

EP INDUSTRIES LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES



INTERPRETATION

1.1 These terms and condition ("Conditions") shall be incorporated into all contracts for the supply of goods and/or services by EP Industries Limited, Unit 1 Pye, Bridge Industrial Estate, Alfretton, Derbyshire, DE55 4NX (hereafter referred to as "EP") to the purchaser ("the Purchaser").

1.2 These Conditions shall prevail to the complete exclusion of any other terms and conditions submitted by the Purchaser. EP do not recognise or accept any conditions referred to within any document, correspondence, purchase order and/or invoice provided by the Purchaser at any time.

1.3 The Purchaser will be deemed to have accepted these Conditions by placing an order with EP, taking delivery of goods and/or acceptance of performance of services whether expressly, implicitly or by conduct.

1.4 All references herein to "agreements" and "contracts" within these Conditions shall be treated as interchangeable and refer to the contractual relationships between EP and the Purchaser.

1.5 Any notice to be given to either party shall be in writing and if sent by facsimile or electronic mail or forwarded by prepaid first class post to the receiving party at its business address as last notified in writing to the other party shall be deemed to have been given on the date of the facsimile or electronic mail transmission (if a copy is sent the same day by post), or two working days following the date of posting. The provisions of this clause shall not apply to the service of any proceedings or documents in any legal action.

CONTRACTUAL AUTHORITY

2.1 The Purchaser must provide EP with immediate written notification if any of its employees cease to have authority to enter into agreements with EP on their behalf. In the absence of any such written notification, EP shall be entitled to rely and act on the orders and instructions of the Purchaser's employees as if they were made or given by the Purchaser with full binding authority.

2.2 The Order constitutes an offer by the Purchaser to purchase Goods and/or Services in accordance with these Conditions.

2.3 The Order shall only be deemed to be accepted when EP issues written Acceptance of the Order or (at the sole option of EP) commences the delivery of goods and/or services in accordance with the Order, at which point and on which date the Contract shall come into existence.

2.4 Any samples, drawings, descriptive matter or advertising used by EP and any descriptions of the Goods or illustrations or descriptions of the Services contained in EP's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 Any quotation or estimate given by EP shall not constitute an offer and is only valid for a period of 20 business days from its date of issue.

PRICE

3.1 EP's charges for the sale of goods and/or services exclude VAT which will be added to EP's charges at the rate applicable at the time of the Order.

PAYMENT TERMS

4.1 Payment of each invoice of EP shall be due to EP upon the expiry of thirty days from the date of the invoice unless otherwise agreed in writing between EP and the purchaser where agreed terms will be displayed on the invoice under the "payment terms" section and must be adhered to. Payment shall be made by way of cleared funds without any discount, set-off or other deduction or reduction whatsoever.

4.2 The Purchaser shall make payment to the following bank account: [BARCLAYS BANK]
Sort Code: 20-63-36
Account No: 13727076
3rd Floor Office, 2 High Street, Nottingham, NG1 2EN

4.3 Time of payment is of the essence and upon payment becoming overdue by more than two days, without prejudice to any other rights or remedies, EP will be entitled to:

4.3.1 Charge the Purchaser interest on any overdue amount from the date on which payment was due to the date on which it is made, calculated on a daily basis at the annual rate of ten per cent.

4.3.2 Charge the Purchaser an administration charge in the sum of £50.00; and/or

4.3.3 All other invoices from EP to the purchaser, whether or not they are due for payment, and irrespective of any other agreement, shall become immediately due and payable by the Purchaser to EP.

4.4 Any payment received by the Purchaser will be applied to the debts due in date order, beginning with the oldest.

4.5 In the event that EP decides to take legal action (including Letter before Action or Pre-Action Protocol correspondence) to recover any outstanding debt from the Purchaser, the Purchaser shall pay on an indemnity basis all of EP's legal costs and any other associated costs that EP incur in the process. This clause applies equally in the event that EP takes legal action to recover any goods from the Purchaser in which ownership has been retained by EP.

DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

5.1 EP will attempt to accommodate delivery of goods or performance of services requested by the Purchaser. However, EP will not be liable for any loss, damage or expense arising from any delay or failure to comply with such request from any cause however so arising.

5.2 The Purchaser will not be entitled to refuse to accept any delivery of goods or performance of services, or rely on the same as a repudiation of any contract between EP and the Purchaser, arising from any delay or failure to comply with a delivery of goods or perform the services by EP.

