

**REVISION 1 , 02-10-2019**

**Terms and Conditions for the Sale of Goods**

**1. INTERPRETATION**

**1.1 Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) between the business hours of 0900 - 1700.

**Conditions:** the terms and conditions set out in this document [as amended from time to time in accordance with clause 14.6].

**Contract:** the contract between Us and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the business only customer is the person or firm who purchases the Goods from Us.

**Force Majeure Event:** has the meaning given in clause 13.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, as set out [in the Customer's purchase order form **OR** in the Customer's written acceptance of Our Quotation **OR** in the Customer's purchase order form, the Customer's written acceptance of Our Quotation, or overleaf, as the case may be].

**New:** manufactured by Meltech

**Original:** not manufactured by Meltech

**Quotation:** any specification for the Goods, including any related plans and drawings, that is agreed [in writing] by the Customer and Us.

**Second hand Rebuilt:** not originally manufactured by Us but since may have been modified either through additional parts, servicing and generally improving the Original goods

**Second hand:** Goods that have come to us for resale or may have been purchased by us for resale , Meltech has not modified or rebuilt these Goods and is reselling or merely acting as an agent in reselling such Goods and therefore 'sold as seen'

**We Us Our:** Meltech Limited of 31 High street, Haverhill, Suffolk CB9 8AD (registered in England and Wales with company number 03780047)

**1.2 Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes [and e-mails].

## **2. BASIS OF CONTRACT**

- 2.1 In placing any order with Us, you warrant that you are not a consumer and that you trade with Us as a business Customer. If that is not the case, you must notify Us in writing ahead of Our accepting your order as different terms will apply to your contract with Us
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer ("Specification") are complete and accurate. A failure by the Customer to supply information requested by Us to enable Us to complete the Order will delay the completion of the Order
- 2.4 The Order shall only be deemed to be accepted when We issue a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Us which is not set out in the Contract.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by Us and any [descriptions or] illustrations contained in Our catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 A quotation for the Goods given by Us shall not constitute an offer. A quotation shall only be valid for a period of [30] Business Days from its date of issue.

## **3. GOODS**

- 3.1 The Goods are described on Our website or the Quotation
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification the Customer shall indemnify Us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Us in connection with any claim made against Us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Our use of the Quotation. This clause 3.2 shall survive termination of the Contract.
- 3.3 We reserve the right to amend the Quotation if required by any applicable statutory or regulatory requirements.

## **4. DELIVERY**

- 4.1 We shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after We notify the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location

- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If We fail to deliver the Goods due to circumstances under Our exclusive control, then Our total liability to the Customer shall be limited to the value of the Contract excluding VAT, duties, and any other charges. We shall have no liability to the Customer for any failure to deliver the Goods where such failure is outside of Our control including where the failure is caused by a Force Majeure Event or the Customer's failure to provide Us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 Under no circumstances will We be liable to the Customer for any indirect or consequential loss including, but not limited to, loss of profit, loss of business, interruption to business, or for any loss of business opportunity, as a result of any delay or failure in Us delivering the Goods.
- 4.6 If the Customer fails to take delivery of the Goods within 20 Business Days of Us notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Our failure to comply with Our obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the first Business Day after the day on which We notified the Customer that the Goods were ready; and
  - (b) We shall store the Goods until delivery takes place, and charge the Customer for all storage costs, insurance and related costs and expenses.
- 4.7 If the Customer does not take delivery of the Goods after 20 Business Days after the day on which We notified the Customer that the Goods were ready for delivery, then We may resell or otherwise dispose of part or all of the Goods. We will then deduct the relevant storage and associated charges, the costs of selling or otherwise disposing of the Goods and set-off any sums due to Us from the Customer under the Contract, or otherwise due to Us from the Customer, from the proceeds of selling the Goods. When such sums due to Us are paid, We will account to the Customer for any excess or charge the Customer for any shortfall below the price of the Goods and such payment from the Customer will be due immediately.
- 4.8 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. QUALITY**

- 5.1 We warrant that on delivery of New Goods where we have confirmed that a warranty is offered and the Customer has paid all sums due to Us for a period of 12 months (**unless otherwise agreed in writing**), the Goods shall:
- (a) conform with the Quotation;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be fit for any purpose held out by Us

such Warranty period will commence on the earliest of the date of commissioning or 60 days after completion of delivery, whichever the sooner.

