

## **F.H & J.ALVITI LTD MACHINERY SALES TERMS & CONDITIONS**

### **1 Definitions**

- 1.1 **Buyer** means the person who buys or agrees to buy the goods from the Seller.
- 1.2 **Conditions** means the terms and conditions of sales set out in this document and any special terms and conditions agreed in writing by the seller.
- 1.3 **Delivery date** means the date specified by the seller, when the goods are to be delivered.
- 1.4 **Goods** means the articles when the buyer agrees to buy from the seller.
- 1.5 **Price** means the price for the goods, excluding carriage, packing, insurance and VAT.
- 1.6 **Seller** means F.H & J Alviti Ltd whose registered office is Hunt House Farm, Frith Common, Tenbury Wells. Worcs WR15 8JY.

### **2 Conditions applicable**

- 2.1 These conditions shall apply to all contracts, for the sale of goods by the seller to the buyer to the exclusion of all other terms and conditions, including any terms or conditions which the buyer may purport to apply, under any purchase order confirmation of order or similar document.
- 2.2 All orders for goods shall be deemed to be an offer by the buyer, to purchase goods pursuant to these conditions.
- 2.3 Acceptance of delivery of the goods shall be deemed conclusive evidence of the buyer's acceptance of the conditions.
- 2.4 Any variation to these conditions (including any special terms agreed between the parties) shall be inapplicable unless agreed within writing by the seller.
- 2.5 No clerical errors or omissions in quotations or acceptances of orders shall annul the sale but shall be subject to subsequent correction by the seller and no compensation shall be allowed to the buyer in the respect thereof.

### **3 The price and the payment**

- 3.1 The price shall be the price set out overleaf. The price is exclusive of VAT, which shall be due at the rate ruling on the date of the sellers invoice.
- 3.2 Payment of the Price and VAT shall be due on the 25th of the month following Date of invoice except where the customer is not an account holder. Time of payment shall be of the essence.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment, at a rate of 2% above Barclays Bank Plc's base rate.
- 3.4 Where the price of the goods shall be the quoted price this shall be binding on the seller provided the buyer shall accept the seller's quotation within 14 days.  
The seller may be giving notice to the buyer at any time, up to 7 days before delivery, of any increase of the price of the goods, to reflect any increase in the cost to the seller, which is due to the occurring after the making of the contract, of sale, any matter or thing which is beyond the reasonable control of the seller (including without limitation foreign exchange fluctuation taxes and duties increases in costs by the manufacturer and other manufacturing costs and the cost of labour and materials). The price is exclusive of VAT, which shall be due at the rate ruling of the sellers invoice.
- 3.5 The buyer shall not be entitled, whether by reason, of any claim against the seller, or for any other reason whatsoever, under any circumstances to defer payment of any monies payable to the seller as and when such monies become due and payable.

## **4 Goods**

4.1 The quality and description of the goods shall be set out in the sellers confirmation of order and shall be supplied in accordance with all applicable British Standards which relate specifically to the goods.

4.2 The seller may from time to time make changes in the specifications of the goods that are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the goods.

4.3 The seller will not be bound to sell goods that correspond with illustrations, leaflets, advertisements and drawings or other matter issued by or on its behalf

4.4 All weights, measurements and horsepower etc given in estimates, illustrations, leaflets , advertisements or drawings or other matter issued by or on behalf of the seller are believed to be correct but are not guaranteed and shall not be binding on the seller insofar as it is fair and reasonable to vary such estimates illustrations, leaflets, advertisements, drawings or other matter issued by or on behalf of the seller.

## **5 Cancellations**

No orders given to the seller can be cancelled without the sellers consent in writing having been obtained and it shall be implied condition of such cancellation that the buyer shall indemnify the seller against all loss and expenses occasions thereby.

## **6 Warranties and Liability**

The seller warrants that the goods will, at the time of delivery, correspond to the description given by the seller. Except where the buyer is dealing as a consumer (as defined in the unfair contract terms 1977 section 12) all other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the goods and whether implied by statute or common law or otherwise are excluded, save in respect of those terms which introduced amendments to the sale of goods act 1979 requiring goods supplied to be of satisfactory quality.

## **7 Delivery**

The time given for delivery is an estimate only. It is given in good faith but not guaranteed and the seller will not be bound by it.

## **8 Acceptance of the goods**

The buyer shall be deemed to have accepted the goods after either collection by the buyer or delivery to the buyer.

