



Terms of Business

All contracts whether written or implied between Clayton Commercials Limited (the Company) and the Customer which expression shall include a finance company in circumstances where payment in respect of the sale or supply of goods or services is to be made by a finance company for the sale or supply of goods or services by the Company shall be subject to these terms and conditions. The Customer accepts that these terms and conditions will govern all relations between the Company and it to the exclusion of any terms and conditions contained in any of the Customer's documents even if the same purport to provide that the Customer's own or some other terms shall prevail and also to the exclusion of all terms, conditions, warranties and representations, written or oral expressed or implied. No employee or other person acting or purporting to act on behalf of the Company is authorised to agree or effect any alterations in these terms or has power to make representations or promises about the conditions of the goods their fitness for purpose or any other matter whatsoever. Without prejudice to the foregoing, these terms and conditions may be added to, altered or excluded by the Company but to be effective any such addition, variation, alteration or exclusion must be in writing and signed by a Director of the Company or the Company Secretary. In any event the Customer shall be deemed to have accepted these conditions unless it notifies the Company in writing at the Company's principal place of business to the contrary with five days of receiving the Company's acceptance of the Customer's order.

(1) ACCEPTANCE OF ORDER

(a) Quotations are supplied only to relating enquiries and must be mentioned upon any order placed on the terms hereof. After the expiration of 30 days quotations must be considered as withdrawn unless otherwise stated therein or has been withdrawn by the Company in writing.

(b) The order of the Customer is an offer subject to these terms and conditions which becomes binding upon the Company posting its written acceptance of the order, together with confirmation by the Company of any quotations provided by the Company to the purchaser in respect of an order by the Customer and without such confirmation no contract shall be concluded.

(c) Codes, standards, regulations and legislation will be compiled with at the date of the Company's quotation. Provided that the Company accepts no such responsibility for such codes, standards, regulations and legislation if failure of the goods results in any way from the failure of chassis parts, equipment or components supplied by the Customer and the Customer shall hold the Company fully indemnified against all costs, claims, damages however arising from such failure.

(2) PRICES

(a) If an order is received for part only of the items quoted the Company reserves the right to vary its prices.

(b) Increased cost of performing the contract including without prejudice the costs of production (materials, hours and wages) and supply will entitle the Company to raise its prices.

(c) The Company may vary its prices to recover costs incurred by -

- (1) Changes in design and specification.
- (2) Delays arising from such changes.
- (3) Other delays created by the Customer.

(d) Prices quoted are "ex works" unless otherwise stated and are exclusive of any Value Added Tax or other sales or service tax chargeable by statute.

(e) The Customer will be charged the prices ruling at the date of invoice/despatch.

(f) The Customer shall not be entitled to make any deduction from the sums due as stated on the Company's invoice in respect of any set off or counterclaim against the Company.

(3) SPECIFICATION AND ALTERATIONS TO SPECIFICATION

Illustrations, drawings, designs, specification and technology furnished by the Company whether in quotation or otherwise shall not, except when the contrary is stipulated in the contract be binding as to detail and it is not warranted that the goods or completed work will exactly correspond to those specified. If it becomes necessary to modify the specification as quoted and/or substitute materials or articles referred to in such designs, illustrations etc. as aforesaid the contract price shall be amended accordingly.

(4) PAYMENT, TITLE AND RISK

(a) Time for payment shall be of the essence in any contract between the Company and the Customer.

(b) Payment in full is due as follows and is to be made at the Company's works at Burscough in sterling:

- (i) on delivery or deemed delivery for tanks, containers and other goods mounted or constructed for attachment to a transport chassis or bogie.
- (ii) within 30 days of delivery or deemed delivery for other manufactured products, components, repair or other works.

(c) Where payment had been arranged by means of a Letter of Credit the Customer will within eight weeks after acceptance of the order by the Company establish a Confirmed Irrevocable Letter of Credit payment in sterling in London by drafts at sight 100% of the invoice value, all bank and other charges being payable by the Customer and the Letter of Credit providing for pro rata payments in case of part deliveries.

(d) Where payment has been arranged by means of Bills of Exchange such Bills will be subject to an interest charge at the rate of 5% above the Company's Bankers' Base Rate from time to time in force all negotiating charges being payable by the Customer.

(e) Where goods are shipped "cash against documents (Foreign Port)" all bank and other charges abroad are payable by the Customer.

