

Standard Terms and Conditions of Sale

1. Interpretation

In these Conditions, unless the context requires otherwise:-

- 1.1 **'You/Your'** means the person whose order for the Work is accepted by Us;
- 1.2 **'We/Us/Our'** means Metaltrax Engineering Support Services t/a Advanced Handling (registered in England under number 534026);
- 1.3 **'Conditions'** means these standard terms and conditions of sale;
- 1.4 **'Contract'** means any contract between You and Us for supply of the Work;
- 1.5 **'Goods'** means the goods supplied to You by Us or any products and/or materials which are utilised in the Services and in which title is intended to pass to You once the Services have been completed;
- 1.6 **'Intellectual Property Rights/IPR'** means without limitation all patents, copyright, database rights, design rights (registered and unregistered), trade marks (registered and unregistered) skill and/or know-how and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same;
- 1.7 **'Liability'** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
- 1.8 **'Services'** means the services to be performed for You by Us;
- 1.9 **'Work'** means the Goods and/or the Services as the context requires;

2. Basis of Sale

- 2.1 These Conditions shall govern the Contract to the exclusion of any other terms and conditions and supersede and replace all previous terms and conditions.
- 2.2 No variation to these Conditions or representations are binding on Us unless confirmed in writing by one of Our Directors. You acknowledge that You do not rely on any addition, variation and/or representation which has not been so confirmed.

3. Orders and Specifications

- 3.1 Quotations are not binding, are estimates only and are valid for 30 days and may be amended or withdrawn by Us at any time. We are not bound until an order has been placed by You in writing, and accepted by Us on Our order acceptance form.
- 3.2 Performance figures quoted by Us are estimates only and We accept no liability for failure to attain any quoted performance figures unless We specifically guarantee them in writing.
- 3.3 You are responsible for ensuring that any order (including any specification) is accurate and adequate and We have all information required to perform the Contract. Any corrections by You after acceptance of any order will be carried out at Your cost.
- 3.4 We may make any changes in the specification of the Work which are required to conform with any applicable statutory requirements or which do not materially affect its quality or performance.
- 3.5 You may not cancel this Contract except with the written consent of one of Our Directors.
- 3.6 If We agree to a cancellation, You shall indemnify Us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Us as a result of cancellation, or alternatively (at Our option) You shall pay to Us the sum of 10% of the Contract price representing liquidated damages to compensate Us against all losses incurred as a result of the cancellation.

4. Price of the Works

- 4.1 The price for the Work shall be as quoted to You on acceptance of the order.
- 4.2 The price is Ex-Works Incoterms 2000 and exclusive of any applicable VAT. You are additionally liable to pay to Us any costs for transport, packaging and insurance and any applicable VAT.
- 4.3 We may render an additional administration charge for any delivery of a small value (as determined by Us).
- 4.4 We may alter prices at any time by giving You notice, and without prejudice to the generality of this, We may increase the price to reflect any increase in cost to Us due to any factor beyond Our reasonable control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Work which You request, or any delay caused by any of Your instructions or Your failure to give Us adequate information or instructions.

5. Terms of Payment

- 5.1 We may invoice You for the price of the Work at any time following Our acceptance of Your order.
- 5.2 Payment must be made in sterling in cash prior to Us making or despatching the Goods and/or prior to Us commencing performance of the Services unless You have a credit account with Us when payment is due within 30 days of Our invoice. Time for payment is of the essence.
- 5.3 If You fail to make payment when due then, without prejudice to Our other rights or remedies:
 - 5.3.1 We may charge You any reasonable administration costs and/or interest (both before or after judgment), on the amount unpaid at a rate of 4% above Bank of England base rate from time to time, compounded with monthly rests;
 - 5.3.2 We may appropriate any payment made by You to such of the Work (or the goods and/or services supplied under any other contract between You and Us) as We think fit (notwithstanding any purported appropriation by You);
 - 5.3.3 We may enter, without prior notice, any of Your premises (or premises of third parties with their consent) where Goods owned by Us may be repossessed and dispose of or sell any of Our Goods found on account of any sums due to Us under this Contract or any other agreement with You;
 - 5.3.4 You shall not re-sell or part with the possession of any of Our Goods;
 - 5.3.5 We may withhold or suspend any current and future provision of the Work and stop any Goods in transit;
 - 5.3.6 We may cancel, terminate and/or suspend without Liability to You any contract with You;
 - 5.3.7 We may suspend or cancel Your credit facilities; and/or
 - 5.3.8 all monies owed by You to Us shall forthwith become due and payable.
- 5.4 You shall pay all sums due without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 5.5 If any Work is cancelled or this Contract terminated, We shall be entitled to be paid for the Services on a quantum meruit basis and for the Goods, for that part of the work carried out up to such cancellation or termination, and such monies shall be immediately due for payment on receipt by You of an invoice.

