

BARVALE ENGINEERING AND SUPPLY CO LTD

**14 Creekmouth Industrial Estate
57 River Road
Barking,
Essex
IG11 ODA
Registration Number: 3927344**

TERMS AND CONDITIONS OF SALE (January -2016)

1. GENERAL

- 1.1. A Contract shall only be entered into by the Company when the Order (and all additional documentation) is accepted by the Company. The Quotation is an invitation to treat and not an offer that is capable of giving rise to a Contract by acceptance.
- 1.2. All Quotations are provided and all Contracts are made subject to the Conditions.
- 1.3. The Company shall only commence work pursuant to a Contract when a Contract Information Form (in the form attached) is properly completed signed (by the Customer) and delivered to satisfaction of the Company.
- 1.4. The Customer shall pay to the Company (in accordance with its applicable charges and rates) for and in relation to the preparation of Company Drawings.

2. REPRESENTATIONS

- 2.1 If any statement or representation upon which the Customer relies or wishes to rely has made to the Customer the representation must be set out in writing in the Documents.
- 2.2 Save as provided by paragraph 2.1 the Parties acknowledge and agree that they have not entered.
- 2.3 The Documents represent the entire agreement of the Parties in relation to the sale of Goods pursuant to the Order and shall supersede all proposals oral or written and all other Representations communications and/or agreements between the Parties.

3. DELIVERY

- 3.1. The time or date for delivery of goods ("Delivery Time") is an estimate only and not a term or condition of the contract. The Company shall not be liable for loss or damage and the Customer shall not be entitled to rescind the contract for any failure to meet any stated Delivery Time.
- 3.2. The Delivery Time shall in every case be dependant upon the receipt of all necessary information instructions or approvals from the Customer. Alteration by the Customer in design Specifications or quantities required (which may not be accepted by the Company) may result in delay in delivery and/or an increase in costs.
- 3.3. Where delivery is postponed otherwise than due to default by the Company the Customer shall pay all costs and expenses including a charge for storage and transportation occasioned or incurred by the Company and the Company shall be entitled to be paid for the Goods in accordance with Contract.
- 3.4 The Company shall deliver the Goods to the address of the Customer (set out in the Order) unless otherwise agreed in writing.
- 3.5 Unless otherwise agreed in writing, the Company shall be entitled to make partial deliveries by instalments and these Terms and Conditions shall apply to each partial delivery. Failure by the Customer to accept or pay for any instalments may be treated by the Company as a repudiation of the Contract.
- 3.6 The Company shall only carry out delivery and installation in accordance with Health and Safety policies and requirements method statements risk assessments and other documents agreed by the Company ("Statements") and the Company shall be entitled to refuse (or suspend) delivery and/or installation (in whole or in part) where such Statements are amended or varied (without agreement of the Company) or do not apply or operate or are not being observed or are not in accordance with any other requirements of the Company. Any expenses costs or Liabilities incurred by the Company and its Charges in respect of any terminated or suspended delivery or installation shall be paid by the Company on demand.
- 3.7 A delivery note in the form provided by the Company must be signed by the Customer on Receipt of the Goods.
- 3.8 All plant hire and other third party costs or expenses incurred by the Company in relation to any delivery or installation of Goods shall be paid by the Customer to the Company on demand.

4. RISK AND TITLE

- 4.1. Risk shall pass to the Customer so that the Customer is responsible for all loss damage or deterioration to the Goods:-
 - 4.1.1. if the Company delivers the Goods by it's own transport at the time when the Goods (or any part) are delivered to the Customer:
or
 - 4.1.2. in all other circumstances at the time when the goods (or any part) leave the premises of the Company (whether or not the Company arranges transport).
- 4.2. Where the Goods are delivered by carrier, any claims for loss or damage in transit must be made by the Customer against the carrier in accordance with the carrier's conditions.

- 4.3. Notwithstanding delivery and the passing of risk property in and title to the Goods shall remain with the Company until the Company has received payment of (a) the full Invoice price of all Goods pursuant to any Contract and (b) all other monies due or payable by the Customer to the Company.
- 4.4. Until property in and title to the Goods passes to the Customer, the Company shall be entitled at any time forthwith to revoke the Customer's power to deal with the Goods, which shall automatically cease if the Customer shall commit or be subject to any Insolvency Event.

5. VARIATION CANCELLATION AND RETURNS

- 5.1.1. The Customer shall not be entitled to vary, alter, cancel or terminate a Contract (or any part) or any Specifications or Customer Information or return Goods without the written consent of the Company.
- 5.1.2. Without prejudice to paragraph 5.1.1. above upon variation termination or cancellation (whether or not agreed by the Company) all liabilities incurred by the Company and all loss of profit and other loss or damage of the Company by reason of such variation cancellation or termination (including the Company's charges for any revised Company Drawings) shall be paid by the Customer to the Company on demand.

