

**SAFETY FIRST INDUSTRIAL LTD**

**TERMS & CONDITIONS OF SALE OF GOODS AND/OR SUPPLY OF SERVICES**

**1 DEFINITIONS**

In these conditions:-

- i) 'the Company' means Safety First Industrial Ltd
- ii) 'the Buyer' means the purchaser of Goods and/or the person to whom Services are supplied by the Company.
- iii) 'Goods' means the articles, equipment of goods to which these conditions relate.
- iv) 'the Services' means the services to which these conditions relate.
- v) 'the Contract' means the contract between the Company and the Buyer for the sale of the Goods and/or the supply of the Services.

**2 QUOTATIONS AND PRICES**

- a) All offers quotations estimates acceptances and contracts are made subject to these conditions and any inconsistent terms or conditions which may be referred to in the Buyer's order or correspondence shall not apply, nor form part of the Contract unless expressly agreed to in writing by a Manager or Director of the Company.
- b) A quotation does not constitute an offer by the Company to sell or supply Goods or Services and every acceptance of any quotation of the Company and every order by the Buyer shall be deemed to be an offer by the Buyer to the Company to purchase Goods and/or Services subject to the terms of these conditions and shall not bind the Company until the Company gives its written acknowledgement of the order.
- c) Unless otherwise agreed in writing a quotation of the Company shall only be available for acceptance for a maximum period of 28 days from the date thereof, and may be withdrawn by the Company within such period at any time by written or oral notice.
- d) No variation or purported variation of the terms of the Contract shall bind the Company unless first agreed in writing by a Manager or Director of the Company. After an order has been acknowledged by the Company the Buyer may not cancel or vary the order without the prior written consent of the Company which at the Company's discretion may be given only on terms which will indemnify the Company against any loss resulting from such cancellation or variation. The Company shall be entitled to invoice the Buyer for all costs accrued to the date of cancellation or variation including Administration and other expenses.
- e) Prices are quoted exclusive of VAT, any import/export duties that may be payable and transport costs.

**3 TECHNICAL SPECIFICATIONS, INFORMATION, DRAWINGS AND PATENTS**

- a) All descriptive and technical specifications, drawings, illustrations, photographs, catalogues, general literature, relating to the Goods and/or the Services are intended only to present a general guide and shall not be incorporated in or form part of the Contract unless otherwise expressly agreed in writing by a Manager or Director of the Company.
- b) All weight measurements, operating pressures, capacities and other particulars of Goods offered by the Company are stated in good faith as being approximately correct but small deviations there from shall not vitiate the Contract nor be made the basis of any claim against the Company. Errors and omissions are subject to correction.
- c) All estimates, designs, drawings, plans or models prepared by the Company are the property of the Company and are subject to the Company's copyright and the Buyer shall not copy or otherwise make use of such documents or drawings except insofar as they may be necessary to the operation, repair or maintenance of the Goods.
- d) Goods and/or parts provided by the Buyer for assembly with Goods of the Company's manufacture be delivered free, in good condition and ready for assembly and be duly advised to the Company. All goods sent to the Company for processing or repairs are at all times at the risk of the Buyer.
- e) All reasonable care is taken to ensure that the use of the Goods in the normal course in the United Kingdom does not infringe any patent of any other intellectual property right of third parties. The Buyer shall indemnify the Company in the event of any infringement by the Company as a Consequence of manufacturing in accordance with instructions, designs or specifications supplied Wholly or in part by the Buyer.
- f) The Company reserves the right to modify the specification of any Goods or Services ordered
- f) without notice provided that the modification does not materially degrade the performance of the same.

**4 DELIVERY**

- a) Unless otherwise agreed in writing the place of the deliver of Goods shall be ex the Company's works.
- b) Any dates or periods for the delivery of the Goods and/or the performance of the Services or any of them are best estimates and cannot be guaranteed. Whilst the Company will where possible make every attempt to comply with such dates or periods the Buyer shall have no right to damages or to cancel the contract for failure for any cause to meet and delivery time previously stated by the Company.
- c) If so requested by the Buyer in writing the Company may postpone delivery of the Goods and/or performance of the Services to a date agreed by the Company and the Buyer but the Company shall be entitled to charge the Buyer for all related expenses (including storage and insurance of the Goods).
- d) The Buyer shall have no claim for short delivery of Goods unless either a receipt is given to the carrier detailing the shortage at the time of delivery or alternatively notification of the shortage is given to the Company within 7 days of the date of delivery of the Goods to the Buyer. Claims for loss or damage in transit must be made by the Buyer against the carrier and the Company accepts no liability therefore.
- e) The Buyer undertakes to examine the Goods within 3 days of delivery and if the Buyer does not notify any defect to the Company within 7 days of delivery (where the defect would be apparent on a reasonable inspection) or within 7 days of the date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent on a reasonable inspection) will be deemed to have accepted them.
- f) Where delivery has been postponed at the request of or by the default of the Buyer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have ready in the ordinary course but for the request or default.
- g) Performance of the services will take place at such place as agreed by the parties.

