

TERMS AND CONDITIONS OF CONTRACT

1. DEFINITIONS

- (a) "Company" means CPS Manufacturing Co.
- (b) "Customer" means any person, firm, company or other legal person who enter into a contract with the Company to undertake the Works.
- (a) "Works" means the Goods and/or services (excluding Equipment) provided by the Company as identified overleaf.
- (b) "Goods" means the product designed, supplied and manufactured by the Company including all components and materials forming part of or incorporated therein.
- (c) "Quotation" means the quote issued to the Customer by the Company in any appropriate format.
- (d) "The Site" means the location or locations stated overleaf or in other relevant documentation forming part of the Contract.
- (e) "Contract Sum" means the prices stated overleaf or such other sum or sums that shall become due and payable by the Customer pursuant to the Contract.
- (f) "Equipment" means any plant or equipment hired by the Customer from the Company as stated overleaf.

2. FORMATION

- (a) The Company entering into contract with the Customer is conditional upon acceptance by the Customer of these Terms and Conditions which shall in relating to the Works, override all others terms and conditions inconsistent herewith, whether express, implied or otherwise, including any terms and conditions which the customer purports to apply under any purchase order, confirmation of order, specification or other document.

3. CONTRACT SUM

- (a) Unless otherwise specified, the Contract Sum is exclusive of all delivery charges, unloading, protection, insurance costs, handling charges, packaging charges, and charges resulting from changes in taxes, duties or similar levies including but not limited to Value Added Tax. All such charges will be paid by the Customer in addition to the Contract Sum or part thereof and at the time or times payment of the Contract Sum is made pursuant to the Contract unless otherwise agreed in writing.

4. DELIVERY

- (a) Time of delivery is not of the essence of the Contract, and the Customer shall not be entitled to refuse to accept late delivery as a breach of contract.
- (b) The Company shall not be liable for any losses, costs, damages or expenses (including loss profits and damage to third parties) suffered by the Customer or any other person or company howsoever arising directly or indirectly out of any failure to meet any delivery date.
- (c) The Customer shall ensure that the Company has access to the Site to take measurements before any delivery date can be agreed. Subject to the aforementioned access any time quoted for delivery shall only commence when the initial payment, and drawings and/or other details have been received by the Company.
- (d) The Company are not responsible for any delay caused by strikes, lockouts, Acts of God (force majeure), riot, civil commotion, terrorism, Government regulation, fire, breakdown of plant, equipment or transport, or any act outside Company control.
- (b) Delivery shall take place and risk shall pass upon the earliest of the following:-
 - (i) the Company handing the Goods or Equipment to the Customer or its agent at the Company's premises or
 - (ii) in the circumstance where Goods or Equipment are to be delivered by Company upon the delivery vehicle entering the Site.
- (iii) Provided always that in respect of 4(c) above the Company's sole liability for loss or damage in transit shall be limited to the replacement or repair of the Goods or Equipment (at Company's option) and shall not in any circumstance extend to any direct, indirect or consequential loss or damage suffered by the Customer or any third party as a consequence thereof.
- (c) Should the Customer refuse or fail to accept or otherwise take delivery of the Goods, the cost of storage and any additional transportation will be added to and form part of the Contract Sum. If the Company elects to treat the contract as repudiated in accordance with this condition it shall (without prejudice to its rights and remedies in respect of such repudiation) be entitled to sell the Goods and retain the proceeds of sale.
- (d) Customer risk and responsibility include safekeeping of the Equipment, and protection against the elements, theft, vandalism or improper use. The Customer is responsible for the return of the Equipment or making clear arrangements with Company for the collection of the Equipment at the end of hire. Customer responsibility ends only when the Equipment has been returned or collected and Customer has received an unqualified receipt from Company for all of the Equipment.

