

## 1. INTERPRETATION

- 1.1 In the conditions  
 'CUSTOMER' means the person who accepts the quotation of the Seller for the sale and installation of the Goods or whose order of the Goods is accepted by the seller.  
 'GOODS' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these conditions.  
 'EMTEC' means EMTEC Products Limited (registered in England and Wales under number 3164658 whose registered office is at Emtec Products Ltd, Unit L, Turnpike Way, High Wycombe, Bucks, HP12 3TF.  
 'CONDITIONS' means the standard terms and conditions of sale set out in the document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between EMTEC and the Customer.  
 'CONTACT' means the contract for the purchase, sale and installation of the Goods.  
 'WRITING' includes email and comparable means of communication.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. BASIS OF THE SALE

- 2.1 EMTEC SHALL SELL AND THE CUSTOMER SHALL PURCHASE THE GOODS IN ACCORDANCE WITH ANY WRITTEN QUOTATION OF EMTEC WHICH IS ACCEPTED BY THE CUSTOMER, OR ANY WRITTEN ORDER OF THE CUSTOMER WHICH IS ACCEPTED BY EMTEC, SUBJECT IN EITHER CASE TO THESE CONDITIONS WHICH SHALL GOVERN THE CONTRACT TO THE EXCLUSION OF ANY OTHER TERMS AND CONDITIONS SUBJECT TO WHICH ANY SUCH QUOTATION IS ACCEPTED OR PURPORTED TO BE ACCEPTED OR ANY SUCH ORDER IS MADE OR PURPORTED TO BE MADE, BY THE CUSTOMER.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of EMTEC and the Customer.
- 2.3 EMTEC's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by EMTEC in Writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4 Any typographical, clerical or any other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by EMTEC shall be subject to correction without any liability on the part of EMTEC.

## 3. ORDERS AND SPECIFICATIONS

- 3.1 No order submitted by the Customer shall be deemed to be accepted by EMTEC unless and until confirmed in Writing by EMTEC's authorised representative.
- 3.2 The customer shall be responsible to EMTEC for ensuring the accuracy of the terms of any order (including any applicable specification) submitted to the Customer, and for giving EMTEC any necessary information relating to the Goods within a sufficient time to enable EMTEC to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality, description and specification for the Goods shall be those set out in EMTEC's quotation (if accepted by the Customer) or the Customer's order (if accepted by EMTEC).
- 3.4 It is the Customer's responsibility to ensure that the Goods comply with any fire, security or Building Regulations requirements.
- 3.5 No order which has been accepted by EMTEC may be cancelled by the Customer except with the agreement in Writing of EMTEC and on terms that the Customer shall indemnify EMTEC 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 EMTEC as a result of cancellation.

## 4. DRAWINGS, DESIGNS AND SAMPLES

- 4.1 On acceptance of quotation or order EMTEC will prepare drawings of the proposed installation which will be sent to the Customer.
- 4.2 It is the Customer's responsibility to ensure that the drawings are correct and approval will be assumed if EMTEC has not heard to the contrary within ten working days of forwarding the drawings to the Customer.
- 4.3 EMTEC reserves the right to make minor alterations to the design in the course of manufacture provided that in so doing the performance of the Goods shall not be adversely affected.
- 4.4 Any sample supplied solely as an example and shall not render any sale a sale by example.

## 5. PRICE OF GOODS

- 5.1 The price of Goods shall be EMTEC's quoted price. All prices quoted are valid for 60 days only or until earlier acceptance by the customer, after which time they may be altered by EMTEC without giving notice to the Customer.
- 5.2 EMTEC reserves the right by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to EMTEC which is due to any factor beyond the control of EMTEC (such as, without limitation, significant increases in the cost of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give EMTEC adequate information or instructions.
- 5.3 Except as otherwise stated under the terms of any quotation and unless otherwise agreed in Writing between EMTEC and the Customer all prices are given by EMTEC on an ex-works basis and where EMTEC agrees to deliver the Goods the Customer shall be liable to pay EMTEC's charges for transport, packaging and insurance.
- 5.4 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to EMTEC.

## 6. INSTALLATION

- 6.1 Where EMTEC's quotation includes installation it is on the basis there is free and unrestricted access to the site, that EMTEC can have uninterrupted working between 8:00am and 5:30pm Monday to Friday (excluding Bank Holidays), free use of 110/240 volt electricity supply within 15 metres of all point of installation and that all site preparation and disconnection of services will be carried out prior to the arrival of EMTEC on site.
- 6.2 The Customer shall be responsible for the cost of all off-loading, storage and positioning, all craneage, lifting and scaffolding, all builders' work including making good, all disconnection and reconnection of services and removal of debris and carting away.

