

STOCK REDLER - TERMS AND CONDITIONS OF SALE: CONTRACT OF SUPPLY – JANUARY 2002 EDITION

1 DEFINITIONS AND INTERPRETATION

1.1 The following words or phrases have the following meanings in these Terms & Conditions:

"**Customer**" means the party who has contracted to purchase under the Order and any successors in title.

"**Delivery**" means the date of despatch of Equipment to Site.

"**Equipment**" means any equipment, machinery accessories, spare parts, materials or plant supplied by Stock Redler under the Order

"**Force Majeure**" means mobilisation, war, revolution, riots of any kind, natural catastrophes, strikes, lockouts, failure by subcontractors, equipment ceasing to be available from Stock Redler's usual suppliers, and acts or occurrences beyond the control of Stock Redler.

"**Intellectual Property Rights**" means patents, registered or unregistered design rights, know-how, copyright of any kind and any kind of related protection statutory or otherwise, and (where appropriate) shall include applications for any of the foregoing.

"**Order**" means the whole of the Order including these Terms & Conditions together with such other documents as are specified in the Order but excluding any conditions whether standard printed terms or otherwise produced by the Customer.

"**Parties**" means Stock Redler and the Customer and "Party" means either of them.

"**Purchase Price**" means the price or prices stated in the Specification or such other sum as may become payable under the Order.

"**Stock Redler**" means Stock Redler Limited and any successors in title.

"**Site**" means such location as is specified in the Order for receipt of the Equipment by the Customer and/or the carrying out of the Works

"**Special Conditions**" means the special conditions (if any) details of which are shown in the Schedule hereto.

"**Terms & Conditions**" means the terms and conditions set out in this document.

"**Variation(s)**" means any works and/or equipment not included within the original Works and/or Equipment under the Order or any variation or change to the Works and/or Equipment which Stock Redler agrees to carry out or supply in accordance with the terms of the Order.

"**Works**" means the works set out in the Order carried out or to be carried out by Stock Redler.

1.2 Headings used do not form part of these Terms & Conditions and are not to be taken into consideration in the interpretation of these Terms & Conditions. Words importing the singular only also include the plural and vice versa where the context requires.

1.3 Notwithstanding any other provision in the Order, nothing in the Order is intended to confer on any person any right to enforce any provision of the Order which such person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

2 FORMATION OF CONTRACT

2.1 Quotations are valid for a period of 30 days. Notwithstanding the foregoing, purported acceptance of any quotation by the Customer shall be deemed to amount to an offer on the part of the Customer, and shall not give rise to a contract until confirmed in writing by Stock Redler.

2.2 These Terms & Conditions form an integral part of the Order. Save for terms and/or conditions set out in Stock Redler's quotation or tender, any other terms and conditions, whether arising directly or indirectly out of the Customer or from statements, correspondence or otherwise, or by any course of dealing between the parties shall not form part of the Order and shall be replaced in their entirety by these Terms & Conditions. The Order constitutes the entire agreement between the parties hereto.

2.3 These Terms & Conditions shall have priority over all other documents forming part of the Order. The next document in priority in the Order is Stock Redler's quotation or tender.

2.4 Notwithstanding the date or dates of execution hereof, the terms of the Order shall be deemed to apply to any Equipment supplied and any Works carried out by Stock Redler prior to the said date or dates.

3 NOTICES

- 3.1 Any notice required to be given by either Party shall be in writing and addressed to the other Party at its registered company address or such other address as may be stated in the Order for such other Party and shall be served either
- (a) personally when service shall be deemed effective on delivery
 - (b) by telex or facsimile when service shall be deemed effective at the time of transmission
 - (c) by first class post when service shall be deemed effective on the day after posting.

4 DESIGN AND INTELLECTUAL PROPERTY RIGHTS

- 4.1 Stock Redler's responsibility for design is limited to that stated in the Order. The Customer warrants that the carrying out Works to any design of the Customer will not infringe the Intellectual Property Rights of any third party and shall indemnify Stock Redler for any infringement of any Intellectual Property Rights of any third party.
- 4.2 In respect of any Works which the Customer has approved, the Customer is responsible for any ambiguity or discrepancy including any costs associated therewith.