6. Delivery

- 6.1 Delivery of the Work shall be ex-works Incoterms 2000 at Our premises or if We agree some other place for delivery, delivery shall be deemed to take place on delivery of the Work to such other place.
- 6.2 Times for delivery are approximate only. We are not liable for any delay in delivery of the goods howsoever caused. Time for delivery is not of the essence. If delay in despatch or delivery is due to any cause beyond Our reasonable control then We shall have the option upon reasonable notice to terminate any agreement between You and Us without Liability to You.
- 6.3 Where Work is delivered in instalments, each instalment shall constitute a separate contract and failure by Us to deliver any one or more instalment or any claim by You in respect of any one or more instalment shall not entitle You to treat this Contract as a whole as repudiated. Each instalment may be invoiced separately.
- 6.4 If We fail to deliver the Work (or any instalment) for any reason other than any cause beyond Our reasonable control or Your fault, Our Liability shall be limited to the lesser of the cost to You (in the cheapest available market) of obtaining work similar to the Work or the price of the Work.
- 6.5 If You refuse and/or fail to take delivery of the Work or fail to give Us adequate delivery instructions then without prejudice to any other right or remedy available to Us, We may:-
 - 6.5.1 dispose of and/or store, at Our discretion and Your cost, the relevant Goods;
 - 6.5.2 withhold delivery and/or performance of any other work; and/or
 - 6.5.3 treat this Contract as repudiated by You.

7. Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to You on delivery, or if You fail to take delivery, at the time when We tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to You until We have received in cash or cleared funds payment in full of all sums due and/or owing for all Work supplied to You by Us under this Contract or any other agreement between You and Us.
- 7.3 Until title in the Goods has passed to You, You shall:
 - 7.3.1 keep the Goods separate from Yours and any third parties' goods and properly stored, protected and identified as Our property;
 - 7.3.2 allow Our representatives, employees and/or agents to enter Your premises at any time to check compliance with this clause;
 - 7.3.3 keep the Goods insured for their value against all insurable normal risks;
 - 7.3.4 procure that Our interest is noted on such policy of insurance;
 - 7.3.5 account to Us for the proceeds of such policy of insurance upon receipt of the same;
 - 7.3.6 not pledge or in any way charge by way of security for any indebtedness any of the Goods.

8. Intellectual Property and Confidentiality

- 8.1 All IPR in the Goods, their packaging and/or arising from the Services shall be owned by Us absolutely.
- 8.2 All IPR in any information and/or material supplied by You to Us shall be owned by You or Your licensor absolutely and You shall be responsible for ensuring that We are duly licensed to use the same to provide the Work.
- 8.3 We shall be free to utilise for the benefit of Our other customers any skill and/or know-how that We may develop or acquire in the provision of the Work.
- 8.4 You will keep confidential and not use except for purposes contemplated by this Contract, all information relating to the Work and all confidential business information, which may be disclosed to You or which You may learn except where such information is public knowledge through no breach of these Conditions or is required to be disclosed by law.

9. Default

- 9.1 If You:-
 - 9.1.1 fail to make any payment to Us when due;
 - 9.1.2 breach the terms of this Contract and, if the breach is capable of remedy, You have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
 - 9.1.3 persistently breach any one or more terms of this Contract;
 - 9.1.4 cease or threaten to cease to carry on business, or You or any other person take any step (including without limitation, the making of an application or the giving of any notice) to appoint a liquidator, trustee, receiver, administrator, administrative receiver or other similar officer to You or any part of Your undertaking or assets, or takes or suffers any similar action in any jurisdiction; and/or
- 9.1.5 appear reasonably to Us to be about to suffer any of the above events;
- 9.1.6 then, without prejudice to any other remedies;
- 9.1.7 We may enter, without prior notice, any of Your premises (or premises of third parties with their consent) where Goods owned by Us may be repossessed and dispose of or sell any of Our Goods on account of any sums due to Us under this Contract or any other agreement with You;
- 9.1.8 You shall not re-sell or part with the possession of any Goods owned by Us.
- 9.1.9 We may withhold or suspend any current and future provision of the Work and stop any Goods in transit;
- 9.1.10 We may cancel, terminate and/or suspend without Liability to You any contract with You;
- 9.1.11 We may suspend or cancel Your credit facilities; and/or
- 9.1.12 all monies owed by You to Us shall forthwith become due and payable.

