



COCHRAN

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MODEL FORM OF CONDITIONS OF SALE (UK)

FOR USE IN CONNECTION WITH THE SUPPLY OF BOILER PLANT, ANCILLARY EQUIPMENT, SPARE PARTS AND RELATED SITE WORK

1. GENERAL

- (i) The acceptance of this tender includes the acceptance of the following terms and conditions, and no alteration, variation, departure therefrom or addition thereto shall affect or be binding upon us, unless agreed in writing.
- (ii) Acceptance of the tender must be accompanied by sufficient information to enable us to proceed with the order (providing that in our quotation we have indicated the extent of information required) forthwith, otherwise we shall be at liberty to amend the tender prices to cover any increase in cost which has taken place after acceptance.
- (iii) In cases where a tender has not been given it is nevertheless to be understood that the acceptance of any order by us is subject to the said terms and conditions.
- (iv) In the event of purchaser's order containing conditions it is understood that such conditions shall not govern this contract in any way and that the order is accepted subject only to the terms and conditions mentioned herein or as may be agreed between the parties in writing.
- (v) We reserve the right to sub-contract the whole or part of manufacture or site erection work.
- (vi) Unless previously withdrawn, the tender is open for acceptance within the period stated therein or, when no period is so stated, within thirty days only after its date.
- (vii) A person who is not a party to this Agreement has no right to enforce any term of this Agreement.

2. CANCELLATION

Orders received and accepted by us shall not be subject to cancellation either wholly or partially without our consent in writing. If such consent is given we reserve the right to make a cancellation charge where it is in our opinion fair, reasonable or necessary to do so.

3. INSPECTION

All boilers and plant manufactured by us requiring a hydraulic test are carefully inspected and tested by our own staff before despatch and except in the case of stock boilers already tested and finished the final test and examination at our works may, if so desired, be made in the presence of the purchaser's representative without extra charge therefor provided that such representative attends at our works for this purpose within a period of seven days after we have notified the purchaser that we are ready. In the event of plate examinations or examination of the boiler during construction by an external authority being required, these will be charged for extra unless such examinations have been definitely specified and included in the price.

In any case it is to be clearly understood that these tests and examinations are not to delay the progress of work in our shops.

4. STORAGE

If we do not receive forwarding instructions with the purchaser's order or within 7 days of notification to the purchaser that the boiler and plant are ready for delivery:

- (i) We shall remove the boiler and/or equipment to storage until such times as the purchaser can accept delivery and charge to the purchaser as an extra the nett costs of transporting and storing the boiler/and or equipment.
- (ii) Alternatively the purchaser may take the boiler and/or equipment from us it nevertheless remaining our property and make his own arrangements for storage, at his own expense, in wind and watertight premises. The cost to us of remedying any damage to plant stored by the purchaser will be payable by the purchaser.
- (iii) The goods shall be deemed to have been despatched 7 days after we shall have notified the purchaser that the boiler is ready for delivery and then Clause 10 (Terms of Payment) shall operate in respect of such goods accordingly.

5. DELIVERY, ERECTION AND COMPLETION

- (i) Delivery to a purchaser within the United Kingdom will, unless otherwise stated, be made at the purchaser's premises on railway truck, by road vehicle, post or courier at our option.
- (ii) Where delivery involves carriage by road vehicle or where seating and/or erection of the boiler(s), accessories or plant or other site work is included in the contract, it is to be understood (unless agreed otherwise in writing):
 - (a) that the site is accessible, free from obstruction, and at ground level:
 - (b) that the purchaser is to carry out any structural or other alterations and any protection, whether temporary or permanent, to the proposed route (other than main highways and those under the control of a highway authority) to enable the boiler(s) and plant to be delivered to and be placed upon their seats, prepared by purchaser, without causing damage, and is to indemnify us in respect of any damage caused by any breach of such obligations.
- (iii) If any extra cost is incurred by us due to abnormal or unusual circumstances affecting transport, delivery, erection or other site work, not communicated to us before we tendered or accepted the order, this is to be chargeable as an extra to contract.
- (iv) Where erection or other site work is included, we quote on the basis of suitable lodging accommodation at rates which are covered by the normal allowances for outworkers being available in close proximity to the site and also that we can procure the necessary rough labour at site.