5 DELIVERY/EXECUTION

- 5.1 Save as set out in the Order, delivery and passing of risk shall be in accordance with "Incoterms 2000".
- 5.2 Any time(s) and/ or date(s) quoted for receipt of the Equipment by the Customer or completion of the Works are deemed to be estimates only and shall not be construed as conditions of the Order. Stock Redler shall not be responsible for any loss or damage attributable to receipt of all or any part of the Equipment or completion of the Works after such times or dates. Time shall not be of essence in performance of Stock Redler's obligations. The Customer shall not be entitled to reject all or any part of the Equipment on the grounds of delay howsoever arising.
- 5.3 Without prejudice to the foregoing Stock Redler will not in any circumstances be liable for any delay due to any cause beyond Stock Redler's immediate control, including (without limitation) Force Majeure.
- 5.4 All Equipment supplied hereunder and delivered by Stock Redler shall be deemed to be accepted by the Customer if the Customer does not make any claim in writing within four weeks from the deemed date of delivery. After acceptance by the Customer Stock Redler shall not be under any obligation or liability to the Customer howsoever whether in contract, tort, statute law, misrepresentation, misstatement or otherwise except as otherwise provided in these Terms and Conditions.

6 TITLE

- 6.1 Stock Redler shall remain the proprietor of all Equipment (whether fixed in place or otherwise) until payment in full of the Purchase Price and all other costs, charges and interest payable under the Order has been made.
- 6.2 The Customer authorises Stock Redler to register the reservation of title / ownership at the Customers expense in public registers or records in the form and within the terms and limitations permitted by the laws of any country which maintains such registers or records and the Customer shall give promptly any signatures requested from him for this purpose.
- 6.3 Stock Redler may recover possession of any Equipment at any time prior to receipt of payment in full of the Purchase Price. The Customer hereby grants to Stock Redler an irrevocable licence to enter (by its employees and/or agents) any premises owned, occupied or controlled by the Customer for the purposes of recovering such possession and to remove any fixings and connections necessary for the removal of the Equipment. The Customer will not by any act or omission hinder or prevent such entry or removal.
- 6.4 If before payment in full of the Purchase Price has been made to Stock Redler:
- (a) any Equipment is sold by the Customer to a third party, the proceeds of sale of such Equipment shall be held by the Customer as trustee for Stock Redler. Alternatively (at Stock Redler's option) the Order shall operate as an assignment to Stock Redler of the right to receive the price payable by such third party for such Equipment. In either case the Customer shall immediately account to Stock Redler for any part of the proceeds of sale received by it. Stock Redler shall account to the Customer for the balance of any amount received under this clause 6.4(a) after deduction of all amounts due to Stock Redler under the Order.
 - (b) any Equipment supplied under the Order is incorporated by the Customer as components of some other manufactured product, the Customer shall hold such manufactured product on trust for Stock Redler.

7 CUSTOMER'S OBLIGATIONS AND WARRANTIES

- 7.1 The Customer will, subject to any Special Conditions, at its own expense provide:-
- (a) convenient access to and about the Site on roads or surfaces satisfactory for vehicular transportation of the Equipment; and
 - (b) appropriate equipment and manual assistance for offloading the Equipment at the Site together with safe covered storage for the same; and
 - (c) insurance for Stock Redler's works at the Site, such works to be at the Customer's risk; and
 - (d) all such assistance, access and information as Stock Redler may reasonably require including without limitation materials and power required for tests, commissioning and start of operations, access to existing plant and equipment and reasonable facilities for the undertaking of the Works; and
 - (e) any alterations or modifications howsoever required without limitation to existing plant, equipment, building and/or services necessary to accommodate the Equipment and/or facilitate the undertaking of the Works; and
 - (f) adequate insurance to cover its liabilities under the Order (details of which, including a copy of the policy and receipt for payment of the last premium are to be provided to Stock Redler on request); and
 - (g) appropriate preparation of the Site has been carried out so that installation of the Equipment and/or the Works can proceed without interference.
- 7.2 The Customer shall be fully responsible and indemnify Stock Redler for all accidents and loss arising from the condition and/or use of lifting-tackle and other tools and accessories supplied by the Customer including, without limitation, if used without objection by Stock Redler or its sub-contractors/agents. The Customer is responsible for all accidents and losses which are caused in whole or in part by its employees, agents or third parties, or suffered by them in connection with the Works, including (without prejudice to the foregoing) when the work is directed by personnel of Stock Redler. The Customer shall make known in writing all and any special precautions to be taken relating to the operation of the plant and/or the Site.

