

# **Pandrol (Vortok) Ltd - GENERAL CONDITIONS OF SALE**

## **1. General**

- (a) These conditions shall come into force on our acceptance of the Buyer's order and shall apply also to subsequent orders accepted by us unless excluded by specific written reference by the buyer and by us.
- (b) In case of any conflict variance or inconsistency between these Conditions and the terms of the buyer's enquiry or order or any correspondence relating thereto these Conditions shall prevail except to the extent that (i) these Conditions are excluded by specific reference in writing and (ii) such exclusion is agreed to by us in writing.
- (c) No variation of the buyer's order will be recognised unless agreed to by us in writing.

## **2. Validity of Tender**

Unless previously withdrawn, our tender is open for acceptance for the period stated therein or, if no period is stated within 30 days after its date.

## **3. Acceptance of Order**

All shipping specifications, drawings and particulars of weights and dimensions submitted with our tender are provided shall be a matter for our discretion alone and clear instructions to enable us to proceed forthwith with the order, e.g. where appropriate, a letter of Credit has been established with a first-class bank in the UK, but shall not constitute a contract until accepted by us and such acceptance has been notified to the buyer by us in writing. Times quoted for despatch, delivery or completion shall run from the date of such notification. Time shall not be of the essence.

## **4. Catalogues, Drawings and other information**

- a) All shipping specifications, drawings and particulars of weights and dimensions submitted with our tender are approximate only. Further, nothing in our catalogues, price lists and other advertisement matter, which are intended merely to present a general description of the goods described therein, shall in any way form part of the contract.
- b) All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the contract shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.
- c) The Supplier shall, not later than at the date of delivery, provide free of charge information and drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

## **5. Loss or Damage in Transit**

- a) **For UK Destinations:** When the tender provides for delivery other than at our works, we will repair free of charge, or at our option replace free of charge, goods damaged or lost in transit provided we and the Carriers receive written notification of such damage within three days of receipt of goods or of such loss within three days of notification of despatch, but not otherwise. Such repairs or replacements shall be made as promptly as possible, but we shall not be responsible for any delay caused through such an event, nor for any Loss occasioned thereby.
- b) **For Destinations other than the UK:** We will give the benefit of any redress which we may be able to obtain from the Carriers or the insurers in respect of loss or damage to the goods in transit.

## **6. Delivery**

- a) **For UK Destinations:** All prices quoted include delivery charges, all local taxes and duties, unless otherwise agreed by us in writing.
- b) **For Destinations other than the UK:** All prices quoted are ex-works and exclude delivery charges, all local taxes and duties, unless otherwise agreed by us in writing.
- c) We shall not be required to give notice relating to insurance referred to in Section 32(3) of the Sale of Goods Act 1979.

In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the international Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression, including FOB, which is defined in or given a particular meaning by the provisions of Incoterms, shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

## **7. Storage**

If we are unable, by reason of the buyer's unclear or inadequate instructions, or lack of instructions, to despatch goods when ready, or if, having made or been prevented from making shipments where delivery under the contract is beyond the Port of Shipment, we are unable for causes beyond our control to deliver in accordance with the Contract, the buyer shall arrange and pay the cost of suitable storage, protection and insurance. If the buyer is unable to take delivery and arrange for storage we shall be entitled to arrange storage at our Works or elsewhere and all charges therefore, including insurance or demurrage, shall be payable by the buyer. Storage shall be at the buyer's risk. In any of these events, we shall be entitled to be paid as though despatch, shipment or delivery had been made in accordance with the contract.

## **8. Limits of Contract**

The contract between us includes only such goods and services as are specified therein. No document, correspondence or statement shall be part of the contract unless specifically referred to in writing by us.

## **9. Tests**

The goods will be carefully inspected and, unless otherwise agreed, tested before despatch in accordance with our normal procedure. The buyer's representatives may attend such tests provided we receive notification of this intention with the order. If, after giving 7 days' notice of our readiness for tests, the attendance of the representatives is delayed, or if it has been decided by the buyer not to have any representatives in attendance, whether notified or not, entitled to proceed with the tests in their absence, and our bona fide certificate of the tests shall be final evidence of the performance achieved.