5.3 In the event that the Purchaser refuses to or fails to take delivery of goods that were ordered by them (or to collect them when notified they are ready for collection) then EP, without notice and at their absolute discretion, may:

5.3.1 Store the goods at the Purchaser's risk;

5.3.2 require the Purchaser to pay all storage, transportation, handling or other charges incurred by EP as a result of such failure; and/or

5.3.3 Require the Purchaser to pay for the goods as though delivery had taken place and/or:

5.3.4 re-sell or otherwise dispose of all or part of the Goods

5.4. The Goods are as described in the written Acceptance of Order by EP

5.4.1 to the extent that any Goods are to be manufactured in accordance with a specification supplied by the Purchaser, the Purchaser shall indemnify EP against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest penalties and legal and other professional costs and expenses) suffered or incurred by EP in connection with any claim made against EP for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the use by EP of such specification.

5.4.2 EP reserve the right to amend the specification of Goods if required by any applicable statutory or regulatory requirements.

RETENTION OF TITLE

6.1 Whether or not risk in goods supplied by EP has passed to the Purchaser, ownership in goods supplied to the Purchaser shall remain with EP until EP has received in cash or cleared funds payment in full:

6.1.1 for such goods and related services of supply/fitting

6.1.2 and for all other goods (and related service of supply or fitting) supplied by EP to the Purchaser (including, in every case, any charges incurred in accordance with clauses 4 of these Conditions).

6.2 Until ownership in goods has passed to the Purchaser:

6.2.1 The Purchaser shall hold the goods as bailee for EP and ensure that the goods are at all times clearly identified as their property;

6.2.2 EP shall be entitled at any time on demand to:

6.2.2.1 Repossess, remove from other equipment or property (without being liable for any damage caused by such removal) and sell or otherwise dispose of all or any of the goods and thereby bring to an end (without any liability to the Purchaser), their right to use, sell or otherwise treat the goods as their own; and

6.2.2.2 enter any premises where the goods are, or are likely to be, located for the purpose of inspecting or repossessing them.

6.3 EP shall, without prejudice to any other remedy they may have, be entitled to maintain an action for the price of the goods notwithstanding that ownership in them has not passed to the Purchaser.

6.4 Risk of damage or loss in any goods shall pass to the Purchaser immediately upon the Purchaser taking delivery of the goods. In this clause "delivery" means the earlier of:

6.5.1 actual delivery of the goods to the Purchaser, their premises or any other place where delivery is directed;

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6.5.2 where EP store or hold goods on the Purchaser's behalf (for whatever period), when EP identify the goods as being no longer available for resale to a third party or when the goods are separated from their stock (whichever is the earlier);

6.5.3 the fitting onto or incorporation of the goods into property belonging to the Purchaser or a third party.

6.6 Unless otherwise agreed in writing, where EP have supplied or fitted goods then the item or items which such goods replace shall become the property of EP on removal unless otherwise agreed in writing by the EP and the Purchaser.

6.7 Where goods supplied by EP to the Purchaser are incorporated by the Purchaser or anyone on his behalf on to property belonging to a third party then a lien will at all times exist in the goods supplied by EP in favour of EP until paid for in full. It is the responsibility of the Purchaser to inform the said third party of the existence of the lien in EP's favour.

6.8 Where the Purchaser supplies free issue casings upon which EP installs tyres at the Purchaser's request then until the said tyres are paid for in full, the Purchaser is deemed to have given up any rights in the said casings so that in the event of the Purchaser failing to pay for the said tyres in full EP shall be entitled to remove both the tyres and the casings.

6.9 For the avoidance of doubt the fitting of tyres (whether by EP or otherwise) supplied to the Purchaser by EP does not constitute the incorporation of such tyre or tyres into other property or goods and title to such tyre or tyres is retained by EP in full accordance with the provisions of this clause 6.

TERMINATION

7.1 EP reserves the right to terminate any contract with the Purchaser with one month's notice by providing written notification. However, in appropriate circumstances, EP may terminate any contract with the Purchaser with immediate effect by providing the Purchaser with written notice.