If, however, such is not the case and we have to send labourers from our own works or elsewhere, we shall require to charge as an extra the additional cost incurred, plus travelling expenses and subsistence allowance and in addition the cost of transport and travelling time between the nearest available lodging accommodation and site, both for skilled and unskilled labour.

Where we include for erection or other site work and unless specifically mentioned otherwise in our tender, we allow for work in normal hours and do not include for any overtime or Saturday or Sunday work. If, therefore, we are required to work on Saturdays or Sundays, or any additional time over normal hours per week, this will be chargeable as extra to contract at the appropriate overtime rates.

- (v) Appropriate power points shall be provided and supply of power shall be made available free of charge by the purchaser.
- (vi) It is to be understood that where progress of the work is delayed on account of inclement weather, frost or other causes outside our control, we are to be allowed an extension of time for completing the work corresponding to the period of delay and that we are to be compensated for any extra charges incurred through such delay and through the negligence of the purchaser or his agents.
- (vii) In cases where executed work is exposed, we do not accept any liability for damage done by inclement weather, frost or other causes outside our control.
- (viii) The purchaser is to obtain any necessary sanction of the Local or other Authorities for the work to be carried out, give all required notices and pay all fees in connection therewith unless included in the specification and tender.
- (ix) Where we are, or may be, liable for any loss of or damage to goods or materials in transit in the United Kingdom, written notice of loss within 14 days of advice of despatch or in the case of damage within 3 days of receipt, both to ourselves and to the Railway Company and/or Carrier, shall be a condition precedent to any such liability.
- (x) If we, our agent or sub-contractors, are on the site for the purposes of erecting and/or commissioning the plant under this clause and/or under Clause 7 or for the purpose of remedying a defect under Clause 9 or for any other purpose of the contract, whether before or after the goods have become the property of the purchaser, we will indemnify the purchaser against damage or injury to his property or person or that of others to the extent directly caused by the negligence of ourselves, our sub-contractors or agents, but not otherwise, by making good such damage to property or compensating personal injury, subject to the provisions of clause 12 below.
- (xi) Where a charge is made for packing cases or other containers for goods delivered in the United Kingdom, this charge will be refunded provided the cases or other containers are returned at purchaser's expense and in good condition within one month of receipt.
- (xii) Where a time for delivery and/or completion is indicated, every reasonable endeavour will be made to adhere thereto but no liability shall attach to us for delay in delivery or completion.
- (xiii) Any time named for delivery unless otherwise specified by us shall date from receipt of final particulars and approval of drawings.

- (xiv) Equipment will only become the property of the purchaser on payment in full of the contract price and until then nameplates if present will not be removed or obliterated. When equipment is delivered to the place designated in the contract and until it becomes the property of the purchaser he will pay for all loss or damage to the equipment however caused, save any such loss or damage arising from our default or that of our servant or agents and whether or not such loss or damage arises from this fault.

