

HORNE ENGINEERING LIMITED

STANDARD TERMS AND CONDITIONS

1 CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS

- (a) In these terms and conditions unless otherwise stated, the following terms shall have the following meanings:-
"the Seller" means Horne Engineering Limited (Company Number SC016062);
"the Buyer" means the individual, firm, company or other party seeking to purchase any Goods from the Seller;
"the Goods" means any products, articles, services or moveables or any part of them offered for sale by the Seller and purchased or to be purchased by the Buyer as specified in the Contract;
"the Contract" means the contract for sale and the purchase of the Goods made between the Seller and the Buyer in all cases on these Terms and Conditions which may be constituted in any form; and
"Order" means the Buyer's order for the Goods as set out in the Buyer's purchase order in whatever form or in the Buyer's acceptance of the Seller's quotation as the case may be.
- (b) Every Order issued by the Buyer (in whatever form) and accepted by the Seller shall constitute a separate contract and constitutes an offer to purchase the Goods in accordance with these Terms and Conditions. The Buyer shall be deemed to have accepted the Contract unless the Buyer states otherwise in writing within seven days of receipt of an acknowledgement of an Order from the Seller.
- (c) No Order in pursuance of any quotation or otherwise shall be binding on the Seller unless and until such Order is accepted by the Seller.
- (d) These Terms and Conditions shall apply to and govern any Contract or transaction between the Seller and the Buyer and shall supersede and take precedence over any other terms and conditions, whether written or oral (including without prejudice to the foregoing generality, any contained in any Order form used by the Buyer) and notwithstanding anything to the contrary in such other terms and conditions.
- (e) No amendment, variation of or addition to any part of these Terms and Conditions may be made except in writing and signed by a duly authorised representative of the Seller and the Buyer and any other amendments or variations or purported amendments or variations to these Terms and Conditions shall be invalid and unenforceable.
- (f) Any general description contained in the Seller's catalogues or other advertising material shall not form a representation or be part of the Contract. The Seller reserves the right to alter or amend any specifications or designs at any time and without notice.

2 SPECIFICATION, INSTRUCTIONS OR DESIGN

- (a) The Seller shall not be responsible for the interpretation of any drawings or specifications supplied by the Buyer. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- (b) If the Goods are made to a specification, instruction or design supplied by the Buyer or any third party on behalf of the Buyer then (i) the suitability and accuracy of that specification, instruction or design will be the Buyer's responsibility; (ii) the Buyer will indemnify the Seller against any infringement or alleged infringement of any third party's intellectual property rights including but not limited to patent, design right, registered design, trademark, trade name or copyright and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country; (iii) the Buyer will indemnify the Seller against any loss, damage or expense in respect of any liability arising in any country by reason of the Goods being made to such specification, instruction or design.

3 QUOTATIONS, PRICES AND PAYMENT

- (a) Any prices quoted by the Seller remain for 30 days, unless otherwise stated. The Seller's price list is for guidance only and may be varied at any time by the Seller and without notice. The price ruling shall be that as at the date of the acknowledgement of the Order by the Buyer. The price of any Order will be subject to change in the event that the Order is revised, modified or altered and such changed price shall be substituted for the previous Contract price.
- (b) Unless otherwise specified in writing by the Seller payment of the Seller's invoices shall be made by the Buyer not later than 30 days after the relevant invoice date. Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Seller, interest will be payable on all overdue accounts at Royal Bank of Scotland plc base rate plus 4% accruing compound on a daily basis until paid in full. Time of payment is of the essence.
- (c) The Seller shall be entitled to increase its prices at anytime to take account of any increase arising from any error or inadequacy in any specification, instructions or design provided by the Buyer or any change in exchange rates and such increased prices ruling at the date of despatch by the Seller shall be substituted for the previous Contract price.
- (d) All prices quoted are exclusive of any applicable value added tax and the Buyer shall pay any and all taxes duties and other government charges payable in respect of the Goods.
- (e) All prices shown are in British Pounds (Pound Sterling/GBP) unless otherwise stated.
- (f) The Buyer shall have no right to set off any sums due or to become due by it to the Seller against any sums due or to become due by the Seller to the Buyer, and the Buyer shall make payment of any sums invoiced by the Seller in respect of the Contract and/or the Goods and any interest due without any set off, compensation or deduction of any kind.
- (g) The price of the Goods is exclusive of transport of the Goods which shall be paid by the Buyer when it pays for the Goods.

