



Conditions of Contract

1. Variations and Representations

- i. These conditions of contract shall apply to the exclusion of any other conditions issued by either party to the contract except as varied by the express written agreement of Acetarc Welding & Eng. Co. Ltd., ("the Company"). No representations by an employee or agent of the Company shall bind the Company unless the same are officially ratified by the Company in writing to the other party to the contract ("the Customer").
- ii. A binding contract ("the Contract") for the supply of purchase of goods and/or services shall come into being on the Company's written acceptance of the Customer's orders and accordingly unless otherwise provided in writing quotations shall be invitations to treat and not offers capable of acceptance.
- iii. The exercise by the Company of any right pursuant to these Terms and Conditions shall be without prejudice to any other right available to it whether hereunder or under general law.
- iv. The Customer acknowledges that the Contract was not entered into in reliance on any representations other than those incorporated in the Company's quotation (if any) and these Conditions.

2. Price Variation

The price of the Contract ("Contract Price") is based on costs ruling at the date of the quotation ("Quotation" which expression shall include a tender submitted by the Company) and shall be exclusive of all taxes (including Value Added Tax) customs or other duties. In the event of any increase in the cost to the Company between the date of Quotation and completion of any Contract of labour manufacture materials insurance or transport (including handling and incidentals) due to any factor beyond the Company's control or in the event of any deviation in the route or manner of transit occasioned by the like causes the Company reserves the right to amend the Contract Price to cover such increased costs by giving notice in writing to the Customer.

3. Specifications

Drawings, photographs and other illustrations accompanying a quotation or contained in the Company's catalogues, price lists or advertisements must be regarded as approximate representations only and are not binding in detail. Weights, measurements, powers, capacities and other Contract specification particulars are stated in good faith as approximately correct but deviations shall not be made the basis of any claim against the Company save where specifically agreed to the contrary in writing. Errors and omissions are subject to correction. In no case does the Company accept responsibility for the condition of any plant or fittings which may be set to work in conjunction with the goods the subject of the Contract ("the Goods"). The Company shall be entitled to make the changes in the Goods which do not adversely affect their specification, dates of delivery or prices.

4. Delivery and Risk

4.1 Delivery of Goods shall be deemed to have taken place:-

- i. Where transit is arranged by the Company when the Goods have been conveyed to the place for delivery named in the Contract ready for unloading by the purchaser or his agents at which time risk of loss of or damage to the Goods shall pass to the Customer
- ii. Where transit is not arranged by the Company when the Goods have been loaded for despatch to the to the Customer or his nominee from the Company's works or those of its sub-contractor at which time risk of loss or damage to the Goods shall pass to the Customer.

4.2 When transit is arranged by the Company and the Goods are damaged in transit or having been placed in transit are not delivered to the Customer then and in such event:-

- i. The customer in the case of damage to the goods shall give notice within three days after delivery that they have been delivered damaged and in the case of non-delivery shall (if he has been advised of the despatch) give notice within ten days after the receipt of the advice that the Goods have not been delivered. Each such notice shall be given in writing to the Company and also if the Customer had knowledge that the goods were entrusted for delivery to a carrier and
- ii. The Company's liability shall be limited to the repair or (at the Company's option) replacement within a reasonable time of the part of the Goods damaged or not delivered provided always that the Company shall be under no liability whatsoever for any damages or non-delivery if the transit was not arranged by the Company or if by reason of the failure of the Customer to give notice of damage or non-delivery the Company is precluded from recovering compensation for such loss or damage from any third party. Transit will not be arranged by the Company except where expressly stated in the Contract.

5. Company's Right to Withhold

Notwithstanding any other provision in these Conditions of Contract the Company shall be entitled to withhold delivery of the Goods or any instalment of Goods or cease any Erection Work until all sums due to the Company from the Customer or where the Customer is a body corporate from any company which is the Customer's subsidiary or holding company (whether mediate or immediate) or a subsidiary (whether mediate or immediate) of the Customer's holding company on any account other than in respect of the Goods of instalments of the Goods withheld or the Erection Work so ceased have been paid in full.

6. Completion and Delivery by Instalments

6.1 Delivery dates and times specified by the Company are approximate only. Unless expressly agreed by the Company in writing, time is not and shall not be deemed to be of the essence of the Contract.

6.2 In the event of Goods being delivered by the Company to the Customer's order by the by the Company's transport or by transport arranged by the Company, the Customer shall unload the goods immediately on arrival, and the Company's employee or agent shall not be permitted to assist in unloading or stacking the Goods.

