

# ANCON LIMITED - CONDITIONS OF SALE

**CONDITIONS OF CONTRACT** governing all contracts for the sale or supply of Goods and/or provision of Design, services by Ancon Limited ("the Company").

"Buyer" means any person at whose request goods are supplied or design services provided by the Company; and services/workmanship supplied to the Buyer under the contract.

"Goods" means any goods or replacements therefore and/or any services/workmanship supplied by the Company to the Buyer under the contract.

"Designs" means designs, drawings and/or calculations provided by the Company following a request from the Buyer for a quotation or an order and submitted to the Buyer for approval in accordance with Condition 8 below.

These conditions shall apply to every contract entered into with the Company except as varied by express agreement in writing signed by an authorised person on behalf of the Company. The headings are for convenience only and shall not affect construction of these Conditions. References to the provision of any statute or legislation shall be construed as reference to such statute or legislation as amended, consolidated or re-enacted (without substantial amendment) from time to time.

## 1. FORMATION AND PARTIES

(a) The Buyer's order to the Company (in whatever manner communicated) is an offer to enter into a contract upon these Conditions. Acceptance occurs and the contract is formed only upon the Company despatching to the Buyer its Acknowledgement of Order. Any terms or conditions proffered at any time by the Buyer are hereby excluded.

(b) A quotation by the Company does not constitute an offer. Quotations are valid for a period of 30 days from date of issue, and may be withdrawn at any time. If no quotation is rendered, the price set out on the Company's price list in force at the date of delivery of Goods shall apply.

(c) The Buyer shall not assign the benefit of the contract without the Company's prior written consent.

(d) The Contract is not cancellable by the Buyer without express written consent of an authorised person on behalf of the Company and subject to sub-clause 1(e) below.

(e) If the Company agrees cancellation by the Buyer, the Buyer shall indemnify the Company in full against all expenses incurred or losses suffered by the Company as a result of such cancellation less such scrap or residual value as determined by the Company.

(f) The Company's employees are not authorised to make any representations concerning the Goods.

## 2. PRICE

(a) Prices quoted are in accordance with the Company's current price list and exclusive of Value Added Tax.

(b) The Company may at its discretion vary the price of the Goods by any amount attributable to a change in or insufficiency of the Buyer's instructions. Such amount is to be determined by the Company.

## 3. DELIVERY

(a) Delivery dates are estimates only. Unless otherwise stated, delivery periods commence from the date of acknowledgement of order. Time of delivery is not of the essence of this contract. The Company shall use its reasonable endeavours to deliver the Goods by any stated or agreed delivery date(s), but may suspend or delay delivery and shall not be liable for any loss howsoever arising in the event of late or non-delivery of Goods and/or any installation due to any occurrence whatsoever beyond its control. The Buyer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.

(b) The Company may at its option delivery by installments; each installment shall constitute a separate contract on these conditions. Lateness of delivery on non-delivery of any installment(s) shall not constitute a breach of contract and shall not entitle the Buyer to cancel any subsequent installments or refuse to accept delivery of such installment(s) or otherwise treat the contract as repudiated.

(c) Delivery shall take place and risk shall pass upon the earliest of the following:-

(i) The Company handing the Goods to the Buyer or its agent at the Company's premises; or

(ii) The Goods leaving the Company's premises; or

(iii) on the eighth day following notification that the Goods are ready for despatch.

(d) The Buyer warrants that if an import licence or other authorisation is required for the importation of the Goods into the country of destination, such licence or authorisation has been obtained or will be obtained prior to shipment.

(e) Unless otherwise agreed in writing carriage charges shall be as detailed on the Company's quotation.

(f) Unless otherwise agreed in writing all export orders will be delivered f.o.b. at a British Port to be notified by the Company.

(g) In the case of wall ties, deviations in quantity of Goods delivered of 10% or less by value from that set out in the contract shall not entitle the Buyer to reject Goods delivered or to claim damages and the Buyer shall accept the Goods delivered and pay the Company therefore at the contract rate or otherwise pro rata to the total contract price.