## 7. TERMS OF PAYMENT

- 7.1 Subject to any terms agreed in Writing between the Customer and EMTEC, EMTEC shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods.
- 7.2 EMTEC reserves the right to demand payment in advance or cash on delivery if the customer does not have an existing credit account.
- 7.3 The Customer shall pay the price of the Goods within 30 days of the date of EMTEC's invoice, notwithstanding that the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 7.4 If the Customer fails to make any payment due date then, without prejudice to any other right or remedy available to EMTEC, EMTEC shall be entitled to:
- 7.4.1 cancel the contract or suspend any further deliveries to the Customer.
- 7.4.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other Contract between the customer and EMTEC) as EMTEC may think fit (notwithstanding any purported appropriation by the Customer) and charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of four percent per annum above HSBC Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 8. DELIVERY

- 8.1 Delivery of the Goods shall be made by EMTEC delivering the Goods to the address given in the order or quotation.
- 8.2 Any dates quoted for delivery of the Goods are approximate only and EMTEC shall not be liable for any delay in the delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless agreed by EMTEC in Writing.

## 9. RISK AND PROPERTY

- 9.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery or collection.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the customer until EMTEC 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 EMTEC to the Customer for which payment is then due.
- 9.3 Until such time as the property of Goods shall pass to the Customer, the Customer shall hold the Goods as EMTEC's fiduciary agent and bailee, and shall keep the Goods separate from those of the customer and third parties and property stored, protected and insured and identified as EMTEC'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 EMTEC for the proceeds of sale or otherwise Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 9.4 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), EMTEC shall not be entitled to any time to require the Customer to deliver up the Goods to EMTEC 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.
- 9.5 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 EMTEC, but if the Customer does so all moneys owing by the Customer to EMTEC shall (without prejudice to any other right or remedy of EMTEC) forthwith become due and payable.

## 10. WARRANTIES AND LIABILITY

- 10.1 Subject to terms and conditions set out below EMTEC warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery.
- 10.2 The above warranty is given by EMTEC subject to the following conditions:  
 10.2.1 EMTEC shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer.  
 10.2.2 EMTEC shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow EMTEC's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without EMTEC's approval.  
 10.2.3 EMTEC shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.  
 10.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by EMTEC, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee that is given by the manufacturer to EMTEC.
- 10.3 Any claim by the Customer which is based on any defect in the quality or the condition of the Goods, or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to EMTEC within 14 days from the date of installation or (where defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.
- 10.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to EMTEC in accordance with these Conditions, EMTEC shall be entitled to replace the Goods (or their part in question) free of charge, or, at EMTEC's sole discretion, refund the Customer the price of the Goods (or a proportionate part of the price), but EMTEC shall have no further liability to the Customer.
- 10.5 Except in respect of death or personal injury caused by EMTEC's negligence, EMTEC shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise) which arise out of, or in connection with, the supply of goods or their use or resale by the Customer, except as expressly provided by the Conditions.
- 10.6 EMTEC shall not be liable to the customer or be deemed to be in breach of the Contract any reason of any delay in performing, or any failure to perform, any of EMTEC's obligations in relation to the Goods, if the delay or failure was due to any cause beyond EMTEC's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond EMTEC's reasonable control.  
 10.6.1 Act of God, explosion, flood, tempest, fire or accident;  
 10.6.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;  
 10.6.3 Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;  
 10.6.4 Import or export regulations or embargoes;  
 10.6.5 Strikes, lock outs or other industrial actions or trade disputes (whether involving employees of EMTEC or of a third party);  
 10.6.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;  
 10.6.7 Power failure or breakdown in machinery.

## 11. INSOLVENCY OF CUSTOMER

- 11.1 This clause applies if:  
 11.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or  
 11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or  
 11.1.3 the Customer ceases, or threatens to cease, to carry on business; or  
 11.1.4 EMTEC reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.2 If this clause applies then, without prejudice to any other right or remedy available to EMTEC, EMTEC shall be entitled to cancel the Contract or suspend any further deliveries under 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.

## 12. GENERAL

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addresses to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by EMTEC of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 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.
- 12.4 Any dispute under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration in accordance with the Arbitration Acts 1950 and 1979.
- 12.5 The Contract shall be governed by the laws of England.