7.2 The Purchaser is entitled to terminate the contract with EP by providing two months written notice.

INSOLVENCY & BANKRUPTCY

8.1 If the Purchaser:

- 8.1.1 makes a composition or arrangement with its creditors, or becomes bankrupt; or
- 8.1.2 being a company,
 - 8.1.2.1 makes a proposal for a voluntary arrangement for a composition of debt or scheme of arrangement to be approved in accordance with the Companies Act 1985 & 2006 or Insolvency Act 1986 as the case may be or any amended enactment thereof; or
 - 8.1.2.2 has a provisional liquidator appointed; or
 - has a winding up order made; or
 - 8.1.2.3 passes a resolution for voluntary winding up; or
 - 8.1.2.4 is served with a statutory demand; or
 - 8.1.2.5 under the Insolvency Act 1986 or any amendment or re-enactment thereof an administrator or an administrative receiver appointed,
- 8.1.3 then the Purchaser shall immediately inform EP in writing.

8.2 Upon any of the conditions referred to in clause 8.1 being met, all invoices issued by EP to the Purchaser, of which payment has not been made by the Purchaser, shall be immediately due and owing.

8.3 In addition, EP reserves the right to demand immediate payment of any invoices, whether or not they are otherwise due for payment, should EP, in their reasonable opinion, consider that the Purchaser is, or may soon be, unable to pay its debts as they fall due.

8.4 In further addition (and without prejudice to any other rights or remedies available to EP), EP may terminate the Contract with immediate effect by giving notice to the Purchaser in the event that any of the conditions in clause 8.1 are met and/or the Purchaser has committed a material breach of its obligations under any Contract and/or these terms and conditions.

DISPUTE RESOLUTION

9.1 The Purchaser may only dispute an invoice if they:

9.1.1 inform EP in writing within five clear days prior to the due date for payment of the amount that is disputed and the reasons for the dispute, as well as provide EP with all documentation and other information that they require in order to enable them to consider the claim; and

9.1.2 Pay any undisputed amounts or invoices in accordance with clause 4.

9.2 By failing to comply with clause 9.1 the Purchaser will not be entitled to dispute the invoice or any part of it.

9.3 Upon making a claim pursuant to clause 9.1 the Purchaser must afford EP:

9.3.1 A reasonable opportunity and facilities for the investigation of any claim and the making good of any discrepancy and, if EP request, the collection or return of goods (but no goods may be returned to EP without their prior written authorisation); and

9.3.2 the opportunity for EP to investigate any claim is given (in the case of any discrepancy which is reasonably apparent on inspection) within not less than three clear days from the date on which notice of the claim is given and, in the case of any goods, in any event before they are used or re-sold.

9.4 If the Purchaser fails to raise a claim in accordance with clauses 9.1, 9.2 and/or 9.3 then EP shall have no liability in respect of any claim by the Purchaser under these Conditions and/or any other contract between this the Purchaser and EP in relation to the Goods and/or Services comprised within the invoice or invoices in question.

9.5 Where a claim is accepted in whole or in part, any replaced items shall belong to EP and may be retained or disposed of as they deem appropriate.

9.6 The contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in all matters relating to and arising from the contract.

LIABILITY

10.1 Save as to the extent stated in these Conditions or otherwise agreed in writing by a director of this company:

10.1.1 EP shall have no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever under or in connection with any contract for the supply of goods and/or services other than for:

10.1.1.1 Death or personal injury resulting from their negligence (as defined by the Unfair Contract Terms Act 1977, section 1); or

10.1.1.2 For proven fraud on the part of their employees whilst acting in the course of their employment with EP; and

10.1.1.3 EP shall have no liability whatsoever for any consequential or indirect loss or damage suffered, directly or indirectly, by the Purchaser under or in connection with any contract for the supply of goods and/or services, including but not limited to wasted time or expenditure, loss of profits, production, business revenue, expected savings or goodwill or any claim against the Purchaser by any third party.

10.2 Without prejudice to the foregoing provisions of this clause 10, the liability of EP under or in connection with any contract for the supply of goods and/or services shall in no circumstances exceed the charge for the supplies (whether of Goods or Services) in respect of which the liability arises and in any event, EP's aggregate liability under a contract shall not exceed 100% of the total contract value.

10.3 EP shall be discharged of all liability to which these Conditions apply unless (without extending statutory limitation) proceedings (which expression shall not include Pre-Action Protocols in accordance with the Civil Procedure Rules of England & Wales or of any other jurisdiction) are commenced within twelve months after the Purchaser becomes aware (or should reasonably have become aware) of the facts giving rise to such liability.