8 GUARANTEES AND WARRANTIES

- 8.1 Stock Redler guarantee the Equipment for 12 months from the date of delivery to Site.
- 8.2 Further, where Stock Redler pursuant to the Order or otherwise, commission the Equipment, then subject to Stock Redler's commissioning engineer being satisfied in his absolute discretion as to the installation and commissioning of the Equipment and certifying such satisfaction in writing, Stock Redler will provide a further guarantee of 12 months from the date of such certification.
- 8.3 During the currency of either period as applicable Stock Redler undertake to supply free of charge from factory and within a reasonable period new parts in replacement of any parts shown to be unserviceable due to defective materials, faulty design or workmanship.
- 8.4 In the event that the Customer makes or has grounds to make and claim under the terms of this guarantee, the Customer shall have no right to rescind the Order or to claim any reduction in the Purchase Price as a result.
- 8.5 This guarantee is strictly conditional on proper payment in accordance with these Terms and Conditions.
- 8.6 This guarantee will not apply and the Customer shall have no other rights in respect of:
- (a) normal wear and tear; and/or
 - (b) mistreatment, destructive treatment, excessive strain, changes to the Equipment and/or Works, use of inappropriate materials or any other inappropriate use of the Works and/or equipment; and/or
 - (c) defects arising from defective or faulty erection, installation and/or commissioning, unless such erection, installation or commissioning has been carried out negligently by Stock Redler; and/or
 - (d) operation or maintenance of the Equipment not in accordance with the Stock Redler installation and maintenance manual.
- 8.7 Except as expressly provided for in Stock Redler's quotation or tender, Stock Redler do not warrant the capacity, handling capacity, power requirements or fitness for purpose of Works and/or Equipment given the wide range of operating circumstances under which Equipment and/or Works may be utilised including, without prejudice to the foregoing, handling material which is in any material respect different to that described in the Order.

8.8 The guarantees and warranties set out in this clause are to the exclusion of all other warranties, conditions or obligations imposed or implied by statute or otherwise in relation to the quality or description of the Equipment and/or the Works or its fitness for any particular purpose.

9 PAYMENT

9.1 The Purchase Price is as set out in Stock Redler's quotation or tender.

9.2 Unless the contrary is expressly stated in the Order the Purchase Price excludes:

- (a) all value added tax (VAT) and all other taxes, charges or levies. VAT shall be charged in accordance with the Part 1 of the Finance Act 1972 or any statutory replacement or modification thereof;
- (b) all collection expenses incurred by Stock Redler in connection with the remittance of payment by the Customer
- (c) Variations undertaken by Stock Redler at the request of the Customer;
- (d) Works, costs and/or variations required as a result of the failure of the Customer to fulfil its obligations under the Order;
- (e) costs or losses arising from any matter beyond Stock Redler's immediate control or any event of Force Majeure which prevents or interrupts the carrying out of the Order;
- (f) costs of complying with any change in law in relation to the Equipment or completion of the Works after the date of the Order

in respect of which Stock Redler shall be entitled to charge the Customer for all additional costs so incurred.

9.3 Any amounts to be paid by the Customer under the Order in addition to the Purchase Price will be added to the Purchase Price. Such amounts shall be based on the cost of Equipment, materials, labour, sub-contracts, transport duties, taxes and other expenses prevailing at the time such works are carried out together with a fair and reasonable allowance for Stock Redler's overheads and profit.

9.4 Stock Redler will be entitled to invoice the Customer:

- (a) for all or any part of the Equipment immediately following delivery thereof; and/or
- (b) for all or part of the Works at reasonable intervals/times as Stock Redler shall decide during the currency of and following completion of the Works.

9.5 Payment will fall due to Stock Redler on the date of Stock Redler's invoice and the final date for payment shall be 30 days after the date of Stock Redler's invoice.

9.6 Failure to pay any instalment or interim invoice within 30 days of its due date for payment shall render the whole of the Purchase Price payable forthwith. All collection expenses (including legal expenses) incurred by Stock Redler in connection with any failure of the Customer to make payment in accordance with these Terms & Conditions shall be payable by the Customer in addition to the Purchase Price. Neither destruction, loss or damage of the Works and/or Equipment or any part thereof, nor delay in delivery erection or the commencement of the Works or the Customer's operations shall excuse payment by the Customer in accordance with these Terms & Conditions.