## **10. Performance**

Any performance figures or results of tests given by us are based upon our experience and are such as, to the best of our ability, we expect to obtain from the tests in our works. We do not warrant such figures or test results unless they have been specifically guaranteed by us. If the performance figures obtained on test in our works are not within the acceptance limits specified in the contract the buyer will be entitled to reject the goods but, before becoming so entitled, we are to be given reasonable time and opportunity to rectify the performance. If the buyer becomes entitled to reject goods and does so reject them, we will repay any sum paid to us on account of the Contract price but without interest, and the buyer shall thereupon be released from this contract. We shall not directly or indirectly be responsible in any way for any consequential losses of the buyer arising from non-delivery of the goods. The buyer accepts that the goods ordered are sufficient and suitable for the buyer's purpose excepting to the extent that the specification of the goods is in accordance with our advice.

## **11. Delivery Period**

Any times quoted for despatch, delivery or completion are subject to receipt by us of all necessary information and drawings to enable the work to be put in hand. All such times are estimates only and shall not involve us in any liability for failure to despatch, deliver or complete within the time stated. Any despatch, delivery or completion time shall be extended if delay in despatch, delivery or completion is caused by inadequate or unclear instructions, or lack of instructions, from the buyer or by industrial dispute or any cause whatsoever beyond our control.

## **12. Liability for Delay**

In the event that we agree to be bound by the quoted time for despatch or delivery or completion as the case may be and if we shall fail to despatch, deliver or complete within that time or within any permitted extension thereof and as a result the buyer shall have suffered loss thereby, we undertake to pay for each complete week of delay, liquidated damages at a rate not exceeding 0.3% per week up to a maximum of 3% of that portion of the price named in the contract which is referable to such portion only of the contract goods as cannot in consequence of the delay be used commercially and effectively. The payment of such Liquidated damages should be in full and final satisfaction of our liability for the delay.

## **13. Extra Cost**

Should we incur extra cost owing to variation of suspension of the work by the buyer's inadequate or unclear instruction or lack of instructions, or due to interruptions, delays, overtime, unusual hours, mistakes, or work for which we are not responsible, such extra cost shall be added to the contract price and paid for accordingly.

## **14. Terms of Payment**

- a) Payment for goods delivered shall be due within 30 days of the date of invoice unless otherwise agreed.
- b) If any amount payable to us under the contract is overdue we may without prejudice to any other right either suspend deliveries to the buyer or terminate the contract and we may charge the buyer interest on overdue amounts at a rate of 2% per annum over the then current base lending rate of Barclays Bank PLC.

c) All payments shall be made in sterling in England, unless otherwise agreed in writing by us.

## **15. Bank Charges**

All bank charges associated with payment are to be for the buyer's account.

## **16. Price Adjustment**

If by reason of any rise or fall in the cost of materials, labour, transport, or sub-contracting, or of conforming to any Act of Parliament, or to any other, regulation or by-law made within statutory Authority by Government Departments or by local or other Authorities the cost to us of performing our obligations under the contract is increased, we reserve the right to add the amount of such increase to the tender or order price, unless otherwise agreed in writing by us.

## **17. Guarantee and Liability**

- a) If within 12 months after despatch there shall be found in the goods any defect caused by faulty design on our part or by faulty materials or workmanship on our part, we will supply free of charge ex-works at our option such new or repaired part or parts as may be required to make good the defect, subject to the following conditions:
- (i) The goods have been installed and operated in accordance with our recommendations.
- (ii) The defect has arisen under proper use.
- (iii) No repairs or alterations have been effected without our knowledge and approval
- (iv) Notice of the defect has been given to us within the above-mentioned period and if so required the defective part or parts returned to us carriage paid.
- (v) New or repaired parts will be delivered free of charge as provided in Clause 6.
- (vi) Defective parts replaced by us become our property.
- (vii) In respect of items not of our manufacture, we will give a guarantee equivalent to the guarantee (if any) which we may have received from the suppliers of such items but not so as to impose on us a liability greater than that imposed on us by the preceding paragraphs of this clause.

b) We will indemnify the buyer against damage or injury to the buyer's property person or that of others to the extent directly caused by the negligence of ourselves, or sub-contractors, or agents, or by defective design, workmanship or materials, but not otherwise, by making good such damage to property or compensating personal injury. Provided that:

- (i) Our total liability for such damage or injury shall not exceed the contract price, and
- (ii) We shall not be liable for loss of profit or of contracts or any other indirect or consequential loss.
- (iii) We shall not be liable for any damage or injury occurring more than 12 months after despatch.

c) Our Liability under this clause shall be in Lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the goods, and save as provided in this clause we shall not be under any liability, whether in contract, tort or otherwise, in respect of the goods or for any injury, damage or loss resulting from them or from any work done in connection with them.

d) The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst in the possession of the Purchaser. Nor shall the Supplier liable for any damage to products manufactured by Purchaser, or to products of which the Purchaser's products a part.

