

## CONDITIONS OF BUSINESS

### Eijkelkamp Fraste UK Ltd - 'the Company'

In these terms and conditions the following definitions shall apply.

**Additional Warranty** means any additional warranty provided in writing by the Company to the Customer for the Goods/Services in addition to the warranty set out in these terms and conditions.

**Contract** means the contract for the purchase and sale of the Goods between the Company and the Purchaser incorporating these Conditions, the Specification and any quotation or confirmation of Order issued to the Purchaser by the Company, and including all its schedules, attachments, annexures and statements of work.

**Company** means Eijkelkamp Fraste UK Ltd, incorporate and registered in England with company number 12194478.

**Goods** means the Goods to be supplied by the Company to the Purchaser as set out in the Company's confirmation of Order

**Order** means an order for the Goods placed by the Purchaser

**Purchaser** means the Purchaser of the Goods from the Company as set out in the Company's confirmation of Order

**Services** means any services which the Company is to supply in accordance with the Contract.

**Specification** means the written specification for the Goods and/Services agreed by the Company.

### 1. General Applicability

- (1) Unless otherwise expressly agreed by the Company in writing, these Conditions shall apply to all contracts for the supply of Goods, equipment and/or services entered into by the Company to the exclusion of all other terms and conditions and no servant or agent shall have the power to alter or in any way vary these Conditions. Any attempt by any Purchaser to vary these Conditions or to substitute alternative Conditions whether in writing or otherwise shall be of no effect.
- (2) Marketing and other promotional material relating to the Goods and/or Services are illustrative only and do not form part of the Contract.
- (3) Any advice or recommendation given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application, performance or use of the Goods and/or Services (as may be applicable) which is not confirmed in writing by the Company and which is followed or acted upon the Purchaser is done so at the Purchaser's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- (4) Where the Contract relates to the hire of the Goods any terms set out in any hire agreement or hire to buy agreement between the Company and the Purchaser shall apply in addition to these terms and conditions.
- (5) All quotations given by the Company are made in good faith and do not constitute an offer by the Company. Any order received by the Company whether pursuant to quotation or otherwise and whether verbal or in writing shall be deemed to be an offer to contract. No valid and binding contract shall be effected until

the Company shall have despatched its written acceptance of the order to the Purchaser.

### 2. Quotations

- (1) All quotations are made subject to the availability of materials and are valid for 30 days. Quotations are submitted on the condition that if a Purchaser makes an order pursuant to such quotation all necessary licences, permissions and consents required in relation to the execution of the contract work shall be obtained at the instigation and cost of the Purchaser.

### 3. Prices

- (1) All prices stated in any quotation or contract are based on rates, costs and conditions of labour, costs of materials, fuel and transport obtained at the date of quotation or acceptance of order (whichever is the earlier). Unless otherwise specifically agreed in writing by the Company, prices may be subject to alteration at the date of despatch of the Goods from the Company's works if there has been an alteration in such direct costs to the Company.
- (2) Unless otherwise expressly stated, all prices quoted are exclusive of Value Added Tax and any other tax or duty relating to the performance of the contract and do not include transport or handling costs, insurance, shipping, carriage, and any other related charges or taxes.
- (3) If the Company agrees to deliver Goods to the Purchaser then:-
  - (a) unless otherwise agreed all costs of carriage and/or insurance and/or freight shall be for the account of the Purchaser;
  - (b) the Company reserves the right to make arrangements in respect of delivery but shall not be liable for any delay in delivery due to a cause beyond its control.
- (4) Orders placed with the Company for Goods will be subject to a minimum charge of £5.00 net value excluding V.A.T. and delivery charge.

### 4. Suitability for purpose

It shall be the Purchaser's responsibility to assess the suitability of the Goods for the purpose, for which they are to be used, and no guarantee or representation is given or to be implied as to the suitability of the Goods for any particular purpose, even when the Goods are manufactured to the Purchaser's special instructions. The Purchaser warrants to the Company the Specification is correct and sufficient for the Purchaser's purpose and that it has provided all relevant full accurate and correct information as to its business needs and purposes to the Company.

### 5. Cancellation

In the event of cancellation of the whole or any part of any order the Purchaser shall pay such charges as the Company deems necessary to recover its costs and expenses incurred. Goods manufactured to order shall be paid for in full.

