

CERRO E.M.S. LIMITED

CONDITIONS OF PURCHASE

1. DEFINITIONS

- (i) The term 'Buyer' shall mean Cerro E.M.S. Limited, so named in the Purchase Order.
- (ii) The term 'Seller' shall mean the person, firm or company to whom the Purchase Order is addressed.
- (iii) the word 'Goods' shall mean all goods and or services mentioned in the Purchase Order.
- (iv) The term 'Purchase Order' shall mean, any Purchase Order addressed by the Buyer to the Seller.
- (v) The 'Contract' shall mean the contract between Buyer and Seller consisting of the Purchase Order and any other documents (or parts thereof) specified in the Purchase Order and these conditions. Should there be any inconsistency between the documents comprising the Contract they shall have precedence in the order above listed in this sub clause.

2. QUALITY AND DESCRIPTION

- All Goods Shall:
- (i) Conform as to quantity, quality and description with the particulars stated in the Purchase Order.
 - (ii) Be of sound materials and workmanship.
 - (iii) Be equal in all respects to the samples, patterns or specifications provided or given by either party.
 - (iv) Be capable of any standard of performance specified in the Purchase Order.
 - (v) If the purpose for which they are required is indicated in the Purchase Order either expressly or by implication, be fit for that purpose.

3. DELIVERY

- (i) Save as otherwise provided the Seller shall at his own risk and expense in all respects deliver the Goods at the place or places in the manner and at the time or times specified in the Purchase Order, whereupon delivery shall be deemed to have been effected.
- (ii) Any excess delivery of Goods beyond quantity ordered made without express written permission may be refused and returned at Seller's risk and expense.
- (iii) Any Goods delivered earlier than the date specified for delivery without express written permission may be refused and returned at seller's risk and expense but without prejudice to Buyer's rights to require delivery of the Goods on the date specified for delivery.
- (iv) Time shall be of the essence so far as the date of delivery is concerned (including any new date for the delivery designated by Buyer pursuant to paragraph 4).
- (v) All payment made in advance of delivery shall be held in trust for the Buyer by the Seller until delivery.

4. POSTPONEMENT OF DELIVERY

The Buyer reserves the right at any time or from time to time to suspend any delivery or deliveries under or the execution of any work covered by this Purchase Order to such extent and for such periods as in his absolute discretion the Buyer may consider expedient.

5. PASSING OF PROPERTY AND RISK TO BUYER

The property and risk in the Goods shall pass to the Buyer on delivery.

6. ACCEPTANCE

Unless otherwise agreed the written acceptance by Seller of a Purchase Order or the commencement of any work or services thereunder by Seller (including the commencement of any work or services with respect to samples or tooling) shall constitute acceptance by Seller of such Purchase Order and of all of its terms and conditions.

7. PATENTS

- (i) Save to the extent that the Goods specified in the relevant Purchase Order are designed by Buyer, Seller warrants that all Goods (and their sale or use alone or in combination for their contemplated purpose or according to Seller's specifications or recommendations if any) will not infringe any United Kingdom or foreign patents and agrees to indemnify and hold harmless Buyer and anyone selling or using any of Buyer's products against all judgements decrees costs and expenses resulting from any infringement or alleged infringement and agrees that Seller shall upon request of Buyer and at Seller's own expense defend or assist in the defence of any action which may be brought against Buyer or those selling any of Buyer's products by reason of any such infringement or alleged infringement.
- (ii) If in the course of or in connection with any work pursuant to a Purchase Order Seller or any of Seller's employees makes any invention Seller hereby agrees to grant or (as the case may be) procure to be granted to Buyer and its associated companies throughout the world a royalty-free licence to make have made, use and sell under any patents which may be issued in respect of any such inventions, Buyer's associated companies shall be deemed to include the Cerro E.M.S. Limited and any company which is for the time being a subsidiary of Buyer or of the said Cerro E.M.S. Limited.
- (iii) In no case shall Buyer be under any liability to Seller in respect of any actual or alleged infringement of patent and other rights of third parties in relation to the Goods specified in the relevant Purchase Order their manufacture and testing except to the extent (if any) that such infringement or alleged infringement occurs by reason of Buyer's design or manufacture or testing methods specified by Buyer.