(f) All goods shall remain the legal and equitable property of the Company until such time as the Customer has paid the purchase price in full including contracts under which goods are delivered in units. The Customer shall hold the goods as bailee of the Company and shall store them separately so as to be identifiable as the property of the Company.

The Customer shall keep and maintain the goods in good order and condition and be responsible for any loss or damage to the goods howsoever caused. Until such time as

payment in full for the goods has been made by the Customer the Company reserves the right to enter with or without transport upon any premises for the purpose of removing such goods and any new products created therefrom such rights to include severance where necessary from reality. The Customer's interest in the possession of the goods shall automatically cease if he commits an act of bankruptcy or if a company does anything or fails to do anything which would entitle any person to present a petition for winding up. The Company reserves the right to maintain an action for the price of the goods notwithstanding that property may not have passed to the Customer.

(g) Responsibility for the safe custody protection and preservation of goods or materials belonging to the Customer deposited under contract with the Company shall rest with the Customer and no liability shall rest upon the Company for any loss or damage caused to such goods or materials or to any Third Party arising or indirectly by reason of such loss or damage.

(h) Without prejudice to any other legal rights or remedies available to the Company if any sums due to the Company are not paid by the time for payment the Company shall be entitled to charge interest at 5% above the base leading rate for the time being of The Royal Bank of Scotland Plc on the amount outstanding from the date of invoice until payment. Such interest shall become payable immediately upon receipt by the Customer of an invoice for the amount of interest charged.

(i) The Company shall be entitled to withhold delivery of any goods or to cancel forthwith the contract with the Customer if the Customer shall fail to pay to the Company any sum due from him by the time for payment whether such sum is due under the present contract or under any previous contract between the Company and the Customer shall incur no liability in respect of such withholding of delivery or cancellation. Upon such cancellation and without prejudice to any other right that the Company may have the Customer shall be liable to pay damages to the Company for breach of the contract.

(j) All risk in the goods shall pass to the Customer upon delivery or collection in accordance with Clause 5. Any return of the goods or part thereof from the Customer's premises to the Company's premises shall be at the risk of the Company.

(k) Without prejudice to any other legal rights or remedies available to the Company if any sums due to the Company are not paid within fourteen days from the due date for payment the Company shall be entitled to charge agreed liquidated damages of £250 for each week or part of a week of delay in payment.

(5) DELIVERY AND CARRIAGE

(a) Delivery shall be at the Company's works at Burscough unless otherwise agreed. Notification of readiness for delivery of goods or completed work will be passed to the Customer and the same will be deemed delivered and accepted seven days thereafter.

(b) Where a delivery time or period is specified calculations will commence from the Company's acceptance of the order or from such later date when the Customer supplied sufficient information and approvals to enable continuous production to proceed and all times or date for delivery or collection are estimates only.

(c) The Company shall use its reasonable endeavours to meet delivery and collection dates but, unless expressly agreed in writing, the Company shall not be liable for damage or loss

resulting directly or indirectly from its delay or failure to deliver the goods/or to carry out the works and time shall not be of the essence of the contract in this respect.

(d) Where it is agreed in writing that the Company shall be liable to the Customer for delay in delivery or carrying out the works the Customer shall nonetheless have no claim against the Customer for:

- (i) delay in delivery of, or failure to deliver, non-essential parts or components, or
- (ii) delay in delivery of, or failure to deliver, the goods or delay in carrying out the works as a result of strikes, labour disputes or other industrial action emergency conditions fire flood accident or any cause whatsoever beyond the Company's control, whether or not of a similar nature to any of the foregoing. nor shall the Customer have any claim against the Company for failure to deliver the goods or carry out the works within the time specified if the Customer is in breach of any of the terms hereof or in any way delays the execution of works.

(e) If the Customer does not physically take delivery of the goods or completed works within seven days of the Company's notice that the goods or completed works are ready for delivery of such longer period as may have been agreed or where goods are to be shipped does not send the necessary forwarding instructions the Company may store the goods or completed works at the Customer's risk and charge the Customer for such storage.

(f) The Company may make deliveries in one or more instalments and each such instalment shall be deemed to be sold under a separate contract. Any default by the Company in delivering any instalment shall not entitle the Customer to repudiate the contract with regard to future instalments remaining deliverable.