### 6. Terms of payment

- (1) Unless otherwise stated, all prices are net and shall not be subject to any discount. Purchaser Payment for the Goods must be received by the Company within 30 days of invoice which shall be raised on or before the last day of the month.
- (2) Where deliveries of Goods are spread over a period, each consignment will be invoiced or despatched as a separate item and each month's invoices will be treated as a separate account and be payable accordingly.
- (3) If and so long as the Purchaser is in arrears with any payments due hereunder or where there are genuine doubts as to the Purchaser's ability to meet their financial commitment under the

Contract, the Company may without liability suspend further deliveries of Goods and/or performance of work both on the same order and on any other order for the same Purchaser until such time as payment is made or satisfactory security for payment has been provided without prejudice to any other rights which the Company may have.

- (4) The Company reserves the right to charge interest on overdue accounts at the rate of 5% over the Base Lending Rate of Bank of England from time to time in force. Such interest shall accrue daily from the due date for payment until the date of actual payment.

#### **7. Delivery Dates**

- (1) All delivery dates quoted or specified in the Contract are estimated only and unless otherwise agreed by the Company in writing, time shall not be of essence of the contract. Lead times shall be computed from the date of the Company's acceptance of order.
- (2) The Company shall not be liable in any circumstances for delay caused by the Purchaser in giving detailed instructions on approval of drawings, diagrams or specifications or by variations requested by the Purchaser or by delays on the part of third parties supplying Goods and/or materials to the Company (whether or not nominated by the Purchaser).
- (3) The Company will make every reasonable endeavour to supply Goods at any times or dates agreed, which times or dates will be estimates only calculated on existing and material supply availability, but will not accept cancellation or be liable for any loss or claim alleged to have arisen from any delay howsoever caused.

#### **8. Delivery**

- (1) Unless the Company otherwise agrees in writing delivery of the Goods shall be made *ExWorks from the Company premises specified to the Purchaser* in accordance with Incoterms 2020 and the Goods shall be deemed delivered when the Company delivers the Goods to the Purchaser in accordance with this clause or any other delivery arrangement the Company agrees in writing with the Customer ("Delivered") Where Goods are delivered by the Company transport it is done so on the understanding that the delivery point is on hard roads and that the Purchaser is responsible for off-loading and storage thereof.
- (2) The Company and its servants and all persons authorised by the Company shall at all times have full and free access to the land and premises of the Purchaser by routes convenient to the Company and uninterrupted occupation thereof for the purpose of delivering the Goods and carrying out any works related thereto with or without vehicles of all descriptions unless otherwise specifically agreed in writing. If in the event of access to the site being unsuitable or the Purchaser's labour not being available to unload the Goods, the Goods will be returned to the Company's works and hauling and handling costs will be charged for.
- (3) The Purchaser must provide his own labour for assisting with unloading the Goods and must arrange to unload the Goods and release the Company's vehicle expeditiously. A charge may be made for any excessive waiting time. Any loss damage or delay occasioned on or after unloading shall be the responsibility of the Purchaser, even if the Company's driver provides assistance.
- (4) If the Purchaser fails to take delivery of the Goods at the time stated for delivery or fails to give the Company adequate delivery instructions within 14 days after the Company notifies the Purchaser that the Goods are available for despatch then, without prejudice to any other right or remedy available to the Company, the Company may store the Goods at the Purchaser's risk and as it thinks fit until actual delivery and charge the Purchaser for all costs (including insurance) of storage. If the Purchaser has not taken delivery of the Goods or collected them within reasonable time, the Company may resell

or otherwise dispose of the Goods without any obligation or liability to the Purchaser

- (5) The Purchaser must notify the Company of any defective Goods within 7 days of delivery and preserve the Goods intact as delivered for inspection by the Company.

#### **9. Force Majeure**

The Company shall be under no liability if it is unable to carry out any provision of any contract (including delays in delivery) for any reason beyond its control including without prejudice to the generality of the foregoing Act of God, fire inclement or exceptional weather conditions, official or unofficial industrial action (whether at the Company's premises or elsewhere), hostilities, shortage of labour, materials, power or other supplies, governmental order of intervention (whether or not having the force of law), pandemic, or any other cause whatever beyond the Company's control or of an unexpected or exceptional nature.

