

TERMS AND CONDITIONS OF QUOTATION AND SALE

1 APPLICATION OF THESE CONDITIONS

These conditions apply to all contracts for the sale of goods or the supply of services by Scobie & Junor (Estd. 1919) Ltd hereinafter referred to as "the Company" and shall supersede any terms and conditions contained in any order by the Purchaser or in any other document relating to the contract. In particular, all other terms whether or not agreed or offered, and all conditions and warranties whether expressed or implied and all representations whether made orally or in writing before or after the date hereof are excluded and cancelled save as required by statute, or to the extent that the same appear herein, or are specifically agreed and confirmed in writing and signed by a director of the Company. The headings of the clauses of these conditions are for reference only.

2 DRAWINGS AND SPECIFICATIONS

Drawings, photographs, illustrations and other descriptions or performance specifications shall not be capable of being made of the essence of the contract, since designs may be subject to modifications and improvement and any performance figures quoted have been so specified by the manufacturers under their test conditions and to take no account of the performance of ancillary equipment, inadequate maintenance or supervision, adverse operating conditions or unskilled operators. Such representations, unless otherwise specifically agreed in writing, are approximate and for information only and they shall not constitute a sale by description under these conditions. All goods supplied by the Company comply with the provisions of the Food Safety Act 1990 and where applicable the Materials and Articles in Contact with Food Regulations 1987. The Purchaser however should satisfy himself as to the performance and suitability of packing materials, casings, ingredients and other consumables for his particular application.

3 QUANTITY

In the case of packaging materials, casings and ingredients, or other goods to be specially produced or printed by the Company, the Purchaser's order shall be deemed duly fulfilled if the Company shall deliver any shortfall or surplus in quantity not exceeding 10% of the quantity ordered, such shortfall or surplus to be credited or charged on a pro-rata basis.

4 DELIVERY

Any date or time of delivery shall not be or be capable of being made of the essence of the contract. Any such date or time is an estimate only and is not contractually binding on the Company. Where the goods sold comprise more than one item, the Company may deliver the same by instalments, whether expressly agreed or not, and in such event the Purchaser agrees to accept delivery of, and pay for, each instalment as if each had been purchased under a separate contract. Any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the contract as a whole as repudiated.

5 DAMAGE AND LOSS IN TRANSIT

The Company shall not be under any responsibility for goods damaged in transit unless such damage is reported by separate notice in writing to the carriers and to the Company within three days of receipt of the goods by the Purchaser and the goods have been signed for as not examined. In the event of non-delivery of the goods in whole or in part no claim can be entertained, unless notice of such non-delivery reaches the Company within seven days from the date of despatch otherwise the carriers have the right to refuse any claim.

6 RETENTION OF TITLE

(i) Risk of damage to or loss of the goods shall pass on delivery to the Purchaser or to any carrier or agent of the Purchaser.
(ii) Notwithstanding delivery and the passing of risk in the goods, the property in the goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price of the goods and all other goods sold by the Company to the Purchaser for which payment is then due.
(iii) Until such time as the property in the goods passes to the Purchaser, the Purchaser is obliged to store the goods in such a way that they can be identified as the Company's property, keeping them separate from the Purchaser's own property and the property of any other person and insuring the Company's goods against loss or damage
(iv) Until such time as the property in the goods passes to the Purchaser, the Purchaser grants the Company, its agents and employees an irrevocable licence to enter any premises where the goods are stored in order to inspect or repossess them at any time.
(v) In the event of:-
(a) any default of the Purchaser in respect of these conditions;
(b) the Purchaser going into liquidation (otherwise than for the purpose of amalgamation or reconstruction), having a receiver appointed over any of its assets or undertaking or being subject to an administration or order any other insolvency proceedings; or
(c) the Purchaser becoming apparently insolvent, bankrupt or granting a trust deed for its creditors; or
(d) the Purchaser making any composition with its creditors or ceasing or threatening to cease to carry on business; or
(e) the Company reasonably apprehending that any of the above mentioned is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.
then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Purchaser and, if the goods had been delivered by not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

7 PRICE AND PAYMENT

(I) The Company reserves the right to revise the contract price to take account of any increases in costs since the date of the contract if it is in any way delayed or hampered in the carrying out of any work under the contract, by any act or omission of the Purchaser or by any circumstances beyond the Company's control. Prices quoted are valid for 28 days from the date of quotation but orders are accepted by the Company on the basis that the goods will be supplied at the price ruling at the date, or, as the case may be, date, of delivery of the goods and quoted prices shall be amended accordingly.
(II) Value Added Tax, or other tax or excise duty applicable to the contract under statute, shall be charged in addition, at the rate or rates prevailing at the date of invoice and shall be payable by the Purchaser.
(III) The time stipulated within which the Purchaser is to pay for the goods or services supplied or to be supplied shall be of the essence of the contract. Save as otherwise expressly specified, all payments shall be due and owing on the thirtieth day following the date of the Company's invoice.
(IV) Without prejudice to any other rights which the Company may have the event of any failure by the Purchaser to pay any monies due by the date for the Company may charge the Purchaser, and in such event the Purchaser shall pay, interest on any overdue amount, at a rate of 4% above the base rate of the Royal Bank of Scotland existing at the time the amount becomes overdue.

