

# CERRO E.M.S. LIMITED

## CONDITIONS OF SALE AND QUOTATION

### 1. GENERAL

- (a) These conditions shall apply to all quotations made and all orders and contracts for the sale of goods accepted by us ("goods"). Special or additional terms of the Purchaser contained in this order or otherwise shall be of no effect unless the same is separately brought to our notice and express content thereto is given in our written acceptance.
- (b) Any variation or addition to any contract shall only be binding upon us if contained in writing and signed on our behalf by a director or other duly authorised person. Contracts may be cancelled only with our written consent and on terms which will indemnify us for all loss.
- (c) All orders are subject to our written acceptance ("our acknowledgement") signed by our duly authorised representative.

### 2. DOCUMENTS

- (a) We reserve the right at any time to correct clerical or technical errors in the contract documents.
- (b) The purchaser shall furnish us with all necessary specifications with his order. We take no responsibility for goods manufactured, priced or delivered not in accordance with the order or the specifications, unless the Purchaser's order and specifications are clear and correct in every particular and the said particulars are correctly set out in our acknowledgement and in any drawings submitted by us, which it is in the Purchaser's duty to check. No responsibility is accepted for goods manufactured or priced not in accordance with any requirements of any governmental or other inspecting authority.

### 3. PRICES

- (a) All selling prices contained in our quotations and acknowledgments are ex-works exclusive of VAT unless otherwise stated and based upon the costs of metal, conversion, power, labour and overheads ruling at the date of the quotation or the acknowledgment. They are provisional only and are subject to revision by us at any time before the goods are despatched to take account of subsequent variations in such costs save that the metal component of the price (other than our supplier's metal conversion costs) will not be varied in respect of goods despatched to the Purchaser within 90 days of the date of the receipt of the Purchaser's order. A certificate of our auditors as to any such variations and as to the appropriate revised price will be conclusive and binding on us and the Purchaser. Prices may also be revised by us where the Purchaser calls down quantities smaller than those specified in his order. The Purchaser shall pay all prices as so revised.
- (b) Packing cases, stollages etc. will be invoiced, if not returned within 3 months of delivery carriage paid. Carriage on all deliveries will be charged to the Purchaser at cost. No allowance will be made to the Purchaser for carriage where goods are collected from our works by the Purchaser or a carrier arranged by him.
- (c) Any special tests or inspections requested by the Purchaser will be charged extra.

### 4. TERMS OF PAYMENT

- (a) Unless otherwise stipulated in our acknowledgment payment is due in full on the last day of the calendar month following the calendar month in which the goods were despatched, or in which the Purchaser is notified that the goods are ready for delivery.

### 5. TERMINATION AND PARTIAL DELIVERIES

- (a) In the event of the purchaser for any reason whatsoever failing within one calendar month to effect any payment which may be due under this or any contract with us, or if he commits any breach of the Contract, or if he becomes insolvent or enters into a composition with or for the benefit of his creditors, or being a body corporate has a receiver appointed of its undertakings or assets or any part thereof, or save for the purpose of reconstruction or amalgamation, goes into liquidation, we shall thereupon be entitled, without prejudice to our other rights, forthwith to terminate the Contract or any unfulfilled part thereof, or at our option to make partial deliveries.

### 6. TIME FOR DESPATCH

- (a) All periods for despatch and delivery expressed in the Contract are approximate only.
- (b) We shall be under no liability for any loss or damage to the purchaser or others arising directly or indirectly out of late despatch or despatch or delivery be deemed to be a breach of Contract, nor entitle the Purchaser to cancel the Contract.
- (c) We shall be entitled, without liability on our part and without prejudice to our other rights, to terminate the Contract or any unfulfilled part thereof, or at our option to suspend or make partial deliveries if the completion of the manufacture of the goods by us or by our sub-contractor or suppliers is prevented, hindered or delayed whether directly or indirectly, by reason of the Purchaser failing to furnish necessary information or instructions, war, civil commotion, governmental restrictions, transport difficulties, strikes, lock-outs, accidents or stoppages to works, shortages of labour, materials, equipment, fuel or power, machinery breakdown or any other cause whatsoever beyond our sub-contractors or suppliers reasonable control, whether such cause exists at the date of the order or not. Any such cause shall be deemed to prevent, hinder or delay us or our sub-contractors or suppliers if we or our sub-contractors or suppliers respectively are thereby prevented, hindered or delayed from fulfilling or aggregate obligations both under the Contract and under all other contracts, whether with the Purchaser or with third parties, relating to the supply of the same or similar goods.

