

1. DEFINITIONS -In these terms and conditions: -

- (a) "goods" means the goods (including any instalments of the goods or any part of them) to be supplied by the Sellers to the Purchaser under the contract of sale of which these terms and conditions form part;
- (b) "the Purchaser" means the person buying the goods; and
- (c) "the Sellers" means Pearson Spares & Service Ltd.

2. GENERAL: These terms and conditions are the only terms and conditions upon which the Sellers will do business with the Purchaser and shall prevail notwithstanding any printed or other conditions contained in any purchase order or acceptance of estimate or quotation or otherwise brought to the Sellers' notice. No other agreement, representation, promise, undertaking or understanding of any kind unless expressly accepted in writing by the Sellers shall alter, vary, supercede or operate as a waiver of these terms and conditions. The Sellers' record of any order placed by the Purchaser verbally shall be conclusive, except in the event of a clerical error, as to the type and quantity of goods and the point and date of delivery.

3. ORDERS: No order made or given by the Purchaser to the Sellers shall be accepted or be deemed to have been accepted by the Sellers and a contract of sale shall not be made or be deemed to have been made until an acknowledgement of such an order has been given in writing by the Sellers to the Purchaser. The right is reserved to the Sellers (without prejudice to any other remedy competent to the Sellers) to cancel without penalty to the Sellers any uncompleted order or the contract of sale or to suspend delivery on the failure of the Purchaser to fulfil any of the commitments or obligations of the Purchaser to the Sellers howsoever arising whether such commitment or obligation arises pursuant to the contract of sale or otherwise. Upon such cancellation or suspension by the Sellers or in the event of any cancellation or suspension of the contract or of any order made or given by the Purchaser to the Sellers, the Purchaser shall, on the demand in writing of the Sellers to the Purchaser, indemnify and so free and relieve the Sellers from and against any loss, cost, charge, expense or damage to or incurred by the Sellers resulting from such cancellation or suspension.

4. VALIDITY: All goods are offered subject to their being available upon receipt of the Purchaser's order.

5. PRICES: All prices quoted or accepted are exclusive of VAT at the applicable rate which shall be paid by the Purchaser to the Sellers on the price of the goods at the time of payment of the price and are given on an ex works basis. Unless expressly quoted as a firm price, all prices quoted are business estimates only and the prices ruling at the date of despatch shall apply and shall be invoiced to the Purchaser. Where a firm price is quoted in writing it is a subject to the receipt of the Purchaser's order within 30 days of the date of the quotation. If work is suspended because of the Purchaser's instructions, lack of instructions or failure to supply specifications, extra charges may be made by the sellers against the Purchaser. The Sellers shall be entitled to refuse to accept any order placed as a result of any quotation made by the Sellers.

6. PACKAGING AND DELIVERY: Packaging and delivery charges will be charged separately. Delivery periods shall run from the date of acceptance or deemed acceptance of the Purchaser's order. The Sellers may make part deliveries or may deliver any of the goods by instalments and each delivery shall be considered a separate transaction and the failure of any delivery shall not affect the due performance of the contract of sale as regards other deliveries. The Sellers will endeavour to adhere to the delivery date set out in the quotation, but such delivery date is a business estimate only and the Sellers shall be under no liability whatsoever for any delay in delivery or the consequences thereof however caused and such delay shall not entitle the Purchaser to cancel or terminate any order or the contract of sale. Time for delivery shall not be of the essence of the contract.

7. FORCE MAJEUR: In the event of any stoppage, delay or interruption of work at the Sellers' works or at the premises of any supplier before or during the delivery period caused by strike, lockout, labour dispute, fire, breakdown of machinery, shortage of materials or transport or any other cause whatsoever beyond the Sellers' control, deliveries may be wholly or partially suspended and the delivery period extended by the length of time during which deliveries are suspended.

8. STORAGE: Where goods are ready for delivery the Sellers may postpone delivery at the request in writing of the Purchaser provided that the Purchaser pays the full price of the goods to the Sellers within seven days of the request. The Sellers may store the goods at their own premises or elsewhere at the Purchaser's sole risk and all storage, insurance and transport charges shall be paid by the Purchaser.

9. ACCEPTANCE Unless the Purchaser gives the Sellers written notice within seven days from the date of delivery that the goods are not in conformity with the contract the Purchaser is deemed to have accepted the goods.

