

EMS (European) Terms and Conditions of Sale



DEFINITIONS

1. In these conditions the following meanings apply:
'Buyer': The person, who orders, buys or agrees to buy goods and/or services from the seller
'Seller': The person who sells or agrees to sell goods and/or services to the buyer.
'Goods': The goods (including any instalment of the goods or any parts for them) and services in which the seller is to supply in accordance with the conditions
'Writing': includes e-mail, telex cable facsimile transmission and comparable means of communication

BASIS OF THE SALE

2. The seller shall sell and the buyer shall purchase the goods in accordance with any written quotation of the seller that is accepted by the seller subject in either case to these conditions, which govern the contract to the exclusion of any other terms, and conditions.
3. No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the buyer and the seller.
4. The seller's employees or agents are not authorised to make any representations concerning the goods unless confirmed by the seller in writing. In entering into the contract the buyer acknowledges that it does not rely on and waives any claim for breach of any such representations that are not so confirmed.
5. Unless otherwise agreed in writing, the seller's quotation shall remain valid for 30 days.

ORDERS AND SPECIFICATIONS

6. No order submitted by the buyer shall be deemed to be accepted by the seller unless and until confirmed in writing by the seller.
7. The buyer shall be responsible to the seller for ensuring the accuracy of the terms of any order according to the specification submitted by the seller and for giving the seller any necessary information relating to the goods within a sufficient time to enable the seller to form the contract in accordance with its terms.
8. Any advice on assembly and installation, information regarding weight, dimensions, capacity or performance and photographs, drawings, plans and other illustrations or descriptions contained in any catalogue, price list, brochure other document supplied by or through the seller shall not form part of any contract between the buyer and the seller and no warranty is given that any goods supplied will correspond exactly with those ordered.

PRICE

9. The price given for an item, product or service is, unless otherwise stated, exclusive of any applicable taxes, both local and/or international, and/or shipping costs which the buyer shall be additionally liable to pay to the seller.
10. Changes to the layout and/or specification may affect the quoted price.
11. The seller reserves the right by giving notice to the buyer at any time before delivery to increase the price of the goods to reflect any increase in the cost to the seller which is due to any fact beyond its control.

PAYMENT

12. Unless otherwise agreed in writing full payment of the total invoice value of the order shall be paid with the order.
13. If agreed to in writing prior to sale, goods not paid for with order shall be invoiced upon order and paid in full within no more than thirty, (30) days of invoice.
14. All cheques payable for goods supplied by EMS (European), the seller, shall be made payable to EMS (European) Ltd.
15. If the buyer defaults on any of these terms then payment in respect of all goods delivered by the seller to the buyer whether before or after the default shall become due and payable forthwith.
16. In such circumstances the seller may withhold further deliveries to the buyer.
17. The seller shall be entitled to charge interest on all outstanding amounts at the rate of 2½% per calendar month compounded monthly from the date of the invoice to the date of payment, interest to run as well after as before Judgement and as well after as before any order resolution or appointment for the liquidation, winding-up, receivership or Bankruptcy of the buyer in the event that the conditions of Clause 12 and/or Clause 13 of these Terms and Conditions are not met.
18. Any payment by the buyer after default may be applied at the option of the seller to any outstanding invoice or to interest before capital.
19. The buyer shall not be entitled to withhold payment of any amount payable by reason of any dispute or claim by the seller in connection with any sale and in the case of any short delivery or

delivery of damaged goods shall remain liable to pay the full invoice of all other goods delivered or available for delivery.