- 5.2 We warrant that on delivery of Second hand Rebuilt Goods where we have confirmed that a warranty is offered and the Customer has paid all sums due to Us for a period of 3 months (**unless otherwise agreed in writing**), the Goods shall:

- (a) conform with the Quotation;
- (b) be free from material defects in design, material and workmanship; and
- (c) be fit for any purpose held out by Us

such Warranty period will commence on the earliest of the date of commissioning or 60 days after completion of delivery, whichever the sooner.

### 5.3 Subject to clause 5.4, if:

- (a) the Customer gives notice in writing to Us within 7 days of discovering that some or all of the Goods do not comply with the appropriate warranty set out in clause 5.1 or 5.2; and
- (b) We are to be given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Us) returns such Goods to Our place of business at the Customer's cost; and
- (d) the Customer has attempted to locate and remedy the faulty part. If the Customer is unable to do so then:
  - (i) if a faulty part requires the on-site services of a service engineer, we will charge for these services to cover the time and cost of travel, attendance and living expenses of the service engineer.
  - (ii) If We exercise Our option to replace the faulty part, the Customer must return the part, freight prepaid to Us within 30 days of being notified of Our decision to replace. The replacement will be free ex works.
  - (iii) This warranty applies solely to non-consumable parts within the induction power supply. The warranty does not apply to perishable items which include (but are not limited to) IGBT's (Insulated Gate Bipolar Transistors), touch screen HMI, thyristors, hoses, gaskets, power leads, diodes, fuses, bulbs, water flow pressure and conductivity sensors, sacrificial anodes, filters and internal pumps.
  - (iv) This warranty is given in place of all other conditions and warranties, express or implied, arising by common law or statute.
  - (v) No warranty is offered on Second Hand products unless otherwise specified in the quotation
  - (vi) This warranty will not apply if the furnace is repaired or serviced by anyone other than Us or Our appointed service contractors.
  - (vii) In the event of a fault in manufacture becoming apparent in goods or parts thereof which have not been manufactured by Us, liability shall be limited to the amount or other remedy recoverable by Us from the manufacturers, whether or not the manufacturers' liability shall be made known to the Customer. Before We seek to enforce or recover any remedy from the manufacturer the Customer must deliver the faulty part, freight prepaid to Us.
  - (viii) Where items or parts thereof are replaced by Us, the replacement item will be an item of the equivalent Quotation (and not necessarily the same make) as that originally supplied. The guarantee in respect of such items or parts replaced shall not extend beyond the period of the original guarantee.
  - (vii) No responsibility is accepted by Us for the failure to comply with any statutory or other regulations or local bye-laws affecting siting, operation or construction of any goods or materials supplied by Us, or

for obtaining any consents necessary in respect thereof unless clearly specified by the Customer in writing and agreed to in writing by Us.

- (viii) All items supplied will comply with the design and safety standards and requirements relevant and applicable at the time of manufacture. CE certification is applicable to items manufactured from January 1993, and evidence of such certification for furnaces will be available from the original equipment manufacturer. Should the Customer request a Certificate of Incorporation, then these can be offered subject to payment of an extra fee

We shall, at Our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.4 We shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 or 5.2 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;
  - (b) the defect arises due to mishandling, inadequate electrical/water supply, incorrect installation by others, metal ingress, lining failure, incorrect storage, fair wear and tear, or abuse
  - (c) the defect arises because the Customer failed to follow Our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (d) the defect arises as a result of Us following any drawing, design or Quotation supplied by the Customer;
  - (e) the Customer alters or repairs such Goods without the written consent of Us;
  - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (g) the Goods differ from the Quotation as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this clause 5, We shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 or 5.2.
- 5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7 These Conditions shall apply to any repaired or replacement Goods supplied by Us.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer when the Goods leave Our premises (or other storage location) for delivery to the Customer
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Our bailee;
  - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Our property;

- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify Us immediately if it becomes subject to any of the events listed in clause 8.2; and
- (f) give Us such information relating to the Goods as We may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or We reasonably believe that any such event is about to happen and notify the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy We may have, We may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. PRICE AND PAYMENT**

7.1 The price and method of Payment of the Goods unless otherwise agreed will be set out in the Customer's Order or Quotation and all payments made by way of deposit are non-returnable in the event of cancellation of the Order by the Customer

7.2 We may, by giving notice to the Customer at any time up to the date of final invoicing, increase the price of the Goods by a reasonable amount reflecting any increase in the cost of the Goods that is due to:

- (a) any increases in material or labour costs;
- (b) any factor beyond Our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (c) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Quotation; or
- (d) any delay caused by any instructions of the Customer or failure of the Customer to give Us adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Us, pay to Us such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 For export, it is the Customer's responsibility to pay (including but not limited to) any domestic charges, taxes, levies and provide Us with a valid VAT number and other such information which may be required

7.6 We may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.7 The Customer shall pay the invoice in full and in cleared funds within 30 Business Days of the date of the invoice or as otherwise confirmed within the Contract. Payment shall be made to the bank account nominated in writing by Us. Time of payment is of the essence.

7.8 If the Customer fails to make any payment due to Us under the Contract by the due date for payment (**due date**), then the Customer shall:

- (a) pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- (b) be subject to administration charges under the Late Payment of Commercial Debts legislation

7.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Us in order to justify withholding payment of any such amount in whole or in part. We may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Us to the Customer.

## **8. CUSTOMER'S INSOLVENCY OR INCAPACITY**

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or We reasonably believe that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Us, We may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Us without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer];
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 9. LIMITATION OF LIABILITY

**WARNING you are strongly advised to read this clause.**

9.1 Nothing in these Conditions shall limit or exclude Our liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or

9.2 Subject to clause 9.1:

- (a) We shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Our total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

9.3 the Customer agrees that apart from the terms contained herein, or in the quotation, or in any document expressly stipulated therein to form part of the Contract and to be outside the provisions of this clause, no statement or representation has been made by Us relating to the items supplied, or if any such statements or representations have been made, the Customer warrants that he understood them to be statements of opinion only, and did not rely upon them.

## 10. DATA/DOCUMENTATION

10.1 Illustrations, weights, measures, temperatures, capacities, performance schedules and output figures are statements of opinion only and are provided for information only and do not form part of the Contract.



10.2 We accept no responsibility for the accuracy of information or drawings supplied by the Customer

## 11. SUBCONTRACTORS

11.1 The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under these Conditions.

## 12. WORK ON SITE

12.1 Customers entering into transactions of any kind with Us expressly warrant that they are either the owners or the authorised agents of the owners of the Goods or property being the subject matter of the transaction and are authorised to accept and do accept these Conditions for themselves and all other interested parties. The Customer shall indemnify and keep Us indemnified against all claims or demands whatsoever by whomsoever made in excess of the liability of Us under these Conditions.

12.2 The Customer shall provide:

- (a) A clear and level site with suitable ease of access and sufficient space adjacent for the placing of material, and shall supply necessary foundations and temporary cover over the site to protect the plant and construction work effectively from the elements.
- (b) Water, light, compressed air, power and lifting tackle necessary in connection with the installation, and shall undertake all filling-in or making good of floors, roofs, provision of cover plates over inspection pits, and any other civil engineering work including removal of rubbish. All service connections, permanent and temporary for fuel, air, water and drains, both to the main plant and auxiliary equipment, shall be the responsibility of the Customer.
- (c) Where installation is delayed through no fault of Ours, We have the right to increase its charges by a reasonable amount to be stipulated by Us.

## 13. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, terrorist attack or threat of a terrorist attack riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## 14. GENERAL

### 14.1 Assignment and subcontracting.

- (a) We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Us.

#### 14.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 14.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**14.4 Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**14.5 Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

**14.6 Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Us.

**14.7 Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.