#### **10. Termination**

- (1) In addition to the termination rights expressly provided for under these Conditions the Company may terminate the Contract or any other contract which it has with the Purchaser at any time by giving notice in writing to the Purchaser if the Purchaser:
  - a) commits a material breach of the Contract and such breach is not remediable;
  - b) commits a material breach of the Contract which is not remedied within 7 Business Days of receiving written notice of such breach;
  - c) has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 5 days after the date that the Company has given notification to the Customer that the payment is overdue; or
  - d) any consent, licence or authorisation held by the Purchaser is revoked or modified such that the Purchaser is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- (2) If the Buyer becomes aware that any event has occurred, or circumstances exist, which may entitle the Company to terminate the Contract under this clause 10, it shall immediately notify the Company in writing.
- (3) The Company reserves the right to terminate the Contract at any time on giving 14 days notice in writing to the Buyer
- (4) Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Company at any time up to the date of termination and all sums outstanding to the Company shall become immediately due and payable.

#### **11. Warranty**

- (1) The Company warrants in relation to Goods of its own manufacture that it will (at its own discretion) either repair or replace, or refund the full purchase price for any Goods which are found within a period of 12 months from the date of despatch of such Goods from the Company's works ("the warranty period") to be defective or not in accordance with the contract or any express description or representation given or made on behalf of the Company in respect of such Goods.
- (2) The Company warrants in relation to Goods not of the Company's manufacture (including but not limited to parts and components supplied by others for Goods manufactured by the Company) that it will so far as it is able to do so give the

Purchaser the benefit of any express guarantee or warranty by the manufacturer or supplier of such Goods and of any other rights which the Company has against the manufacturer or supplier in respect thereof.

- (3) The Purchaser's remedies in respect of any claim under the foregoing express warranty or against any manufacturer or supplier as aforesaid or any claim or any other claim in respect of the Goods or any workmanship in relation thereto Whether or not involving negligence on the part of the Company shall in relation to Goods of the Company's manufacture be limited to repair, replacement or refund of the purchase price as aforesaid and in all other cases be limited to the enforcement of the above mentioned liabilities of the manufacturer or supplier.
- (4) In particular (without prejudice to paragraph (4) of this condition) the Company shall not be liable for any costs of dismantling or re-assembling any structure of equipment to remove any Goods alleged to be defective or not in accordance with the contract or any description or representation as aforesaid or for any other removal costs or for any transport costs in relation to such Goods.
- (5) The foregoing rights of the Purchaser shall only be enforceable where it is shown that the Goods have not been abused or subjected to excessive use, have not been used, installed or stored otherwise than in accordance with the Company's or any manufacturer's instructions or recommendations and have been properly tested in accordance with any such instructions or recommendations, have not been used or installed otherwise than in accordance with good engineering principles or recognised standards and have not been used in unsuitable environment or application.
- (6) A claim in relation to any Goods in accordance with any of the foregoing provisions will not entitle a Purchaser to cancel the contract or any part thereof or to refuse to take delivery of or pay for Goods or any other Goods (whether under the same or any other contract).
- (7) The terms of this section 11 will apply to any Additional Warranty.

## 12 Limitation of Liability

- (1) Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (2) Any claim by the Purchaser which is based on any defect in the quality or condition of the Goods shall (whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or (where the defect was not apparent on reasonable inspection) within a reasonable time after discovery of the defect. If the Purchaser does not notify the Company accordingly, the Purchaser shall not be entitled to reject the Goods and the Company shall have no liability for such defect
- (3) The Company shall be entitled to repair the Goods and/or re-perform Services (or the part in question) free of charge or, at the Company's sole discretion, replace the Goods (or the part in question) but the Company shall have no further liability to the Purchaser.
- (4) No Goods shall be returned to the Company unless agreed in writing by the Company. All charges for transport packaging and insurance of returned Goods shall be prepaid by the Purchaser.
- (5) Except in respect of death or personal injury caused by the Company's negligence the Company shall not;  
(a) be liable to the Purchaser by reason of any representation, or any implied warranty, condition or other term, or any duty at common law;

- (b) be liable to the Purchaser for any indirect or 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 Company, its employees or agents or otherwise) which arise out of or in connection with the supply or installation of the Goods and/or Services or any part or parts thereof or their use or resale by the Purchaser, except as expressly provided in these Conditions or the Contract;
- (c) be liable to the Purchaser for any indirect or consequential losses or third party claims which arise out of or in connection with a breakdown of the Goods (for the avoidance of doubt including but not being limited to loss of profit, loss of contract, removal costs or any other fines or penalties).
- (6) The Company's total liability to the Purchaser howsoever arising shall not exceed the price for the corresponding Goods and/or Services to which the Purchaser's loss relates.

