

FLOWSTORE SYSTEMS Ltd TERMS & CONDITIONS OF SALE - U.K. CONTRACTS

QUOTATIONS

Quotations issued by the company are open for acceptance within 30 days only from the date thereof and in all cases are subject to confirmation in writing by the Company upon acknowledgement of the Customers order.

1. DEFINITIONS

- 1.1 Flowstore Systems Ltd is referred to herein as "The Company"
- 1.2 The Customer" the individual, firm, company or other party with whom the company contracts.
- 1.3 "Goods" means plant, equipment or materials of any kind.
- 1.4 "Delivery of goods" shall be deemed to occur on arrival of the goods at the customer's premises or designated site irrespective of whether or not they have been unloaded.
- 1.5 "Consumer Protection Acts" the Consumer Protection Act 1987 or any similar legislation in any other country.

2. FORMATION OF CONTRACT

An order placed by the customer on the company shall constitute an offer to contract with the company on the Terms and Conditions set out herein and shall only become binding on the company if and when accepted by the company in writing. No order may be cancelled without the Company's written consent. In the event of acceptance of cancellation the company reserves the right to charge for any and all costs incurred in the preparation and execution of the said order.

3. COMPANY'S TERMS AND CONDITIONS PREVAIL

No addition, waiver, variation or departure to or from these Terms and Conditions shall be effective and binding on the company unless expressly agreed to in writing by a duly authorised officer of the company. A list of authorised signatories is available on request.

3.1 Unless otherwise agreed in writing by the company these conditions will override any terms or conditions certificated or referred to by the customer in his order or pre-contract negotiations.

3.2 In the case of goods not manufactured by the Company the Company gives no assurance or guarantee whatsoever that the sales or use of the goods will not infringe patent copyright or other intellectual property rights of any third party.

3.3 If goods or services are carried out to a specification, instruction or design supplied by the customer or any third party on behalf of the customer then:-

- a) The suitability and accuracy of that specification or design will be the customers responsibility and
- b) The customer will indemnify the Company against any infringement of any patent copyright or other intellectual property right and any loss or damage or expense it may incur as a result of any such infringement in any country and
- c) the customer will indemnify the Company against any loss, damage or expense in respect of any liability arising under the Consumer Protection Act by reason of the specification or design.

4. EXTENT OF CONTRACT

4.1 The company's obligations to supply goods and services to the customer are limited to the matter expressly described or referred to in the company's acceptance of the customer's order.

4.2 Figures or statements relating to the capacity of performance of goods offered or contracted by the company are such as the company expects to achieve but the company shall not be liable for any failure to achieve such figures or comply with such statements unless the same have been expressly guaranteed by the company as part of the written terms of contract between the company and the customer. Where any such guarantee is given and the goods fail to comply therewith the company shall be entitled to reasonable time and facilities to enable it to correct such failure.

4.3 Weights, measurements and other descriptive particulars of goods or services offered or contracted for by the company are stated in good faith, but minor deviations therefrom shall not constitute a breach of contract on the part of the company or otherwise render the company liable to the customer.

4.4 Except in so far as may be expressly guaranteed in the written terms of the contract between the company and the customer the company makes no representation and gives no warranty that goods offered or contracted for will be suitable for or capable of use in conjunction with any goods supplied by the company or by anyone else.

4.5 Tests which under the terms of the contract between the company and the customer are to be made on site will be at the customer's expense, unless otherwise agreed in writing by the company.

4.6 SUB CONTRACTS

The company shall have the right to sub-contract or sub-let this Contract or any part thereof.

5. PRICE AND PRICE VARIATIONS

5.1 All prices quoted or agreed by the company are dependent on and liable to variation in accordance with:

- a) Fluctuations in direct or indirect costs and in particular the availability of materials and labour.
  - b) The amount of overtime work and work outside normal hours required to complete a contract resulting from delays due to unsatisfactory site conditions.
  - c) The speed with which necessary instructions and/or information are provided by the customer.
  - d) The performance of work not expressly covered by the contract specifications but necessary for the due provision of the goods and/or services contracted for.
  - e) Mistakes and/or omissions in the contract specifications.
  - f) Special expedition in the completion of a contract at the request of the customer.
  - g) Other matters of any kind whatsoever outside the control of the company.
- 5.2 The customer shall pay extra charges in the event of:
- a) The customer or his agent failing or refusing to take immediate delivery of goods tendered for delivery or deliberately being abortive for any reason, not being due to the fault of the company, and as a result whereof such goods have to be redelivered.
  - b) Goods ordered by the customer having to be stored or held by the company beyond the date on which the customer or his agent were notified or their readiness for delivery or beyond the date when they were first tendered for delivery whether at the request of the customer or his agents or by reason of lack of adequate instruction or information from the customer or his agent or by reason of any other matters outside the control of the company.
  - c) Erection or installation work being interrupted, delayed or frustrated by reason of any failure of the customer or his agents to comply with the requirements of Clause 7 hereafter or by reason of any other matter outside the control of the company.

