

CONDITIONS OF SALE "A"

incorporating: BEAMA CONDITIONS OF SALE (A) FOR MACHINERY AND EQUIPMENT
(Exclusive of Erection) United Kingdom - January 1991
WITH AMENDMENTS

1. GENERAL - The acceptance of our tender includes the acceptance of the following terms and conditions:
2. VALIDITY - Unless previously withdrawn, our tender is open for acceptance within the period stated therein or, when no period is so stated, within thirty days only after its date.
3. ACCEPTANCE - The acceptance of our tender must be accompanied by sufficient information to enable us to proceed with the order forthwith, otherwise we shall be at liberty to amend the tender prices to cover any increase in cost which has taken place after acceptance. Any samples submitted to you and not returned to our works within one month from date of receipt shall be paid for by you.
4. PACKING - Unless otherwise specified in our tender, all packing cases, skids, drums and other packing materials must be returned to our works at your expense and in good condition within one month from date of receipt. If not so returned they will be charged for.
5. LIMITS OF CONTRACT - Our tender includes only such goods, accessories and work as are specified therein.
6. DRAWINGS, ETC. - All specifications, drawings and particulars of weights and dimensions submitted with our tender are approximate only, and the descriptions and illustrations contained in our catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract. After acceptance of our tender a set of certified outline drawings will be supplied free of charge on request.
7. INSPECTION AND TESTS - Our products are carefully inspected and, where practicable, submitted to our standard tests at our works before despatch. If tests other than those specified in our tender or tests in the presence of you or your representative are required, these will be charged for. In the event of any delay on your part in attending such tests or in carrying out any inspection required by you after seven days' notice that we are ready, the tests will proceed in your absence and shall be deemed to have been made in your presence.
8. PERFORMANCE - We will accept no liability for failure to attain any performance figures quoted by us unless we have specifically guaranteed them, subject to any tolerances specified or agreed to by us, in an agreed sum as liquidated damages.
If the performance figures obtained on any test provided for in the contract are outside the acceptance limits specified therein, you will be entitled to reject the goods.
Before you become entitled to claim liquidated damages or to reject the goods we are to be given reasonable time and opportunity to rectify their performance. If you become entitled to reject goods, we will repay to you any sum paid by you to us on account of the contract price thereof and any sum that may have accrued due to you in respect of delay in despatch under Clause 9 up to the date of such rejection.
You assume responsibility that goods stipulated by you are sufficient and suitable for your purpose save in so far as your stipulations are in accordance with our advice.
9. LIABILITY FOR DELAY - Any times quoted for despatch or delivery are to date from receipt by us of a written order to proceed and of all necessary information and drawings to enable us to put the work in hand. The time for despatch or delivery shall be extended by a reasonable period if delay in despatch or delivery is caused by instructions or lack of instructions from you or by industrial dispute or by any cause beyond our reasonable control.
If a fixed time be quoted for despatch or delivery, and we fail to despatch or deliver within that time or within any extension thereof provided by this clause, and if as a result you shall have suffered loss, we undertake to pay for each week or part of a week of delay, liquidated damages at the rate of 0.5 per cent up to a maximum of 5 per cent of that portion of the price named in the contract which is referable to such portion only of the contract goods as cannot in consequence of the delay be used commercially and effectively. Such payment shall be in full satisfaction of our liability for delay.
Any time described as an estimated or expected time shall not be construed as a fixed time quoted for the purpose of this clause and we shall not be liable for failure to despatch or deliver within that time unless you have suffered loss thereby and the amount payable in respect thereof shall have been agreed in writing as liquidated damages in which case our liability shall be limited to the amount so agreed to be paid.
10. VARIATIONS - In the event of variation or suspension of work by your instructions or lack of instructions the contract price shall be adjusted accordingly.
11. DELIVERY - Unless otherwise specified in our tender, the price quoted includes delivery by any method of transport at our option.
Unless otherwise specified, we shall not be responsible for offloading.
12. LOSS OR DAMAGE IN TRANSIT - When the price quoted includes delivery other than at our works, we will repair or at our option replace free of charge goods lost or damaged in transit; provided that we are given written notification of such loss or damage within such time as will enable us to comply with the carrier's conditions of carriage as affecting loss or damage in transit or, where delivery is made by our own transport, within a reasonable time after receipt of the Advice Note.
13. REJECTION - Unless otherwise agreed in writing or provided herein, goods rejected by you as not complying with the contract must be so rejected within 14 days of receipt by you failing which they shall be deemed to be accepted.
