

BOWERS ELECTRICALS LTD.

Standard Terms and Conditions of Sale

1. CONTRACT

In these conditions ("Conditions") "Seller" means Bowers Electricals Ltd and "Customer" means the person entering into the contract with the Seller. These Conditions extend to the provision of installation and other services ("Services") as well as Goods, and apply to Services executed away from the Seller's premises whether on the Customer's own site or elsewhere. Accordingly, references herein to "Goods" should be understood, where applicable, to include the provision of Services and these Conditions should be read and construed accordingly. "Contract" means the contract for the sale and purchase of Goods and/or Services (to which these Conditions apply).

2. GENERAL

- 2.1. Acceptance of the Seller's Quotation shall not be binding until the Customer's order is accepted by the Seller.
- 2.2. Acceptance by the Customer of the Seller's Quotation to supply Goods and/or Services includes the acceptance by the Customer of these Conditions.
- 2.3. In all contracts between the Seller and the Customer these Conditions shall be deemed to be incorporated except to the extent that they may be expressly varied in writing by a director of the Seller. No other conditions or terms whatever whether oral or written regardless of the date or dates upon which they were sent to the Seller or exhibited by the Customer shall affect or vary these Conditions and/or the terms or conditions upon which the contract is made. For the avoidance of doubt the Seller shall not be deemed to accept such other conditions nor to waive any of these Conditions by failing to object to provisions contained in any purchase order or any other communication from the Customer.
- 2.4. No representative agent or salesman who is not a director of the Seller has any authority to amend or waive any of these Conditions or other provisions of the Contract and, in accordance with 2.3 above, no amendment by a director shall be binding on the Seller unless in writing.

3. LIMITS OF CONTRACT

- 3.1. All Quotations are made subject to acceptance by the Customer within 30 days of the date thereof (unless otherwise stated) and subject to the Goods being unsold and/or not withdrawn prior to acceptance. All Goods are liable to be withdrawn without notice.
- 3.2. All Quotations relate only to such Goods as are specified therein. Drawings, dimensions and weights submitted must be taken to be approximate and do not form part of the Contract. All extras and accessories ordered but not specified in the Seller's Quotation will be charged for separately as will the

costs of all alterations, additions and other work undertaken at the request of the Customer.

- 3.3. The acceptance of the Seller's Quotation must be accompanied by sufficient information to enable the Seller to proceed with the order forthwith; otherwise the Seller shall be at liberty to amend the Quotation price(s) to cover any increased costs in labour or materials which may take place after acceptance.
- 3.4. The Customer shall not assign or transfer its rights under any contract subject to these Conditions to any third party without prior consent in writing of the Seller.
- 3.5. The Seller will make every effort to execute all orders at the price indicated (subject to Clause 3.3 above) (the Quotation Price) at the time of the acceptance but reserves the right to raise the Quotation Price in the event of any increase in the Seller's costs of raw materials that may take place between the date of acceptance of the Seller's Quotation and the date such Goods are ready for delivery.
- 3.6. The Goods are carefully inspected and submitted to standard tests (as outlined in the Seller's Quotation) at its Works before despatch. If additional tests are required or if the Customer wishes that any test to which the Goods are to be subjected take place in the presence of the Customer or its representative, the Seller reserves the right to charge an additional fee. If requested by the Customer, the Seller shall give the Customer 7 days' notice of when any tests are due to take place on the Goods. In the event of the failure of the Customer or its representative attending at the date and time specified by the Seller, the tests shall proceed in their absence, but, any additional fee in respect of those tests shall still be payable by the Customer.