5.3 In the event of any of the circumstances envisaged in clause 5.2 (c) arising it shall be for the company alone to decide at its sole discretion whether to maintain personnel on site or to withdraw some or all such personnel until such time as the company is able to proceed regularly and freely with such work.

5.4 Interest on overdue accounts shall be paid by the customer at the rate

4% above Bank of England Minimum Lending Rate

5.5 Where delivery of goods has been prevented or delayed by reason of any of the matters referred to in Clauses 5.2 (A) or 5.2 (B) above the price of such goods, or the balance thereof, shall become due and payable 30 days after such goods were first tendered for delivery or first notified to the customer by the company as being ready for delivery whichever shall be the earlier.

5.6 Where goods have been delivered to the customer's premises or to the site but erection/installation thereof has been affected by any of the matters referred to in Clause 5.2 (c) above, the price of such goods, or the balance thereof, shall become due and payable 30 days after delivery of aforesaid.

5.7 The payment terms specified in the company's quotation are conditional upon the receipt by the company of satisfactory trade and banker's references, prior to the delivery of goods. If satisfactory references are not forthcoming, the company reserves the right to require payment of the contract price prior to the delivery of the goods or provisions of service.

5.8 The company reserve the right to postpone the delivery of goods under this or any other contract or treat the contract as determined if any amounts due on this or any other contract remain unpaid on the date or dates. The customer shall be liable for any increased costs incurred by the company as a result of any such postponement.

5.9 The company reserves the right to make design changes to the goods without prior notice subject only to the customer's rights under Clauses 10 (A) and 10(B).

5.10 The Customer will not be entitled to withhold payment of any invoice by any right of set off or any claim or dispute with the company unless any right or claim is agreed by the company in writing.

6.0 DELIVERY DATES

The Company will endeavour to comply with dates or periods quoted to the customer for delivery of goods and/or the erection/installation thereof or for the supply of services but no such date or period shall be contractually binding on the company and the customer shall have no claim whatsoever against the company in the event of the Company's failure or inability, for reasons beyond its control to perform the contract by such date or within such period, unless specifically agreed in writing by the company.

7.0 PREPARATORY AND ANCILLARY MATTERS IN CONTRACTS INVOLVING ERECTION/INSTALLATION.

Before any goods are erected/installed by the company the customer shall at its own expense and responsibility:

- a) Carry out all such works as may be necessary in order to prepare the site in question for the receipt of the goods, and the effective erection/installation thereof including in particular the provision of a level, even and sound floor, power, light, water and other services, suitable unloading, lifting and scaffolding facilities, in connection with such erection/installation.

- b) Provide all health and welfare facilities currently required by law or otherwise reasonably necessary for the benefit of the employees of the company or of subcontractors engaged at or about the said site in performance of the contract.
- c) Obtain all necessary statutory or other consents and approvals.
- d) Erection.

Unless otherwise agreed prices are based on a normal working week. Work carried out at other times at the customer's request will be subject to an additional charge. Delays on the site not the responsibility of the company before or during erection caused by other trades or from any other cause may lead to an additional charge.

#### 8.0 PROPERTY AND RISK

The risk of loss or damage, however caused, to goods supplied by the company shall pass to the customer on delivery thereof whether or not such goods are thereafter to be erected/installed by the company. It is the customer's responsibility to ensure that his agents or representatives attend the site or the delivery point at the time of delivery to ensure the satisfactory receipt of the goods and to give a written acknowledgement thereof. The customer shall ensure that he has adequate insurance cover against All Risks or Damage as set out in a contractor's All Risk Policy of the usual kind to cover these goods. Risk in the goods will pass to the Customer on the relevant date or if delivery is postponed at the Customer's request when the goods are ready for despatch.

#### 8.1 TITLE

Until payment in full has been received by the Company of all sums owing or due to the Company in respect of the Goods the customer holds the Goods in a fiduciary capacity as bailee for the Company and:

- a) Legal and beneficial title in the Goods shall remain with the Company and if the Company requires the Customer shall store the Goods in such a way that they are clearly the property of the Company and shall maintain full insurance cover against loss or damage in respect thereof,
- b) The Company reserves the right of disposal of each item of Goods and may retake possession thereof at any time and for the purpose may by its servants or agents enter upon any land or premises occupied by the customer,
- c) The Customer undertakes in relation to each item of the Goods not to remove parts from, add to, modify or otherwise do any work on such Goods without the express prior written permission of the Company,
- d) If the customer incorporates or allows the incorporation of any item of the Goods into other goods in any way, legal and beneficial title of those other goods, both during the process of incorporation and thereafter shall vest forthwith in the Company and the Customer shall hold them in a fiduciary capacity as bailee for the company, if the Company so requires the Customer shall observe the conditions regarding storage in sub-clause (a) hereof as if such other goods were the goods originally supplied and the Company reserves the rights regarding disposal, repossession and entry in sub-clause (b) hereof as if such other goods were the goods originally supplied.

