processing of the order packing and carriage in the UK Mainland

(iii) for delivery to Remote Areas of UK Mainland the delivery surcharge may be increased.

(iv) For orders for Pressurisation Equipment the delivery surcharge will be 3% of the total net order value.

5 Cancellation

(A) Subject to sub-clause (A)(i) (A)(ii) (A)(iii) (A)(iv) (A)(v) (A)(vi) and (B) the Buyer may cancel any order by delivering a notice of cancellation to the Company before the Goods are despatched.

(i) Buyer must ensure that the notice of cancellation or return is received in writing by the Company at those business premises of the Company to which the original order was sent. Such notice shall only be valid for the purposes of this sub-clause if it refers to original order number, the date of that order, and the quantity and description of goods which were thereby ordered.

(ii) Where a notice of cancellation is received by the Company after the date of despatch of the Goods or a notice of return is received by the Company the notice shall not have effect to cancel the order or return the goods unless the Company agrees in writing that the order shall be cancelled or the goods returned. Such written agreement by the Company shall be conditional on the Goods being returned to the Company in exactly the same state (including nature of packaging) as they were on despatch from the Companies premises, and on Buyer indemnifying the Company against reasonable costs of what ever nature (including administration and transportation costs but excluding any loss of profit) in relation to that order.

(iii) The company reserves the right to charge the customer reasonable administration costs for cancellations (Cancellation fee). Typically administration costs will be between 5 and 10% of the order value but not less than £50

(iv) The company reserves the right to charge the customer for any cost for materials, labour or cancellation fees of sub suppliers that have been incurred up to the date of cancellation. These will be advised in writing by the company within 1 week of receipt of the official cancellation

(v) The cancellation fees will be invoiced to the customer under the original order number. Alternatively the customer may issue a new order to cover the cancellation costs.

(vi) Goods delivered six or more months previously can not be accepted for return in any event.

(B) An order which requires goods to be specifically manufactured for Buyer may not be cancelled unless the Company agrees in writing that the order shall be cancelled.

(C) The Buyer may not withhold payment of the amount when goods are returned. The sale of goods and return of the same goods are to be treated as separate transactions.

6 Payment

(A) Buyer shall be invoiced by the Company in respect of the goods and the sums shown on the invoice will be due 30 days after the date of invoice.

(B) In the event of the Buyer failing to comply with the agreed terms of payment, overdue accounts will bear interest at the rate 15% per annum or 5% above the UK clearing base rate, which ever is the greater computed on a daily basis from the date of delivery to the day payment in full is received. Furthermore all other accounts shall become due for payment immediately. If the Seller instructs a Debt Collection Agency to recover any accounts the Buyer shall pay the Seller's costs instructing the Debt Collection Agency and all ancillary legal costs.

(C) Where the goods are to be supplied or payment therefore is to be made by instalments the failure of Buyer to pay any instalment in due time shall entitle the Company to treat such failure as a repudiation of the whole contract by Buyer and to recover damages for such breach of contract.

7 Delivery

(A) Any dates given for delivery of goods or performance of services are estimates only and the time of delivery or performance shall not be of the essence of the contract. In no circumstances shall the Company be liable to compensate Buyer in damages or otherwise for non-delivery or late delivery of the Goods or any of them for whatever reason or for any loss consequential or otherwise arising there from.

(B) If the Company is unable to deliver due to acts or omissions of third parties or by reason of industrial dispute, the time for delivery shall be extended until the operation of the cause preventing or hindering delivery has ceased.

(C) Should the Company be prevented from delivering part of the Goods for reasons covered by the preceding sub-clause, the Company shall deliver and Buyer shall take and pay for such part of the Goods as the Company shall be able to deliver in accordance with the contract.

(D) The Company shall be entitled to deliver the Goods in one or more consignments unless otherwise expressly agreed.

(E) If delivery of any item comprised in the Goods has not been made within 12 months the estimated delivery date, Buyer shall be entitled to cancel its order in respect of that item, but the Company shall in no circumstances be liable to compensate Buyer in damages or otherwise for late delivery or non-delivery of the Goods or any of them for whatever reason or for any loss consequential or otherwise arising there from.

(F) The Company shall not be liable for any loss of any kind to Buyer arising from any damage to the Goods however caused arising after the risk has passed to Buyer, nor shall any liability of Buyer to the Company be diminished or extinguished by reason of such loss.