20. Payment terms may be revised as a result of information received from relevant credit checks.

DELIVERY

21. Changes to specification may affect delivery lead times.
22. Delivery of the goods shall be made by the seller causing the goods to be delivered either to the place stipulated in the buyer's order or if no such place is stipulated then to the address of the buyer as shown in the order or to an agreed location for storage purposes.
23. Any dates quoted for delivery of the goods are approximate only and the seller shall not be liable for delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the seller in writing. The goods may be delivered by the seller in advance of the quoted delivery date upon giving reasonable notice to the buyer.
24. Where the goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the buyer in respect of any one or more instalments shall not entitle the buyer to treat the contract as a whole as repudiated.
25. If the seller fails to deliver the goods for any reason other than for a reason which is cause beyond the seller's reasonable control or which is the buyer's fault then the seller is accordingly liable to the buyer and the seller's liability shall be limited to the excess (if any) of the cost to the buyer (at the cheapest available market) of similar goods to replace those not delivered over the price of the goods.
26. If the buyer fails to take delivery of the goods or fails to give the seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the buyer's reasonable control or by any reason of the seller's fault) then without prejudice to any other right or remedy available to the seller the seller may store the goods until actual delivery and charge the buyer for the reasonable costs (including insurance) of storage.

RISK AND PROPERTY

27. Risk of damage to or loss of the goods shall pass to the buyer at the time of delivery (or at the time of storage under Clause 22 above) or if the buyer wrongfully fails to take delivery of the goods the time when the seller has tendered delivery of the goods.
28. Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions the property in the goods shall not pass to the buyer until the seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the seller to the buyer for which payment is then due.
29. Until such time as the buyer has paid the seller in full for the goods and all other goods which the seller has supplied to the buyer:-
30. The buyer shall hold the goods as the seller's fiduciary agent and bailee for the seller.
31. If the buyer sells the goods the buyer shall hold the proceeds of sale on trust for the seller in a separate bank account.
32. The seller may trace the proceeds of sale that the buyer receives into any bank or other account that the buyer maintains.
33. If the buyer sells the goods the seller may by written demand require the buyer to assign to the seller the buyer's rights to recover the price from its purchaser.
34. The buyer shall not assign to any other person any rights arising from the sale of the goods without the seller's written consent until such time as the buying price is paid in full (see Clause 30)
35. The buyer shall store the goods separately from any other goods until they become the buyer's property or until the buyer sells the goods and shall keep the goods properly stored, protected, insured and identified as the seller's property.
36. The buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the seller but if the buyer does so all money owing by the buyer to the seller shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable.

SELLER'S WARRANTY AND LIABILITY

37. Subject to the conditions set out below the seller warrants that the goods will correspond with their specification and are of merchantable quality at the time of delivery.
38. The above warranty is given by the seller subject to the following conditions:
39. It is the buyer's responsibility to ensure that all goods specified in the quotation conform to all relevant performance requirements.
40. The seller shall be under no liability in respect of any defect arising from fair wear or tear, wilful damage, negligence and normal working conditions failure to follow the seller's instructions mis-

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use or alteration or repair of the goods without the seller's approval.

41. Subject as expressly provided these conditions and except where the goods are sold under consumer sale (as defined by The Sales of Goods Act 1979) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
42. Any claim by the buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification (whether or not delivery is refused by the buyer) be notified to the seller within seven working days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the buyer does not notify the seller accordingly the buyer shall not be entitled to reject the goods and the seller shall have no liability for such defect or failure and the buyer shall be bound to pay the price as if the goods had been delivered in accordance with the contract.
43. If any defect of workmanship or material in the goods supplied is reported to the seller within one years from the date of delivery or within such period during which the goods are covered by any warranty, guarantee or indemnity obtained by the seller from the manufacturer thereof, whichever shall be the shorter period, and the defective part of the goods in question returned to the seller at the buyer's risk and expense immediately upon discovery of such defect, the seller will at its own cost and its own option arrange for the replacement or repair of the defective part.
44. All warranties are valid only when the equipment supplied are installed and used within the conditions and operational specifications as defined at the time of quotation and as defined by the manufacturer.
45. Except in respect of death or injury caused by the seller's negligence, the seller shall not be liable to the buyer by reason of any representation or any implied warranty condition or other term or any duty of common law or under the express terms of the contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of the seller its employees or agents or otherwise) which arise out of or in connection with their supply of the goods or their use or re-sale by the buyer except as expressly provided in these conditions.
46. The seller shall not be liable to the buyer or be deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of the seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the seller's reasonable control.