**5 PROPERTY & RISK**

- a) The risk in the Goods shall pass to the Buyer when the Goods or a relevant part of them leave the premises of the Company for delivery to the Buyer, who shall be responsible for all subsequent loss, theft, damage or deterioration.
- b) The title to the Goods (both legal and equitable) shall not pass to the Buyer until the Company has received full payment for the Goods delivered and for work performed and Services provided within the scope of the delivery plus all carriage, insurance duties and Value Added Tax payable and all other sums (whether payable under the Contract or not) which are or will afterwards become due or owing from the Buyer to the Company. Until title has passed the Buyer shall permit the servants or agents of the Company to enter the Buyer's premises and to repossess the Goods at any time and shall hold the Goods on a fiduciary basis as the Company's bailee, store the Goods (at no cost to the Company) separately from all other goods of the Company or third parties and identify them as the Company's property, not destroy or deface any identifying mark on the Goods or their packaging, keep the Goods insured on the Company's behalf for the full price of the Goods against "all risks" to the reasonable satisfaction of the Company and upon request produce a policy of insurance to the Company and hold all proceeds of the insurance on trust for the Company and shall not mingle them with any other money nor pay the proceeds into an overdrawn bank account.
- c) At any time before the property in the Goods has passed to the Buyer the Company may be written notice end the Buyer's right to use and sell the Goods and the Buyer shall immediately return the Goods to the Company (at the Buyers cost). After giving such notice the Buyer shall no longer be in Possession of the Goods with the consent of the Company any the Company and/or its representatives May enter into any premises where the Goods are or reasonably believed to be and remove the Goods.
- d) The Company shall have a general lien on all goods which are either the property of the Buyer or which would ordinarily be expected to become the property of the Buyer under a contract of sale with the Company and which (in each case) are in the possession of the Company for whatever purpose, for all amounts payable by the Buyer to the Company whether under the Contract or not and whether due or not.
- e) Any goods specified in clause 5(d) which are in possession of a carrier in transit to the Buyer shall be deemed for the purpose of clause 5(d) only to be in possession of the Company shall be permitted to stop such goods in transit at its discretion.
- f) The Company may without prior notice to the Buyer dispose of such goods as are referred to in clause 5(d) whether by way of sale or otherwise or otherwise on such terms as the Company shall in its discretion decide and apply the proceeds of such disposal (after deducting the cost of storage, insurance, transport and disposal of such Goods) towards the satisfaction of the amounts payable by the Buyer to the Company.
- g) Nothing in this condition shall change the Buyer's obligation to pay for the Goods.

**6 ERECTION, INSPECTING & TESTING**

- a) The Buyer will ensure that representatives of the Company shall, at all times during normal working hours, have access to and be allowed to work on all material which is the subject of Contract. The Company does not guarantee the skill of its employees, sub contractors or agents and it must be kept indemnified by the Buyer against all loss or damage incurred during or arising out of any work on which Company employees may have or have been engaged. Time spent starting the machinery or attending same after starting, will be charged for at current hourly rates, unless otherwise agreed. The Buyer will also supply on site such equipment (including access equipment), machinery, tools and Services as the Company or its employees shall require.
- b) All orders involving site work are accepted on the understanding that any material arriving before Company personnel will be unloaded and stored free of charge by the Buyer until such time as it is Required and that a free supply of light and power for any portable tools used will be made available by the Buyer. The Buyer will be responsible for maintaining and will produce all registers, records or any other documents or certificates required by statute.
- c) Where Company personnel are doing work for the Buyer's premises the Buyer warrants that the premises and equipment thereon are in sound and fit condition and that such work can be safely undertaken in the ordinary course. The Buyer will be liable for all damage, loss or injury whatsoever suffered by the Company or the Company's employees, sub-contractors, agents or representatives, due to or as a result of the Buyer's acts, omissions, neglect or default or misconduct or that of the Buyers representatives, employees, agents or subcontractors and the Buyer agrees to indemnify the Company against all loss, damage, costs, expenses, claims and demands whatsoever and howsoever incurred by the Company in respect thereof.
- d) In the event that the Buyer is to collect Goods from the Company, the Buyer shall indemnify the Company and keep it fully and effectively indemnified against any loss or liability of whatsoever nature suffered or incurred by the Company as a result of the acts of omissions of the Buyer or its employees, representatives, agents or subcontractors in the course of such collection.

