



## **TERMS AND CONDITIONS OF SALE**

### **INTRODUCTION**

These Conditions apply to all Contracts for the sale of goods or services by E&R Moffat Limited (the "Seller"). By placing an order with the Seller, the purchasing company (the "Purchaser") agrees to deal with the Seller on these Conditions to the exclusion of all other terms, conditions, warranties, or representations with the exception of the terms and conditions specified in writing below.

### **1. CONTRACTS**

- 1.1 - Each contract for the sale of goods by the Seller is subject to the terms and conditions set out in this document (the "Conditions"). No agreement between the Seller and the Purchaser for the sale and purchase of goods (the "Contract") shall take effect until the Seller so agrees in writing.
- 1.2 - "Goods" includes any raw materials, component parts and finished products which the Seller supplies to the Purchaser in accordance with these Conditions or as further provided for in any relevant purchase order or any amendment thereto duly signed by the Purchaser and the Seller (the "Order").
- 1.3 - No variation of or to these Conditions, and the relevant Contract or Order placed shall be effective without the Seller's prior written agreement.
- 1.4 - These Conditions override and supersede any other terms or conditions emanating from or referred to by the Purchaser.
- 1.5 - The Purchaser shall provide the Seller with an Order for each delivery of Goods required. The Order shall stipulate the type and quantity of Goods required, the delivery address, details of technical requirements (the "Purchaser's Specification"), if any, and any other information required by the Seller from time to time.
- 1.6 - Unless otherwise stated, all quotations issued by the Seller to the Purchaser will remain open for acceptance for 30 days from the date of the quotation being communicated to the Purchaser in writing. Thereafter, each quotation shall cease to be effective.

### **2. SUPPLY OF GOODS**

- 2.1 - Where appropriate, the Seller shall supply the Goods in accordance with the Purchaser's Specification. However, notwithstanding the Seller's reasonable endeavours to comply with the Purchaser's Specification, the Seller accepts no liability for the appropriateness or fitness for purpose of the Purchaser's Specification.
- 2.2 - The Seller reserves the right in its sole discretion to make any changes to the technical requirements and/or description of the Goods where such changes are required to conform with any applicable safety or other requirements, or which do not materially affect the quality or performance of the Goods.

### **3. PRICE AND PAYMENT**

- 3.1 - The price of the Goods shall be the price set out overleaf or, if not specified, the price quoted by the Seller or, if not specified, the price contained in the Seller's published price list current at the date of the Contract. The Seller reserves the right to revise any prices quoted in the event that the Purchaser alters any quantities ordered and/or changes the delivery address stipulated on the Order.
- 3.2 - The Seller reserves the right to increase the price of the Goods without prior notice to the Purchaser in the event of any rising costs whatsoever, including, in particular any rise in manufacturing costs and/or costs of raw materials or labour. The Purchaser shall pay such increased costs as may be stipulated by the Seller.
- 3.3 - The terms of payment specified are to be strictly and punctually adhered to. Time for payment is the essence of the Contract and due compliance with such payment terms shall be a condition precedent to any complaint or remedy of the Purchaser against the Seller under the Contract.
- 3.4 - For Goods to be delivered to addresses within Great Britain, subject to clause 3.5 below, unless otherwise stated all prices quoted by the Seller shall include the cost of packing, carriage, and delivery of the Goods to the address specified by the Purchaser. The price does not include off-loading, positioning or installation of the Goods.
- 3.5 - Where Orders are received for Goods to be supplied to the islands of Orkney, Shetland, Hebrides/Western Isles, and remote parts of the mainland, unless otherwise agreed in writing, the Seller shall make the Goods available for collection by the Purchaser from the Seller's dispatch premises. In the case of spare parts or orders less than £500 in value, a handling charge, inclusive of postage and packaging will be made by the Seller.
- 3.6 - The Seller does not deliver Goods outside Great Britain or to those locations specified in clause 3.5 above. Where Orders are received for Goods to be supplied outside Great Britain, unless otherwise agreed in writing, the Seller shall make the Goods available for collection by the Purchaser on an ex-works basis. An additional charge shall be made for storage, packaging, and administration costs, where applicable. Such additional charges shall be made in the Seller's sole discretion.