(G) The Company may at its option cancel or suspend (or suspend and later cancel) all further deliveries under the contract if Buyer fails to make any payment due hereunder or under any other contract between the Company and Buyer, or of Buyer, being an individual, shall die or become bankrupt, or, being a company shall enter into liquidation or have a receiver appointed of its undertaking property or assets or any part thereof, or shall enter or offer to enter into any agreement or composition with his or its creditors, or if events similar to the foregoing shall occur under the laws of any jurisdiction in which Buyer is incorporated, resident or carries on business.

8 Passing Of risk

(A) On a sale delivered in the UK risk of loss or damage of the Goods shall pass to Buyer at the time when the Goods are delivered to the Buyer or to the order of the Buyer, unless the Company agrees otherwise in writing.

(B) On a sale CIF or C&F the risk shall pass from the Company to the Buyer when goods have passed the Ship's rail at the agreed port of shipment, unless the Company agrees otherwise in writing.

9 Passing Of Property

(A) Notwithstanding the earlier passing of risk title to and property in the goods shall remain with the Company and shall not pass to the Buyer until the whole price has been paid; until payment in full the Buyer shall hold the goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company and the following provisions of this Clause 9 shall apply.

(B) The whole price shall only be treated as paid when any cheque, bill of exchange or other instrument of payment given by Buyer has been met on presentation or otherwise honoured in accordance with its term. The Company may sue for the whole of the price of the notwithstanding that the property in the goods has not passed to the Buyer.

(C) Payments shall be applied to invoices in the order in which they were issued and to goods in the order in which they are listed in the invoices.

(D) If buyer sells or disposes of the goods before the price is paid in full, Buyer shall, subject to subclause (F) below, hold on trust for the Company:-

(i) if the Goods have not been mixed with or incorporated into other goods the whole of the proceeds of sale; or

(ii) if the Goods have been mixed with or incorporated into other goods a just proportion of the proceeds of sale and such sum representing the proceeds of sale or a just proportion thereof shall be held in a separate designed account and not mingled with any other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.

(E) The trust declare in sub-clause (D) above shall be void if and to the extent that the trust in like term arises by operation of law in favour of the Company.

(F) Buyer shall not:-

(i) pledge the Goods or the documents of title thereto, or allow any lien to arise thereon;

(ii) deal with or dispose of the Goods or the documents of title thereto or any interest therein other than by a sale to an independent purchaser buying for full value in the ordinary course of his or its business;

(iii) hold its self out as the Company's agent in respect of the Goods.

(G) If Buyer defaults in the punctual payments of any sum owing to the Company then the Company shall be entitled to the immediate return of all Goods sold by the Company to Buyer (or the documents of title thereto) in which the property has passed to Buyer, and the Buyer hereby authorises the Company to recover the goods or documents and to enter any premises of the Buyer for that purpose and to repossess and dismantle and use or sell any of the Goods and by so doing terminate the Buyer's right to use sell or otherwise deal in them. Demand for or recovery of the Goods or documents by the Company shall not of itself discharge wither the Buyer's liability to pay the whole of the price and take delivery of the Goods or the Company's rights to sue for the whole of the price.

10 Claims for Shortcomings, Warranty

(A) The Buyer must inspect the delivery immediately upon receipt and report any shortcomings to the supplier in writing without delay, though not later than within 8 days. If this is not done, the supplies and performances will be assumed to have been accepted.

(B) Any (concealed) defects appearing later within the period of warranty (subsection 11) are to be notified to the supplier immediately after discovery in writing, though not later than 3 days after. The purchaser must state the exact details of the shortcoming and the circumstances that led to a defect.

If Buyer fails to give such notice Buyer shall be deemed to have accepted the Goods. If Buyer establishes to the Company's reasonable satisfaction that the Goods are so defective, Buyer's sole remedy in respect of non-acceptance or defects shall be limited as the Company may elect to the replacement of the Goods or refund of the purchase price against return of the Goods. In the case of non-delivery of the Goods Buyer shall inform the Company in writing within 14 days from the date of the invoice. If the goods supplied are not these which were ordered or there is a shortage in the goods supplied the Buyer must notify the Company immediately.

(C) All parts marred by shortcomings which prove to be defective demonstrably owing to a circumstance obtaining prior to the transfer of risk are to be corrected or replaced by fault free parts without charge, as the supplier deems fit. Replaced parts become the property of the supplier.

(i) After agreeing with the supplier the purchaser must grant the former the necessary time and opportunity for effecting all corrections or replacements deemed necessary by the supplier, otherwise the latter will be released from liability for the consequences resulting. Only in urgent cases where operational security is endangered or disproportionate major damage is to be avoided is the purchase entitled to rectify the trouble himself or call in a third party. The supplier must then be informed at once.