6.3 If goods are sold and delivered to the Company's Customers in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any

one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated and further the Customer shall have no right of set-off against any monies due to the Company under this or any other order.

6.4 If the Customer fails to collect or otherwise take delivery of the Goods when the Company has notified the Customer that they are ready for delivery then they shall be regarded as

delivered and payment shall become due notwithstanding any other provisions hereof not later than twenty-eight days after the date of the Company's invoice. If acceptance of delivery is delayed beyond fourteen days after notification that the Goods are so ready the Company shall be entitled to charge the Customer for storage, handling, maintenance and insurance.

6.5 Where goods are delivered in instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Terms and Conditions.

6.6 If the Customer is in default in paying any sum as and when it becomes due, the Company shall have the right to suspend all further deliveries until the default is made good and/or to cancel the Contract so far as any goods remain to be delivered there under.

7. Terms of Payment

The terms of payment of the Contract Price (as amended pursuant to Clause 2 above) together with any Value Added Tax chargeable on the supply of goods or services pursuant to the Contract will be stated in writing on the Company's Quotation and/or acceptance of Customer's order. Interest at the rate of one and a half per cent per month or part of a month will be payable on all amounts overdue.

8. Warranty

Providing that the Goods are correctly handled, installed and maintained and used in accordance with the Company's recommendations and where applicable any recommendations of the Company's sub-contract suppliers save for fair wear and tear the Company undertakes to make good by repair or (at the Company's option) replacement any defect arising solely from faulty materials or workmanship and disclosed within a period of twelve calendar months from the date of delivery of the Goods to the Customer (except that where the plant in which the Goods are installed or with the Goods are set to work is running night and day the warranty period shall be six calendar months from such delivery) subject to the following:-

8.1 Notice in writing is given of any such defect immediately it becomes apparent and no repair or replacement is made or attempted without the Company's express and written permission.

8.2 All parts supplied by the Company not of the Company's manufacture are not covered by this guarantee and are subject to the warranty (if any) of the makers beyond which the Company accepts no responsibility.

8.3 The Company's right to require the purchaser to return defective Goods to the Company's United Kingdom works free of charge. Thereafter repaired or replaced Goods would be sent to site free of charge with the United Kingdom mainland f.o.b (Incoterms 1990) British Port or destination outside the United Kingdom mainland.

8.4 In the event of the Company assuming guarantees for output, yield and other Contract Specifications the Company shall be entitled to require the Customer to afford to the Company facilities for and the opportunity to prove that such guarantees could be fulfilled and if the Customer refuses such facilities or opportunities then such proof will be deemed to have been furnished by the Company. The raw material, power and other necessary items and services as well as personnel required for such purposes shall be placed by the Customer free of charge at the Company's disposal. In the case of non-fulfilment of such guarantees in respect of the Goods the Company shall be entitled to take back the Goods supplied and refund the Customer the payments received on account of such Goods and thereupon the Company will bear no liability whatsoever for any claims for compensation of whatever nature.

9. Packing

Unless otherwise agreed all packing will be charged as an extra cost and packages are not returnable.

10. Title

10.1 Title in the Goods or any part thereof shall only pass to the Customer when payment in full thereof has been made and the Customer shall permit so far as it is able and shall use its best endeavours to assist any officer, employee, representative or agent of the Company to enter onto any premises where the Goods may from time to time be situated and to repossess the goods at any time prior to the title passing to the Customer shall hold the Goods as the Company's fiduciary agent and bailee.

10.2 The Customer shall only be at liberty to sell goods purchased from the Company prior to the passing of title on the understanding that the Goods are to be sold only by the way of bona fide sale at market value in the ordinary course of the Customer's business and the Customer will hold on trust for the Company so much of the proceeds of sale intangible or tangible, including insurance proceeds received by the Customer, as are necessary to discharge the sum due for the Goods to the Company and such proceeds of sale shall be kept separate from any and all other monies held by or on behalf of the Customer.

The Customer shall account to the Company on demand for the monies so due and shall be liable for any shortfall including all interest due in accordance with the terms hereof.

- i. The Customer sells goods purchased from the Company prior to passing of title then so long as the Customer has not discharged all amounts owing to the Company the Company shall be entitled to the benefit of all claims the Customer has against its purchaser emanating from such transaction which benefit the Customer shall formally assign to the Company when called upon to do so.
- ii. The Customer shall not in any event, until all monies due have been paid to the Company be entitled to pledge or in any way charge by way of security for any reason any of the goods which remain the property of the Company, but if the Customer does so all monies due to the Customer shall become immediately due and payable without prejudice to any other right or remedy of the Company.