- 3.7 - The price is exclusive of any applicable VAT, which the Purchaser shall be additionally liable to pay the Seller.
- 3.8 - The Purchaser shall make payment to the Seller in respect of all invoices in full and without any set-off or deduction by such method, at such time and in such currency as referred to overleaf. Unless otherwise agreed, payments should be made in accordance with the terms of the relevant invoice.
- 3.9 - With all first orders, and in such other cases as the Seller may specify from time to time, payment in full shall be a condition precedent to delivery of the Goods. In all other cases, payments must be made in full within 30 days from the end of the month of the relevant invoice, unless otherwise agreed in writing.
- 3.10 - If full payment is not received by the Seller from the Purchaser in the terms outlined in clauses 3.8 and 3.9 above then, without prejudice to its rights under these Conditions, at common law or under statute, the Seller shall be entitled to:
- 3.10.1 - Sue the Purchaser for the entire price outstanding; and/or
- 3.10.2 - Charge interest (both before and after any judgement) at a rate of 8% above the current bank base rate and statutory compensation on the full invoice price or outstanding balance; and/or
- 3.10.3 - The customer shall also reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount; and/or
- 3.10.4 - Suspend any further deliveries of Goods to the Purchaser under any Contract, pending payment in full; and/or
- 3.10.5 - Terminate the Contract forthwith by notice in writing; and/or
- 3.10.6 - Require the immediate return to the Seller of all Goods in which the property has not passed to the Purchaser in accordance with the provisions of clause 9 below. Furthermore, the Purchaser hereby agrees to reimburse to the Seller upon demand the Seller's costs and expenses in recovering such Goods.
- 3.11 - Errors and omissions are subject to correction.

#### **4. DELIVERY**

- 4.1 - Subject to clause 3.5 above, for Goods to be delivered within Great Britain, delivery shall be effected at the location specified by the Purchaser in the Order or as otherwise agreed between the parties.
- 4.2 - Delivery times and dates shall be regarded as approximate only. Anticipated delivery dates and times shall be specified as being on a 'week commencing' basis and either during the morning or afternoon respectively. Delivery will be made on any working day within the specified week commencing date. Whilst all reasonable efforts will be made by the Seller to avoid delay, the Seller does not accept liability for any loss, cost or expense, whether direct or indirect, arising from such delay.
- 4.3 - Where a time for delivery is stated and the Purchaser fails, for whatever reason, to accept delivery, the Seller reserves the right to make a reasonable charge for storage of the Goods, lost driver's time, consequent vehicle hire charges and return, and offloading costs incurred at the Seller's premises. The Purchaser shall give at least 10 days' notice to the Seller of a revised delivery date. The Seller shall not be required to deliver the Goods unless and until all reasonable charges are paid in full by the Purchaser. Such Goods are stored at the risk of the Purchaser.
- 4.4 - In the event that the Purchaser requires advance notice of the estimated time of delivery, such request shall be made in the Order. The Seller shall use its reasonable endeavours to meet the requirements specified, except that delivery times shall only be given in terms of either morning or afternoon.
- 4.5 - Where the Seller is prevented from effecting delivery to the Purchaser on the agreed due date, the full price of the Goods shall become payable, in accordance with clause 3, as if the Goods had been delivered.
- 4.6 - The Purchaser shall provide at its own expense adequate and appropriate unloading facilities and labour (as the case may be) at the place of delivery, including but not limited to, stairs, lifts, vehicle access and other necessary equipment.
- 4.7 - Time lost due to strikes, blackouts, any Act of God, war and hostilities, any act of terrorism, riot, civil commotion, revolution, blockade, embargo, industrial or trade dispute, fire, explosion, flood, adverse weather conditions, disease, accident to or breakdown of plant or machinery, shortage of any labour, material, transport, electricity or any other supply, change of law or regulation or any form of government, official or regulated intervention or any other event beyond the control of the Seller shall be added to the delivery time specified in the original Contract.
- 4.8 - Any pallets, containers, or any other packing in which the Goods are supplied to the Purchaser shall remain the property of the Seller and shall be returned to the Seller by the Purchaser in the same condition at the expense of the Purchaser within 30 days of the date of delivery.
- 4.9 - The Seller reserves the right to make a reasonable additional charge when a delivery address other than that stipulated on the Order is requested by the Purchaser or where delivery is to be split between different delivery addresses from that stated on the Order. Formal written acceptance of these charges must be given by the Purchaser to the Seller before delivery will be undertaken.
- 4.10 - Prices are inclusive of delivery charge to most UK mainland destinations with the following exceptions:
- Delivery Charges will apply to the following postcodes:
- HS1 through to HS9, IV17 through to IV28, IV40 through to IV56, KA27 through to KA28,  
KW1 through to KW17, PA20 through to PA38, PA41 through to PA49, PA60 through to PA78, PA80, PH36 through to PH44,  
ZE1 through to ZE3

**We do not deliver to Northern Ireland, Isle of Man, Isle of Wight and the Channel Islands.**

## **5. CONNECTION AND WORK ON SITE**

5.1 - Where previously agreed between the Seller and the Purchaser in writing, prices quoted include assembly of the Goods at the Purchaser's premises, being a clear site on the ground floor with unhindered access, during normal working hours and within one visit. Site conditions other than these stated in this clause 5.1 will not be accepted unless otherwise agreed in advance in writing between the Purchaser and the Seller. Unless otherwise agreed between the parties, assembly prices payable by the Purchaser are subject to the following additional charges:

5.1.1 - An extra carriage charge if the site for assembly differs from that of delivery.