#### LIEN

Until all outstanding invoices rendered to the Customer by the Company are paid in accordance with Clause 5 as above the Company shall have a general lien (in addition to any other right or remedy open to the Company) upon any goods of the Customer from time to time in the Company's possession or control and the Company may enforce such lien by selling goods or a sufficient quantity of such goods to realise all amounts then due to the Company under this contract of otherwise and appropriating the same.

#### 9. DAMAGE IN TRANSIT AND DELIVERY SHORTAGES

9.1 Providing that the customer complies strictly with the provisions of Clause 9.2 and subject to the provisions of Clauses 9.3 and 9.4 thereof, the company will at its option either replace, repair or reinstate any goods supplied by the company which are received by the customer in damaged condition.

9.2 The customer shall

- a) in every case advise the company in writing within 7 days of delivery of the damaged goods and of the precise nature and extent of the damage or delivery shortage.
- b) Where goods are so damaged as to render them unserviceable, return the same to the company, properly packed, protected, insured and consigned at the customer's expense.

9.3 It shall be for the customer to satisfy the company that the damage to the goods in question did not occur after delivery of such goods to the customer's premises or site.

9.4 the customer shall make available for inspection of the company all relevant documentation and shall permit the company to interview and question such of the customer's personnel as the company may reasonably require.

#### 10. WARRANTIES

Provided that the written notice of the failure or malfunction in question is received by the company within 14 days of the first occurrence thereof of the company warrants and undertakes:

- a) That in accordance with the Sale of Goods Act 1979 any such failure or malfunction thereof which occurs as in the opinion of the company directly attributable to a defect of material, workmanship of incorrect or faulty erections and/or installation for which the company is responsible, the company will at its option make good any such failure or malfunction as is directly attributable to a defect of material or workmanship. The replaced goods will become the property of the company.
- b) That if at any time there occurs in goods supplied by the company any such failure or malfunction as is directly attributable to a defect of material or workmanship the responsibility not of the company but of a supplier or sub-contractor to the company, the company will use its best endeavours to obtain for the customer and benefit of any warranty which may have been given by such supplier or sub-contractor in respect of such defect, provided always that the company shall not be obliged to institute legal proceedings of any kind, including arbitration, or otherwise incur legal costs or expenses of any kind hereunder.

10.1 The Company will have no liability for consequential loss arising out of any shortage loss or damage. The Company's liability, under any circumstances for direct loss will be limited to the contract value. Where the Company agrees to replace or repair goods as described above, the contract will be extended for such periods as the Company may require.

#### 11. FRUSTRATION

The company shall be released from all liability under the contract between the Company and the customer whenever and to the extent that the fulfilment thereof is frustrated, prevented or delayed for a period of more than 3 months by reason of

- a) The effect of any statute, rule, regulation, order, directive or recommendation issued by any Government, Government department or other competent authority.
- b) The inability of the company to obtain or renew any requisite authorisation or licence.
- c) The non-availability of suitable materials or labour or of necessary power of other services.

#### 12. PROPERTY IN AND CONFIDENTIALITY OF INFORMATION SUPPLIED BY THE COMPANY

The copyright in all drawings, plans, specification, designs or other written, printed or graphic material supplied or made available for inspection by the company remains the property of the company or the company's suppliers or sub-contractors and shall not be divulged or used save only for immediate and legitimate purposes by the customer without the express written consent of the company.

#### 13. FORCE MAJEURE

Neither party hereto shall be liable to the other for any loss damage or default occasioned by reason of any Act of God, strike, labour dispute, fire, flood, war, public disaster, or any cause or reason beyond the control of the party causing the said loss, damage or default. The term of this agreement shall be suspended during the continuation of any such event.

#### 14. DISPUTES AND GOVERNING LAW

14.1 If at any time any questions, disputes, or differences whatsoever shall rise between the customer and the company out of or in relation to or in connection with any contract between the customer and the company, whether during or after completion, either party may give to the other written notice of the existence of such questions, dispute or difference, and such matter shall be and hereby is referred to the arbitration of the President for the time being of the Institute of Mechanical Engineers or such person as he may appoint. Such reference shall be deemed to be submission to arbitration within the meaning of the Arbitration Act 1950 or such statutory modification or re-enactment thereof as may be in force. No payment due by the customer to the company shall be withheld on account of any such pending arbitration.

14.2 If for any reason such question, dispute or difference does not proceed to arbitration, the Courts of England alone shall have jurisdiction thereover and in relation thereto.

14.3 All contracts between the company and the customer shall in all respects be construed and governed in accordance with English Law.