10. RISK AND PASSING OF PROPERTY:

- (a) Save as otherwise expressly provided in these terms and conditions, risk in the goods shall pass to the Purchaser when the goods are delivered to the Purchaser or its Agent.
- (b) Notwithstanding delivery of the goods, title thereto shall remain with the Sellers and shall not pass to the Purchaser until such time as payment is made full to the Sellers of all amounts howsoever arising due to the Sellers by the Purchaser and, where applicable, by any holding or subsidiary company (as those terms are defined by the Companies Act 1985) of the Purchaser.
- (c) Until such time as payment in full is made to the Sellers in accordance with these terms and conditions and title to the goods has passed to the Purchaser, the Purchaser shall hold the goods as trustee, but not as agent, for the Sellers and shall ensure that the goods shall be stored separately from any other property of the Purchaser or from any property belonging to a third party and held by the Purchaser and shall be clearly identifiable as the property of the Sellers. At any time prior to title to the goods passing from the Sellers in accordance with these terms and conditions the Sellers shall be entitled on demand to recover possession of the goods or any of them (without prejudice to any other of their other rights) and, for this purpose, shall be entitled to enter upon the Purchaser's premises (or any other premises where the goods are stored) during normal business hours for the purpose of removing such goods and to remove such goods from such premises. These terms and conditions constitute an authority for any third party authorised by the Sellers to exercise the Seller's rights hereunder.
- (d) Until payment in full of all sums due to the Sellers has been made, the Purchaser shall hold in trust for the Company to the extent of such sums all rights under any contract of resale or any other contract in pursuance of which the goods or any part thereof are disposed of or any contract by which compromising the said goods or any part thereof is or is to be disposed of and any monies or other consideration received by the Purchaser thereunder.
- (e) The Sellers and the Purchaser agree that, where the goods are mixed with other goods or if the goods in any way whatsoever become a constituent of any other goods before title to the goods has passed pursuant to these terms and conditions, title to the goods shall remain with the Sellers until title therein has passed pursuant to these terms and conditions and, in addition, the Sellers shall have a right of joint property in the other goods which shall arise with effect from the moment at which the goods supplied by the Sellers are mixed with or become a constituent of other goods.

11. WARRANTIES:

- (a) The Sellers will enforce for the benefit of the Purchaser any manufacturer's guarantee, warranty or servicing agreement but the Sellers shall be under no liability whatsoever, even for negligence, for any manufacturer's defect.
- (b) No warranty whatsoever is given on second-hand goods nor shall the Sellers be under liability for any defects drawn to the attention of the Purchaser or which were or ought to have been discovered on any examination of the goods prior to delivery to the Purchaser, its servant or agents.
- (c) The Sellers give no warranty and make no representation whether express or implied as to any matter whatsoever including (without limitation) condition, merchantability or fitness for any purpose.
- (d) For the avoidance of doubt, no description of goods given by the Sellers shall be deemed to constitute a contract of sale by description so as to impose any implied condition as provided in section 13 of the Sale of Goods Act 1979.

12. LOSS OR DAMAGE IN TRANSIT : Any shortage or damage to the goods must be clearly stated on the driver's delivery sheet or in a written statement of the facts received by the Seller and by the carrier (if not the Sellers' transport) within seven days after the date of delivery otherwise no claim will be entertained. The package and contents should be retained by the Purchaser for examination. The Purchaser shall give the Sellers such opportunity as the Sellers may reasonably require to examine or inspect the defective or faulty goods at the Purchaser's premises. Written notice of any non-delivery must be received by the Seller within Seven days after the date of invoice. Time is of the essence of this condition. The Sellers' liability in respect of any claim accepted under this condition is limited to making up the shortage or replacing any goods to have been damaged or lost in transit to the point of delivery, and the Seller does not accept liability for any loss or damage suffered by the Purchaser whether direct or consequential and howsoever arising.

13. ILLUSTRATIONS: Photographs, illustrations, specifications and publicity matter are intended to give a general idea of the machines portrayed. They do not constitute a description of the machine nor shall they be taken to be representations made by the Sellers. Unless specifically stated items shown such as tooling, blade and other accessories appearing on illustrations are not included in the price.

14. PERFORMANCES: Performance and production figures given are estimated for those obtained during tests by the Sellers. The Sellers do not warrant that equivalent results will be obtained on any particular machine and shall not be liable if equivalent results cannot be obtained. It is the responsibility of the Purchaser to determine that the goods are sufficient and suitable for the purpose to which they are to be put. The Sellers cannot accept any responsibility either in respect of the installation of any goods or as to the ultimate performance of any product in which the goods may be installed. The Sellers shall in no way be liable for any direct or consequential damage, loss or expense arising from any defect or inefficiency caused by the manner in which the goods are used.

15. WEIGHTS AND MEASURES: Weights, measurements, horsepower etc. are approximate only.

16. INSTALLATION AND COMMISSION: The Sellers may agree to a separate charge to install and/or commission machines at the premises of the Purchaser of any third party. If they do so then: -

- (a) The Sellers shall be under no liability whatsoever for any loss or damage whether direct or consequential and howsoever caused to the Purchaser or to any third party during or as a result of or in connection with the installation or commissioning.
- (b) The Purchaser shall indemnify the Sellers against any loss or damage caused to the Sellers, their servants or agents during or as a result of or in connection with the installation or commissioning.
- (c) The Purchaser shall indemnify the Sellers against any liability whatsoever which the sellers may incur to any third party (including the Purchaser's servants or agents and the Sellers servants or agents) during or as a result of or in connection with the installation or commissioning.

