

## Conditions of Sale – Supply Only

**DEFINITION** The word "Company" or "Companies" shall mean Frenger Systems Limited. The "Customer" or "Customers" shall mean the person, firm or company who accept a quotation of the Company for the sale of goods or whose order for goods is accepted by the Company.

### 1. GENERAL

The following terms and conditions apply to all contracts for sale of the Company's goods and / or services. These terms and conditions shall prevail over any other provisions inconsistent therewith, wherever contained. No variations to these terms and conditions shall be binding upon the Company unless expressly accepted by the Company in writing and signed by a director of the Company. Contracts for installation of products shall be governed by the Company's "Conditions of Sale – Installation".

### 2. AVAILABILITY OF GOODS

- (i) Offers for delivery from stock are made subject to the goods remaining unsold upon receipt of order.
- (ii) If at the Customers request the Company hold the goods in their store, the same will be at the Customers risk and the Company reserves the right to make a nominal storage charge.
- (iii) If the Customer cannot accept delivery of goods by the contracted due delivery date, goods shall be stored either at the Company's facility or at an independent storage facility and charged to the Customer's account (Invoiced) accordingly and would become payable 30 days from the month end in which the invoice was raised.
- (iv) Where orders contain multiple deliveries / consignments each consignment / delivery shall be considered to be a separate contract.
- (v) Manufacturing lead times quoted are to first batch / consignment delivery and not the entire quoted quantity, as larger quantity quotations would consist of multiple lorry loads of goods.

### 3. PRICES

- (i) Prices quoted are those ruling at the date of the Company's order acknowledgement (OA) or the date of despatch of the goods, as the case may be, detailed in the Company's quotation and / or order acknowledgement.
- (ii) Fixed prices quoted can be varied by the Company if delay in placing the order for the goods by the customer has allowed any material suppliers price to the Company to have increased, the Company therefore reserve the right to revise their quotation based on any increased cost incurred. Once an Order Acknowledgement has been issued by the Company the price is then fixed.
- (iii) Where before delivery the goods become subject to customs duty, value added tax or any other tax surcharge under any applicable law or Regulation, or an amount payable under the European Communities Act or enactments or regulations hereunder, in excess of the sum allowed for such liabilities in the Company's quotation price for the goods, such extra charge would be charged to and payable by the Customer in addition to the quoted price.
- (iv) The Company's quotation is made at prices applicable to the quantities and types of goods specified. In the event of the whole order as quoted not being placed with the Company, the Company reserves the right to revise their prices in respect of the type and quantity of goods actually supplied.
- (v) In the event of credit account sales, the Company reserves the right to make a minimum invoice charge.

### 4. SAMPLES

Samples and colour charts are only submitted as indicative of the class of goods quoted for, without any guarantee as to colour, exact dimensions or quality of the bulk. Deliveries of materials may show slight variations in substance, performance, colour or dimensions, and estimates are given on the understanding that any unavoidable degree of variation will be accepted.

### 5. DESCRIPTIONS AND ILLUSTRATIONS

- (i) Whilst all descriptions of the goods in catalogues, brochures, leaflets and web sites provided by the Company have been carefully prepared, they are intended for general guidance only and the Company does not accept responsibility for any errors or omissions therein or for any loss or damage resulting from reliance on such descriptions and illustrations.
- (ii) The goods are not tested or sold as fit for any particular purpose and any term, warranty or condition, expressed or, implied are applicable if specifically detailed in writing by a director of the Company.
- (iii) Unless expressly stated, layout drawings submitted by the Company shall be regarded as general arrangement drawings only and shall not be binding as to detail. Manufacturing drawings are issued where appropriate for detail. The copy is valid in the event of a dispute, but the Company does not accept responsibility for the property of the Company and not be reproduced or modified without written consent by a director of the Company.