(h) If the Buyer has failed to collect the Goods on the expiry of the seventh day following notification of readiness for despatch, the Company shall be entitled to treat the contract as repudiated by the Buyer. Until the contract is so terminated the Company may, at its option, either store the Goods itself or have them stored by a third party on such terms as it in its absolute discretion thinks fit. The cost of storage and any addition transportation will be added to the price of the Goods and be payable by the Buyer. If the Company elects to treat the contract as repudiated in respect of such repudiation) be entitled to sell the Goods and retain the proceeds of such sale.

## 4. LOSS OR DAMAGE IN TRANSIT

The Company shall not be liable for loss or damage to Goods in transit unless:-

(i) the Company has agreed to effect delivery to a place other than the Company's premises; or

(ii) the loss or damage occurs prior to arrival or delivery point; and either

(iii) damage or shortage is reported within 3 days of arrival of delivery point; and

(iv) in the case of total loss, non-arrival is notified to the Company within 7 days after despatch of the advice note.

## 5. INSPECTION

(a) The Buyer shall inspect the Goods immediately upon receipt and shall (unless such inspection cannot be carried out and the delivery note is marked "not examined") subject to paragraph 5(b) below be deemed to have accepted the Goods as delivered.

(b) The Company shall not be liable for defects or shortages discovered on reasonable inspection unless the Buyer notifies the Company before the expiry of 3 days following receipt of any Goods alleged to be defective or lacking conformity with the contract.

(c) The Company shall make good shortages notified to it under sub-clause 5(b) as soon as reasonably practicable but shall not be liable for any other loss whatsoever arising from such shortage.

(d) The Company's liability for defects and shortages notified to it under sub-clause 5(b) above shall in all circumstances be limited to (at the Company's option) the repair or replacement of the goods in question or crediting the Buyer with the invoice value thereof.

## 6. WARRANTY

(a) If within 3 days following delivery a material defect in the Goods shall be discovered and:-

(i) the Buyer notifies the Company within 7 days following discovery giving particulars and either at its own expense and risk returns the Goods to the Company; or (at the Company's sole option) permits the Company to inspect the same; and

(ii) such defect has arisen from faulty materials employed or workmanship carried out by the Company (other than defects arising from compliance with specific instructions, drawings, specifications issued by the Buyer) existing but not reasonably discoverable upon inspection at the time of receipt then the Company shall at its option remedy the defect by repair or replacement or credit to the Buyer's account with the Company or refund to the Buyer the purchase price paid for the defective Goods, provided that in the case of replacement the Company shall be entitled to collect all the defective Goods in question whereupon the same shall become the absolute property of the Company.

(b) In respect of Goods which have been repaired or replaced by the Company hereunder, the Company shall guarantee such items for a period of 18 months from the date of repair or replacement provided always that under no circumstances shall the Company's obligations hereunder extend beyond a date of 24 months after first delivery of the original item.

(c) The Company's liability for defective Goods is limited in all circumstances to (at the Company's option) delivery of replacement or crediting or refunding of the invoice value to the Buyer and the Buyer shall accept such of the aforementioned remedies as the Company shall proffer as fulfillment of the Company's obligations under the contract.

(d) The Company's liability under this Conditions applies only to defects appearing before the Buyer makes any modification or alteration to the Goods and whilst the Goods are being properly used or stored and in particular (but without limitation) the Company shall not be liable in the case of defects arising from normal deterioration or improper or faulty handling or processing of the Goods by the Buyer.

(e) The above warranty does not extend to parts, materials or components forming part of the Goods, which are not of the Company's manufacture. In respect of such items, the Buyer shall be entitled only to the benefit of any manufacturer's warranty or guarantee, which the Company is able to obtain and pass to the Buyer.

(f) Where the Company undertakes to carry out work or provide services of any kind on premises other than its own, it shall be under no liability whatsoever for any loss or/and damage occasioned to the Buyer, his contractors, servants, employees, invitees or otherwise arising from any cause connected in any way with the execution of such works or provision of such services, and the Buyer shall indemnify the Company against any claim by third parties under any statute or at common law.

(g) The Company disclaims all other warranties whether express implied or statutory.