5. RISK AND TITLE

- (a) The Goods and use of Equipment shall be at the Customer's risk from the time of delivery. The Customer shall then be responsible for the satisfactory use, care and protection of the Goods and Equipment.
- (b) Title to the Works (excluding any intellectual property rights referred to in Clause 6 below shall pass to the Customer when both (i) the Works and (ii) all other Works then subject of any other contract between the Company and the Customer have been paid in full by the Customer to the Company.
- (c) Until payment in full has been made the Customer shall hold the Works as bailee in a fiduciary capacity for the Company and it shall be the responsibility of the Customer to keep the Works in good repair and condition at its own expense. Until payment in full has been made the Customer shall not be entitled to sell, transfer, sub-licence, charge, assign by way of security or otherwise deal or encounter the Works or any part thereof.
- (d) Until payment in full is made the Company may at any time (regardless of any period of credit given to the Customer) enter the Customer's premises or sites to inspect or repossess all or part of the Works and Equipment and the Customer therefore hereby grants the Company and its agents a licence necessary to effect such inspection or repossession. Upon repossession of the Works the Contract shall terminate in respect of those Works without prejudice to any rights of the Company.
- (e) The Customer agrees to indemnify and hold harmless the Company against any and every expense, liability, financial loss, claim or proceedings in respect of any death or personal injury or damage to or loss of property of the Customer and third parties (including the Works and Equipment). The Customer shall effect appropriate insurance for the duration of the Contract and shall at the request of Company produce to the Company the policy of insurance and evidence of premium paid in respect thereof.
- (f) The Customer has full responsibility for the care and safekeeping and return in good order of the Equipment. Customer will pay to the Company all costs incurred in rectifying any Equipment returned damaged or unclean. Customer will also pay for Company financial loss until such rectification is complete. In the event that Equipment is lost or stolen or damaged beyond economic repair, the Customer will pay for all financial loss until Customer has paid to Company the full replacement cost. This provision is without prejudice to other rights of the Company.

6. INTELLECTUAL PROPERTY AND USE

- (a) All intellectual property rights in the Works or Equipment in any document, invention or information made or compiled in connection with the Works or Equipment including but not limited to all tools, patterns, materials, drawings, specifications, samples or other data ("Intellectual Property") shall remain vested in the Company and where applicable the original source. The Company grants the Customer a non transferable, non-exclusive right to use such Intellectual Property for the sole purpose of this Contract, and the Customer indemnifies and holds harmless the Company from any claims for loss or damage from the use or disposition of the Work by the Customer.

7. INSPECTION

- (a) The Customer shall inspect the Goods immediately upon receipt and shall (unless such inspection cannot be carried out and the delivery note is marked "not examined") be deemed to have accepted the Goods as delivered.
- (b) Subject to 7(a) above the Customer shall within 7 days of delivery (such period being confirmed by the Customer as a reasonable period to examine the Goods for defects), notify the Company in writing of any alleged non-conformance. Failure to notify the Company within 7 days will be deemed as acceptance of the Goods for all purposes.
- (c) The Customer shall keep itself acquainted with the state and condition of the Equipment and ensure that it remains safe, serviceable and clean. Any breakdown or any unsatisfactory working of Equipment must be immediately notified to the Company. Under no circumstances must the Customer repair or attempt to repair the Equipment unless authorised in writing by the Company. The Equipment must be returned to Company premises for examination except where examination elsewhere has been mutually agreed upon. The Customer must notify the Company immediately if the Equipment is involved in any accident resulting in damage to the Equipment or to other property, or injury to any person.

8. PAYMENT

- (a) The Customer must pay for the Works or part thereof by the date and/or time stated overleaf and if not so stated within 14 days of the date of the Company's invoice.
- (b) If the Customer shall default in payment of the Contract Sum or part thereof and/or any other charges payable hereunder the Company shall in addition and without prejudice to any other of its rights, have the right to terminate the Contract forthwith and refuse to supply any further Goods, services or other products to the Customer or any other Company in its Group.