10.4 Nothing in clauses 10.1 to 10.3 shall affect the Purchaser's liability to pay the charges or any other sums falling due to EP under any contract.

10.5 The term "in connection with any contract for the supply of goods and/or services" includes any performance or contemplated performance of the contract.

10.6 The terms implied by Sections 13 - 15 of the Sale of Goods Act 1979 and the terms implied by Sections 3 - 5 of the Supply of Goods & Services Act 1982 are, to the fullest extent permitted by law, excluded from any contract entered into under these terms and conditions.

WARRANTIES

11.1 In respect of goods that EP supply, they shall (to the extent that they are able to do so), assign to the Purchaser the benefit of any manufacturer's warranty applying to the goods and shall, at the Purchaser's request supply the details of any such manufacturer's warranty.

11.2 To the extent permitted by law, all other warranties in respect of the supply of goods and/or services (including, but without limitation, fitness for any particular purpose), whether express or implied, are excluded.

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FORCE MAJEURE

12 EP shall not be liable for any delay or failure to perform the whole or any part of any contract resulting from any cause whatsoever beyond their reasonable control existing at the date of the contract or arising thereafter including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities, or the supply of labour, materials or power, lack or shortage of stock or goods, adverse weather, traffic congestion or disruption, strike, lockout or labour dispute, illness or restriction of any authority or governmental agency (of whatever nature) and the time for performance shall be extended by the period of any such delay.

GENERAL PROVISIONS

13.1 Nothing in these Conditions shall create any partnership, joint venture, or relationship of principal and agent between the parties.

13.2 These Conditions contain the entire agreement between the parties in respect of its subject matter and supersedes all previous agreements and understanding between the parties and may only be modified by an instrument in writing signed by a director of EP.

13.3 EP may at their discretion sub-contract all or any of their obligations under any contract. However, the Purchaser cannot assign their interest in the contract with EP without their prior written consent.

13.4 Where the Purchaser deposits their own goods with EP, whether for repair or otherwise, then in the event of their failing to collect those goods and meet all sums (if any) due to EP and arising within two months of the date on which the said goods are available for collection then EP shall have the right to dispose of the goods in the open market and to recover the proceeds of any such disposal all or any sums due to EP from the Purchaser howsoever arising and in the event that the proceeds of the disposal exceed any such sums due EP shall be accountable to the Purchaser for such excess for a further period of two months from the date of the disposal in question but thereafter the Purchaser shall have no claim against EP, whether in respect of the goods themselves or the proceeds of any disposal. 13.5 If any of these Conditions shall be held to be illegal, void, invalid or unenforceable or under the laws of any jurisdiction, the legality, validity and enforceability of the remaining Conditions shall not be affected, and the legality, validity and enforceability of the whole of these Conditions in any other jurisdiction shall not be affected.

13.6 No person who is not a party to this agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce these Conditions.

13.7 If any provision or part provision of these terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to, or deletion of, a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these terms and conditions.

13.7.1 if one party give notice to the other of the possibility that any provision or part-provision of these terms and conditions is invalid, illegal or unenforceable the parties shall negotiate in good faith to amend such provisions so that, as amended, it is legal, valid and enforceable and to the greatest extent possible, achieves the intended commercial result of the original provision.

13.8 Except as set out in these Conditions no variation including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by EP.

INTELLECTUAL PROPERTY RIGHTS

14.1 A reference to "Intellectual Property Rights" herein shall include patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

14.2 The Purchaser acknowledges that EP is the owner (or licensee) of all Intellectual Property Rights in the goods sold and/or services (including in the design and manufacturing processes) provided to the Purchaser under these Conditions and that these Intellectual Property rights shall at all times remain the exclusive property of EP (or, where applicable, the third party licensor from whom EP derives the right to use them). Nothing in these Conditions shall under any circumstances be interpreted to transfer any of the Intellectual Property Rights in the goods and/or services to the Purchaser.

14.3 EP shall grant the Purchaser a non-exclusive, non-transferable, non-sub licensable, revocable license to use the Intellectual Property Rights in the goods and/or services for the sole purpose of making reasonable use of the goods and/or services in accordance with the terms of these Conditions.

14.4 The Purchaser shall indemnify and hold EP harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by EP as a result of or in connection with any alleged or actual infringement, whether under English law or not, of any third party's Intellectual Property Rights or other rights arising out of the use of the goods and/or services.