INSOLVENCY OF THE BUYER

47. This clause applies if the buyer make any voluntary arrangements with creditors or becomes subject to an administration order or (being an individual firm) becomes bankrupt or (being a company) goes into liquidation (other wise that for purposes or amalgamation or reconstruction); or an encumbrance takes possession or a receiver is appointed of any of the property or assets of the buyer; or the buyer ceases or threatens to cease to carry on in business; or the seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the buyer and notifies the buyer accordingly.
48. If this Clause applies then without prejudice to any other right or remedy available to the seller the seller shall be entitled to cancel the contract or to suspend any further deliveries under the contract without any liability to the buyer and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

COPYRIGHT

49. All drawings and technical documents by either of the parties to the other party remain the property of the delivery party and the receiving party may not improperly use them reproduce them or bring them to the knowledge of a third party.
50. The buyer shall indemnify the seller against all damages penalties costs and expenses to which the seller may become liable as a result of any work done in accordance with the buyer's requirements under the contract involving infringement or alleged infringement of any patent copyright or registered design.

FORCE MAJEUR

51. The seller shall be under no liability if it shall be unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing), act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or any other action taken by employees in contemplation or

furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract.

52. During the continuance of such contingency the buyer may by written notice to the seller elect to terminate the contract and pay for work done and materials used but subject thereto shall otherwise accept delivery when available.

CANCELLATION

53. The seller may at its sole discretion accept or reject the cancellation of any order once such an order has been placed by the buyer.
54. In the event of a cancellation being accepted by the seller all goods delivered pursuant to the cancelled order must be returned in unused re-saleable condition at the buyer's expense within four days from the date on which the seller accepted the cancellation.
55. Any goods that do not comply with the requirements of Clause 56 must be collected by the buyer from the seller's premises within four days of the seller dispatching notice to this effect to the buyer's last known place of business. In default the buyer is deemed to have failed to accept the delivery.
56. The buyer will be liable to a reasonable handling charge payable to the seller in respect of the cancelled order.
57. The buyer may be liable at the seller's discretion to a charge in respect of the work done and materials obtained pursuant to the cancelled order prior to the date on which the seller accepts such cancellation.

SEVERANCE

58. If any provision (or part thereof) in these conditions of sale is found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability of such provision (or part thereof) shall not effect any other provision or the remainder of the partly invalid, ineffective or unenforceable provision.
59. All provisions (or part thereof) not affected by such invalidity, ineffectiveness or unenforceability as referred to in Clause 67 shall remain in full force and effect.

WAIVER

60. Failure of the seller to enforce at any time or for any period of any time any of the terms herein contained shall not operate as a waiver of such terms or of any rights contained herein.
61. The seller shall at all times be entitled to enforce each and every term contained herein.

ASSIGNMENTS

62. The buyer may not assign any contract made or rights arising hereunder in whole or in part without the seller's prior written consent.

MODIFICATION

63. Notwithstanding that any item of goods has at any time been shown to the buyer this contract does not constitute a sale by sample.
64. The seller may modify without notice; existing designs and specifications from time to time as it may in its 'sole discretion considered expedient'.

CURRENCY FLUCTUATIONS

65. Invoices not settled within thirty (30) days will be subject to additional charges to reflect any change in the exchange rate that is adverse to the seller.
66. The official rate of exchange shall be the closing rate of exchange in the London Market as published in the Financial Times.

NOTICES

67. Any notice required to be given by either party to the other under these conditions shall be in writing and addressed to that party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to the provisions of the party giving notice.

LAW

68. The laws of England shall govern these Terms and Conditions and each party hereby submits to the non exclusive jurisdiction of the English Courts

May 2008