9. WARRANTY

- (a) Unless otherwise specified the Company warrants that for a period of 12 months from the delivery of the Goods the Works will operate substantially in accordance with the specification in the documentation, instructions and other reference materials supplied with the Work.
- (b) The Company's entire liability and the Customer's exclusive remedy under the Warranty is that the Company will at its option and expense make good any such defect in the Works by repair or replacement if in the opinion of the Company the defect constitutes a breach of this warranty and occurs during the warranty period.
- (c) The Customer shall be responsible for the cost, risk and expense of delivery of the Goods back to the Company to enable the Company to investigate any breach of warranty.
- (d) In the event that a defect in the Goods is discovered by the Company the Company will at its sole discretion either repair or replace the defective Goods free of charge and deliver the repaired or replacement Goods back to the Customer.
- (e) The Company will not be responsible under this warranty for:-
 - (i) any defect resulting from misuse, neglect or alteration of the Works;
 - (ii) any defect arising from usage not in accordance with product instructions or user manuals or other similar documentation, including the alteration or modification of any part of the Works (unless such modification is expressly agreed to by the Company);
 - (iii) any defect arising from any repair or modification by anyone other than the Company (without the express consent of the Company) or other causes outside the Company's reasonable control.
- (f) The express warranties made by the Company in these terms and conditions are in lieu of and to the exclusion to the fullest extent permitted by law, of all other conditions, terms, warranties and undertakings, express or implied, statutory or otherwise, including without limitation as to the condition, quality, merchantability, performance and fitness for purpose of the Works or any part thereof.

10. VARIATIONS

- (a) If the Works are varied in any way, whether at Customer request; change in applicable law, statute, statutory or regulatory body after the date of entering into contract; instructions from any authorised body or representative; price increases in respect of labour, materials or transportation; ("variation") the Customer shall pay to the Company for all such variations to the Works. The valuation of variations shall be on the basis of the agreed estimate provided by the Company. In the event that no such estimate is agreed then the Company shall be entitled to receive a fair valuation. For the avoidance of doubt the fair valuation shall include a fair allowance for Company overheads and profit.
- (b) The payment of variations and the Company remedy for default shall be in accordance with Article 8 hereof, and the Contract Sum shall be adjusted to reflect same.

11. LIMITATION OF LIABILITY

- (a) Subject to clause 11 (b) below (but excluding liability which may not by law be excluded or limited) the total liability of the Company in contract, tort (including negligence), breach of statutory duty or otherwise under or in connection with these terms and conditions shall not exceed the price of the Works or Equipment paid by the Customer for the Works or Equipment in respect of which the liability arises. For the avoidance of doubt such liability shall exclude any indirect or consequential damage, loss cost or expense of any kind, including without limitation loss of profits, interest, business revenue or savings, loss of goodwill or loss of contracts.
- (b) Nothing in this Condition shall be construed as limiting or excluding the Company's liability under the Consumer Protection Act 1987 or for death or personal injury caused by negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977).

12. TERMINATIONS

- (a) If the Customer commits any breach of or fails to comply with any term of the Contract or becomes insolvent or enters into a voluntary arrangement with its creditors the Company shall have the right (without prejudice to its other rights or remedies) forthwith to terminate the Contract, to withhold delivery of Goods or Equipment and demand payment of all sums due by the Customer to the Company.
- (b) In the event that the Customer is a limited company the directors thereof agree to accept personal liability for any debts owed to the Company in the event of Customer insolvency.

13. CONSTITUTION AND JURISDICTION

- (a) Either party may refer any dispute arising under or in connection with the Contract to arbitration by serving on the other party a written notice of arbitration identifying the dispute and requiring them to agree to the appointment of an arbitrator. If the parties are unable to agree on the person to act as arbitrator within 14 days from the date of the notice then appointment will be made by the President of the Chartered Institute of Arbitrators. The provisions of the Arbitration Act 1996 or any modification or re enactment shall apply. The arbitration shall be conducted in accordance with the JCT 1998 edition of the Construction Industry Model Arbitration Rules (CIMAR) current at the date of the Contract. The law applicable to this sub contract is the law of England and Wales
- (b) Each of these Terms and Conditions and each paragraph hereof shall be construed as a separate Condition. Should any provision hereof be found to be invalid or unenforceable or as unreasonable restrictions of the Company's liability then such provision shall apply with such modification as may be necessary to make it valid and effective.

14. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

Other than set out in Article 11 It is agreed by the parties to this Contract that no provisions of this Contract shall be virtue of the Contracts (Rights of Third Parties Act) 1999 confer any benefit on, nor be enforceable by any person who is not party to this Contract.