

**1. Definitions**

- 1.1 "Seller" shall mean Valco Engineering Limited its successors and assigns or any person acting on behalf of and with the authority of Valco Engineering Limited.
- 1.2 "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
- 1.5 "Services" shall mean all services supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods and/or Services as agreed between the Seller and the Client subject to clause 3 of this contract.

**2. Acceptance**

- 2.1 Any instructions received by the Seller from the Client for the supply of Goods and/or Services and/or the Client's acceptance of Goods and/or Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Seller.
- 2.4 The Client undertakes to give the Seller at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.

**3. Price And Payment**

- 3.1 At the Seller's sole discretion the Price shall be either;
  - (a) as indicated on invoices provided by the Seller to the Client in respect of Goods and/or Services supplied; or
  - (b) The Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3 At the Seller's sole discretion a deposit may be required.
- 3.4 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by any other method as agreed to between the Client and the Seller.
- 3.6 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**4. Delivery Of Goods and/or Services**

- 4.1 At the Seller's sole discretion delivery of the Goods and/or Services shall take place when the Client takes possession of the Goods and/or Services at the Client's address (in the event that the Goods and/or Services are delivered by the Seller or the Seller's nominated carrier).
- 4.2 At the Seller's sole discretion the costs of delivery are included in the Price.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods and/or Services as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.4 The Seller may deliver the Goods and/or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.5 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods and/or Services (or any of them) promptly or at all.

**5. Risk**

- 5.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

**6. Title**

- 6.1 It is the intention of the Seller and agreed by the Client that ownership of the Goods shall not pass until:
  - (a) the Client has paid all amounts owing for the particular Goods and/or Services, and
  - (b) The Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
  - (a) the Client is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and
  - (b) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.

**7. Client's Disclaimer**

- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Seller and the Client acknowledges that the Goods and/or Services are bought relying solely upon the Client's skill and judgment.

**8. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**

- 8.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 8.2 Notwithstanding clause 10.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
- 8.3 In particular where the Client buys Goods and/or Services as a consumer the provisions of Clauses 8 and 9 above shall be subject to any laws or legislation governing the rights of consumers.

**9. Default & Consequences of Default**

- 9.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 9.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 9.3 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment); the Seller may suspend or terminate the supply of Goods and/or Services to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller exercised its rights under this clause.
- 9.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- 9.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**10. Security and Charge**

- 10.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

#### 11. Cancellation

- 11.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 11.2 In the event that the Client cancels delivery of Goods and/or Services the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

#### 12. Data Protection Act 1988 & Data Protection Act 2003

- 12.1 The Client and the Guarantor/s (if separate to the Client) authorises the Seller to:
  - (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
  - (b) to disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Client on publicly accessible credit reporting databases.
- 12.2 Where the Client is an individual the authorities under (clause 14.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
- 12.3 The Client shall have the right to request the Seller for a copy of the information about the Client retained by the Seller and the right to request the Seller to correct any incorrect information about the Client held by the Seller.

#### 13. Dimensions, Plans and Specifications

- 13.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods and/or Services unless the Seller and the Client agree otherwise in writing.
- 13.2 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client
- 13.3 If the giving of an estimate or quotation for the supply of Goods and/or Services involves the Seller estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Seller's estimated measurements and quantities, before the Client places an order based on such estimate or accept such quotation.
- 13.4 Should the Client require any changes to the Seller's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

#### 14. Client's responsibilities

- 14.1 It is the Client's responsibility to:
  - (a) supply a sufficiently detailed brief to enable the Seller to develop the plans and define all the relevant components; and
  - (b) accept the recommended specifications of the Seller; and
  - (c) ensure there is adequate access at the delivery point to accept the Goods; and
  - (d) Make the installation site available on the agreed date and time. Should delivery be delayed or interrupted by the failure of the Client to adhere to the delivery schedule agreed to between the Seller and the Client then any additional costs will be invoiced to the Client as an extra; and
  - (e) Have all areas clean and clear to enable scheduled work to be completed in accordance with the agreed schedule of

- installation. The Seller will not be responsible for clearing blockages from existing and/or deteriorating plumbing or pipe work. Delays to the installation caused by the Client, their employees or Sellers will result in chargeable downtime; and
- (f) Provide adequate and safe access to the site for all workmen and equipment necessary for the installation. Delays in gaining access to, or from, the site will attract chargeable downtime; and
- (g) fully disclose any information that may effect the Seller's installation procedures; and
- (h) ensure that adequate lighting for efficient installation is provided in the working area; and
- (i) Provide suitable and adequate waste disposal facilities unless otherwise agreed with the Seller.

#### 15. General

- 15.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 15.3 The Seller shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions.
- 15.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Seller exceed 5% of the Price of the Goods and/or Services.
- 15.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Seller.
- 15.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change. Except where the Seller supplies further Goods and/or Services to the Client and the Client accepts such Goods and/or Services, the Client shall be under no obligation to accept such changes.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.