6. (b) The warranty period is (24) months from delivery to the Buyer

## 7. ITEMS SUPPLIED BY BUYER

The Buyer shall be liable for all designs, drawings, specifications and instructions issued by the Company whether pre-quotation or with orders or otherwise pursuant to the contract and shall indemnify and keep indemnified the Company against all loss arising directly or indirectly out of any error in or omission from such drawings specifications and instructions, and against all costs, claims demands and expenses whatsoever in respect of the infringement or potential infringement of any patent, copyright, registered design, design right or other third party right arising out of the Company's use of such drawings, specifications or instructions when in producing the designs, the Goods or any of them.

## 8. APPROVAL OF DESIGNS

(a) All designs are submitted to the Buyer for its approval, consideration and evaluation; it is the responsibility of the Buyer to satisfy itself that the Designs are suitable for its purposes.

(b) Where a quotation and/or order for Goods requires design input by the Company, the Company shall not commence manufacture of the Goods (except as permitted under sub-clause 8(f) below) until approval of the Design has been received by the Company from the Buyer.

(c) Upon the Company's receipt of written comments from the Buyer appertaining to the Design, the Company shall make such revisions as are reasonable and acceptable within the scope of the Design, and the revised document shall be submitted to the Buyer for approval within a reasonable time.

(d) The Design or revisions thereof pursuant to condition 8(c) herein may be deemed at the discretion of the Company to be approved by the Buyer, unless the Buyer notifies the Company with any detrimental written comments before the expiry of 14 days following despatch for approval of the Design of revisions thereof.

(e) Whilst the Company shall make every effort to deliver Goods manufactured in accordance with the Design within the time period requested by the Buyer, the Company shall accept no liability for delays incurred as a result of the implementation of this approval procedure.

(f) Where the Buyer's delivery requirements are such that manufacture of Goods must necessarily commence prior to the receipt by the Company of approval of the Design, then such manufacture shall be preceded by authorisation in writing by the Buyer, and the Buyer shall be deemed to accept responsibility for the cost of any subsequent alterations to the Design.

(g) The Buyer shall be liable for the cost of any alterations to the Design requested after the commencement of the manufacture of the Goods, and for any costs which result from revisions of the Designs requested by the Buyer. The Company shall notify the Buyer prior to implementing any such alterations or revisions that additional costs may be incurred and shall give to the Buyer an estimate of such costs. The Buyer shall provide the Company with written acceptance of those costs prior to implementation.

(h) Approval and/or comment by the Architect or Engineer for the project in question shall be deemed to constitute approval and/or comment by the Buyer.

(i) Instructions to proceed with manufacture, notification of no comment, failure to advise detrimental written comments and requests for delivery shall be deemed to constitute approval by the Buyer. Instructions to incorporate comments shall be deemed to constitute approval by the Buyer on the condition that the comments are incorporated into the design.

## 9. INTELLECTUAL PROPERTY

(a) All patents, trade marks, trade names, copyrights, topography rights whether registered or unregistered in or relating to the Goods or the Designs or any of them are and shall remain the absolute property of the Company.

(b) The Buyer shall upon request by the Company and in any event immediately upon the Buyer deciding not to submit an order for the Goods or to cancel an order for the Goods in accordance with sub-clauses 1(d) and 1(e) above return to the Company all Designs and associated documents and information and any copies thereof in its possession, custody and control.

## 10. LIMITATION OF LIABILITY

(a) The Goods and/or the Designs are supplied strictly on the terms that the Buyer has satisfied itself of their suitability for the Buyer's intended purpose. The Buyer acknowledges that all details issued to the Buyer by the Company are approximate and the Company accepts no liability whatsoever arising therefrom.

(b) The Company's liability under clauses 5 and 6 herein shall be accepted by the Buyer in lieu of any warranty or condition whether express or implied by law, as to the quality or fitness for any particular purpose of the Goods.

(c) In any event the Company's liability for any loss or damage arising out of any action or proceedings relating to any defective goods supplied to the Buyer or other failure by the Company shall not exceed the net cost of the Goods supplied and valued at the time of the supply.