9.7 If payment is not made by the final date for payment under clause 9.5, the Customer shall pay interest on any such payment at the rate of 2½% per annum above the base lending rate of Barclays Bank (subject always to a minimum interest rate of 7% per annum) from the final date for payment to the date of payment.

9.8 Where any sum due under the Order is not paid in full within 7 days of the final date for payment of the said sum, Stock Redler shall be entitled (without prejudice to any other right or remedy) to suspend performance of its obligations under the Order after the expiry of not less than 7 days' notice of intention to suspend performance stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Customer makes payment in full of the amount previously outstanding and due together with any additional costs which have arisen as a result of suspension notified to the Customer by Stock Redler.

10 VARIATIONS AND VALUATION OF VARIATIONS

10.1 The Customer is entitled to invite Stock Redler to undertake Variations to the Works and/or Equipment. Stock Redler's charges in respect of such Variations shall be agreed in writing between the Parties prior to Stock Redler having any obligation to undertake such Variations. Stock Redler may refuse in their absolute discretion to agree to undertake and Variation(s) to the Works and/or the Equipment.

- 10.2 On receipt of instructions from the Customer in respect of any proposed Variation, the cost thereof shall be advised by Stock Redler to the Customer. The Customer shall within 7 days of being advised of such costs decide whether or not to proceed with such Variation and shall advise Stock Redler of its decision in writing.
- 10.3 A Variation can also arise by any default of the Customer resulting in Stock Redler incurring loss, expense or costs in which instance Customer approval as set out above shall not apply.
- 10.4 The amount payable in respect of any Variation shall be added to or deducted from the Purchase Price (as appropriate).

11 LIMITATION OF LIABILITY AND INDEMNITY

- 11.1 Neither Stock Redler nor any personnel provided by Stock Redler shall be liable to the Customer by way of indemnity or by reason of any breach of the contract or of statutory duty or by reason of tort (including but not limited to negligence) in respect of:
- (a) any delay in performing, or any failure to perform any of Stock Redler's obligations in relation to the Works, or damage or injury to the extent that it is in whole or in part due to circumstances over which Stock Redler has no immediate control;
 - (b) any consequential loss or damage, whether for loss of profit, loss of use, loss of production, loss of contracts or, without prejudice to the foregoing, for any indirect damage that may be suffered by the Customer.
- 11.2 Without prejudice to any exclusion of liability under these Terms & Conditions, Stock Redler's liability in respect of any breach of its obligations under the Order shall not exceed the Purchase Price. The Parties hereby agree that such provision is reasonable as between commercial parties contracting in a free manner.
- 11.3 No provision of the Order shall operate so as to restrict Stock Redler's liability for death or personal injury resulting from negligence.
- 11.4 The Customer is obligated to take all reasonable steps to mitigate any loss suffered by the Customer.
- 11.5 The Customer shall indemnify Stock Redler against all claims, demands, proceedings, losses, damages, legal costs and expenses made against or incurred by Stock Redler by reason of any breach by the Customer of the Order or by reason of any act, neglect or default on the part of the Customer or its agents.

12 ASSIGNMENT, SUB-CONTRACTING AND THIRD PARTIES

- 12.1 Stock Redler shall be entitled to sub-contract the whole or any part of its obligations under the Order.
- 12.2 The Customer shall not assign the whole or any part of the benefit or burden of the Order or any right of action hereunder without the prior written consent of Stock Redler which can be withheld for any reason. The consent of Stock Redler to any assignment by the Customer shall not in any way relieve the Customer of any of its obligations under or in connection with the Order.