4 DELIVERY

- (a) Unless otherwise agreed in writing by the Seller, the Seller shall deliver the Goods by the means most convenient to the Seller to the address specified by the Buyer at the time of placing his Order. The Seller shall be entitled to add to the Contract price a reasonable charge for packaging and delivery.
- (b) If the Contract requires the Buyer to take delivery of the Goods at the Seller's premises the Seller shall notify the Buyer of the collection date (being the date

on which the Goods are or will be ready for delivery) and the Buyer shall take delivery of the Goods within 7 days of the collection date.

- (c) Should the Seller be delayed in or prevented from making delivery of the Goods due to any cause whatsoever beyond the reasonable control of the Seller the Seller shall be at liberty to terminate the Contract or suspend the Order placed by the Buyer without incurring any liability for any loss or damage arising therefrom, but without prejudice in any such case to rights accrued to the Seller in respect of deliveries already made.
- (d) While the Seller will endeavour to deliver the Goods by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the Seller will not be liable for any failure to deliver the Goods by such a date or within such a period. Time for delivery shall not be of the essence of the Contract. Moreover, the Seller shall be entitled to defer delivery until any monies due from the Buyer have been received.
- (e) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated. Any delay or defect in any instalment shall not entitle the Buyer to cancel any other instalment.
- (f) If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may at its option;
- store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or;
 - sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract. The Buyer shall pay such shortfall to the Seller within 28 days of the date of the Seller's demand there for.

5 TITLE

- (a) Property and title to the Goods will not pass until such time as payment is made in full to the Seller of all sums and debts due in respect of the Goods supplied not only under the Contract but also under any other contract for the supply of goods and all other sums for the time being howsoever due or to be come due by the Buyer to the Seller
- (b) Until property in and title to the Goods passes to the Buyer, the Buyer shall keep the Goods in good repair and condition and store them separately from any other property in its possession so that the Goods are readily identifiable and separable from any other goods stored in the Buyer's premises or otherwise in its possession and insure the Goods to their full replacement value.
- (c) If the Seller delivers the Goods to the Buyer prior to payment of the price for the Goods and/or if any other sum is due by the Buyer to the Seller and the Buyer sells the Goods to a third party, the Buyer shall make such sale only as trustee for the Seller and the proceeds of that sale shall be identified and kept separate from the Buyer's general bank accounts as monies to be held upon trust and payable on demand to the Seller.
- (d) The Buyer must notify the Seller immediately if it becomes subject to any of the events listed in clause 8(c).
- (e) If before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 8(c), or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

6 RISK IN THE GOODS

The risk of loss or damage to the Goods shall pass from the Seller to the Buyer on delivery (or collection of the Goods by the Buyer) and that notwithstanding that property and title to the Goods has not passed to the Buyer.

7 LIEN

The Seller shall have and be entitled to a first and general right of lien over all or any goods or other items of the Buyer from time to time lawfully in its possession (or that of its employees or agents) and that in respect of all monies outstanding at any time by the Buyer to the Seller.

8 CANCELLATION OR DEFERMENT

- (a) For the purposes of this clause "an intervening event" shall mean any such event as is described in sub-clause (c) hereof.
- (b) If there shall be an intervening event
- the Seller may, within a reasonable time thereafter, defer or cancel any further deliveries or services, stop any Goods in transit and treat the Contract of which these conditions form part as determined but without prejudice to its rights to the full purchase price for Goods delivered and damages for any loss suffered in consequence of such determination and
 - the Buyer shall immediately on the occurrence of any of the events set out in 8(c)(iii), (iv) or (v) identify the Seller's Goods or any part of them and return or make them available to the Seller for collection.
- (c) An intervening event shall be any of the following:
- failure by the Buyer to make any payment when it becomes due;
 - breach by the Buyer of any of the terms or conditions of the Contract;
 - the Buyer's proposal for or entry into any composition or arrangement with creditors;
 - the presentation against the Buyer of any Petition for a Bankruptcy Order, Administration Order, Winding-Up Order, or similar process;
 - the appointment of an Administrative Receiver or Receiver in respect of the business or any part of the assets of the Buyer;
 - the Seller forming the reasonable opinion that the Buyer has become or is likely in the immediate future to be-come unable to pay his, her or its debts (adopting, in the case of a Company, the definition of that term set