## **9 Title and Risk**

- 9.1 The goods shall be at the buyers risk as from delivery or collection.
- 9.2 In spite of delivery having been made, property in the goods shall not pass from the seller until:
  - 9.2:1 the buyer shall have paid the price plus VAT in full; and
  - 9.2:2 no other sums whatsoever shall be due from the buyer to the seller.
- 9.3 Until property in the goods passes to the buyer in accordance with clause 9.2

The buyer shall hold the goods and each of them on a fiduciary basis as bailee for the seller. The buyer shall store the goods (at no cost to the seller) separately from all other goods in its position and marked in such a way that they are clearly identified as the sellers property.

9.4 Notwithstanding that the goods (or any of them) remain the property of the buyer may sell or use the goods in the ordinary course of the buyers business at full market value for the account of the seller. Any such sale or dealing shall be a sale or use of the seller's property by the buyer on the buyer's own behalf and the buyer shall deal as principal when making such sales or dealings. Until property in the goods passes from seller to the entire proceeds of sale or other wise of the goods shall not be held in trust for the seller and shall not be mixed with other money or paid to any overdrawn bank account and shall be at all material times identified as the sellers money.

9.5 The seller shall be entitled to recover the price (plus VAT) notwithstanding that property in any of the goods has not passed from the seller.

9.6 Until such time as property in the goods passes from seller, the buyer shall upon request, deliver up such of the goods as have not ceased to be existence or resold to the seller. If the buyer fails to do so the seller may enter upon any premises owned, occupied or controlled by the buyer where the goods are situated and repossess the goods. On the making of such a request the rights of the buyer under clause 9.4 shall cease.

9.7 The buyer shall not pledge or in any way charge by way of security for any indebtedness any of the goods, which are the property of the seller. Without prejudice to the other rights of the seller, if the buyer does so all sums whatsoever owing by the buyer to the seller shall forthwith become due and payable.

9.8 The buyer shall insure and keep insured goods to the full price against all risks to the reasonable satisfaction of the seller until the date that property in the goods passes from the seller, and shall whenever requested by the seller produce a copy of the policy of insurance. Without prejudice to the other rights of the seller, if the buyer fails to do so all sums, whatever owing by the buyer to the seller, shall forthwith become due and payable.

9.9 The buyer shall promptly deliver the prescribed particulars of this contract to the registrar in accordance with the companies act part XII as amended. without prejudice to the other rights of the seller. If the buyer fails to do so all sums, whatever owing by the buyer to the seller, shall forthwith become due and payable.

## **10 This contract is subject to the law of England and Wales.**

## **11 Waiver**

No waiver or forbearance by the seller or buyer (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future.

## **12 Sub-contracting**

The seller shall not assign sub-contract license or otherwise dispose of any part of its rights or obligations under this contract without the prior written consent of the buyer.

## **13 Force Majeure**

Neither party shall be liable for any default due to any act of god, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

## **14 Seller's Cancellation Clause**

The seller may cancel this contract at any time before the goods are delivered by giving written notice. On giving such notice the seller shall promptly repay to the buyer any sums paid in respect of the price. The seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

## **15 Remedies in sale contract**

### a. Exclusions of liability for indirect loss

the seller shall be under no liability whatever to the buyer for any indirect loss and/ or expense (including loss of profit) suffered by the buyer arising out of a breach by the seller of the contract.

### b. General limitations of seller's liability.

In the event of any breach of this contract by the seller the remedies of the buyer shall be limited to damages. Under no circumstances shall the liability of the seller exceed the price of the goods.

### c. Exclude liability for delay in delivery.

0.1 The seller shall not be liable for any loss or damage whatever due to failure by the seller to deliver the goods (or any of them) promptly or at all.

0.2 Notwithstanding that the seller may have delayed or failed to deliver the goods (or any of them) promptly the buyer shall be bound to accept delivery and to pay for the goods in full provided that delivery shall be tendered at any time within 3 months of the delivery date.

d. 0.1 No goods delivered to the buyer which are in accordance with the contract will be accepted for return without prior written approval of the seller on terms to be determined at the absolute discretion of the seller.

0.2 If the seller agrees to accept any such goods for return the goods must be in an as new saleable condition. The buyer will be liable to pay a handling charge of up to 25% of the invoice price. Such goods must be returned by the buyer carriage – paid to the seller and returned by the seller to the manufacturer carriage – paid by the buyer.

0.3 Goods returned without prior written approval of the seller may at the sellers absolute discretion be returned to the buyer or stored at the buyers cost without prejudice to any rights or remedies the seller may have.

15 Nothing in this contract or these conditions will operate to amend, detract or adversely affect the buyers statutory rights.

16 For the avoidance of doubt, nothing in this contract is intended to confer on any third party any benefit or right to enforce any terms of the agreement.