**7 WARRANTIES**

- a) The Company warrants that the Goods supplied are of satisfactory quality and that the Services will be carried out with reasonable care and skill and to make good defects which arise solely from faulty materials and/or bad workmanship and which under proper use appear in the goods or the Services supplied within six months from the date of delivery or such other period as may be agreed expressly in writing by a Manager or Director of the Company. It shall be within the absolute discretion of the Company whether to repair, replace parts or replace the whole or part of the Goods or the Services. The Company's liability under this condition shall not exceed the amount (if any) paid to it for any Claim under its insurance policy covering such risks. The Company acknowledges that delay in notifying any claim will prevent the Company recovering any money under such policy.
- b) The supply to the Buyer, carriage paid of a defective part of the product properly repaired or a replacement part, or the repair of any defective workmanship or the refund by the Company of the price for the relevant part of the Services on a pro rata basis shall constitute fulfilment by the Company of its obligations. The Buyer must return the defective Goods, properly packed and insured at the Buyer's expense to the Company's works unless the Company agrees otherwise. Other than as set out in clause 7
- a) the Company shall not be liable for any defect in the quality of the Goods and/or the Services (whether in contract, tort, statute, misrepresentation, negligence or otherwise).
- c) The Buyer must afford to the Company the opportunity to examine any Goods or Services which are relevant to the subject of a claim before such Goods or Services have been further handled, processed or otherwise dealt with. The Buyer shall at all times disclose in writing to the Company all information and documents relating to the potential claim and if requested by the Company shall give the Company c) and its advisors access to the personnel of the Buyer and to any records, documents, premises or chattels within the power, possession or control of the Buyer to enable the Company and/or its advisors to interview such personnel and to examine such claim, chattels, documents and records and to take copies or photographs of them. The Buyer shall take such action as the Company may require to avoid resist or compromise any claim or potential claim. Nothing in these conditions shall diminish the Buyer's duty to mitigate its loss.
- d) The Company will not be liable whether in contract, tort, negligence or otherwise for any damage to or deterioration of any Goods or any defect in the quality of the Services which occurs after delivery of the Goods or performance of the Services and is due to unsuitable storage conditions, inappropriate use Whether as to purpose rating or capacity, neglect, overloading, unsuitable lubricants, improper installation or repair, alteration or accident, or any failure to follow any instructions of the Company.
- e) Where Goods are manufactured or supplied or Services performed or supplied to the specific design, specification or instruction of the Buyer, in the event of any claim relating to the satisfactory quality, ability to carry out a particular function or where the claim (directly or indirectly) arises as a result of the unsuitability, inadequacy or failure of the design specification or instruction of the Buyer the Company shall not have any liability to the Buyer on any account whatsoever and the Buyer shall indemnify the Company against all actions, claims, costs, expenses and liabilities of whatsoever nature suffered or incurred by the Company as a result.
- f) Unless specifically agreed otherwise no guarantee is given for Goods which are not entirely new at the time of delivery and all such Goods are sold as seen.
- g) The Buyer shall indemnify the Company in respect of all claims by third parties consequent to the supply of the Goods and/or the Services.

**8 LIMITATION OF LIABILITY**

- a) Save as specified in condition 7(a), all other warranties, conditions or other terms implied by statute or common law are excluded from these conditions.
- b) Notwithstanding anything to the contrary herein contained the Company's liability to the Buyer for:-
  - i) death or personal injury resulting from the negligence of the Company, its employees, agents or subcontractors;
  - ii) damage suffered by the Buyer as a result of a breach by the Company of the condition as to title implied or section 2 Supply of Goods and Services Act 1982; or
  - iii) fraudulent misrepresentation shall not be limited save that nothing in this condition 8b) shall confer a right or remedy upon the Buyer to which the Buyer would not otherwise be entitled.
- c) The Company's charges to the Buyer are determined on the basis of the exclusions from and limitations of liability contained in these conditions. The Buyer expressly agrees that these exclusions and limitations are reasonable because of amongst other matters the likelihood that the amount of damages awardable to the Buyer for a breach by the Company of these conditions may be disproportionately greater than the price of the Goods and/or the Services.
- d) The Company shall not be liable to the Buyer for any consequential loss (including loss of profit, loss of business or economic loss) costs, damages, charges or expenses arising out of the delivery, non-delivery, supply or use of the Goods or the performance of the Services (even if caused by the Company's negligence). However, if a Court rules that the Company is liable for any type of consequential loss, which is not excluded by this clause, or which is deemed to be a direct loss as opposed to consequential loss, the Company's liability for the same shall not exceed the amount (if any) paid to it for any claim under its insurance policy covering such risks; and in the event that the insurance policy does not cover such risks, the liability is to be limited to the value of the goods and/or services supplied, which caused the loss in question.
- e) The exclusions from and limitations of liability contained in this condition 8 shall be construed severably. The invalidity or unenforceability of any one clause shall not affect the validity of enforceability of any other part.