5.1.2 - Charges for fixing barrier rails, tray slides, shelves, or other units to walls or floors.

5.1.3 - Charges for the connection to gas, water, electricity, steam, ventilation, drainage services, pipes or systems.

5.1.4 - An extra labour charge for assembly or connection which is undertaken outside normal working hours, at weekends, public holidays or where subsequent extra visits are requested by the Purchaser or necessitated by site conditions.

5.2 - Subject to clause 5.1, where the Seller has agreed to connect the Goods supplied to any of the services detailed in clause 5.1.3 or to fix units to the walls and floors in clause 5.1.2.

5.2.1 - The Purchaser shall arrange at his own risk and expense for service pipes or other connections to be brought to within 1 metre of each corresponding output of the Goods assembled.

5.2.2 - The agreed cost for effecting connection excludes the provision of isolators, stop cocks, drains, waste pipes and associated materials; and

5.2.3 - The Purchaser shall, at his own expense, arrange and ensure that walls and floors are suitable and are suitably prepared to accept the specified Goods, especially in terms of load bearing capacity and fixing anchorage.

5.3 - The Purchaser shall:

5.3.1 - Give full and unfettered access to the delivery address to the Seller for the purpose of installing the Goods.

5.3.2 - Undertake all and any preparatory work specified by the Seller overleaf, in the relevant quotation or in the Seller's standard documentation to be necessary for the Goods to be installed; and

5.3.3 - Compensate the Seller for any additional costs which the Seller incurs by reason of the Purchaser's failure properly to undertake any such preparatory work.

5.4 - The Seller shall procure that its employees who install the Goods comply with all reasonable safety, security and other regulations which are in force or apply at the delivery address and the Purchaser shall indemnify the Seller against any loss which the Seller may suffer or incur as a result of any injury whilst at the delivery address resulting from anything other than the negligence of the Seller or its employees.

## **6. DAMAGE OR LOSS IN TRANSIT**

6.1 - The Seller's responsibility to the Purchaser shall end upon delivery of the Goods at the designated delivery point.

6.2 - The Seller shall not be responsible for any damage or loss caused during the unloading of the Goods.

6.3 - The Purchaser shall examine the Goods upon their delivery and any loss, shortfall or damage should be noted on the Carrier's log. If the Goods are not examined, the Carrier's log should be noted accordingly.

6.4 - In the event of damage or loss, Goods or parts thereof shall be replaced or repaired by the Seller free of charge provided that:

6.4.1 - Damaged Goods will not be replaced or repaired if they have been used; and

6.4.2 - The Seller and Carrier are notified in writing of such damage or loss within 3 days of delivery; and

6.4.3 - The Goods and any associated packaging are returned to the Seller carriage paid within 14 days of delivery; and

6.4.4 - The Seller is notified of the name and address of the Carrier and of the date the Goods were collected for return.

6.5 - In the event of a shortfall or non-delivery of a total consignment, the Seller shall replace such Goods provided that written notification is served upon the Seller by the Purchaser within 10 days from the date of the Seller's invoice.

6.6 - All notifications pursuant to clauses 6.4, 6.5 and 7.1.1 are to be addressed to the Seller at Bonnymuir Works, Bonnybridge, FK4 2BS, Scotland.

6.7 - The Seller shall be under no obligation to the Purchaser under this clause 6 if it does not receive notification in accordance with the provisions of clause 6.

## **7. DEFECTS**

7.1 - Where Goods supplied are of the Seller's design and manufacture, the Seller shall make good any defects in those Goods subject to the following conditions:

7.1.1 - The Purchaser shall notify the Seller in writing as soon as is practicable after discovery of the defect.

7.1.2 - The Seller reserves the right to conduct an inspection of any Goods which are the subject of such a notification.

7.1.3 - The Seller shall not be obliged to make good any defect which, in the reasonable and sole opinion of the Seller, has arisen from accident, misuse, neglect, incorrect installation, lack of reasonable maintenance or any other cause beyond the reasonable control of the Seller.