### 7. DELIVERIES

- (a) When delivery is effected on our vehicles or by an independent contractor arranged by us, the Purchaser shall be bound to accept delivery of the goods on arrival at his works, when risk in the goods shall pass to the Purchaser. The Purchaser must notify us and the carrier in writing (otherwise than upon the carrier's documents) of damage in transit, mis-delivery or quantity discrepancy immediately on arrival. The Purchaser must notify us and the carrier in writing (otherwise than upon the carrier's documents) of non-delivery within 6 days where delivery is effected through the post, 10 days where delivery is effected by road transport or British Rail, and 5 days where delivery is effected on our own vehicles in all cases from the date of despatch advised to the Purchaser.
- (b) Where delivery is effected on the Purchaser's vehicles or is arranged by him, risk in the goods shall pass to the Purchaser on delivery to the carrier, whether he be the Purchaser's servant or agent or an independent contractor arranged by the Purchaser.
- (c) Without prejudice to our other rights, should the Purchaser for any reason fail to accept delivery of the goods on arrival, we shall be entitled at the Purchaser's risk and expense to store the goods and/or to procure or effect storage of the goods elsewhere.
- (d) Where goods are sold f.o.b the risk in the goods shall pass to the Purchaser immediately the goods are over the ship's rail, and shall be under no obligation to give the Purchaser the notice specified in Section 32(3) of the Sale of Goods Act 1893.

### 8. FAULTS AND EFFECT AND EXCLUSION OF LIABILITY

- (a) On arrival of the goods the Purchaser must immediately examine them and any visual faults or defects must be notified to us in writing within 3 days. Non-visual faults and defects must be notified within 90 days.
- (b) Upon the Purchaser within the appropriate period provided by sub-clause (a) above notifying us of any fault or defect in the goods or within the appropriate period provided by clause 7(a) of damage in transit, mis-delivery or quantity discrepancy and in the case of allegedly defective or faulty goods upon their being returned to us within 10 days of such notification and upon the fault, defect or damage in transit, mis-delivery or quantity discrepancy being established to our satisfaction we shall use our best endeavours to replace such goods or to make up any shortage. If goods are delivered not in accordance with specification, we shall accept the same for credit and replacement. All goods replaced hereunder remain our property.
- (c) We shall not replace goods or make up shortages:-
  - (i) if faults or defects are not notified in accordance with clause 8(a) or if damage in transit mis-delivery or quantity discrepancy is not notified in accordance with clause 7(a).
  - (ii) in respect of which the Purchaser or any third party has without our previous written consent effected modifications or repairs;

- (iii) if the faults or defects were caused by incorrect or negligent handling, disregard of operation instructions, overloading, unsuitable work or any other default by the Purchaser or any third party;
- (iv) if the faults or defects were caused by fair wear and tear, accident, or any other matter beyond our reasonable control occurring after the date of arrival.

- (d) The terms of this Condition are in lieu of all conditions, warranties or other terms as to description, fitness for purpose, condition, merchantability, quantity or otherwise in respect of the goods or packing, whether expressed in the Contract or implied by Common Law, custom or statute and notwithstanding that such purpose or condition may be. may become or may have been known to us. Apart from our obligation to replace goods in accordance with the terms of this Condition, we accept no liability either for faults or defects in goods or for any loss or damage to the Purchaser or others arising directly or indirectly from any breach by us of the terms of the Contract or of the general law, and defects in quality or dimension shall not be ground for the cancellation of the Contract or for the balance of the Contract by the Purchaser.

- (e) Without prejudice to the generality of the foregoing:-

- (i) We shall not be liable for any consequential loss or damage suffered by the Purchaser, including but without limitations, delay, loss of production, loss of profits or loss of or damage to other property or goods, nor shall we be liable for any loss or damage capable of being covered by insurance;
- (ii) We shall not be liable in damages in excess of the total price stated in the Contract, even if the Purchaser's loss or damage results from a fundamental breach or repudiation and even if further performance of the Contract is frustrated. The purchaser shall also indemnify us against all actions, claims or demands by third parties in tort or otherwise arising directly or indirectly in connection with faults or defects in the goods to the extent that the same exceeds the limitation of liability aforesaid.

- (f) The provision of this Condition 8 shall apply, subject to the limitations imposed by the Unfair Contract Terms Act 1977.

- (g) We reserve the right to deliver goods to within  $\pm$  10% of the quantity or weight specified in the Purchaser's order, and payment shall be made for the actual quantity supplied pro-rata.