6. EXCAVATIONS, CONCRETING, BRICKWORK, CHIMNEYS AND OTHER SITE WORK

- (i) Where we undertake the construction of such work it is understood that the site is in all respects suitable and that unless otherwise specified our work is to commence from the top of the purchaser's concrete foundations and the purchaser takes all responsibility for such foundations being suitable for the purpose. Also that the site will be left clear and ready for us to commence our work, purchasers to maintain a good hard road to the site and to supply us with free use of water and lighting laid on to site and allot us sufficient accessible space for storing and stacking of our plant and materials in close proximity to the site.
- (ii) In cases where we include for excavating and/or concreting we do so on the basis of our not having to contend with either rock, stone, running sand, brickwork, water, oil or other obstruction and that the debris can be removed to a suitable tip within one barrow run. Any pumping, cutting through roofs, underpinning, shoring up, etc., to be chargeable as an extra to contract. Adequate protection and watching of the excavation to be the responsibility of the purchaser. If, after excavating to the depths specified and/or shown on drawings, the ground is not suitable for carrying the superimposed loads, any additional excavating and/or piling necessary to be charged as an extra to contract. Any diverting, altering or grubbing up of the underground drains, sewers or services also to be charged as an extra to contract.
- (iii) We do not accept any responsibility for settlement, cracking, springing or bulging through any cause whatsoever.
- (iv) Samples of materials submitted are indicative only of the bulk of supplies and the latter are not guaranteed to be exactly similar to sample. Purchaser may not subsequently reject or hold up the work on that account or claim alteration or rectification.

7. COMMISSIONING, TESTING AND OTHER ENGINEERING SERVICES

When our price includes for commissioning, testing and (or) other engineering services it must be understood that everything must be ready for our engineer to proceed with his work immediately upon arrival at the site. If he is delayed or has to make more than one visit due to circumstances outside our control, the cost of the extra time or visit will be payable by the purchaser. The purchaser is to provide all necessary lighting, power, oil, gas or any other fuel and water supplies for commissioning and testing, free of charge to us.

8. PERFORMANCE

In view of the numerous factors outside our control in respect of the performance of boilers and plant, no liability is accepted for the performance, efficiency or fitness for any particular purpose of the boiler or plant unless a definite guarantee in writing has been arranged on an agreed bonus and penalty basis, in which case the remedy shall be liquidated damages. In the event of the initial performance failing to fulfil the terms of such guarantee, a reasonable time and opportunity to make alterations or to comply with the terms of the guarantee shall be given to us before the remedy becomes operative. The purchaser is responsible for stipulating correctly the capacity and performance required from the equipment.

9. GUARANTEES AND LIABILITIES

- (i) We undertake to make good any defect in the equipment supplied, or the works executed, under the contract, which arises solely from faulty material or workmanship or any damage to such equipment or work arising from such defect which becomes apparent during the period of twelve months commencing in the case of the equipment from the date of despatch (as defined in paragraph (ii) of this clause) of the equipment and in the case of excavation, concreting, brickwork, chimney and other site work, from the date on which we notify the purchaser that such works are completed; and, allowing for fair wear and tear, to provide without charge to the purchaser replacement parts or materials required for this purpose; provided that:
 - (a) notice in writing is given of any such defect or damage within 14 days of it becoming apparent and that no repair or replacement is made or attempted other than by us, or with our express written consent:
 - (b) defective or damaged parts are promptly returned to our works at the purchaser's expense and that they thereafter become our property:
 - (c) all materials, fitting and components supplied by sub-contractors shall carry the supplier's guarantee, beyond which we accept no responsibility:

- (d) our obligations hereunder are subject to the purchaser's complete compliance with terms of payment and all other terms and conditions contained herein.
- (ii) For the purpose of paragraph (i) of this clause the date of despatch shall be the date when the equipment leaves our works, or 14 days after we have notified the purchaser that the equipment is ready for despatch, whichever shall be the earlier.
- (iii) If installation and (or) commissioning is delayed beyond 14 days from the date of despatch (as determined in (ii) above), then the guarantee period will end twelve months after a date midway between the date of despatch (as determined in (ii) above) and the date of installation and (or) commissioning.
- (iv) The guarantees incorporated in Clause (i) and (iii) hereof shall remain in force provided the equipment supplied is suitably protected from theft, mechanical and electrical damage and where appropriate preserved in accordance with the current edition of The Water Treatment Booklet supplied as part of the Operating and Maintenance Manual.
- (v) Our liability under this clause shall be in lieu of any condition or warranty whether expressed or implied by law as to the quality or fitness for any particular purpose of any portion of the boiler or plant. Save as in this clause expressed neither ourselves nor our sub-contractors, servants or agents shall be liable whether in contract, tort, or otherwise howsoever, in respect of defects in or damage to such portion or for injury, damage or loss whatsoever kind attributable to such defects or damage. For the purpose of this sub-clause we contract on our own behalf and on behalf of and as trustees for our sub-contractors, servants and agents. Nothing in this clause shall affect our liability for death or personal injury caused by negligence on our part and for fraud which liability shall not be limited as aforesaid or at all.