6. PRICES

- 6.1. The price(s) is (unless otherwise stated in writing) net ex-works exclusive of VAT.
- 6.2. In the event of any alteration in design or specification to the Goods required by the Customer and agreed by the Company the Company shall be Entitled to make an adjustment of the Price (corresponding to the costs of such alteration) as determined by the Company.
- 6.3. VAT will be charged by the Company at the rate in force at the time of the Invoice.

7. TERMS OF PAYMENT

- 7.1. The Price for all Goods supplied by the Company shall be paid by the Customer to the Company within 30 days of the date of Invoice.
- 7.2. If full payment of any Sum(s) Due is not made to the Company on or before the Due Date the Customer shall pay the Company interest on the Sum(s) Due at the rate of 1½ per cent per month (and pro rata for an part) from the date of the Invoice to the date of actual payment calculated on a daily basis both before and after any judgment.
- 7.3. Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay each Invoice in accordance with these Conditions.
- 7.4. No disputes or delays in delivery beyond the reasonable control of the Company shall permit any delay in payment of any Sum(s) Due.
- 7.5. The Customer shall pay any deposit(s) or advance or instalment payments to the Company on the Due Date(s).

8. SPECIFICATIONS AND DIMENSIONS

The Company reserves the right to alter or change Specifications and/or dimensions of the Goods supplied and/or Specifications provided it shall not materially affect the use or functionality of the Goods.

9. SHORTAGES AND DEFECTS

- 9.1. The Customer shall have no claim and the Company shall not be liable for shortages or defects apparent on visual inspection unless:-
 - 9.1.1. A written notification (specifying the Despatch Note number and reasonable details of the shortage and/or defect) ("the Notification") is made to the Company within 3 days of receipt of the Goods; And
 - 9.1.2. The Company is given the opportunity to inspect the Goods and any packing materials (which shall be retained by the Customer) and investigate any complaint before any use is made of the Goods.
- 9.2. If a Notification is not made to the Company as herein provided the Goods shall be deemed to be in all aspects in accordance with the Contract
- 9.3. In the case of non-delivery of Goods written notification of non-delivery shall be given to the Company within 14 days of the relevant Delivery Time.
- 9.3 The Customer shall have no claim and the Company shall not be liable in respect of defects not apparent on visual inspection unless:-
 - 9.5.1 A Notification is sent to the Company as soon as reasonably practicable after the defect is discovered and provided that no use is made of or alteration made to the Goods before the Company is given an opportunity to inspect the Goods in accordance with this condition; And
 - 9.5.2 The Notification is in any event sent within one month of the delivery of the Goods.

- 9.6 The Customer shall not be entitled to make and the Company shall not be liable for any claim in respect of (a) any repairs or alterations to the Goods undertaken by the Customer without the prior written consent of the Company or (b) in respect of any defect arising by reason of fair wear and tear or (c) damage caused by misuse.
- 9.7 The Company shall not be liable for loss or damage suffered by reason of use of Goods after the Customer becomes aware or should reasonably have been aware of a effect.
- 9.8 The Company shall be entitled within 15 days of receiving a Notification (or 28 days where the Goods are situate outside the United Kingdom) to inspect the Goods and the Customer shall (if required by the Company) take all steps necessary to enable the Company to do so.

10. REPLACEMENT GOODS

In the event that the Customer may have a claim as a result of the condition of the Goods (or any breach of this Agreement) the Customer shall (before making any claim or repudiating the Contract) notify the Company (in accordance with these Conditions) and permit the Company to repair or take back the defective Goods and supply substitute Goods within a reasonable time. If the Company repairs the Goods or supplies satisfactory substitute Goods the Customer shall be bound to accept such repaired or substitute Goods and the Company shall be under no liability in respect of any loss or damage arising from the initial delivery of the defective Goods or from the delay before the defective Goods are repaired or the substitute Goods are delivered.

11. LIABILITY

11.1.1. The following provisions set out the Company's entire Liability (including Liability for the acts and omissions of its

- (a) any breach of its contractual of other obligations arising under the Contract and
- (b) any Representation, tortuous act or omission including negligence arising in connection with the Contract.