4. DELIVERY

- 4.1. Except where otherwise stated Goods are deemed delivered when ready for collection at the Seller's premises.
- 4.2. Goods sold and to be delivered by the Seller will be despatched according to the Customer's instructions and shall be deemed to be at the Customer's risk from the time of loading.
- 4.3. Goods sold delivered (rather than ex-works) will be despatched by any means of transport at the Seller's option unless otherwise agreed in writing. All unloading and demurrage charges which may be incurred will be charged to the Customer. It is an implied condition that where the Seller sells goods delivered to the Customer's premises or site that adequate facilities exist for so doing by road and/or rail and for unloading.
- 4.4. Any packing or protection shall be at the discretion of the Seller. All such packing will be charged to the Customer unless it is specifically included in the Quotation price.
- 4.5. The Customer shall be solely responsible for the proper unloading of the Goods. If the Seller assists the Customer to remove Goods from the point of

delivery in such circumstances neither the Seller nor any sub-contractor of the Seller shall have any liability whatsoever for loss or damage to the Goods or other property of the Customer or any third party and the Customer shall indemnify the Seller in respect thereof.

- 4.6. The Seller reserves the right to make delivery by instalments, unless otherwise expressly agreed in writing. The period during which instalments may be delivered and the quantity of Goods delivered in each instalment shall be at the Seller's discretion. Where Goods are delivered in instalments, each delivery shall constitute a separate contract (to which these Conditions apply) and failure by the Seller to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as repudiated.

5. TIME FOR DELIVERY

- 5.1. Delivery times where given will be approximate and date from the acceptance of the Customer's order by the Seller; under no circumstances shall delivery times be, or be capable of being, made of the essence of the contract.
 - 5.1.1. Delivery times are calculated from receipt by the Seller of the Customer's order providing all details and full approvals to enable the Seller to proceed without interruption to manufacture the Goods.
 - 5.1.2. Lead times quoted are estimated based on the Seller's workload at the point of receipt of the Customer's order.
 - 5.1.3. Delivery times when given are subject to the Payment provisions contained in 12 below.
- 5.2. The Seller will not be liable for any loss, damage, injury or expense either direct or indirect which may be suffered by the Customer by reason of late delivery of the goods from whatsoever cause such late delivery may arise.
- 5.3. If the Seller does not receive payment of the Quotation price (or relevant part thereof) within 14 days of notification that the Goods are available for collection or delivery (as agreed) the Seller shall be at liberty to arrange storage either at the Seller's works or elsewhere at the Customer's risk and charge reasonable costs for storage, insurance and demurrage from the date of notification that the Goods are available for collection or delivery until actual collection or delivery. The storage costs, insurance and demurrage incurred by the Seller will be notified and invoiced to the Customer on a weekly basis.

6. LOSS OR DAMAGE IN TRANSIT

- 6.1. In the event of loss or damage in transit from any cause whatsoever (including causes which might be held to involve fundamental breach of contract) the liability of the Seller shall be limited (at the Seller's option) to replacing, repairing the Goods or refunding the purchase money. In no circumstances shall the Seller be liable for any consequential loss sustained by the Customer.

- 6.2. The Seller shall not be liable for any such damage as is referred to in 6.1 above unless the Seller and the carriers are notified of such damage or loss within 7 days of delivery. It is the responsibility of the Customer to examine the Goods immediately on receipt.

7. GUARANTEE

- 7.1. If any goods manufactured, rebuilt or reconditioned by the Seller are found to be faulty within the offered guarantee period (normally 12 months) after the date of installation [which must take place within 6 months after supply unless expressly agreed otherwise by the Seller] then, [provided that the fault was present at the date of supply or installation and has not been caused or aggravated by subsequent misuse, neglect, damage or otherwise (and in particular by any alteration or attempted repairs not authorized in writing by the Seller), and that the Seller is notified in writing promptly and at the latest within 7 days of the discovery thereof] the Seller undertakes to rectify the fault at its own cost, or if, at the Seller's sole discretion, it deems it necessary, replace the goods or the faulty part. Provided that where a fault was initially present but has been aggravated, the Seller may at its discretion apply this guarantee subject to the payment of an appropriate and reasonable contribution towards the cost.
- 7.2. A Customer who invokes this guarantee must return the Goods at its own risk and cost to the Seller's works unless it is specifically agreed that the Seller will do the work (or make a preliminary inspection) at the Customer's premises.
- 7.3. Engine driven generating sets, electronic components and engine repairs do not carry any warranty unless specifically given in writing.
- 7.4. No guarantee is given in respect of equipment not manufactured, rebuilt or reconditioned by the Seller. In such cases the Customer must satisfy itself that the equipment will meet its requirements and rely on the manufacturer's guarantee where available.
- 7.5. The foregoing guarantee represents the whole liability of the Seller and all implied terms as to description, quality, suitability or otherwise, and all liability for any misrepresentation or negligence by the Seller its servants or agents are expressly excluded, except in respect of death or personal injury caused by the Seller's negligence or wilful default.
- 7.6. On any claim for failure to fulfil this guarantee, damages shall not exceed the price charged by the Seller for the faulty Goods or Services.

