

OEM-AUTOMATIC LIMITED ("OEM")

**GENERAL CONDITIONS OF SALE ("the Conditions")**

**1. DEFINITIONS**

In these Conditions:

- "Buyer"** means the party with whom OEM contracts;
- "Contract"** means the contract made between OEM and the Buyer for supply of the Goods which are subject to these Conditions;
- "Goods"** means all or any of the goods works and materials to be supplied by OEM;
- "Act of Insolvency"** means any one or more of the following namely the passing of a resolution or the presentation of a petition for winding-up, bankruptcy or for the appointment of an administrator, the appointment of a receiver and/or manager or administrative receiver over the whole or any part of the Buyer's undertaking and assets, the making of a proposal for a voluntary arrangement within the Insolvency Act 1986 or of a proposal for any other composition scheme or arrangement with or the calling by the Buyer of any meeting of its creditors generally, the levying of execution or distress or diligence on any of its assets, the failure to pay its proper debts as and when due and anything analogous to any of the foregoing under the law of the jurisdiction where the Buyer is established.

**2. CONSTRUCTION OF CONTRACT**

- (1) These Conditions shall apply to all contracts of sale between OEM and the Buyer.
- (2) The terms of the Contract shall consist of the particulars set out in OEM's Order Acknowledgement and these Conditions. Any term in OEM's Order Acknowledgement which is at variance with these Conditions shall prevail over these Conditions, which shall be construed accordingly, except with regard to price in respect of which condition 5 (2) shall prevail.
- (3) No other terms (whether contained in any document issued by the Buyer or in any written or oral communication between the parties) shall apply to the Contract nor shall these Conditions or the particulars contained in OEM's Order Acknowledgement be modified without OEM's written agreement. OEM shall be entitled to amend technical specifications of the Goods without notice.
- (4) In order that these Conditions and the particulars in OEM's Order Acknowledgement shall be a complete record of the agreement between the parties with regard to the sale of the Goods, the Buyer must ensure that any pre-contractual representation on which the Buyer wishes to rely has been specified in those particulars. In entering into the Contract, the Buyer does not rely upon any such representation made by or on behalf of OEM which has not been so specified.

**3. QUOTATIONS AND ORDERS**

- (1) Unless accepted before lapse or withdrawal, or renewed in writing by OEM, quotations shall lapse automatically after 30 days, but maybe withdrawn earlier.
- (2) Quotations are information only and are not firm offers. There shall be no binding contract until OEM has accepted the Buyer's order by despatching OEM's official Acknowledgement of Order or invoice

**4. DELIVERY**

- (1) Although OEM will endeavour to deliver Goods within any delivery time specified in OEM's Acknowledgement of Order, that time is an estimate only and not a term of the Contract and as such, time shall not be of the essence. OEM shall not be liable for any failure to meet any such estimate, nor for any loss, of whatsoever nature resulting directly or indirectly therefrom.