### Indemnity

(d) The Buyer shall indemnify and keep indemnified the Company against all actions, claims, costs, damages, demands and expenses or other loss arising out of:-

(i) defect in the Goods (including, without limitation, all liability incurred under the Consumer Protection Act 1987) to the extent occasioned or contributed to by any act or omission of the Buyer, his servants, agents or persons under its control; or

(ii) any claim by any third party of any intellectual property rights of such third party arising from the use, modification, adaptation of the Goods or incorporation of the Goods into other products by the Buyer.

## 11. INFORMATION AND INSTRUCTIONS

Written information and instructions are available from the Company concerning products and their use and the conditions necessary to ensure that they are dealt with so as to be safe and without risk to health. Should the Buyer not possess such information or instructions, they should immediately obtain them from the Company.

## 12. RETENTION OF TITLE

(1) Until the Company has received payment in full, in cash or cleared funds, of all sums owed to it on any account by the Buyer, whether arising out of this or any other contract, legal and beneficial title to the Goods shall remain in the Company; such Goods are referred to in this condition as "retained Goods".

(2) Retained Goods:-

(a) are held by the Buyer as fiduciary for the Company and the Buyer shall not pledge or in any way charge by way of security for indebtedness, any retained Goods;

(b) shall be at the Buyer's risk, insured by the Buyer from the date of delivery at its own expense for their full replacement value against all usual risks; and kept safe in good condition and stored separately and clearly identifiable as the Company's property and with all identifying marks intact and legible.

(c) may, subject to sub-clause (c) below be used or sold by the Buyer in the ordinary course of its business on the basis that the Buyer shall hold the proceeds of sale in trust for the Company absolutely.

(3) The Buyer's powers of use and sale of retained Goods shall terminate:-

(a) forthwith on notice of the occurrence of any of the following:-

(i) if the Buyer is in default in performance of any of its obligations under this or any other contract with the Company; or

(ii) if the Company has reasonable doubts as to the ability or willingness of the Buyer to pay any sum to it on the due date.

(b) automatically upon the occurrence of any of the events specified in sub-clause (4) below ("the Events")

(4) The Events are:-

(i) if the Buyer causes a meeting of or makes any arrangement or composition with its creditors or

(ii) if the Buyer becomes insolvent or bankrupt or appears to be unable to pay a debt or to have no reasonable prospect of paying a debt (within the meaning of Section 268 of the Insolvency Act 1986); or, being a Company, appears unable to pay its debts (within the meaning of Section 123 of that Act);

(iii) if there is presented a petition for the winding up of the Buyer or for the appointment of an Administrator of its undertakings or

(iv) if the Buyer has an Administrator or Receiver appointed over any of its assets or undertakings or a winding up order made against it or it goes into voluntary liquidation (otherwise than for the purpose of bona fide reconstruction or amalgamation of a solvent Company).

(5) The Company may, at any time on giving prior notice, enter the Buyer's premises for the purposes of inspecting retained Goods and identifying them as the Company's property and the Buyer irrevocably authorises the Company to enter upon its premises for that purpose: And

(6) Upon suspension and revocation of determination of the Buyer's power of sale and use under this Condition the Buyer shall place all the retained Goods in its possession or under its control at the Company's disposal and shall be deemed irrevocably to authorise the Company to enter upon any of the Buyer's premises, with our without vehicles, for the purpose of removing such Goods.

(7) The repossession of retained Goods by the Company in accordance with this Condition shall be without prejudice to all or any of the Company's other rights against the Buyer under the contract.

## 13. PAYMENT

(a) Subject to satisfactory trade, bankers and other requisite references, and where no other terms of payment have been specifically agreed in writing, the Company's terms are that a cash payment be made in full by the end of the month following the month on invoice, namely net monthly account. The Company is entitled to invoice the Buyer for the Goods at any time following delivery as defined in sub-clauses 3(c) and 3(h) herein.

(b) unless specifically agreed in writing payment for export orders shall be irrevocable letter of credit confirmed by a London Clearing Bank and issued under the inciters then in force.

(c) No discount or allowance will be made unless specifically stated by the Company in writing. Interest will be charged on all sums due under or by way of damages for breach of the contract at the rate of 5% per annum above the base rate of Barclays Bank PLC from time to time in force and shall be calculated and accrue on a day to day basis from the date on which payment fell due until payment (whether made before or after judgement has been obtained by the Company against the Buyer).