8. NO LIABILITY FOR CONSEQUENTIAL LOSS

The Seller shall not in any case be liable to the Customer for loss or damage to any premises, stocks or other property or for loss of profits or for any legal liability of the Customer to a third party or any other form of consequential loss, whether alleged to be due to breach of Contract, negligence of any other head of legal liability. Customers should therefore check that their own

property and liability insurances cover risks from electrical and other equipment supplied or installed by the Seller and for contract work carried out by the Seller on the Customer's site or premises.

9. PLANT ON HIRE

- 9.1. Hired equipment is subject to CPA terms or Standard Terms as detailed in the hire agreement/quotation.
- 9.2. Goods supplied to the Customer by the Seller on hire shall be the Customer's responsibility and at the Customer's risk from the time of leaving the Seller's works or any other place until returned by the Customer.
- 9.3. The Customer is responsible for insuring the Goods underwritten by a reputable insurance company and the Seller has the right to inspect the insurance policy if it so wishes. The Customer undertakes to return the Goods in the condition in which they were hired. The Customer shall keep the Goods in good and proper repair.
- 9.4. All express or implied terms, conditions and warranties as to the quality of the Goods are excluded and all liability for any damage, loss or injury howsoever arising (including consequential loss) is excluded save that if a defect occurs which would have been covered by the Guarantee in clause 7.

10. CANCELLATION AND VARIATION BY THE CUSTOMER

Orders accepted by the Seller cannot be varied or cancelled without the Seller's written consent. The Seller reserves the right to make charges to cover overheads, profit and direct costs incurred by the Seller to the date of cancellation or to cover any amendments to the specification or otherwise of the Goods ordered as requested by the Customer.

11. CANCELLATION BY THE SELLER

- 11.1. If, owing to hostilities (whether war has been declared or not), Government Restrictions, strikes, riots, or civil commotion, difficulty or inability to obtain suitable raw materials, devaluation, major movements in international exchange rates, force majeure or causes of any other nature beyond the Seller's reasonable control, the Seller decides it to be unreasonable or uneconomical to deliver the whole or any part of an order, the Seller shall have the right on giving notice in writing to the Customer to cancel the order or any undelivered balance of the order.
- 11.2. Notice as aforesaid shall be deemed to have been received by the Customer 48 hours after the same has been posted in a first class prepaid ordinary letter addressed to the Customer at its last known address or immediately where such notice is sent by facsimile (upon receipt of the answerback code) or e-mail, or personal delivery.
- 11.3. In the event of cancellation under this Clause the Customer shall not be entitled to make any claim arising from such cancellation other than a refund

(without interest) of any advance payment made or a reasonable proportion thereof in respect of the cancellation of part of such order as the case may be.