("an Event of Default")

- 11.1.2 The Company's liability for death or injury resulting from its employees, agents or sub-contractors' negligence shall not be Limited.
- 11.1.3 Subject to clause 11.1.2 the Company's entire liability and all liabilities in respect of any Event of Default shall be Limited to the Price of the Goods in respect of which the Event of Default has arisen.
- 11.1.4 Subject to clause 11.1.2 the Company shall not be liable in respect of any Event of for loss of profits, loss of contracts, savings, goodwill or any type of special indirect or consequential loss or damage even if such loss was reasonably foreseeable or the Company had been advised of the possibility of incurring the same.
- 11.2. Nothing in these Conditions shall operate so as: -
- 11.1 To exclude the Company's non-excludable liability in respect of death or personal injury caused by the Company it's servants or agents or defective goods pursuant to Section 5 (1) UCTA;
 - 11.2 To exclude application of Section 12 of the Sale of Goods Act 1979 or implied terms pursuant to Section 6 (2) UCTA;
 - 11.3 To exclude liability for fraudulent misrepresentation;
 - 11.4 To affect the statutory rights of the Customer where goods are sold or Services are supplied to a Customer dealing as a consumer within the meaning of UCTA or the Regulations.

12. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in all Company Drawings or other products or items in which the Company has intellectual property rights supplied by the Company ("IP Information") are the property of and belong to the Company and the Customer shall not sell, transfer, assign, or deal in any way with any IP Information (or extracts there from or copies thereof) except in connection with the proper use of Goods.

13. CUSTOMERS DRAWINGS

- 13.1 The Customer shall be solely responsible for and the Company shall have no liability
- 13.2 The Company shall have no liability in respect of and the Customer shall indemnify the Company from and against all actions proceedings and Liabilities, which arise as a result of the manufacture of Goods in accordance with the Customer Information or where it infringes the Intellectual Property Rights of any party

14. CATALOGUES AND PRICE LISTS

The information provided in the Company's catalogues price lists and the other publications is provided for general guidance only and forms no part of the Contract unless expressly agreed in writing.

15. TERMINATION

Without prejudice to any rights and remedies, the Company shall be entitled, forthwith either to terminate the Contract wholly or in part and/or any other Contract with the Customer or to suspend or withhold performance of all or any of it's obligations under the Contract and/or any other contract with the Customer (and on the giving of such notice all sums due from the Customer to the Company shall become immediately due and payable) if: -

- 15.1. The Customer shall commit or be subject to an Insolvency Event;
- 15.1.2. Any sum (s) Due to the Company from the Customer from the Customer on any account whatever shall be unpaid after the Due Date (in which event the Company shall have a general lien for any Sum (s) due on all and any property of the Customer in it's possession);

15.1.3. the Customer shall commit any breach of the Contract or any other contract with the Company.

15.2 In the event of a suspension of performance the Company shall be entitled, as a condition of resuming performance, to require pre-payment of any sum (s), or such security as it may require.

16. FORCE MAJEURE

In the event that the Company's performance is prevented, delayed or prejudiced by any delay loss or damage caused in whole or in part by act of God natural disaster(s), fire, flood, earthquake, epidemic, serious accident(s) or governmental act or omission or any necessary licences or consents of any competent authority, or any other cause whatsoever beyond the reasonable control of the Company the Company may at its option suspend or cancel the contract or so much of its as remains unperformed, without liability for loss damage provided the Company informs the Customer of such act or event as soon as reasonably practicable. Such suspension or cancellation shall be without prejudice to the Company's right to receive payment for all the Goods delivered pursuant to the Contract.

17. LEGAL

The Contract shall be governed and interpreted exclusively according to the Law of England and the parties submit to the exclusive jurisdiction of the English Courts.