- (vii) out in Section 123 of the Insolvency Act 1986) or the Buyer being a partnership has any partner to whom any of the foregoing apply; or being an individual the Buyer dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- (d) Cancellation by the Buyer will only be accepted at the discretion of the Seller and in any case on condition that any costs or expenses incurred by the Seller up to the date of cancellation and all loss or damage resulting to the Seller by reason of such cancellation will be paid by the Buyer to the Seller forthwith. Acceptance of such cancellation will only be binding on the Seller if in writing and signed by an authorised signatory of the Seller.
- (e) Any costs incurred by the Seller due to suspension or deferment of any Order by the Buyer or in the event that the Buyer defaults in collecting, or giving instructions for the delivery of, any Goods will be payable by the Buyer forthwith on demand.

9 QUALITY

9.1 The Seller warrants that on delivery or collection for a period of two years from the date of delivery or collection, the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship

9.2

- (a) Save as otherwise provided in these conditions the Seller's liability in respect of any defect in or failure of Goods procured and supplied by the Seller to the Buyer is limited to replacing or (in its discretion) repairing or paying for the repair or replacement of such Goods where the Goods are faulty due to materials used or workmanship and provided that the Buyer gives notice in writing to the Seller within the warranty period set out in clause 9.1 and where:-
 - (i) the Goods have not yet been installed, the Seller will accept their return within 3 months of delivery of the Goods and the Seller will arrange for their collection. The Buyer is required to securely re-package the Goods and label each package of Goods using the Seller's return notes;
 - (ii) the Seller is given a reasonable opportunity to examine such Goods;
 - (iii) the Goods have been installed, the Buyer is required to contact the Seller within 7 days of the Goods failing or the defect arising. The Seller will assess where the repairs are to be carried out. Replacement parts will be sent to the Buyer together with fitting instructions;
 - (iv) a persistent fault is found within multiple items installed, the Seller may authorise and instruct a technician to attend to any required repairs to carry out repairs in accordance with clause 9.3 hereof.
- (b) Where the Seller agrees to repair or replace Goods in accordance with the foregoing provisions of this clause 9 or otherwise any time specified for delivery under the Contract shall be extended for such period as the Seller may reasonably require.
- (c) Where the Buyer has ordered incorrect Goods, and provided such Goods are returned within three months of the date of dispatch from the Seller the Buyer may return the Goods still contained in secure packaging using the Seller's return notes. A credit note will be issued by the Seller less 25% of the value of the item retained by the Buyer for restocking the product.
- (d) If the Seller delivers incorrect Goods to the Buyer then provided the item has not been installed, the Seller will uplift the item and replace with the correct Goods and issue any balancing invoice to the Buyer. The Seller reserves the right to amend the invoice to reflect the Goods which are subject to the Contract.

9.3

- (a) If the Seller authorises and instructs a technician to attend premises as directed by the Buyer to examine or attend to repairs of the Goods, then the Buyer will require to:-
 - (i) provide the technician with free access to the premises and free and unrestricted access to repair or examine the Goods during normal working hours;
 - (ii) ensure that the technician is met by an authorised representative of the Buyer and is treated in a responsive and courteous manner;
 - (iii) ensure that the services to the premises are available and are within appropriate parameters to enable the examination or repairs to be carried out; and
 - (iv) notify the Seller and the technician of any health and safety hazards which may arise in connection with the technician's examination or repair of the Goods;
 - (v) that it shall notify Seller and the technician of any health and safety hazards which may exist or arise at the Premises and which may affect the technician. The Buyer will draw the hazards to the attention of the Seller and the technician at the Premises and shall ensure that they comply with relevant safety measures.
- (b) If the Buyer fails to comply with 9.3(a) above, the Seller and the technician reserves the right to refuse to attend the premises to either examine or repair the Goods, and the Seller may require the Buyer to meet the cost of the technician for the failed attempt to examine or repair the Goods.
- (c) Neither the Seller nor the technician shall be responsible for, or for meeting the cost of the reassembly of any units or surrounds which are disassembled, removed or dislodged in order for the technician to examine or repair the Goods.