12. PAYMENT

- 12.1. Unless otherwise agreed in writing payment of the price for the Goods and/or Services shall be net cash with order, or, where a credit account has been approved, net cash within 30 days of invoice.
- 12.2. For orders to the value of £15,000.00 or more the Seller will agree in writing, prior to acceptance of the Customer's order, either stage payments and/or monthly evaluations.
- 12.3. Prices for Goods will be quoted by the Seller as exclusive of either carriage or Value Added Tax (VAT) unless otherwise stated in writing on behalf of the Seller. Where applicable, VAT will be added to the Seller's invoice/s at the appropriate rate prevailing at the time of raising the invoice/s or otherwise as required by the relevant VAT statutory regulations.
- 12.4. All equipment quoted as ex-stock is offered subject to being unsold prior to acceptance by the Seller of the Customer's order.
- 12.5. The risk shall pass to the Customer on despatch of the Goods and thereupon the Customer shall be responsible for insurance.
- 12.6. Notwithstanding delivery and the passing of risk in the Goods to the Customer, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Customer for which payment is then due, together with any interest or other sums payable under the relevant contract in respect of the Goods and such other goods.

Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected, insured and identified as the Seller's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Customer to deliver up the Goods to the Seller and, if the Customer fails to do so, forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Customer does so all monies owing by the Customer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

- 12.7. The Seller shall have a general lien on all goods and property of the Customer in its possession until payment is made in full and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property as the Seller thinks fit and apply any proceeds towards such debts.
- 12.8. No disputes as to quality or performance of the Goods or Services shall entitle the Customer to delay payment unless the Seller shall agree in writing liability thereon in an agreed sum.
- 12.9. In the event of the Customer failing to comply with the Seller's terms of payment the Seller (without prejudice to any legal rights of action) reserves the right without notice to discontinue forthwith the provision to the Customer of any further Goods or Services.
- 12.10. When delivery of the Goods is made by instalments the Seller may invoice the Customer for each instalment.
- 12.11. The Seller does not accept any set-off or retention against the price/s invoiced for Goods or Services supplied unless agreed in writing by the Seller prior to acceptance of the Customer's order/s.
- 12.12. The Seller reserves the right at any time before proceeding or proceeding further with an order to demand full or partial payment of monies due and payable under the Contract and any other contract between the Seller and the Customer.

If the Customer defaults in any payment the Seller may, in addition to exercising any of the rights set out above, suspend work, delay or withhold delivery under or cancel either the Contract and/or any other contract between the Seller and the Customer and to retain any progress payments or payments on account already received under either the Contract or under any other contract between the Seller and the Customer.

The Seller reserves the right to charge interest at the annual rate of four per cent above the base rate from time to time of National Westminster Bank Plc on all overdue monies.

All rights and remedies afforded to the Seller in these Conditions for non-payment shall be in addition and without prejudice to all other rights and remedies available to the Seller under the Contract or at law.

13. RETURN

Goods may only be returned with the prior agreement in writing of the Seller. Any goods returned without the prior agreement of the Seller will be returned to the Customer and a reasonable charge for handling plus all carriage costs will be made.

14. TRADEMARKS, PATENTS AND OTHER INDUSTRIAL RIGHTS

- 14.1. If any claim is made against the Customer alleging that Goods infringe any patent rights, registered designs, copyright or other industrial property rights of another then:
 - 14.1.1. the Customer shall forthwith notify the Seller with full particulars, and
 - 14.1.2. the Seller or its suppliers or licensors (as case may be) shall be at liberty at their expense to conduct all negotiations and/or litigation in respect thereof and (if necessary) in the name of the Customer, and
 - 14.1.3. except pursuant to a final award, the Customer shall not pay or accept any such claim or compromise any proceedings without the consent of the Seller (which shall not be unreasonably withheld or delayed) and if as a result of such negotiations or litigation, the Customer shall be unable to use the Goods substantially for the purpose for which they were bought the Seller shall (except where clause 14.2 below applies) take them back and refund the price thereof and such refund shall be in full satisfaction of all claims by the Customer against the Seller.
- 14.2. The Customer shall indemnify the Seller against all actions costs (including cost of defending legal proceedings) claims proceedings and demands in respect of any infringement or alleged infringement by the Seller of patent rights registered design copyright design rights or other industrial rights attributable to the Seller complying with any special instructions from or requirements of the Customer relating to the Goods.