10. TERMS OF PAYMENT

All payments are to be made in full, no discounts or deductions on the contract price once it is agreed whatsoever being allowed. We reserve the right to charge interest of 2 per cent above current base rate with a minimum of 5 per cent per annum upon all overdue accounts. The times of payment in this condition hereafter referred to are to be deemed to be of the essence of the contract.

BOILERS AND PLANT

(excluding Building Work and/or Brickwork)

- (a) 35% cash with order
- (b) 30% on successful completion of boiler hydraulic test
- (c) 30% when ready for, and before despatch
- (d) Final 5% on completion of commissioning, or two months after due date of payment of 30% under (c), whichever is the sooner.

BUILDING WORK AND/OR BRICKWORK

95% of the value of the work executed and/or materials and goods delivered upon the site by the end of each month shall become due and payable on the 15th of the month following and the balance of the purchase price shall become due and payable one month after completion.

SPARE PARTS AND RELATED SERVICES

100% cash with order

11. ILLUSTRATIONS, ETC.

- (a) All descriptive and forwarding specifications, drawings and particulars of dimensions submitted with the tender are approximate only and the descriptions and illustrations contained in catalogues, price lists and other advertisement matter are intended merely to present a general idea of the equipment described therein and none of those shall form part of the contract.
- (b) All drawings and designs and other information submitted in connection with the tender or any contracts arising out of it will remain the vendor's property and be subject to recall at any time; they are submitted in strict confidence and for the sole purposes of the tender, the contract and subsequent maintenance of the equipment, none of the drawings or designs or written matter, nor any of the information contained in them or otherwise supplied may be loaned, copied or otherwise be communicated to any third party, nor may any use be made of them for any purpose whatsoever except for the purposes of the tender, the contract and subsequent day to day maintenance of the equipment.

12. LIMIT OF LIABILITY

- (i) We shall not be liable in any circumstances whether by way of indemnity, tort (particularly negligence), breach of contract or otherwise howsoever for loss of use of the Boiler plant or ancillary equipment, loss of production, loss of profit(s), loss of contract(s), increased costs and expenses, wasted expenditure and any indirect or consequential losses whatsoever and howsoever caused.
- (ii) Unless in accordance with clause 12(iii) below our maximum aggregate liability arising out of or in connection with this contract shall not exceed the payment received by us under this contract.
- (iii) Nothing in this contract shall exclude or limit our liability for death or personal injury caused by our negligence; fraud and any other liability, which cannot be lawfully excluded or limited.

13. SPECIAL RISKS

We are not responsible for any consequences whether direct or indirect of War, Invasion, Act of Foreign Enemy, Hostilities (whether war be declared or not), Civil War, Rebellion, Revolution, Insurrection or Military or Usurped Power, Riot, Strike, Lock-out or Civil Commotion.

14. LEGAL CONSTRUCTION AND INTERPRETATION

- (i) Unless both parties are domiciled in Scotland, in which case the contract and these conditions shall be subject to Scottish Law, the contract and these conditions shall in all respects be subject to English Law.
- (ii) The titles of these conditions shall not affect their legal construction.
- (iii) The expression "purchaser" wherever used in these conditions includes any person for whom work is undertaken or to whom materials are supplied and the expression "purchase price" wherever used in these conditions shall be construed accordingly.