8. FORCE MAJEURE

If before delivery of the Goods is completed the Buyer's business is stopped, interrupted or restricted due to any act of God, war, strikes or lock-outs whether in Buyers works or in the works of the Buyer's other suppliers or the Buyer's sub-contractors, riot, civil commotion, epidemic, unusually severe weather, fire, accident, Governmental Acts, shortage of material or labour or any delay of a supplier due to any of the aforementioned causes or events or any other cause whatsoever and wheresoever beyond the control of the Buyer then delivery may at the option of the Buyer be partially or wholly suspended (as the case may require) during the continuance of such stoppage, interruption or restriction and the time for delivery shall be correspondingly extended or delivery may be cancelled by the Buyer and upon such cancellation the Buyer shall pay the Seller such sum as may be equitable in respect of work performed prior to cancellation.

9. PROGRESS AND INSPECTION

Buyer's representatives shall have the right to progress and inspect all goods at Seller's works and the works of the sub-contractors at all reasonable times and to reject goods that do not comply with the terms of the Contract. Any inspection, checking, approval or acceptance given on behalf of Buyer shall not relieve Seller or his sub-contractors from any obligations under the Contract.

10. ASSIGNMENT AND SUB-LETTING

The Contract shall not be assigned by Seller nor sub-let as a whole. Seller shall not sub-let any part of the work without Buyer's written consent which shall not be unreasonably withheld. The restriction contained in this clause shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the Contract. Seller shall be responsible for all work done and goods supplied by all sub-contractors. When Buyer has consented to the placing of sub-contractors copies of each sub-order shall be sent by Seller to Buyer immediately they are issued.

11. BUYER'S RIGHTS IN SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS, etc.

- (i) All drawings supplied by Buyer and all rights therein shall remain the property of the Buyer. Seller is licensed to use such drawings for the purpose only of fulfilling contracts with Buyer. Seller shall not disclose any such drawings or any data comprised therein to any third party unless expressly required or permitted to do so by Buyer.
- (ii) All drawing prepared by Seller in connection with a Purchase Order or in connection with any enquiry by the Buyer prior to the relevant Purchase Order and all rights therein shall be at all times the property of Buyer.
- (iii) For the purpose of this paragraph 11 'drawings' shall be deemed to include plans, photographs, models, patterns, samples, specifications and technical information of every description whether written or oral or three dimensional.

12. FREE ISSUE MATERIAL

Where Buyer for the purpose of the Contract issues materials free of charge to Seller such materials shall be and remain the property of Buyer. Seller shall maintain all such materials in

good order and condition.

Seller shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed Of at Buyer's discretion. Waste of such materials arising from bad workmanship or negligence of Seller shall be made good at Seller's expense.

The whole of these conditions shall apply mutatis mutandis to orders for the carrying out of work or the rendering of services as well as to orders for supplies and in addition the following provisions of this paragraph shall apply whenever a Purchase Order requires Seller to repair or apply a process to goods or material of Buyer (hereinafter called 'Buyer's Property') which Buyer makes available for that purpose.

- (i) Buyer's property shall be returnable on demand.
- (ii) Seller shall indemnify Buyer against loss of or damage to Buyer's property while It Is in the possession, custody or control of Seller or its permitted sub-contractors. During such time Seller shall adequately insure against such loss or damage and shall produce on demand by Buyer the policy of such insurance and the premium receipts.
- (iii) Buyer's Property shall not be removed from Seller's Premises without Buyer's written authority (except for the purpose of fulfilling the relevant purchase order in accordance with its terms).
- (iv) Seller shall keep separate account of all Buyer's Property and will furnish statements on request giving detailed description and location thereof both before and after repair or processing (as the case may be) as well as any other information regarding Buyer's Property asked for by Buyer. Buyer and persons authorised by Buyer shall be entitled at all reasonable times to check and inspect Buyer's Property and Seller's records thereof and may enter Seller's land and buildings for those purposes.
- (v) Where materials are supplied by Buyer for processing Seller shall return such number or quantity of finished units as in accordance with the conversion rate specified in the relevant Purchase Order or shall account for failure so to do to Buyer's satisfaction. Seller shall promptly pay Buyer on demand the full value of any of the Buyer's Property which is not returned or satisfactorily accounted for.