19. DEFINITIONS

"the Company"	Barnvale Engineering and Supply Company Limited (registered number 3927344) of 14 Creekmouth Industrial Estate, 57 River Road, Barking, Essex IG11 0DA
"Company Drawings"	the drawings designs documents details patterns samples and other information provided and/or prepared by the Company in relation to the Contract.
"Conditions"	these terms and conditions, which are incorporated into the Contract
"Contract"	a contract made between the Company and the Customer for the purchase of Goods
"the Customer"	any party who buys or agrees to buy Goods from the Company
"Customer Information"	any Specification(s) drawings designs details patterns samples and other information provided and/or prepared or delivered by the Customer in relation to the Contract
"Delivery Place"	the place of delivery of the Goods specified in the Order or the Contract Information Form and agreed by the Company
"the Documents"	the Documents relevant to any Contract comprising all or any written contract the Specification(s), the Quotation the Order any written acceptance of the Order by the Company
"the Due Dates"	the date(s) for the payment of any payments due to the Company
"Goods"	any goods products or services which are the subject of a Contract
"Invoice"	an invoice by the Company for or in respect of Goods sold (including any delivery or other applicable charges) pursuant to a Contract
"Insolvency Event"	means when:- <ol style="list-style-type: none">(a) a party enters into any arrangement or composition for the benefit of the party's creditors or convenes a meeting of the party's creditors (or a nominee calls a meeting) or(b) a party (being an individual or if more than one individual being any one of them).<ol style="list-style-type: none">(i) is the subject of an interim order under Part VIII of the <i>Insolvency Act</i> 1986 or makes application to the Court for such an order: or(ii) convenes a meeting of or enters into any arrangement, scheme, compromise, moratorium or composition with any of his/her creditors: or(iii) has a bankruptcy petition presented against him/her or is adjudged bankrupt or has a receiver appointed in respect of all or any of his/her assets: or(c) a party (being a company or partnership):<ol style="list-style-type: none">(i) makes a voluntary arrangement or submits a proposal to its creditors or any of them: or(ii) enters into any arrangement, scheme, compromise, moratorium or composition with any of its creditors; or(iii) makes an application to the Court under section 425 of the <i>Companies Act</i> 1985 or resolves to make such an application; or

- (iv) is the subject of an administration order or is subject to a resolution passed by the directors or shareholders for the presentation of a petition for such an order presented against it; or
- (v) has a petition for winding up presented against it or is the subject of a resolution for voluntary winding up or a meeting of its creditors is called to consider a resolution for winding up; or
- (vi) has an administration receiver or receiver appointed in respect of all or any of its assets; or
- (d) a party suffers any distress or execution to be levied on any of its assets or becomes unable to pay its debts as and when they become due; or
- (e) analogous proceedings or events to those specified in this clause are instituted or occur in relation to a party elsewhere than in England and Wales;

“Intellectual Property Rights” means any current and future intellectual property rights, including:

- (a) copyrights, trade marks, trade names, domain names, rights in logos and get-up, inventions, confidential information, trade secrets and know-how including commercial know-how, design rights, patents, utility models, semi-conductor topographies, all rights of whatsoever nature in computer software and data, rights in databases, privacy rights; and
- (b) all intangible rights and privileges of a nature similar, analogous or allied to any of the above in any case in any part of the world and whether or not registered

“Liabilities” all costs claims demands damages losses liabilities and expenses (including legal and other fees);

“Order” a written or verbal order for the purchase of Goods;

“Price(s)” the price payable for the Goods pursuant to the Contract;

“Quotation” a written or verbal estimate or quotation (or confirmation of price(s)) for or in respect of a proposed sale of Goods by the Company;

“Regulations” the Unfair Terms in Consumer Contracts Regulations 1999;

“Representations” all or any written or verbal statements representations recommendations or assurances;

“Specifications” the drawings and/or specifications for the Goods accepted and agreed by the Company;

“Sum(s) Due” all sums due to the Company pursuant to the Invoice(s) and/or the Contract(s) including all VAT taxes delivery and other charges expenses;

“UCTA” the Unfair Contractual Terms Act 1977.

“in writing” in any legible written form including without limitation letter fax electronic mail or other permanent record.

20. MISCELLANEOUS

- 20.1.1. Each and every obligation contained in these conditions shall be treated as a separate obligation and shall be severally enforceable and any failure of or non enforceability of any clause or obligation shall not affect any other clause or obligation.
- 20.1.2. No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver of such rights nor shall any waiver by the Company of any breach by the Customer of any of its obligations under the Contract affect the rights of the Company in the event of any further or continuing breach.
- 20.1.3. These Conditions and the Contract shall not create or evidence or be deemed to create or evidence any agency or partnership between the Company and the Customer or any third party.
- 20.2. The Contract is personal to the Customer, who shall not assign or in any way transfer or assign the benefit of the Contract without the Company’s prior written consent.
- 20.3. The parties to this Agreement do not intend that in any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Acts 1999, by any person who is not a party to this Agreement.
- 20.4. Nothing herein shall affect a consumers statutory rights under the Sale of Goods Act 1979 UCTA and the Regulations or any amendment thereof.
- 20.5. The Contract is personal to the Customer, who shall not assign or in any way transfer or assign Benefit of the Contract without the Company’s prior written.
- 20.6. The parties to this Agreement do not intend that any term of this Agreement should be Enforceable, by virtue of the Contracts (Rights of Third), Acts 1999, by any person who is not a party to this Agreement.
- 20.7. Nothing herein shall affect consumer’s statutory rights under the Sale of Goods Act 1979 UCTA and the Regulations or any amendment thereof.