8 WARRANTY

The Company warrants that the goods supplied by it are of sound material and workmanship and that accordingly:-
(a) In the case of food processing and preparation equipment or any part or parts thereof (other than any consumable or wearing parts requiring regular repair or renewal under normal working conditions), such equipment shall be free from any fault or defect arising from defective materials or workmanship for a period of six months unless specified separately, from the date of supply provided however that such warranty periods shall be limited to three calendar months in the case of reconditioned equipment, unless specified separately.
(b) In the case of packaging materials, casings and ingredients, consumables or wearing parts of food processing and preparation equipment and other consumable materials, such goods shall be free from any fault or defect arising from defective material or workmanship for a period of one calendar month from the delivery date thereof.
Provided however that:-
(i) Any warranty claim under this clause must be notified in writing to the Company before the expiry of the relevant warranty period.
(ii) This warranty shall only apply to the equipment referred to in paragraph (a) above if such equipment shall have been properly operated by the Purchaser under the conditions and in accordance with the instructions specified by the Company and using only original or replacement parts supplied or approved by the Company, and no such equipment nor any parts thereof shall be returned to the Company and no claim in respect thereof shall be considered by the Company unless such equipment and the operating conditions thereof shall first have been inspected at the Purchaser's premises by the Company's engineer.
(iii) This warranty shall only apply to the goods referred to in paragraph (b) above if such goods shall not normally require repair or renewal under normal working conditions within such one-month warranty period and shall not have been cut, printed or processed after delivery to the Purchaser, and no such goods shall be returned to the Company and no claim in respect thereof shall be considered by the Company unless such goods shall first have been inspected at the Purchaser's premises by the Company's representative.
(iv) The Purchaser must return, at his own expense, to the Company's works, any goods (including equipment or parts referred to in paragraph (a) above) claimed to be faulty or defective, after written approval for such return is given by the Company, and if such claim is accepted and such goods are replaced under this warranty such original goods shall become the property of the Company and this warranty shall apply to any replacement goods only during the remainder of the warranty period applicable to such original goods.
(v) This warranty shall not apply to any goods (including any equipment or parts referred to in paragraph (a) above) which are the subject of any modification, repair or other work carried out by the Company pursuant to any contract for or including the supply or services, and the Company's sole obligation under any such contract in respect of any services to be supplied shall be to exercise a reasonable standard of care in carrying out such work.
(vi) The Company's sole liability under this warranty shall be at its option and at its cost to repair or to replace any faulty or defective goods (or the faulty or defective part or parts thereof) or to repay to the purchaser the purchase price for the faulty or defective goods or services provided.
(vii) The Company shall be under no liability to repair or replace as aforesaid, unless and until the Purchaser shall have paid in full for the goods and shall have performed all his other obligations hereunder.

9 CONDITIONS OF LIABILITY

Subject to the extent to which liability cannot be excluded under relevant statute, neither the Company nor its employees shall be liable in contract or otherwise for any direct, indirect or consequential loss or loss of production or damage (howsoever such loss or loss or production or damage be caused) suffered by the Purchaser or any other person arising out of the design, manufacture, sale, delivery or failure or delay in delivery, stoppage, repair, adjustment or faulty working of the goods, (including replacements), or the use thereof. For the purpose of this clause the Company contract on its own behalf and on behalf of its servants.

10 REPAIRS

The Company shall take all reasonable care of goods and equipment received by it at its premises for modification, repair or other work and shall be responsible for any physical loss or damage thereto arising directly from the acts or omissions of its employees, but subject thereto such goods or equipment shall be held by the Company at the sole and entire risk of the Purchaser.

11 CANCELLATION OF ORDERS

No order can be cancelled by the Purchaser in whole or in part after the order has been accepted by the Company, without the written consent of the company and at the company's discretion, the Purchaser shall indemnify the Company in full against all loss, costs and expenses incurred by the Company as a result of such cancellation.

12 FORCE MAJEURE

In the event of the Company being prevented from performing any of its obligations hereunder by reason of any cause beyond its control or by reason of any strike, go slow, lockout or other industrial action, the Company may either suspend any of its said obligations until such reasonable time as it is not prevented from performing as aforesaid or may terminate the contract. Such determination shall, without prejudice to the accrued rights and obligations of the parties hereunder, including but not limited to the Purchaser's obligation to pay any amounts owed to the Company under the conditions, relieve each party of any duty to perform any remaining obligation hereunder.

13 LAW GOVERNING THE CONTRACT

These conditions and the contract shall be subject to and construed in accordance with Scots Law and the Purchaser hereby submits to the non-exclusive jurisdiction of the Scottish Courts.

14 CONDITIONS OF LIABILITY

No waiver by the Company of any breach of the contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provisions.

15 GENERAL

If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.