13 DETERMINATION OF THE ORDER BY STOCK REDLER

- 13.1 If the Customer fails to make payment of any sum under the Order by the final date for payment then notwithstanding Stock Redler's right to suspend performance, Stock Redler shall be entitled to give notice that unless payment is made in full without deduction or set off within 21 days, Stock Redler may by written notice to the Customer forthwith determine the Order.
- 13.2 Stock Redler's right to give notice are without prejudice to any other rights and remedies. On exercise of any right under this Clause, Stock Redler may take possession of all Equipment, materials, machinery, plant, appliances and other things whatsoever brought onto the Site by or on behalf of Stock Redler or otherwise pursuant to the Order which are not incorporated in the buildings on the Site or the fabric thereof and the Customer hereby grants Stock Redler an irrevocable licence to enter on to its premises in pursuant of Stock Redler's rights under this clause.
- 13.3 On the occurrence of any of the following events in respect of the Customer, namely:
- (a) any arrangement or composition with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to the Customer;
 - (b) a receiver, administrator, administrative receiver or other encumbrance taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within ten (10) Business Days) upon, the whole or any material part of the assets of the Customer.

- (c) the Customer ceasing to carry on business;
- (d) a petition being presented (and not being discharged within twenty (20) business days) or a resolution being passed or an order being made for the administration or the winding-up bankruptcy or dissolution of the Customer; or
- (e) the Customer shall suffer any event analogous to the events set out in paragraphs (a) to (d) in any jurisdiction in which it is incorporated or resident.

Stock Redler shall have the right forthwith to determine the Contract without prejudice to any claim or right which Stock Redler may otherwise have or exercise and to enter upon any premises and to repossess any Equipment supplied hereunder.

- 13.4 Upon a determination of the Order pursuant to any provisions of the Order, the rights and liabilities of Stock Redler and the Customer shall be the same as if the Customer had repudiated the Order and Stock Redler had by his notice under this clause elected to accept such repudiation.

14 NON-BINDING EXPERT DETERMINATION

- 14.1 Without prejudice to such other rights as the parties may possess under the Order or at law, the parties may chose to seek to resolve any dispute or difference by non-binding expert determination.
- 14.2 If the parties agree within a period of 14 days after either party receives notice of dispute that such question, dispute or difference is appropriate for determination by an independent third party expert, the same shall be referred to such an expert who shall be a person agreed upon by the parties. Such expert shall decide all matters referred to him as an expert and not as an arbitrator.
- 14.3 The Customer and Stock Redler shall afford any such expert every assistance in deciding any dispute referred to him and shall give him access to the Site and shall provide him with all such information as he may reasonably require.
- 14.4 Any such expert shall have power by his decision to fix the reasonable amount of his fees (but not the costs, legal or otherwise, of the parties) in connection therewith and to direct how they shall be borne as between the Customer and Stock Redler.
- 14.5 The decision of such expert shall be non-binding except in respect of payment of his fees.

15 CONFIDENTIAL INFORMATION AND TECHNICAL ASSISTANCE

- 15.1 All information including (without limitation) documents, drawings and plans supplied by Stock Redler shall remain the property of Stock Redler and must not be disclosed to any third party, without prior written authority from Stock Redler.
- 15.2 In the event that Stock Redler provides or makes available any such information to the Customer but the parties do not then enter into any binding contract for the supply of the Works and/or Equipment, then regardless of whether or not a formal contract is concluded, the Customer hereby undertakes to hold all documents, drawings and plans and other information supplied by Stock Redler to Stock Redler's order and to return the same to Stock Redler immediately on request.
- 15.3 If Stock Redler gives any technical assistance of any kind free of charge to the Customer in regard to any commercial activities of the Customer then such assistance is given without any liability by Stock Redler in any circumstances to any direct or indirect damage or loss howsoever arising.

16 ENGLISH LAW AND JURISDICTION

- 16.1 The Order is subject to English Law and the parties hereby submit to the jurisdiction of the English Courts. For the avoidance of doubt, this provision applies regardless of whether or not any party is or is not based, located or trades from a jurisdiction outside of England and Wales.
- 16.2 Any dispute or difference arising under or in connection with the Order may be referred to non-binding expert determination as provided for herein.
- 16.3 This is without prejudice to the right in law (if applicable) of either party to adjudicate under the Housing Grants, Construction and Regeneration Act 1996, such adjudication to take place in accordance with the then current rules of TeCSA. The parties are only entitled to adjudicate where and to the extent that the Order constitutes a "construction contract" as defined in Section 104 of the Housing Grants, Construction & Regeneration Act 1996.
- 16.4 Without prejudice to the option of non-binding expert determination and, if applicable, adjudication, the courts of England and Wales shall have exclusive jurisdiction to hear and determine any dispute under or in connection with the Order.

END