13. TOOLING

- (i) All tools, jigs, dies, fixtures, moulds, patterns, plant and/or equipment (hereinafter called 'Tooling') which is supplied or paid for by Buyer or for which Buyer is liable to pay under the terms of a purchase order shall be marked 'Property of Cerro E.M.S. Limited' and shall remain Buyer's Property to which paragraph 12 above (except sub paragraph (v) thereof) shall apply whether or not the relevant Purchase Order requires Seller to repair or apply a process to any goods or materials of Buyer as specified in that paragraph.
- (ii) Where Buyer is liable to contribute less than the whole cost the proportions paid by the Buyer and Seller shall be determined and ownership shall be agreed at those proportions. Seller shall during the currency of the relevant Purchase Order at Seller's expense maintain all tooling (whether Seller's or Buyer's property) in first class condition and immediately replace any such items which are lost or destroyed or become worn out. Seller shall adequately insure all such items against loss or destruction and shall produce on demand by Buyer the policy of such insurance and the premium receipts. None of such items shall be moved from Seller's premises or disposed of by Seller without the prior written approval of Buyer.
- (iii) No such tooling as is mentioned in this paragraph 13 shall be used in the production, manufacture or design of any goods or materials other than those contracted for by or in pursuance of the relevant Purchase Order nor for larger quantities than those specified.

14. GENERAL CONDITIONS IN THE TENDER

No terms or conditions submitted or referred to by Seller when tendering shall form part of the Contract unless otherwise agreed to in writing by Buyer

15. PRICE INCREASES

There shall be no increase in the Contract price unless the Seller shall have notified the Buyer in writing not less than 30 days prior to delivery and the Buyer shall have accepted the increase in writing.

16. SELLERS WORKING ON BUYER'S PREMISES

Each day before starting work on the Buyer's premises the person in charge of the Seller's work people must report to the office of the person named as the Buyer's authorised representative in the Purchase Order.

Seller's staff will be required to sign an undertaking not to disclose information relating to the Buyer's business and interests to any other party.

17. TERMINATION

Without prejudice to its other rights the Buyer may be giving written notice to the Seller elect to determine the Contract forthwith on the happening of any one of the following events:

- (i) If the Seller shall repudiate or commit any serious breach of the Contract.
- (ii) If the Seller shall commit any other breach of the Contract and shall not have remedied the same in one month of having requested by the Buyer by notice in writing to do so.
- (iii) If any distress or execution levied upon or against any of the chattels or property of the Seller is not satisfied within 21 days after the date of such levy or enforcement.
- (iv) If the Seller is granted a moratorium by or enters into a composition of debts with its creditors.
- (v) If the Seller shall commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against the Seller.
- (vi) If any order be made or a resolution passed for the winding up of the Seller unless such Resolution is made for the purposes of reconstruction or amalgamation.
- (vii) If a receiver or equivalent officer is appointed of the undertaking of any of the property and assets of the Seller.

18. CHANGES IN SPECIFICATION

The Buyer may at any time make changes in drawings, designs and/or specifications to the Goods covered by the relevant Purchase Orders.

The Seller should not make any changes in the design or composition of any Goods ordered without written consent of the Buyer.

19. INSPECTION

All Goods shall be subject to inspection and test by Buyer. In case any Goods are defective in materials or workmanship or otherwise fail to meet the requirements of the relevant Purchase Order Buyer shall have the right to reject or to retain and correct such Goods at the expense of Seller. Rejected Goods will be held or returned to Seller at Seller's expense and risk and Seller shall pay all Buyer's costs of packing, handling and sorting the rejected Goods.

20. CARRIAGE AND PACKING

All orders will be carriage paid to the works specified on the Purchase Order. No charge will be entertained for any packaging materials but these will made available for collection by Seller at his expense when availability is notified by the Buyer.

21. STATUTORY REQUIREMENTS

The Seller warrants that the Goods comply in all respects with the requirements applicable thereto of any statute or regulation which shall be in force at the date of delivery.

22. GENERAL

Nothing in these Conditions shall prejudice any Condition or Warranty express or implied or other right or remedy to which the Buyer may be entitled in relation to the Goods by virtue of any statute of custom or any general law or local law or regulation.

23. PROPER LAW

The contract shall be governed by English law, unless the Buyer is incorporated in Scotland, in which case it shall be governed by Scottish law.

24. NOTICES

All notices or communications by one party to the other concerning any matter or things relating to the Contract may be given by prepaid first class post addressed to the last known address of the party to whom the notice or communication is to be given. Any notice or communication so sent shall be deemed to be properly and effectively given three days after the same shall have been properly posted according to the postal rules of the country of the sender.