**9 FORCE MAJEURE**

- a) The Company shall not be liable to the Buyer in any manner or be deemed to be in breach of these conditions because of any delay in performing or any failure to perform any of the Company's obligations under these conditions if the delay or failure was due to any cause beyond the Company's reasonable control.
- b) Without prejudice to the generality of condition 9(a) the following shall be included as causes beyond the Company's reasonable control:-
  - i) government actions, war, threat of war, riot, civil disturbance, sabotage or requisition;
  - ii) Act of God, fire, flood, epidemic or accident;
  - iii) import or export regulations or embargoes;
  - iv) labour disputes including disputes involving the Company's workforce of any carrier or supplier of materials to the Company; or
  - v) inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts machinery or labour.

**10 TERMINATION**

a) The Company shall be entitled to terminate the contract of which these conditions form part (without any notice or other act on the part of the Company and notwithstanding that the Company may have waived some previous default or matter of the same or like nature), upon the happening of any one of the following events if the Buyer (1) make default in punctual payment of all sums due to the Company for the sale of Goods or the provision of Services or other charges or shall fail to observe and perform the terms and conditions of these conditions. (ii) Suffer any distress or execution to be levied against him or make or purpose to make any arrangement with his creditors or has had a bankruptcy order made against him, has been the subject of an application for an interim order under section 253 insolvency Act 1986 or has had an interim receiver of his property appointed under section 286 Insolvency Act 1986, or being a company shall become the subject of a voluntary arrangement under section 1 Insolvency Act 1986 (iii) Is unable to pay its debts within the meaning of section 123 Insolvency Act 1986. (iv) Has a receiver, manager, administrator or administrative receiver appointed Over all or any parts of its undertaking, assets or income, have passed a resolution for its winding up or have a petition presented to any court for its winding up or for an administrative order. (v) Has ceased to trade.

b) In the event of termination the Buyer shall immediately pay to the Company all sums due to the Company under these conditions. Any deposit paid by the Buyer shall be forfeit to the Company and Irrecoverable to the Buyer. Any prepayment of the price shall be forfeit to the Company and Irrecoverable to the Buyer save as to any sum in excess of loss suffered by the Company. The Company shall be entitled immediately to repossess all Goods in the possession or control of the Buyer or any servant or agent, representative, subcontractor (or associated company) of the Buyer (in which title has not passed to the Buyer by reason of clause 5(b) hereof) and shall be entitled to enter upon any premises of the Buyer or under the control of the Buyer for such purposes.

#### **11 WAIVER**

a) The failure or delay by the Company in exercising any right, power or remedy of the Company under these conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by the Company of any right, power or remedy shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

b) The rights, powers or remedies provided in these conditions are cumulative and not exclusive of any rights, powers and remedies provided by law.

c) Any waiver or breach of, or default under, any of the terms of the Contract shall not be deemed a waiver of any breach or default and shall in no way affect the other terms of the Contract.

#### **12 ENGLISH LAW**

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any terms of these conditions shall be governed by English law. The English courts shall be exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties agree to submit to the jurisdiction.

#### **13 ACCESS**

The Buyer shall permit the Company and its employees or agents access to the premises of the Buyer for the purpose of inspecting and monitoring the manner and performance of the Buyer's obligations under these conditions.

#### **14 GENERAL**

a) If any term in these conditions is held to be invalid this shall not affect the validity of the remaining terms.

b) The headings in these conditions are for reference purposes only and shall not affect the interpretation of these conditions.

c) These conditions contract are to the exclusion of any other terms and conditions (including any terms and conditions) which the Buyer purports to apply under any purchase order, confirmation of order, correspondence or similar document).

d) All orders from the Buyer shall be deemed to be an offer by the Buyer to purchase the Goods and/or the Services subject to the terms of these conditions.

e) No terms or conditions endorsed upon, delivered with or contained in the Buyer's order, specification or similar document will form part of the Contract simply as a result of a reference to such document in the Contract.

f) Any variation to the Contract and any representation about the Goods and/or the Services shall have no effect unless it is expressly agreed in writing by the Company. This shall not exclude the Company's liability for any fraudulent representation. The Buyer must ensure that the terms of its order and any applicable specification are accurate, must notify the Company if the order or specification requires any unusual procedure to be carried out by the Company and must answer all questions reasonably put by the Company in relation to any order and any applicable specification.

#### **15 TERMS OF PAYMENT**

a) Payment becomes due 30 days from the date of the invoice.

b) If payment is not made on the due date the Company shall have the right to charge interest on any amount outstanding at the rate of 3.0% over the prevailing Base Rate of National Westminster Bank for the time being in force, in the form of a separate Debit Note.

c) Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds in its account.