### 9. INDEMNITY

- (a) The Purchaser shall indemnify and hold us harmless against all claims by any person in tort or for infringement or alleged infringement of patents, trade marks, copyright, registered designs, or otherwise arising directly or indirectly in connection with goods manufactured by us or with work done by us on goods in accordance with the Purchaser's specifications.

### 10. PROPERTY IN THE GOODS

- A. This clause A applies to goods sold and delivered to any location other than in Scotland.

1. Until payment in full has been received by us for all goods whatsoever supplied at any time by us to the Purchaser:-
  - (a) Property in the goods shall remain in us and the Purchaser shall hold the goods as our fiduciary agent and bailee;
  - (b) The Purchaser shall subject to (c) and (f) below store the goods separately from his own goods and the goods of third parties, property stored, protected and insured;
  - (c) The Purchaser may resell the goods in the ordinary course of business, and in the relations between himself and us will resell as our fiduciary agent but in the relations between himself and his sub-purchaser is to act as principal, and is not to create any relationship, disclosed or undisclosed, between us and his sub-purchaser;
  - (d) The Purchaser shall account to us for all proceeds of the goods, tangible and intangible, including insurance proceeds and shall keep them separate from his own moneys and other assets and from those of third parties;
  - (e) We may appropriate payments by the Purchaser to such goods and accounts as we see fit, notwithstanding any purported appropriation by the Purchaser to the contrary, and may take such appropriation at any time;
  - (f) Notwithstanding that property in any goods has not yet passed, the Purchaser may incorporate the goods in or together with any product manufactured or assembled by the Purchaser in the ordinary course of its business;
  - (g) if Purchaser sells any such products as are referred to in (f) above before property in the incorporated goods has passed, it shall do so as our agent, but Purchaser's liability to account as agent for the proceeds of such sales shall be limited to our invoice value of goods so incorporated, if, before property in goods passes, any goods are incorporated in or together with any products manufactured or assembled by Purchaser, Purchaser shall maintain records sufficient to enable such products to be identified and for goods so incorporated to be identified, measured or otherwise quantified;
  - (h) The powers of the Purchaser referred to in (c) and (f) above shall be determined:-
    - (i) by written notice to the Purchaser if any payment for any goods whatsoever remains unpaid 14 days after becoming due to us;
    - or
    - (ii) automatically if a receiver is appointed over any assets or undertaking of the Purchaser or a winding up order is made against the Purchaser or the Purchaser goes into voluntary liquidation or calls a meeting or makes any composition or arrangement with its creditors or commits any act of bankruptcy;
    - (iii) Upon determination of the powers of the Purchaser referred to in (c) and (f) above the Purchaser shall place the goods at our disposal and we shall be entitled to enter upon the premises of the Purchaser and remove any goods, including any goods which may have been incorporated into or together with other products PROVIDED ONLY THAT their severance from such products is possible without materially damaging the other components thereof.

- B. This clause B applies to goods sold and delivered to any location in Scotland. Until we have been paid in full for the goods comprised in this Contract:-

1. Such goods remain our property;
2. We may recover the goods at any time from the Purchaser; for such purposes we and our servants or agents may enter any land or building upon which the goods are situated. In the event of the Purchaser who has contracted to buy goods from us purporting to sell the whole or any part of such goods to a third party before payment has been made to us of all sums owing to the Company therefor from the Purchaser, then as between us and the Purchaser, the Purchaser shall be accountable to us as agent for any sums received by the Purchaser from the third party in respect of the whole or any part of the goods.

### 11. HEALTH AND SAFETY AT WORK

The attention of the Purchaser is drawn to the provisions of Section 6 of the Health and Safety at Work etc., Act 1974. We will make available on request, information on the method of construction and manufacture to ensure that, as far as is reasonably practicable, they are safe and without risk to health when properly used. It is the responsibility of the Purchaser to take such steps as are necessary to ensure that appropriate information relevant to the goods is made available to its employees and any person to whom the Purchaser supplies them.

### 12. LEGAL CONSTRUCTION

The Contract shall in all respects be construed and operate in conformity with English law. If any of these Conditions or any part thereof is rendered void or unenforceable by any legislation to which it is subject, it shall be so void and unenforceable to that extent and no further.

### 13. DIES AND TOOLS

Notwithstanding any charge that may be made, dies and tools are the property of the seller, who will normally, but without obligation to do so, retain them for not more than three years from the date of completion of the last order. The seller undertakes to exclusively use the dies for production of the buyers orders and will not use them for any other buyer without prior consent.