14. TITLE - Neither the legal nor the equitable title in the goods shall pass to you until the goods have been paid for in full. Until such time as title in the goods has passed to you we shall be entitled to re-take all or any part of the goods in which title remains vested in us and for this purpose we or our agents or authorised representatives shall be entitled to enter upon any of your premises where they are held or are reasonably believed to be held and repossess the same.
15. TERMS OF PAYMENT - Unless otherwise agreed, payment in full shall be due for goods on despatch or notification by us that they are ready for despatch.
Payment shall be made by direct debit on the 28th day of the month following the month of invoice unless otherwise stated thereon. We reserve the right to charge interest on overdue payments in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 or any statutory modification or re-enactment thereof at the rate provided therein.
You must inform us no later than the date on which payment is to be made if you have not received the goods. No claim for non-payment on grounds of non-delivery will be allowed after this date.
16. STORAGE - If we do not receive forwarding instructions sufficient to enable us to despatch the goods within 14 days after the date of notification that they are ready for despatch, you shall take delivery or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to arrange storage either at our own works at a monthly rate of 0.5 per cent of the price of the respective goods, or elsewhere on your behalf and all charges for storage, for insurance or for demurrage shall be payable by you.
17. DEFECTS AFTER DELIVERY - We will make good, by repair or at our option by the supply of a replacement, defects which, under proper use, appear in the goods within a period of twelve calendar months after the goods have been delivered and arise solely from faulty design (other than a design made, furnished or specified by you for which we have disclaimed responsibility in writing), materials or workmanship; provided always that defective goods have been returned to us promptly after discovery of the alleged defect, and that dismantling and subsequent re-installation or commissioning works and costs remain out of warranty and shall be under your costs and risks. The repaired or replacement goods will be delivered by us free of charge as provided in Clause 11 (Delivery). Replaced goods will become our property. If you require us to make good defects at your premises our labour rates current at the time will be charged.
Prior to returning any goods please contact us for a Returns Approved Label which must be attached to the returned goods.
You will be liable for the cost of repairing the goods or the full selling price of the replacement goods if the defect found to be caused by damage or misuse or if the goods are found not to be defective.
Our liability under this clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the goods, and save as provided in this clause we shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in goods delivered or for any injury (other than personal injury caused by our negligence), damage or loss resulting from such defects or for any injury done in connection therewith.
18. SERVICE EXCHANGE - Where goods are sold as service exchange items at a price lower than the normal selling price we reserve the right to charge the difference between the service exchange price and the normal selling price if the goods which are being exchanged are not returned to us within 14 days after delivery of the exchange goods.
19. PATENTS - We will indemnify you against any claim for infringement of Letters Patent, Registered Design, Trade Mark or Copyright (published at the date of the contract) by the use or sale of any article or material supplied by us to you and against all costs and damages which you may incur in any action for such infringement or for which you may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to our having followed a design or instruction furnished or given by you or to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to us, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by us. And provided also that this indemnity is conditional on your giving to us at the earliest possible time notice in writing of any claim being made or action threatened or brought against you and on your permitting us at our own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. You on your part warrant that any design or instruction furnished or given by you shall not be such as will cause us to infringe any Letters Patent, Registered Design, Trade Mark or Copyright in the execution of your order.
20. SOFTWARE - Unless otherwise specified in our tender, all software supplied in whatever form is supplied under licence and not by way of sale and is subject in the case of our software to the General Licence Conditions for Software Products current at the date of supply and in the case of third party software to terms and conditions specified by the third party licensor.
21. HEALTH AND SAFETY - The goods are sold on the basis that in accepting them you undertake to make available to all those persons who will use the goods at work all information concerning the goods which we shall supply to you and you further undertake to take all measures to ensure that such information is utilised so that the goods will be safe and without risk to health when properly used.
22. LIMITATION OF LIABILITY -
(a) We will indemnify you against direct loss of or damage to property or death of or injury to persons to the extent caused by the negligent acts or omissions of ourselves, our employees, agents or sub-contractors under the contract, but not otherwise, by making good such loss of or damage to property or compensating such death or injury, provided that our total liability in respect of loss of or damage to property shall be limited to £500,000.
(b) In no event shall we be liable to you, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, for any loss of profit, loss of contracts, loss of revenues, interruption of business or loss of production, loss of use, loss of data or information or for any special, indirect, punitive or consequential loss or damage whatsoever.
(c) In any event, our liability in contract, tort (including negligence and breach of statutory duty) or otherwise arising by reason of or in connection with the contract (except in relation to death or personal injury caused by our negligence and except as provided in sub-clause (a) hereof) shall be limited to the contract price.