- (2) Any such time specified shall be extended by any period during which the manufacture or delivery of the Goods or other work by OEM in connection with the Contract is delayed due to fire, explosion, flood, storm, tempest, sabotage, strikes (official and unofficial), riot, invasion, acts of war, shortage of labour, power or materials, civil commotion, accidents, plant breakdowns, compliance with an order of an apparently competent authority, and any other event beyond OEM's control.
- (3) If any such delivery time is so extended by more than 90 days the Buyer shall be entitled to give written notice to OEM requiring the Goods to be delivered within 30 days of the date of such notice failing which the Buyer shall have the right to give further written notice terminating the contract forthwith.
- (4) OEM shall be entitled to deliver the Goods by instalments and/or in advance of the estimated date. Each delivery shall constitute a separate contract to which these Conditions shall apply. Failure by OEM to deliver any one or more of the instalments or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- (5) In the case of United Kingdom and Overseas customers, unless otherwise stated, OEM will deliver to the Buyer's premises and will charge separately for packing, carriage and handling.
- (6) The delivery by OEM of a greater or lesser quantity provided for in the Contract, the delivery of other goods not provided for in the Contract, or the delivery of Goods only some of which are defective, shall not entitle the Buyer to reject all of the Goods delivered. In order that OEM can comply with its carrier's conditions, a claim in respect of error in quantity or type of Goods in respect of the condition of the Goods delivered must be made in writing to OEM within 3 days or to the carrier and OEM within 5 days of receipt. Failure to make such claim shall constitute unqualified acceptance of the Goods and waiver by the Buyer of all claims relating to error in quantity or type of Goods delivered or relating to the condition of Goods delivered. Similarly, if any Goods invoiced by OEM are not received by the Buyer, the Buyer must notify OEM within 25 days or the carrier and OEM within 28 days of the date of invoice, failing which the Buyer will be liable to pay for the Goods in full.
- (7) OEM shall at its option make good any non-delivery short delivery or damage of Goods notified in accordance with Condition 4(6) by repair or replacement of such Goods and save as provided in this Condition shall not be liable for any such non-delivery short delivery or damage in transit nor for any loss, financial or otherwise resulting directly or indirectly therefrom. In no event shall OEM be liable to the Buyer in connection with any damage or loss in transit where delivery takes place at OEM's premises.
- (8) If the Buyer fails to take delivery of or collect the Goods or fails to give OEM adequate delivery instructions after notification by OEM that the Goods are ready OEM may (without prejudice to its other rights and remedies): store the Goods (on its own or any third party's premises) and charge the Buyer for its reasonable costs (including without limitation VAT costs of storage, carriage and insurance); and/or sell the Goods at any time and after deducting all costs and expenses account to the Buyer for any excess over the price already paid under the Contract or charge the Buyer for any shortfall between the Contract price and such costs and expenses.
- (9) All returnable containers and packing materials will be charged for, but credit will be given if these are returned in condition satisfactory to OEM, to OEM's works carriage paid within thirty days following delivery of the relevant Goods.

## **5. PROPERTY AND RISK**

- (1) The risk in the Goods shall pass to the Buyer upon despatch of the Goods from OEM's warehouse.
- (2) Notwithstanding delivery and the passing of risk, property in and title to the Goods shall remain in OEM until OEM has received payment of all sums owing to OEM under the Contract and any other contract with the Buyer whatsoever.
- (3) Until property in and title to the Goods passes to the Buyer: the Buyer shall keep the Goods properly stored, protected and insured and separate from all or any other goods whether belonging to OEM, the Buyer, or any third party; OEM shall be entitled at any time forthwith to revoke the Buyer's power to deal with the Goods; and it shall automatically cease if the Buyer shall commit or be subject to any Act of Insolvency; and the Buyer shall not make any modification to the Goods or their packaging or alter remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods. Upon termination of the Buyer's power to deal with the Goods, the Buyer shall place the Goods at the disposal of OEM and OEM and its servants and agents are hereby irrevocably authorised without the need for consent of any third party but using only such force as may be necessary, to enter upon any premises of the Buyer or any third party for the purpose of removing the Goods.
- (4) If any of the foregoing provisions of this Condition shall be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provisions.

## **6. PRICES**

- (1) Unless otherwise stated in OEM's Order Acknowledgement, prices for the Goods shall be ex-works, and shall be exclusive of VAT, packing, carriage, insurance, and any other costs, all of which shall be the subject of additional charges. VAT shall be charged where appropriate at the rate prevailing at the relevant tax point.

- (2) Any price quoted by the Company is based upon costs current as the date of quotation. The price charged to the Customer under the Contract may be changed to take account of costs current at the date of invoice. Such changes may include, but are not limited to, fluctuations in rates of currency where the Goods or any part thereof, are sourced from third countries.

## **7. PAYMENT**

- (1) Subject to prior written agreement to the contrary, OEM shall be entitled to invoice the Buyer for the price of the Goods on or at any time after OEM has notified the Buyer that the Goods are ready for collection or OEM has tendered delivery of the Goods.
- (2) If OEM has granted the Buyer monthly account credit facilities, then payment of the price must be made within 30 days of the date of Invoice. Otherwise payment must be in cash prior to delivery. Payment shall be made direct to OEM in the currency invoiced. The Buyer shall not be entitled to exercise any right of set-off against payment due to OEM.
- (3) OEM shall be entitled to charge daily interest on any overdue sum at the rate of 5 per cent annum above the base lending rate for the time being of Lloyds TSB Bank plc from the due date for payment to the actual date of payment (both before and after judgment).
- (4) Where payment is agreed to be made by instalments, any delay or default by the Buyer in making payment in respect of any one instalment shall render all the remaining instalments due forthwith, and interest will be charged in accordance with condition 7(3) with immediate effect until the date of actual payment.
- (5) OEM may appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between OEM and the Buyer) as OEM may think fit (notwithstanding any purported appropriation by the Buyer).