(g) If the Customer makes default in taking delivery of or paying for any instalment the Company will be relieved from all obligation to make any further deliveries but without prejudice to its right to recover damages for breach of contract.

(h) Where the Company has agreed to ship goods outside the United Kingdom the Company will not be responsible for loss or damage or deterioration from whatsoever cause arising to the goods beyond the point of shipment and the price quoted by the Company is f.o.b. UK port, the term f.o.b. being constituted in accordance with the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce as in force at date when the contract is made but subject to anything to the contrary contained in these conditions of sale. The Company shall not be obliged to give notice under Section 32 (3) of the Sale of Goods Act, 1979. The Customer shall be responsible for paying all Customs and other duties charges and taxes for complying with all regulations governing admission of goods into the Country of destination and for obtaining all such foreign licences as may be necessary to import the goods. The Company will take out consular documents on behalf of the Customer who must state how the goods are to be dedicated but if the Customer does not furnish the necessary instructions the goods will be declared by the Company as it shall deem fit, the Customer being responsible for any fines or other charges imposed as a result of errors or incorrect declarations. The cost of taking out consular documents shall be borne by the Customer.

(i) In any case where the Company has agreed to deliver goods or completed works to the Customer's works the Company shall be responsible for the replacement of goods which are not delivered or damaged during transit. The Company shall not be liable to compensate the Customer or any Third Party claiming through the Customer for any further or consequential loss by reason of the loss or damage. The Company's liability as

aforesaid is in every case contingent upon the Customer giving to the Company and to the carriers due notice in writing within SEVEN DAYS of receipt by the Customer and within FOURTEEN DAYS from the date on which in the ordinary course of events the goods should have been delivered in the case of non delivery.

(6) DETERMINATION, LIEN AND DAMAGES

(a) Without prejudice to any rights of the Company by law stature or under these conditions the Company may determine the contract if:

- (i) the Customer shall fail to take delivery of the goods or completed works when required so to do, or shall after due warning commit or continue any serious breach of its obligations under the contract, or
- (ii) any distress execution or other legal process is levied upon any of the Customer's assets, or
- (iii) the Customer shall make any arrangement or composition with his or its creditors, commit any act of bankruptcy or (being a corporation) shall enter into liquidation or have a winding-up petition presented against it or call a meeting of its creditors or suffer the appointment of a receiver in respect of any parts of its undertaking or assets.

(b) Without prejudice to any rights of the Company by law stature or under these conditions the Company shall in the event of determination of the contract for any reason be entitled to recover from the Customer:

- (i) the contract value of any work completed or goods manufactured at the date of termination.
- (ii) the value of any work begun or goods begun to be manufactured but not completed at such date, such value to include the cost of materials, labour, overheads and a fair profit as determined by the Company's auditors whose decision shall be conclusive and binding on the Company and the Customer, and
- (iii) the cost of goods and materials ordered by the Company pursuant to the contract for which the Company has to pay.

(c) The Company shall have, in addition to any other remedy, a general lien on all goods and materials of the Customer which may be in the possession of the Company (although such goods or some of them may have been paid for) for all monies due to the Company by the Customer under the contract and may at its discretion sell such goods or materials and apply any monies received on such sale or sales in reduction of monies due to the Company by the Customer.

(7) INSPECTION AND TESTS

(a) The Customer may inspect the goods or completed works before delivery. If asked for by the Customer on or before the placing of an order, special tests will be allowed at the Customer's expense as convenient during normal working hours at the Company's works before acceptance.

(b) Unless special tests shall have been requested by the Purchaser in accordance with sub-clause (a) hereof the goods or completed works will be inspected and where practicable submitted to the Company's standard tests at the Company's works before delivery.

(c) If during such tests the goods or completed works shall fail to operate efficiently by reason only of the existence of defects therein arising from faulty or improper material or workmanship the Customer shall be entitled to refuse to accept the goods or completed works until such defects shall have been remedied but the Customer shall not have the right to determine the contract by reason only of such failure to work efficiently Provided that the Customer's right of rejection shall not apply in the event that the failure of the goods or completed works to operate efficiently shall have been caused in any way whether directly by the incorporation therein or fitment thereto of any items of equipment not manufactured by the Company and incorporated in the goods or completed works at the express direction of the Customer (not having been included in the Company's initial quotation to the Customer).