7.1.4 - Where the defect is reasonably attributable to the default of the Seller, the Seller shall repair or replace the Goods but, subject to clause 10.5, shall not be liable to the Purchaser for any removal or installation costs nor any consequential loss whatsoever or damage to the Purchaser arising therefrom; and

7.1.5 - In accordance with clause 10.2, the Seller's liability to replace or repair defective Goods shall be limited to a period of 24 months from the date of dispatch from the Seller's premises, unless otherwise agreed in writing. The repair of defective goods shall be limited to mainland Great Britain beyond which a replacement parts only warranty shall be provided.

7.2 - Where Goods or components supplied by the Seller are not of the Seller's design or manufacture, the Seller's liability shall be limited to the guarantee provided by the manufacturer of such Goods or components.

7.3 - The Seller shall have no obligation to the Purchaser under this clause 7 if the Purchaser is in breach of any provision of the Contract or of these Conditions.

## **8. CANCELLATION**

8.1 - The Seller, in its sole discretion, reserves the right to cancel any delivery or further delivery of Goods in any case where the Purchaser:

8.1.1 - Is in default of any payment.

8.1.2 - Breaches any of these Conditions.

8.1.3 - Is subject to bankruptcy proceedings; or

8.1.4 - In the case of a limited company, has appointed a receiver or is subject to liquidation proceedings other than for the purpose of an amalgamation or internal restructuring programme.

8.2 - In the event that the Order, or any item(s) on the Order, are cancelled by the Purchaser, the following charges will be levied on the Purchaser by the Seller:

8.2.1 - 20% of the net invoice value or of the value of the cancelled item(s), payable within 30 days from the date of cancellation; or

8.2.2 - For Goods being manufactured by the Seller in accordance with the Purchaser's Specification, a charge of 20% of the net invoice value plus all manufacturing costs incurred by the Seller in pursuance of the Purchaser's Specification up to and including the date of cancellation being communicated to the Seller.

## **9. OWNERSHIP**

9.1 - Risk of damage to or loss of the Goods shall pass to the Purchaser on the earliest of delivery at the allocated delivery point or the date on which the Seller attempted to deliver the Goods to the Purchaser.

9.2 - Notwithstanding delivery and the passing of risk in the Goods to the Purchaser, or any other provision contained within these Conditions, ownership and title to the Goods shall not pass to the Purchaser (and shall be retained in full by the Seller) until (i) in the event that the Goods are sold within the jurisdiction of the Scottish courts, property in the Goods sold shall not pass from the Seller to the Purchaser until the Purchaser has paid (a) the price for the Goods in full in cleared funds (including Value Added Tax) and (b) all other sums due of whatsoever nature by the Purchaser to the Seller; or (ii) in the event that the Goods are sold within the jurisdiction of the English courts, legal and beneficial ownership and property in the Goods shall not pass from the Seller to the Purchaser until the Purchaser has paid the price for the Goods in full in cleared funds (including Value Added Tax).

9.3 - The Seller may, in its sole discretion, cancel any Contract or Order and remove the Goods if the price is not paid in full at the time and manner stipulated in clause 3 above and, furthermore, to recover damages in respect of the Purchaser's failure to comply with the terms of that Contract.

9.4 - Until such time as title in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Seller's fiduciary agent and shall keep the Goods separate from those of the Purchaser and third parties, and shall keep the Goods properly stored, protected, insured, and identified as the Seller's property. Until that time, the Purchaser shall be entitled to resell the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods (including insurance proceeds) and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties.

9.5 - Until such time as title in the Goods passes to the Purchaser and, provided that the Goods are still in existence and have not been sold, the Seller shall be entitled at any time to require the Purchaser to deliver up the Goods to the Seller and, if the Purchaser fails to do so (within 14 days), to enter upon any premises of the Purchaser or any third party where the Goods are stored and repossess such Goods.

## **10. EXCLUSION OF LIABILITY**

10.1 - Since the Seller has no control over the uses to which the Goods provided under the Contract will be put, the Purchaser must satisfy himself that the Goods are suitable for the purposes for which they are intended and must rely exclusively upon his own tests and observations. Except as set out in clause 10.2, the Seller gives no warranties, conditions, guarantees or representations as to the Goods, their satisfactory quality or fitness for a particular purpose and all other warranties, conditions, guarantees or representations, whether express or implied, oral or in writing are hereby excluded.