## **8 WARRANTIES AND EXEMPTIONS**

- (1) IF UNDER PROPER USE THE GOODS DEVELOP ANY DEFECT DURING THE WARRANTY PERIOD DUE TO DEFECTIVE ARTICLES OR MATERIALS SUPPLIED OEM SHALL AT ITS OWN EXPENSE AND OPTION REPLACE OR REPAIR SUCH GOODS AS ARE DEFECTIVE SO AS TO REMEDY THE DEFECTS EXCEPT WHERE SUCH DEFECTS ARE ATTRIBUTABLE TO ACCIDENT, FAIR WEAR AND TEAR, OR ANY ACT OMISSION OR NEGLIGENCE OF THE BUYER OR OF ITS AGENTS. THE BUYER MUST GIVE OEM NOTICE OF ANY ALLEGED DEFECTS AS SOON AS IT BECOMES APPARENT, AND SHALL (UNLESS OTHERWISE INSTRUCTED BY OEM) RETAIN THE GOODS AT THE BUYER'S PREMISES FOR INSPECTION BY OEM AND GIVE OEM ADEQUATE FACILITIES TO INVESTIGATE THE COMPLAINT AT THE BUYER'S PREMISES. THE "WARRANTY PERIOD" SHALL MEAN THE PERIOD SPECIFIED IN OEM'S ORDER ACKNOWLEDGEMENT AS THE WARRANTY PERIOD AND IF NO SUCH PERIOD IS SPECIFIED, THEN A PERIOD OF 12 MONTHS FROM THE DATE OF DELIVERY OF THE GOODS.
- (2) EXCEPT AS EXPRESSLY STATED ABOVE THERE SHALL BE EXCLUDED FROM THE CONTRACT ANY WARRANTY, CONDITION OR STATEMENT, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO SATISFACTORY QUALITY, AND/OR FITNESS OF THE GOODS FOR ANY PARTICULAR PURPOSE.
- (3) OEM shall not be liable to the Buyer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by OEM its servants or agents, [in a sum which is greater than the Contract price].
- (4) OEM shall not be liable to the Buyer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss of profits loss of goodwill loss of contracts and/or any indirect or consequential (including economic) loss of any kind including loss of profits and/or loss of production which the Buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by OEM, its servants or agents.
- (5) Provided that nothing in this Condition shall operate so as to exclude OEM's non-excludable liability in respect of death or personal injury caused by the negligence of OEM its servants or agents; to affect the statutory rights of the Buyer where Goods are sold to a Buyer dealing as a consumer within the meaning of Unfair Contract Terms Act; or to exclude the application of Section 12 of the Sale of Goods Act 1979 or to exclude liability for fraudulent misrepresentation.
- (6) OEM RESERVES THE RIGHT NOT TO ACCEPT GOODS FOR CREDIT OR REPLACEMENT FROM THE BUYER THAT ARE NOT ACCOMPANIED AND CLEARLY MARKED WITH A RETURNED MATERIALS AUTHORISATION (RMA) NUMBER THAT HAS BEEN PREVIOUSLY AGREED WITH AND ISSUED BY OEM. AN RMA NUMBER SHALL REMAIN OPEN AND VALID FOR 30 DAYS FROM DATE OF ISSUE BY OEM. IF OEM HAVE FAILED TO RECEIVE THE GOODS TO WHICH THE RMA NUMBER RELATE WITHIN THIS PERIOD THEN OEM RESERVE THE RIGHT TO CANCEL THE RMA. THE RISK AND THE PROPERTY IN THE GOODS REMAINS WITH THE BUYER UNLESS OTHERWISE NOTIFIED BY OEM. OEM WILL NOT ACCEPT RETURNED GOODS THAT CLEARLY SHOW SIGNS

OF PHYSICAL DAMAGE TO EXTERNAL PACKAGING WHERE IT IS POSSIBLE THAT DAMAGE TO THE GOODS MAY HAVE OCCURRED AS A RESULT. THE BUYER SHALL BE RESPONSIBLE FOR THE CARRIAGE COSTS OF THE RETURNED GOODS UNLESS OTHERWISE AGREED IN WRITING BY OEM.