(d) Time for making payment shall be of the essence of the contract.

(e) The Company may at any time in its absolute discretion, appropriate any payment made by the Buyer in respect of Goods to such outstanding debt as the Company thinks fit, notwithstanding any purported appropriation to the contrary by the Buyer.

(f) The Company shall be entitled to cancel the contract or to postpone any delivery until payment in respect thereof has been received in the event that the Company has reasonable doubts about the Buyer's ability or willingness to pay on the due date calculated by reference to sub-clause 13(a).

(g) The Company reserves the right at any time at its discretion to demand security for payment before continuing with an order or delivering the Goods or any installment.

(h) VAT will be charged at the rate ruling at the time of despatch of the Goods or, if different, the basic tax point (as defined in regulations governing VAT from time to time in force).

## 14. CANCELLATION

Without prejudice to any of the Company's other rights or remedies, the Company shall be entitled forthwith upon the happening of any of the events detailed in clause 12 herein, to cancel the contract or (in its absolute discretion) suspend further deliveries under this or any other contract with the Buyer, without liability, and if Goods have been delivered, but not paid for, the price thereof shall become immediately due and payable, notwithstanding any previous agreement to the contrary.

## 15. FORCE MAJEURE

(a) The Company shall not be liable to the Buyer if unable to carry out any provision of the contract for any reason beyond its control including (but without limitation) Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock out, strike, stoppage or other action by employees or third parties in contemplation of furtherance of any dispute or owing to any inability to procure parts or materials required for the performance of the contract.

(b) The Company shall notify the Buyer as soon as reasonably practicable after circumstances preventing performance arises. During the continuance of such a contingency the Company may, in its absolute discretion, withhold, reduce or suspend performance of its contractual obligations, so far as prevented or hindered by such contingency, without liability to the Buyer for any loss or damage whatsoever suffered directly or indirectly by reason of any such withholding reduction or suspension.

(c) Should such contingency continue for more than three months either party may (subject to the Company repaying to the Buyer any advance payments made for undelivered Goods and the Buyer paying for Goods delivered) cancel the contract without further liability to the other.

## 16. NO WAIVER

No waiver of the Company's rights under the contract shall be effective unless in writing signed by a Director of the Company. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of a Company's rights in relation to different circumstances or the recurrence of similar circumstances.

## 17. NOTICES

Any notices under these conditions shall be properly given if in writing and sent by first class post, recorded delivery or via facsimile transmission to the address of the intended recipient as stated in the contract or to such address as the Company and the Buyer from time to time notify each other as their respective addresses and shall be deemed served in the case of postal notice, on the expiry of 48 hours from the time of posting and in the case of facsimile transmissions on the expiry of 1 hour from completion of transmission by the sender.

## 18. CONSTRUCTION AND JURISDICTION

English Law shall govern construction and operation of the contract. If at any time any question, dispute or difference arising under or in relation to the contract shall arise between the parties they shall attempt to resolve the same by using an alternative dispute resolution ("ADR") procedure agreed between the parties. The costs and fees associated with such ADR procedure shall be paid equally by the parties.

In the event that the parties cannot agree on a suitable ADR procedure within 6 weeks of the original notification of the matter, or if the said question, dispute or difference cannot be resolved by the ADR procedure, then such question, dispute or difference shall be submitted to the exclusive jurisdiction of the Courts of England and Wales.

Each of these provisions shall be construed as a separate provision. Should any provision hereof be found to be invalid or unenforceable or an unreasonable restriction of the Company's liability then such provision shall apply with such modifications as may be necessary to make it valid and effective.

## 19. BRITISH STANDARDS

The Company is registered as a firm of Assessed Capability and is approved to BS ISO 9001. The Company supplies a small number of items that are not manufactured within the scope of this system. Details will be supplied upon request.

## 20. EXCLUSION OF THIRD PARTY RIGHTS

For the avoidance of doubt a person who is not a party to this contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms and the parties to this contract reserve the right to amend or rescind this contract without giving notice to, or requiring the consent of, any third party