(d) Each provision of this Clause shall be construed as a separate limitation and shall remain in force notwithstanding termination of the contract.
23. FINAL CERTIFICATE - Upon expiry of the defects liability period specified in Clause 17, we shall be under no further obligation or liability to you either under the contract or in tort (including but not limited to negligence), unless within 14 days thereafter you shall have given us written notice of any matter in respect of which we remain obliged or liable to you. You shall issue to us a final certificate to the effect that we have fulfilled all our obligations and liabilities to you immediately upon expiry of the said period of 14 days or, in the event that you have given us notice as aforesaid which we have not disputed, immediately upon our having dealt with the matter(s) specified therein.
24. LEGAL CONSTRUCTION - Unless otherwise agreed in writing the contract shall in all respects be construed and operate as an English contract and in conformity with English law and the English Courts shall have exclusive jurisdiction over any matter arising out of the contract.
25. STATUTORY AND OTHER REGULATIONS - If the cost to us of performing our obligations under the contract shall be increased or reduced by reason of the making or amendment after the date of tender of any law or of any order, regulation, or by-law having the force of law that shall affect the performance of our obligations under the contract, the amount of such increase or reduction shall be added to or deducted from the contract price as the case may be.
26. RIGHTS OF THIRD PARTIES - No term of the contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
27. EXPORT CONTROL - RESERVATION CLAUSE - Our obligation to fulfill the contract is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions. Where a statutory or regulatory export approval is required at the time of delivery or performance and is not granted upon request, the Seller shall be entitled to rescind or terminate this Agreement. Delays in obtaining approvals by the responsible authorities will not result in the right to claim for damages whatsoever including without limitation, special, incidental, consequential or indirect damages for loss of profits, business interruption or any other pecuniary loss.
If the Buyer transfers goods including, but not limited to hardware and/or software and/or technology as well as corresponding documentation delivered by Seller ("Goods"), or works and services, regardless of the mode of provision, and/or including all kinds of technical support provided by Seller ("Services") to a third party, the Buyer must comply with all applicable national and international (re-) export control regulations. In any event of such transfer of Goods and/or Services, Buyer shall comply with the (re-) export control regulations under the applicable national law, the law of the European Union ("EU") and the law of the United States of America ("USA") and any United Nations ("UN") regulations. Prior to any transfer of Goods and/or Services to a third party, the Buyer must check and guarantee by appropriate measures that:
- there will be no infringement of an embargo imposed by the EU, the USA and/or by the UN by such transfer, by brokering of contracts concerning Goods or Services or for other economic resources in connection with the Goods or Services also taking into account any prohibitions to circumvent these embargos;
- the Goods and Services are not intended for use in connection with armaments, nuclear technology or weapons technology, if and to the extent such use is subject to prohibition or authorization unless required authorization has been obtained;
- the regulations of all applicable sanctioned party lists, e.g. those of the EU, the USA and/or by the UN concerning business transactions with entities, persons and organizations listed therein are complied with.
For all deliveries by Flender Group entities with registered seat in the European Union and the United Kingdom, the direct or indirect sale, export, or re-export to or for use in the Russian Federation of any Flender Goods or of goods that fall under the scope of Article 12g of Council Regulation (EU) No. 833/2014 is prohibited. This provision is a principal element of this Agreement and any violation of this provision by the Buyer shall entitle the Seller to seek appropriate remedies, including, but not limited to the termination of this Agreement and liquidated damages of five (5) percent of the price of the Goods exported. Should the EU Commission require a higher mandatory minimum value of such liquidated damages or penalties, this higher minimum value shall apply. The liquidated damages shall serve as the minimum amount of the damage. The assertion of further damages shall not be excluded.
The Buyer hereby represents and warrants that the Buyer, its customer and the End-User of the Goods or Services are not listed on any applicable restricted party list, e.g., those of the EU, USA or the UN, and is not under the direct or indirect control of any such party.
Upon request by the Seller, the Buyer shall promptly provide the Seller with all information pertaining to the End-Customer, the particular destination and the particular intended use of Goods and Services, as well as any export control restrictions existing.
The Buyer's failure to comply with the obligations set forth above shall entitle the Seller to rescind or terminate this Agreement with immediate effect. The Seller's right to terminate shall be without prejudice to any other right or remedy of Seller in respect of the breach.
The Buyer shall indemnify and hold harmless the Seller from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with the above export control obligations and the Buyer shall compensate the Seller for all losses and expenses resulting therefrom.