(ii) Of the immediate costs incurred by correction or replacement delivery, the costs of the replacement item will be borne by the supplier where the complaint proves to be justified. In particular the costs of dismantling and fitting as well as all transport and travel expenses will be borne by the purchaser.

(iii) Within the provisions of the legal regulations the purchaser is entitled to withdraw from the contract if the supplier fails to correct or replace a defective delivery for which he is to blame, within a reasonable time granted to him, despite written reminder with appropriate time extension.

(iv) In particular no warranty will be granted in the following cases: unsuitable or inexpert usage, incorrect assembly or unauthorised commissioning by the purchaser or third parties, natural wear and tear, incorrect or negligent treatment, inadequate or inexpert maintenance, modifications or repairs by the purchaser or third parties, unsuitable operating media, chemical, electrochemical or electrical influences and the use of spare and wearing parts obtained from other sources where these have not been approved or recommended by the supplier.

Additional clauses relating to system issues which directly effect operational characteristic of equipment

Air problems resulting from:

1) Inadequate or incorrect venting during system fill.

Inadequate or no air separation equipment installed.

2) Excessive water make-up - Old / leaky pipe work

- Construction phasing (draining and re-filling parts of system after commissioning of equipment).

3) Dirt particle problems resulting from: - Corroded pipe work

- Inadequate flushing of pipe work prior to installation and commissioning of equipment.

4) Inadequate or no dirt separation equipment installed.

5) Inadequate or no inline filters installed in accordance with O&M literature.

(D) These terms set out the Company's entire liability in respect of the Goods, and the Company's liability hereunder shall be in lieu and to the exclusion of all other warranties conditions, terms and liabilities express or implied statutory or otherwise in respect of the quality or the fitness for any particular purpose of the Goods or otherwise (notwithstanding all liability in respect of which, howsoever arising, is expressly excluded) except any implied by law or statute and which by law or statute cannot be excluded. Save as provided in these terms the Company shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in the Goods of failure to correspond to specification or sample for any injury, damage, loss consequential loss (including loss of profit, use or good will or similar financial loss) resulting from such defects or from any work done in connection therewith.

11 Warranty period limitation

(i) The warranty covering the performances defined in subsections 10 and 11 is valid for 12 months, subject to demonstrable observance of OEM maintenance instructions for equipment. Rubber bags in hot water vessels are covered by a 5-year warranty. For vessels with no-replaceable bags the 5-year warranty covers the entire vessel.

(ii) Standard warranty period begins with the installation but at the latest six months from delivery ex works.

(iii) Upon the expiry of the warranty, all claims by the purchaser for any reason whatsoever become null and void for all time.

(iv) Extended warranties are only valid in conjunction with a Company approved Service Contract.

12 Software Usage

Where the supply includes software, the purchaser is granted a non-exclusive right to use the software supplied including its documentation. It is granted for the exclusive use on the intended equipment supplied. All other rights to the software and the documentation remain with the supplier.

13 Commissioning

Where the Company also provides the commissioning these will be charge separately.

14 Indemnity

Buyer shall indemnify the Company in respect of all damage, injury or loss occurring to any person or property and against all actions, claims charges or expenses in connection therewith arising from the condition or use of the Goods in the event and to the extent that the damage injury or loss shall have been occasioned partly or wholly by the carelessness of Buyer or his servants or agents or by any breach by Buyer of its obligations to the Company.

15 Certification

If Buyer requires any testing, inspection or certification, including Certificate of Conformity, this must be clearly defines as part of the contract on placement of order (see Clause 2), and the Company may make a separate or additional charge for such services.

16 Specification, Drawings Etc

All quotations, drawings or technical documents submitted to the Buyer prior to, or subsequent to the formation of a contract remain the exclusive property and copyright of the Company and are returnable to the Company on request. They may not be used by the Buyer, or copies reproduced, transmitted or communication to a third party except with the prior written consent of the Company given by a duly authorised representative of the Company.

17 Proper Law

The contract shall be governed by and interpreted in accordance with English Law and Buyer submits to the jurisdiction of the High Court of Justice in England but the Company may enforce the contract in any court of competent jurisdiction.

18 Assignment

The Buyer shall not assign any benefit under the contract without the Company's written consent, which may if given be on such terms as the Company thinks fit.

19 Notices

Any notice given under or pursuant to the contract may be sent by any means resulting in the receipt of a written communication in permanent form and, if so sent to the address of a party shown on the delivery note so such other address as a party may have given for this purpose, shall be deemed received on the day when in the ordinary course of the means of despatch it would first be received by the addresses in normal business hours.