15. GOODS OFFERED WHICH ARE NOT THE SELLERS OWN PROPERTY

- 15.1. Any information supplied by the Seller concerning the location and other matters in respect of Goods offered for sale by the Seller but which are not the Seller's property is given on the understanding that the Customer/Enquirer will not make a direct approach to purchase the Goods from the Owners but will purchase them through the Seller.
- 15.2. The Customer agrees not to make any direct approach to the Owner and undertakes to reimburse the Seller in respect of any loss of commission or other loss which may result to the Seller as a breach of this Clause.

16. INSTALLATION NOTES AND QUALIFICATIONS

In the event that the Seller offers to carry out installation and/or site works the following clauses will apply:

- 16.1. The Seller only offers to carry out installation works specifically as detailed within the Seller's Quotation. Any further works not detailed in the Quotation will be quoted as extra and charged at additional cost.
- 16.2. All prices stated in the Seller's Quotation are estimated until a fully detailed site survey including detailed measurement has been carried out.

- 16.3. The Seller's Quotation does not include any provision for any liaison with the Distribution Network Operator (DNO) unless expressly stated otherwise.
- 16.4. It is the responsibility of the Customer to advise the DNO of any increase in power requirements and to arrange for adjustment of the Allowed Supply Capacity (ASC). Further, it is the Customer's responsibility to arrange suitable tariffs/charges with the meter operator.
- 16.5. Any costs associated or connected with upgrading the Distribution Network or metering equipment are not included in the Seller's Quotation unless specifically detailed therein.
- 16.6. Where the Seller includes earthing of High Voltage equipment or Power Transformers in the Quotation, the Seller will allow for 4 x 2.4 metres driven earth rods for the earthing matrix at the location specified. If test readings prove unsatisfactory due to ground conditions (or otherwise) then the Seller reserves the right to raise appropriate additional charges to achieve the required ohmic value.
- 16.7. Where a site is identified as a "hot site", a detailed site survey will need to be carried out and a specific Quotation for earthing will be provided based on the survey. The Seller's Quotation does not include the earthing of hot sites unless specifically detailed therein after completion of a detailed site survey carried out for that purpose.
- 16.8. The Seller's employees will only operate the Customer's high voltage electrical switchgear if it is considered to be in a suitable condition and under the supplier's safety rules. All switchgear must have documented evidence that routine and all necessary maintenance has been carried out.
- 16.9. The Seller's Quotation allows for normal working hours being from 8.00am to 4.30pm Monday to Friday; any work necessarily carried out beyond these times will be charged additionally at normal day work or overtime rates as appropriate unless stated otherwise in writing by the Seller.
- 16.10. Any waiting time incurred by the Seller's employees, not due to the fault of the Seller, will be charged at normal day work or overtime rates as appropriate.

17. INSOLVENCY OF THE CUSTOMER

- 17.1. This Condition applies if:
 - 17.1.1. the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 17.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
 - 17.1.3. the Customer ceases, or threatens to cease, to carry on business; or
 - 17.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 17.2. If this Condition applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to suspend work, delay or

withhold delivery under or cancel the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

17.3. This condition 17 is subject to the retention of title provisions set out in 12.6 above.

18. SURVIVAL OF PROVISIONS

The expiration or determination of a Contract, howsoever arising, shall be without prejudice to any provisions thereof (including these Conditions) which are to have effect after the date of expiration or determination.

19. WAIVER

No waiver by the Seller or any breach or obligation of the Customer pursuant to the Contract shall constitute a waiver of any other prior to subsequent breach or obligation.

20. NOTICES

All notices required to be given by the Customer to the Seller in respect of this contract shall not be effective unless in writing and sent to the Seller at its address stated overleaf.

21. HEADINGS

The headings to these Conditions are for convenience or reference only and shall have no effect on the construction of the Conditions.

22. ENGLISH LAW

22.1. 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.

22.2. The Seller and the Customer hereby irrevocably agree to submit to the jurisdiction of the English Courts.

(Issue 09|13)