17. LIABILITY: Subject to the other terms of these terms and conditions, the Sellers shall not be liable for any shortages or defects in the goods or failure of the goods to comply with any specification unless a claim in writing shall have been received by the Sellers from the Purchaser within seven days of the delivery of the goods. The liability of the Sellers under this condition shall be limited to replacing, repairing or making good goods which are proved to be defective or faulty under proper use by reason of faulty workmanship or faulty material. Save as expressly provided in these terms and conditions and except as provided in section 16 of the Unfair Contract Terms Act 1977, the Sellers shall not be liable to the Purchaser or to any third party for any loss or damage (whether direct or consequential) suffered in respect of the goods or arising from or caused by any defect or fault in the goods and the Sellers shall be indemnified by the Purchaser against all third party claims made in respect of the goods.

18. HEALTH AND SAFETY AT WORK ACT 1974: The Purchaser undertakes to ensure that the goods are in all respects safe for their application before they are put into operation.

19. THE PURCHASER'S WARRANTIES: The Purchaser hereby warrants:

- (a) In every case that all statutory consents, licences and approvals of whatsoever nature which may be necessary to utilise the equipment supplied for the manufacture of any product have been duly obtained.
- (b) That when the Sellers deliver the goods to the delivery address, the Purchaser will arrange for the unloading to be completed within not more than one hour of arrival of Sellers' transport.
- (c) The Purchaser hereby agrees to indemnify the Sellers against all expenses, liabilities, loss claims and proceedings which may arise by reason of the Purchaser's breach or breaches of any of the aforesaid warranties.

20. RETURN OF GOODS: The Sellers shall be under no liability to accept the return of goods which are of sound quality. Such goods may only be returned to the Sellers with the Sellers' prior written consent and subject to the receipt by the Sellers of the Purchaser's advice note stating the reason for the proposed return and the date and number of the Sellers' invoice. In the event that the Sellers consent in writing to accept the return of such goods, such goods must be returned securely packed and, unless the Sellers arrange collection, consigned carriage paid by the Purchaser. If the Sellers collect such, the Sellers shall be entitled to impose a handling charge payable by the Purchaser. The issue of the Sellers' collection note will not bind the Sellers to issue any credit in respect of the goods.

- 21. TERMINATION:** (a) If the Sellers shall consider that the Purchaser's financial condition does not at any time justify the agreed terms of payment, the Sellers may, having given notice in writing to the Purchaser, cancel any unfilled order or the contract of sale unless the Purchaser shall forthwith make payment to the Sellers for the goods already delivered or supplied by the Sellers to the Purchaser or shall make prior payment for the goods ordered but not delivered or supplied, or both, at the Sellers' option.
- (b) If any sum owing by the Buyer to the Seller is overdue under this or any other Contract or if the Buyer commits any breach of the terms and conditions of the Contract or becomes insolvent or commits an act of bankruptcy or enters into any arrangement or composition with its creditors or goes or is put into liquidation or if a receiver or administrator is appointed over any part of the Buyer's business the Seller may without prejudice to any rights which may have accrued or which may accrue to it terminate the Contract order summarily by notice in writing without compensation to the Buyer.
- (c) If the contract shall become impossible of performance or otherwise frustrated, the Sellers shall be entitled to reasonable remuneration for work done until the date of frustration.

22. LAW: The Contract shall be deemed to be made at Cramlington, England, and shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

23. EXCLUSION OR IMPLIED TERMS: All quotations are submitted, all orders are accepted and all goods are supplied by the Sellers subject to these terms and conditions and all other conditions, warranties and representations express or implied by statute or otherwise are hereby excluded to the fullest extent permitted by law. If any provision of these terms and conditions is or becomes invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions of these terms and conditions or of the contract of sale shall not in any way be affected or impaired.

24. PAYMENT:

- (a) All business will be carried out on our standard payment terms of 20% deposit with orders, 80% on dispatch from manufacturer of goods in the form of equipment, unless otherwise agreed in writing by the Sellers. The only other exception will be for the supply of goods in the form of consumables when upon agreement at the time of order, the payment terms will be made strictly within 30 days of the date of the relevant invoices.
- (b) If the Purchaser fails or refuses to make payment in accordance with these terms and conditions within the time provided and fails to remedy such failure or refusal within 14 days after having been given notice in writing requiring the said payment, then all payments due under this contract shall forthwith become payable and in each such case the Sellers may suspend any delivery or deliveries and the Purchaser shall be liable to pay on demand.
- (c) Interest at the rate charged to the Sellers by their bankers on overdraft account from time to time and for the time being shall be payable on any sum payable by the Purchaser to the Sellers and not paid on the due date from the due date of payment thereof until the date of actual payment thereof, to the Sellers and that whether or not after judgement or decree. Such interest shall be calculated on the basis of the actual number of days lapsed.

25. CONFIDENTIAL INFORMATION: All technical data, drawings, reports, documents and information whatsoever which the Seller submits to the Buyer in connection with the Contract (and the copyright therein) shall remain the Seller's property and must not be copied or shown to any third party without the Seller's express consent being obtained in advance and in any event upon the condition of a similar condition being imposed upon any third party.

26. WAIVER: Any waiver by the Sellers to enforce any of these terms and conditions shall not be construed as a waiver of any of the Sellers rights hereunder.