(8) ACCEPTANCE AND CLAIMS

(a) Subject to paragraph (c) below the Customer shall carry out a thorough inspection of the goods immediately on the delivery or collection thereof and shall within seven working days of

delivery or collection give notice in writing to the Company of any shortage in the goods delivered or collected which a reasonable examination would have revealed or of any matter or thing by reason whereof he alleges that the goods are not in accordance with the order.

(b) If the Customer shall fail to give notice in accordance with (a) above the goods shall be deemed in all respects to be in accordance with the order and the Customer shall be bound to accept and pay for the same accordingly.

(c) The Company shall not be under any liability because the goods could not be examined on delivery or collection unless the carriers note or such other note as appropriate is marked "not examined" and the seven working day limit will the apply from the date on which the Customer has had the first reasonable opportunity to examine them.

(9) WARRANTY AND LIMITATION OF LIABILITY

(a) Details of the Company's warranty and its liabilities in respect of the sale or supply of goods or services are set out on the reverse side of the Company's specification which is supplied at the same time as the Company submits its quotation to the Customer. The Company's warranty and the details of its liabilities in respect of the sale or supply of goods or services are to be read in conjunction with and form part of these terms and conditions. In the event of the Company's specification not accompanying the Company's quotation, a copy will be supplied to the Customer upon request.

(10) PATENTS, TRADE MARKS, REGISTERED AND COPYRIGHT

(a) Provided that all goods sold under the contract and all parts thereof shall have been used only in a manner or for a purpose reasonably to be inferred by the Company from the nature of the goods or disclosed to the Company in writing prior to the making of the contract, if any claim or action is made or brought against the Customer in respect of infringement of any Patent Trade Mark or Registered Design arising from the manufacture or sale by the Company of the goods sold under the contract the Customer shall forthwith give notice to the Company of such claim or action and the Company shall be at liberty at its own expense but with the Customer's assistance if required and in the name of the

Customer to contest such claim or action or conduct any negotiations for the settlement thereof. The Customer shall not make any admission which might be prejudicial to any such negotiation or litigation.

(b) Subject to the proviso contained in sub-clause (a) hereof the Company shall indemnify the Customer in respect of any such claim or action mentioned therein.

(c) The Customer shall indemnify the Company against all claims and actions made or brought against the Company for infringement of any Patent Trade Mark or Registered Design where goods are manufactured and supplied or work is done to the Customer's designs and/or specifications.

(d) The Company reserves the copyright for all its drawings, prints, plans and other data.

(e) Any invention disclosure or information made received or acquired by the Company in the performance of any order shall remain its property.

(11) DRAWINGS

All drawings, models, descriptive matter or data are supplied on terms that they remain the Company's property and are to be returned to the Company on demand. The Customer shall not copy, publish or communicate them or particulars of any goods supplied by the Company to any

other person whatsoever without the Company's permission in writing. All such drawings, models, descriptive matter or data whatsoever, including advertising material are intended to present a general idea of the goods in question and must not be taken as forming part of any contract.

(12) SUB-CONTRACTING

The Company reserves the right to sub-contract the fulfilment of the order or any part thereof or any other works it is obliged to carry out under the contract.

(13) HEALTH AND SAFETY

The Customer undertakes for the purposes of the Health and Safety at Work Act 1974 that it will take all necessary steps to ensure, so far as is reasonably practicable, that any goods or completed works supplied to it under the contract will be safe and without risk to health when properly used. This obligation includes (without limitation) providing all necessary guarding, complying with all the requirements of the local Factory Inspectorate, keeping the goods or completed works in good operating condition, maintaining and using the goods or completed works within their normal capacity and in accordance with any relevant operating manual and ensuring that only properly qualified personnel who have been conversant with the terms of such operating manual, are permitted to use the goods or completed works.

(14) CONDITIONS REASONABLE IN THE CIRCUMSTANCES

(a) The Customer warrants that these terms and conditions are freely accepted on its part in knowledge and on the basis that:

(i) the price charged would be higher if the Company were under any liability other than as set out in these terms and conditions.

(ii) any liability or potential liability upon the Company other than as set out in these terms and conditions would be disproportionate to the price to be paid in respect of the sale or supply of goods and/or services.

(15) APPLICABLE LAW

The proper law of the contract is English Law and the contract shall be construed and shall take effect in all respects in accordance with English Law and shall be subject to the jurisdiction of the English courts.