- i) If the Supplier incurs liability towards any third party such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless.
- ii) If a claim for damage as described in this Clause is by a third party against one of the parties, the latter party forthwith shall inform the other party thereof in writing.
- iii) The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them basis of damage allegedly caused by the Product.

The limitation of the Supplier's liability in the paragraph of this Clause shall not apply where the Supplier been guilty of gross negligence.

## **18. Patents**

In the event of patent infringement claims in respect of any patent, the specification of which is published prior to the date of the order relating to any part of the goods supplied by us (other than a part based on a design specified by the buyer), we will at our expense either replace or modify such part with a non-infringing part or procure for the buyer the right to use such part provided that we are given full opportunity to conduct all negotiations in respect of such claims, but in no event shall we have any liability for losses arising from non use of any infringing part. The buyer warrants that any design or instruction furnished or given by him shall not be such as will cause us to infringe any Letters Patent, Registered Design, Trade Mark or Copyright in the execution of this order.

## **19. Vesting**

Risk for the goods to be supplied under the Contract shall become the buyer's at whichever is the earlier of the following times, namely:

- (a) the date when such goods are delivered pursuant to the Contract; or
- (b) the date when such goods would have been delivered to the buyer but for causes for which the buyer or some other contractor employed by the buyer is responsible and the buyer has been given notice of such date.

## **20. Title**

Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions, the property in the goods shall not pass to the buyer until we have received in cash or cleared funds payment in full of the price of goods and all other goods agreed to be sold by us to the buyer for which payment is then due. Until such time as the property in the goods passes to the buyer, the buyer shall hold the goods as our fiduciary agent and bailee and shall keep the goods separate from those of the buyer and third parties and properly stored, protected and insured, and identified as the property of Vortok International. Until such time, the buyer shall be entitled to resell or use the goods in the ordinary course of its business but shall account to us for the proceeds of sale or otherwise of the goods, whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

Until such time as the property in the goods passes to the buyer and provided the goods are still in existence and have not been resold, we shall be entitled at any time to require the buyer to deliver up the goods to us and, if the buyer fails to do so forthwith, to enter upon any premises of the buyer or any third party where the goods are stored and repossess the goods.

The buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain our property, but if the buyer does so all monies owing by the buyer to us shall (without prejudice to any other right of remedy available to us) forthwith become due and payable.

## **21. Force Majeure**

The completion/delivery date shall be extended by a reasonable period if performance of the Company's obligations in accordance with the Contract is delayed by industrial disputes or any cause whatsoever beyond the Company's reasonable control whether existing at the date of the Contract or arising thereafter which without in any way limiting the generality of the foregoing shall include earthquake, flood, fire or other natural physical disaster, plague or other epidemics, war hostilities whether war be declared or not, invasion, act of foreign enemies, rebellion, revolution, civil war, insurrections, the usurping of power, riot, commotion or disorder, strikes, lockouts, or general shortage of materials, acts or omissions of the Company's suppliers or sub-contractors, breakdown or failure of electrical power or machinery, damage by fire, or otherwise shortage of transport or delays en route, or failures or restrictions of Governments including restrictions or delays in issue of export or other licences.

## **22. Legal Construction**

The contract shall in all respects be construed and operate as an English contract and in conformity with English Law. Titles of the clauses shall not affect their legal construction.

## **23. Bankruptcy, etc.**

If a petition for a voluntary winding up is brought against the buyer, or if the buyer being a company commits an action in respect of which a petition for a winding up order may be presented, we may forthwith terminate the contract.

## **24. Assigning/Sub-letting**

We reserve the right to assign or sub-let such parts of any contract or order to any third party as may be customary or prudent.

## **25. Arbitration**

Any dispute arising between the parties under the foregoing General Conditions of Sale or in connection with any matter or thing to be done in accordance therewith, shall be submitted to arbitration by a single arbitrator approved by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society of Great Britain.