10. Refunds and Replacements

- 10.1 We warrant that the Work will correspond with its specification at the time of delivery to You and will be free from defects in material and workmanship for a period of 12 months from the date of delivery to You.
- 10.2 Any claim by You which is based on any defect in the quality of the Work or a failure to correspond with specifications or shortage of delivery shall be notified to Us within 3 days from the date of delivery or (where a defect or failure or shortage was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.
- 10.3 Any claim by You shall be notified to Us on Our warranty claim form and must specify a valid serial number.
- 10.4 Where any valid claim is notified to Us in accordance with these Conditions, We shall replace and/or re-perform the Work (or the part in question) free of charge or, at Our sole discretion, refund the price of the Work (or a proportionate part of that price).
- 10.5 The above warranty does not extend to parts, materials or equipment not manufactured by Us in respect of which You shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to Us.

11. Liability

- 11.1 We shall have no Liability:
 - 11.1.1 for defective Work:
 - 11.1.1.1 where the defect arises from any specification, information and/or instructions supplied by You, to the extent so contributed;
 - 11.1.1.2 unless the event is notified to Us pursuant to clause 10.2; and
 - 11.1.1.3 which is not, where practicable returned to Us and/or made available for inspection.
 - 11.1.2 for Goods not despatched or Goods damaged or lost in transit unless the event is notified to Us within 3 working days of delivery, or in the event of total non-delivery, within 28 working days of the due date for delivery;
 - 11.1.3 if We are not given reasonable opportunity to remedy any matter for which We may be liable before You incur any costs and/or expenses in remedying the matter Yourself;
- 11.4 if the full amount payable for the Work has not been paid when due;
- 11.5 for any matters which are outside Our reasonable control and/or caused or contributed to by You; and
- 11.6 for any:
 - 11.6.1 consequential losses;
 - 11.6.2 expenses, loss of profits and/or damage to goodwill;
 - 11.6.3 economic and/or other similar losses;
 - 11.6.4 special, aggravated and/or punitive damages and indirect losses; and/or
 - 11.6.5 business interruption, loss of business, savings, contracts, opportunity and/or production.
- 11.2 Except for the cap on Our total Liability in Clause 11.3 which covers all the said types of Liability set out below, each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
 - 11.2.1 Liability in contract (including fundamental breach);
 - 11.2.2 Liability in tort (including negligence);
 - 11.2.3 Liability for breach of statutory duty; and
 - 11.2.4 Liability for breach of Common Law.
- 11.3 Our total Liability to You in relation to any event or series of events shall not exceed the price of the Work
- 11.4 Nothing in this Contract shall exclude or limit Our Liability for death or personal injury due to its negligence or any Liability which is due to Our fraud or any other Liability which We are not permitted to exclude or limit as a matter of law.

12. Export Terms

- 12.1 In these Conditions "Incoterms 2000" means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2000 edition, and Incoterms 2000 form part of these Conditions. Unless the context otherwise requires any term or expression which is defined or given particular meaning by the provisions of Incoterms 2000 shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail
- 12.2 Where the Goods are supplied outside the United Kingdom, the provisions of this clause 12 shall apply in relation to warranty.
- 12.3 You are responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 12.4 The Goods shall be delivered 'Ex Works Incoterms 2000'. If any other place of delivery is agreed by Us, We are under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979 (as amended).
- 12.5 You are responsible for arranging for testing and inspection of the Work at Our premises before shipment. We shall have no liability for any claim:
 - 12.5.1 in respect of any defect in the Goods which would be apparent on inspection and which is notified to Us after shipment, or in respect of damage during transit; or
 - 12.5.2 which is not notified to Us on Our warranty claim form, specifying a valid serial number.
- 12.5.3 The warranty and provisions of clause 10 shall apply, except that the warranty shall be valid for a period of 6 months from the date of delivery to You.
- 12.6 You undertake not to offer the Goods for resale in any country; other than a country agreed in writing by Us or to any other person if You know or have reason to believe that that person intends to sell the goods in any such country.

13. General

- 13.1 No waiver by Us of any breach of the Contract by You shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.3 You shall not assign Your interest in the Contract (or any part) without Our prior written consent.
- 13.4 All third party rights are excluded and no third party shall have any right to enforce this Contract. This shall not apply to members of Our group from time to time who shall, subject to Our consent, have the right to enforce this Contract as if they were Us.
- 13.5 If any dispute arises under or in relation to this Contract (except disputes relating to payment of monies) the parties shall first meet to seek to resolve the dispute. If they are unable to resolve it within 14 days of the dispute arising they shall refer the dispute to a Mediator either agreed between the parties or appointed by the Centre for Effective Dispute Resolution, provided that this clause shall not preclude either party from seeking any immediate remedy from the Court to protect any rights reasonably considered to have been infringed.
- 13.6 The Contract is governed by the laws of England and You agree to submit to the non-exclusive jurisdiction of the English courts.