#### **9. *INSOLVENCY AND DEFAULT***

- (1) Without prejudice to any rights and remedies available to it, OEM shall be entitled, forthwith on written notice to the Buyer either to terminate the Contract in whole or in part and/or any other contract with the Buyer or to withhold performance of all or any of its obligations under the Contract and/or any other contract with the Buyer (and on the giving of such notice all monies outstanding from the Buyer to OEM shall become immediately due and payable) if:-
  - (i) any sum owing to OEM from the Buyer on any account whatsoever shall be unpaid after the due date for payment (in which event OEM shall have a general lien for any such sum on all and any property of the Buyer in its possession); or
  - (ii) the Buyer shall commit or be subject to any Act of Insolvency; or
  - (iii) the Buyer shall commit any breach of any contract (including without limitation the Contract) with OEM.
- (2) In the event of a suspension of performance OEM shall be entitled, as a condition of resuming performance, to require pre-payment, or such security as it may require.

#### **10. *EXPORT TERMS***

- (1) Any term or expression which is defined in the provisions of Incoterms 2000 (or any subsequent revision thereof) shall import the respective obligations of Buyer and Seller into these Conditions, but in the event of conflict these Conditions shall prevail.
- (2) Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between OEM and the Buyer) apply notwithstanding any other provision of these Conditions.
- (3) Unless otherwise agreed in writing between OEM and the Buyer, the Goods shall be delivered Ex-Works and OEM shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- (4) The Buyer shall be responsible for arranging for testing and inspection of the Goods at OEM's premises before shipment. OEM shall have no liability for any claim in respect of any defect in the Goods which would be apparent on testing or inspection and which is made after shipment, or in respect of any damage during transit.

#### **11. *CANCELLATION***

The Contract may be cancelled in whole or in part by the Buyer only with OEM's written consent and upon the condition that the Buyer shall indemnify OEM in full against all loss, damages, costs expenses and other liabilities awarded against or incurred by OEM as a result of or in connection with the cancellation.

#### **12. *GENERAL***

- (1) It shall be the responsibility of the Buyer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, (including without limitation any relating to the importation or use of the Goods in the country of destination and for the payment of duties thereon) are duly complied with. It shall be a condition precedent to the performance by OEM of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Buyer.
- (2) Neither party shall have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.
- (3) No failure or delay on the part of OEM to exercise any of its rights under the Contract shall operate as a waiver of nor shall any waiver by OEM of any breach by the Buyer of any of its obligations under the Contract affect the rights of OEM in the event of any further or continuing breach.
- (4) The Contract is personal to the Buyer, who shall not assign or in any way part with the benefit without OEM's prior written consent.
- (5) Each and every obligation contained in these Conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non- enforceability of any other such obligation.
- (6) The Conditions and the Contract shall not create or evidence, or be deemed to create or evidence, any agency or partnership between OEM on the one hand and the Buyer or any third party on the other.
- (7) Any notice required to be given in writing under the Contract shall be given, where possible, by facsimile transmission and otherwise by first class post addressed to the registered office of the party for which it is intended, or to such other

address as may be notified in writing in accordance herewith for the purpose, and shall be deemed to have been received, in the case of a facsimile transmission, upon transmission and, in the case of a letter, forty-eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.

- (8) The Contract shall be governed by English Law.
- (9) The parties irrevocably submit to the exclusive jurisdiction of the English Courts, save in the case of a Buyer who has no assets within the jurisdiction of the English Courts and who is established in a country which will not enforce the judgement of the English Courts. In those circumstances OEM may if it chooses refer any disputes arising out of the Contract to arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, such arbitration to take place in London.

**CARRIAGE AND HANDLING CHARGES**

Please enquire.