10.3 The Customer's power of sale of the Goods shall cease upon the happening of any of the following events:

- i. Upon written notice from the Company after the Customer shall have failed to pay any sum due to the Company for a period exceeding seven days.
- ii. Ipso facto upon the happening of any event as is set out in Condition 11 hereof.

11 Customer's Insolvency

If an distress or execution shall be levied on the Customer's property or assets or any part thereof or if the Customer shall make or offer to make any arrangements or composition with its creditors generally or if the Customer:-

11.1 Being an individual commits any act of bankruptcy or if any Petition or Receiving Order in Bankruptcy shall be presented or made against him or

11.2 Being a partnership if the said partnership is dissolved for whatsoever reason or if any partner commits any act of bankruptcy or if any Petition or Receiving Order in Bankruptcy shall be presented or made against any partner or,

11.3 Being a limited company if proceedings are commenced for the liquidation of the Customer or if a meeting of creditors is called pursuant to Section 588 of the Companies Act 1985 or if a resolution is passed for the voluntary winding up of the Customer (other than a members voluntary winding up for the purpose of amalgamation or reconstruction only) or the appointment of an Administrator or if Receiver is appointed of all or any of the assets of the Customer or the Customer ceases or threatens to carry on business. Then the Company shall

have the right forthwith to determine all subsisting contracts whether remaining to be performed in whole or in part by serving written notice of such determination on the Customer and all monies due to the Company shall become immediately due and payable.

12. Lien

The Company shall have a general lien on all the goods for the time being under its control belonging to the Customer for all sums due and for all claims of every description by the Company against the Customer in respect of any order of account and if any sum or sums remain owing to the Company fourteen days after the Customer has been given notice in writing of the exercise of such lien the Company shall have the power to sell the whole or any part of such goods to discharge the same and claims and all expenses incurred in connection with the sale of the goods and any balance of the proceeds of such sale shall be paid by the Company to the Customer.

13. Erection Work

In cases where the Company's contract Price includes the costs of erecting part or all the Goods ("the Erection Work" which expression shall include all work required to be carried out by the Company to install commission and proof tests of the Goods) or when the Company contracts separately to carry out Erection Work then structural alteration to buildings or foundations the clearing, strengthening or repairing of floors and all building and masonry work are excluded from the Company's Quotations and Contract prices unless specifically mentioned as being included.

When the Company carries out Erection Work the Contract Price is based on the fact that all services (typically water, compressed air and electricity supply, instrumentation, foundations and other requirements of the Goods) are completely ready and available for the Company's on-site personnel to proceed immediately upon arrival at the site. All such services are provided free of charge and any interruption of the Erection Work due to circumstances beyond the Company's control will be charged to the Customer as an extra. All Erection Work is understood to take place during normal working hours.

14. Consequential Loss

The Company shall not in any event be liable for indirect or consequential loss or damage (including without limitation) loss of profits of use or of contracts arising out of the supply or failure of supply of goods or services by the Company (other than liability

for death or personal injury resulting from negligence of the Company) and whether arising in contract tort or otherwise and in all other cases liability shall be limited to the Contract Price and the provisions of this sub-clause shall survive the termination of an order or contract howsoever arising.

15. Force Majeure

Should the Company be restricted, hindered or delayed in or prevented from carrying out its obligations under the Contract by any circumstances whatsoever outside the Company's reasonable control including without prejudice to the generality of the foregoing and without limitation, any act of God, war, riot, strike, lock out, trade dispute or other labour disturbance, fire, flood, difficulty in obtaining workmen, fuel, materials or transport, government restrictions or the exercise of government authority whole or partial failure of equipment or the Company's supplies then the Company shall not be liable to the Customer for any loss or damage whether direct or indirect which may thereby be suffered by the Customer and furthermore the Company will be at liberty to determine or suspend the contract without incurring any liability for any loss or damage resulting to the Customer.

The appointment of available goods between separate orders and separate customers shall be entirely within the discretion of the Company.

16. Arbitration

If at any time any question, dispute or difference whatsoever shall arise between the Company and Customer upon in relation to in connection with or arising out of the Contract either of the parties may give to the other notice in writing of such question, dispute or difference and the same shall be referred to arbitration of a single arbitrator mutually agreed upon or failing agreement as to such an arbitrator within twenty one days of a request by either party to so mutually agree upon an arbitrator some person appointed of either party by the London Chamber of Commerce and such arbitrator shall be deemed to be single arbitrator within the Arbitration Act (1950) or any statutory enactment in that behalf for the time being in force

17. Legal Construction

The Contract shall in all respects be construed and operate as an English Contract and be subject to and interpreted in accordance with English Law.