## 13. Loss or Damage in Transit

The risk in the Goods passes to the Purchaser when the Goods are Delivered and the Company accepts no responsibility for any damage, shortage or loss in transit.

## 14. Title to Goods

- (1) The Goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Purchaser shall have paid the Company the agreed price together with the full price of any other Goods the subject of any other contract with the Company.
- (2) The Company may for the purpose of recovery of its Goods enter upon any premises where they are stored or kept or where they are reasonably thought to be stored or kept and may repossess the same and sever the Goods from anything they are attached to without being responsible for any damage caused. The Purchaser grants the Company an irrevocable licence for this purpose.
- (3) Until such time as the Purchaser becomes the owner of the Goods, he will store them on his premises separately from his own Goods or those of any person, and in a manner which makes them readily identifiable as the Goods of the Company. Such repossession shall be without prejudice to the obligations of the Purchaser to purchase the Goods.
- (4) Where Goods are Delivered to the Purchaser prior to being paid for in full by the Purchaser the Purchaser is licensed by the Company to sell the Goods, subject to the express condition that the entire sale proceeds thereof are held in trust for the Company and credited to a separate bank account held for the benefit of the Company and are at all times identifiable as the Company's monies PROVIDED THAT nothing in this clause 14.4 shall permit the Purchaser to sell any Goods that constitute rigs or rental equipment.
- (5) If Goods the property of the Company are mixed with Goods the property of the Purchaser or are processed with or incorporated therein, such property shall become and/or shall be deemed to be the sole and exclusive property of the Company. If Goods the property of the Company are admixed with Goods the property of any person other than the intending Purchaser, or are processed with or incorporated therein, such shall become or be deemed to be owned in common with that other person.
- (1) Whilst the Goods are in the possession of the Purchaser before the property in the Goods has passed to the Purchaser, the Purchaser shall at his own expense keep the Goods in the same condition as that in which they were delivered and make good any damage or deterioration.

**15. Defaults**

If the Purchaser shall default in or commit any breach of any of its obligations to the Company, or if any distress or execution shall be levied upon the Purchaser or if the Purchaser shall enter into any negotiations, arrangements or composition with its creditors, or commit any act of bankruptcy, or if any petition in bankruptcy shall be presented against it, or if the Purchaser is a corporate body, any resolution is proposed or presented to wind up the Purchaser, or if a receiver of the Purchaser's assets or undertakings or any part thereof shall be appointed, the Purchaser shall provide immediate notice to the Company and the Company shall be entitled to terminate the agreement and recover any Goods (or any part thereof which remains the property of the Company). Any outstanding amount owed to the Company by the Purchaser shall become immediately due and payable.

**16. Patents**

The Purchaser shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Purchaser's instructions whether expressed or implied.

**17. Non Standard and Special Orders**

Where a Purchaser orders Goods or materials of a type, size or quality not produced by the Company in the ordinary course of its business, the Company will use all reasonable endeavours to execute the order. If it subsequently proves impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the incomplete balance thereof, in which event the Purchaser will only be liable to pay for such part of the contract as has been performed. The Purchaser will be responsible for costs of materials and labour incurred by cancellations, or design changes, once the order has been accepted.

**18. Return of Goods**

Goods designated as standard stock by the Company will at the Company's discretion be accepted for return to stock subject to being in a suitable and resalable condition and to a minimum handling charge of 27% provided always that such Goods were originally purchased from the Company and that prior notice of intention to return is given. In such cases the Purchaser shall be obliged to provide full details of supply date and associated documentation. In all cases the Company reserves the right to refuse to re-purchase Goods

**19. Services**

Where the Contract is for the supply of Services the Purchaser acknowledges and agrees that;

- a) It will co-operate with the Company in the performance of the Services and will provide to the Company in a time manner all information, access to its premises and facilities and access to any personnel as the Company may require for the performance of the Services.
- b) The Company will not be liable to the Purchaser for any delay or failure by the Company to perform the Services as a result of the Purchaser failing to comply with any of its obligations under the Contract.
- c) Where the Company supplies a call out service to the Purchaser the Purchaser will be liable for all costs incurred by the Company, save where the call it is required due to a manufacturing fault.

**20. Applicable Law**

All contracts to which these Conditions shall apply shall in all respects be governed by and construed in accordance with the Laws of England and the Purchaser hereby agrees to submit to the exclusive jurisdiction of the English Courts.