9.4 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 9.1 if:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 9.2(a); or
- (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, testing, use and maintenance of the Goods or (if there are none) good trade practice; or
- (c) the defect arises as a result of the Buyer's or its employees or agents or operators or subcontractors exposure to or use of chemicals or fluids of any nature with, through, or on the Goods that are anything other than potable water supplies. The Buyer hereby indemnifies the Seller, its officers and agents from and against on demand all claims, demands, actions, costs and expenses (including legal costs and disbursements) which the Seller may incur directly or indirectly as a result of
 - (i) the Buyer's failure or its employees, officers, suppliers, agents, operators, subcontractors or invitees failure by exposing the Goods to or

- using chemicals or fluids of any nature with, through or on the Goods that are anything other than potable water supplies;
 - (ii) damage to real or personal property; or
 - (iii) injury to persons including injury resulting in death except in so far as and to the extent that the damage or injury is caused by any act of Seller.
 - (d) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer; or
 - (e) the Buyer incorrectly uses or alters, modifies or repairs such Goods without the written consent of the Seller; or
 - (f) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal or inappropriate storage or working conditions.
- 9.5 The Seller shall have no liability to the Buyer in relation to the Seller's interpretation of drawings or specifications supplied by the Buyer.
- 9.6 Except as provided in this clause 9., the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 9.1.
- 9.7 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

10 LIMITATION OF LIABILITY

- (a) The Seller will have no liability for damage in transit, shortage of delivery or loss of Goods unless the Buyer shall have given to the Seller written notice of such damage, shortage or loss with reasonable particulars thereof within 5 days of receipt of the Goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Seller's liability, if any, shall be limited to replacing or (in its discretion) repairing such Goods and it shall be a condition precedent to any such liability that the Buyer shall if so requested provide authority for the Seller's servants or agents to inspect any damaged Goods within 14 days of such request.
- (b) The Seller will have no liability for any consequential loss arising out of any damage in transit shortage of delivery or loss of Goods.
- (c) Unless otherwise stated, and except as provided in this clause 10 or in respect of any warranty or term implied by law and which by law cannot be excluded, the Seller gives no warranty, representation or undertaking, whether express or implied, regarding the condition or quality or permitted use of the Goods and all such terms, warranties, representations and/or undertakings implied by law are to the maximum extent permitted hereby excluded, including without prejudice to the foregoing generality, those implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994.
- (d) Except to the extent implied by law and which law cannot be hereby excluded, the seller shall not under any circumstances be liable to the Buyer for any indirect or consequential or punitive loss including without prejudice to the foregoing generality, financial loss, penalty payments of any nature, loss of profits, loss of property or property damage, loss of contracts, loss of business or revenue, or the payment of any charges, compensation payments or costs and expenses whatsoever, loss of production or anticipated savings or income. Where any person, firm or company by whom the Seller is or has been supplied validly excludes limits or restricts his or its liability to the Seller in respect of the Goods or any of them or any loss or damage arising in connection therewith, then the liability of the Seller shall be correspondingly excluded, limited or restricted.

11 USE AND SAFE HANDLING

The Buyer warrants that it will pass on to all third parties to whom it may supply the Goods or any of them all information as to the use and safe handling of such Goods as may have been provided to the Buyer by the Seller.

12 EXPORT

The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

13 FORCE MAJEURE

The Seller shall be entitled to cancel or suspend the Contract and/or the sale and supply of the Goods without liability for loss or damage if performance of its obligations is prevented or in any way adversely affected by reason of any act or occurrence beyond its reasonable control including, without prejudice to the foregoing generality, fire, accident, failure of Sellers or sub-contractors, strike, riot of civil disturbance, statutory enactment of Act of God.

14 GENERAL

- (a) The Contract and these Terms and Conditions shall be governed by the law of Scotland and the Seller and the Buyer hereby prorogate the exclusive jurisdiction of the Scottish Courts.
- (b) The headings to the paragraphs of these conditions are for ease of reference only and shall not affect the interpretation or construction thereof.
- (c) If any provision of these conditions is or becomes illegal, void or unenforceable for any reason, the validity of the remaining provisions shall not be affected.
- (d) Failure by the Seller to enforce strict compliance with these conditions by the Buyer will not constitute a waiver of any of the provisions of these conditions.
- (e) Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

The Seller's Privacy Policy can be viewed on their website at <https://www.home.co.uk/privacy-policy/>. The Privacy Policy does not form part of these Terms and Conditions.