10.2 - The Seller warrants that the Goods will correspond with the Purchaser's Specification (if any) at the time of delivery and will be free from defects in material and workmanship for a period of 24 months from the date of despatch unless otherwise agreed in writing between the parties, provided that:

10.2.1 - The Seller shall be under no liability in respect of any defects in the Goods arising from the Purchaser's Specification, or for the performance or operation of such Goods.

10.2.2 - The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by the Purchaser or persons using the Goods, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) or misuse, alteration, or repair of the Goods without the Seller's approval.

10.2.3 - The Seller shall be under no liability if the total price for the Goods has not been paid by the due date for payment.

10.2.4 - Any such defect in or failure to meet the Purchaser's Specification of the Goods shall be notified to the Seller in writing as soon as reasonably possible after the Purchaser discovers such defect or non-conformity; and

10.2.5 - The above warranty does not extend to the parts, materials or equipment not manufactured by the Seller.

10.3 - Subject to clause 7, in the event of any valid claim under clause 10.2 above being made by the Purchaser, the Seller shall be entitled to replace or repair the Goods (or the part in question) free of charge, or, at the Seller's sole discretion, to refund to the Purchaser the price of the Goods (or a proportionate part of the price as appropriate) but the Seller shall have no further liability to the Purchaser for any loss or damage whatsoever.

10.4 - In any event, and notwithstanding anything in these Conditions, the Seller shall not be liable to the Purchaser in contract, tort or otherwise, and whatever the cause thereof:

10.4.1 - For any increased costs or expenses it incurs.

10.4.2 - For any loss of profit, business, contracts, revenues, or anticipated savings it experiences; or

10.4.3 - For any other special indirect or consequential loss or damage whatsoever.

10.5 - Nothing in these Conditions operates to limit or exclude the Seller's liability for death and personal injury to the extent that it results from the negligence of the Seller or its employees.

## **11. INSTRUCTIONS AND HEALTH AND SAFETY**

11.1 - The Purchaser shall comply (and ensure that its employees and agents comply) strictly with all instructions, warnings, data sheets, manuals, and other material (including without limitation those regarding health and safety) supplied by the Seller with or in connection with the Goods and/or their use, and shall, upon delivery of the Goods, ensure that such materials accompany the Goods.

## **12. REFRIGERATED APPLIANCES**

12.1 - Refrigerated appliances are designed to operate in ambient temperatures not exceeding 80 degrees Fahrenheit and with duty limits as specified. No duty can be stipulated in respect of open refrigerated display units.

## **13. DRAWINGS**

13.1 - All drawings shall remain the Seller's property and must not be used or copied either in whole or in part without the Seller's prior written permission.

## **14. INDEMNITY**

14.1 - The Purchaser shall indemnify and keep indemnified the Seller against all damages, penalties, costs and expenses howsoever arising to which the Seller may be liable as a result of work done in accordance with the Purchaser's Specification, which infringes any third-party property or intellectual property rights.

## **15. WAIVER**

15.1 - Failure by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

15.2 - Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way effect the other terms of the Contract.

## **16. SEVERANCE**

16.1 - If any provision of the Contract is found by any court, tribunal, or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable, or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable, and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

## **17. WEEE REGULATIONS The Waste Electrical and Electronic Regulations 2006 (SI 2006/3289)**

17.1 - The Customer shall:

17.1.1 - Be responsible for financing the collection, treatment, recovery, and environmentally sound disposal of:

17.1.1.1 - All WEEE arising or deriving from the Products; and

17.1.1.2 - All WEEE arising or deriving from products on the market prior to 13 August 2005 where such products are to be replaced by the Products and the Products are from an equivalent type or are fulfilling the same function as that of such products.

17.1.2 - Comply with all additional obligations placed upon the Customer by the WEEE Regulations by virtue of the Customer accepting the responsibility set out in clause 1.1.1; and

17.1.3 - Provide the Customers WEEE compliance scheme operator with such data, documents, information, and other assistance as such scheme operator from time to time reasonably require to enable such operator to satisfy the obligations assumes by it as a result of the Sellers membership of the operator's compliance scheme.

17.2 - The customer shall be responsible for all costs and expenses arising from and relating to its obligations in clause 1.1.

17.3 - Further information in respect of the arrangements set out in clause 1.1 can be found at [www.electrolink.eu.com](http://www.electrolink.eu.com) by clicking on the 'WEEE FINAL USERS' button and quoting WEEE registration number (WEE/KF0061TU) where prompted.

**18. LAW AND JURISDICTION**

18.1 - The construction, validity and performance of each Contract is governed by the laws of Scotland and the parties hereby accept the exclusive jurisdiction of the Scottish courts. Duly noted and accepted by the Purchaser.