### 6. CANCELLATIONS AND RETURNS

- (i) Contracts and orders may be cancelled only with written sanction by the Company, if not already dispatched, however any goods part manufactured or materials ordered cannot be cancelled and will be charged accordingly up to a maximum of 95% of the OA / contract value inclusive of any agreed Variations.
- (ii) All administration costs associated with cancelled contracts prior to dispatch will be charged up to a maximum of 15% of contract value (minimum of £300). If drawings for the order have been produced by the company this charge may increase by the Company to a maximum of 40% of the contract value.
- (iii) Deposits taken against orders are non-refundable under any circumstances.
- (iv) The Company cannot accept the return of goods obtained or made especially to the project requirements (i.e. made to order). The Company reserves the right to make a handling and restocking charge of 40% on standard stock products either ready for delivery at the Company or returned in unopened packaging, unused, undamaged and resalable condition within 30 days of delivery, however acceptance of a standard stock item return is at the discretion of the Company. Any arrangements for the return of goods must be made with the Company's accounts department and accepted in writing before customers return any stock products. Drivers / delivery companies cannot accept returned goods without written instructions from the accounts department of the Company. Return carriage at Customers own expense.

### 7. DELIVERY

- (i) Although every endeavour will be made by the Company to adhere to delivery dates quoted / order acknowledged, in no circumstances shall the Company be liable for any delay in delivery or loss arising there from, however caused. Time shall not be the essence of the contract.
- (ii) When goods are offered for delivery to site, the Company's obligation is to deliver as near to the site as a safe hard road permits. The Customer shall be responsible for checking the goods for any transport damage before unloading and recording the same on the hauliers paperwork at the time of delivery. Customer to unload and site distribute accordingly.
- (iii) If delivery times are restricted by local traffic regulations, the Customer shall be responsible for advising the Company of the details of the restriction and providing whatever necessary for unloading at the agreed time. If the delivery has to be made outside our normal hours of business, the Company reserves the right to make an additional charge.
- (iv) Manufacturing lead times and/or delivery dates may be postponed/extended due to acts of force majeure, Governmental actions, industrial strike actions, war, quarantine, shipping and air travel restrictions or any other actions outside of the control of the Company. The above list should not be considered exhaustive.

### 8. DAMAGE AND LOSS IN TRANSIT

- (i) The Company accept no liability for damage to goods occurring in transit unless notified to the Company on the day of delivery and provided that the goods have been signed for as "damaged" on the Company's delivery note and on the haulage company's delivery note at the time of delivery. In the case of non-delivery, the Company accepts no liability of any sort unless written notice of non-delivery is given to the Company within three working days after the posting or electronic issue of the despatch advice note or invoice in respect of the goods.
- (ii) The Company's liability for damage to or non-delivery of goods duly notified to the Company by the Customer in accordance with the foregoing shall in any event be limited to replacement of the goods within a reasonable time, whether the damage or non-delivery is due to negligence or otherwise by the Company. Consequential losses shall not be transferable from the Customer to the Company.

### 9. CONTAINERS / STALLAGES

Shipping containers to be offloaded by the Customer and goods emptied by them on the day of delivery and empty shipping containers reloaded by the Customer onto the delivery vehicle on the same day, unless otherwise agreed in writing with the Company. If reusable stillages and/or carcasses are listed on the order acknowledgement it is the Customers responsibility for the safe keep and return of such items on the next available delivery lorry. Any loss or damage or shortfall in return of stillages or carcasses would be chargeable to the Customer by the Company.

### 10. PASSING OF PROPERTY

- (a) All goods sold by the Company whether delivered, installed or not shall remain the sole property of the Company until all funds of whatever kind due from the Customer to the Company for the sale or supply of such goods have been paid and cleared into the Company's bank account in full.
- (b) Until property in goods sold or supplied passes to the Customer the Customer shall:
  - (i) be responsible for any damage suffered to the goods and shall take all steps necessary to keep the goods in good condition and repair and shall keep the same in safe custody;
  - (ii) shall not overload or overwork or in any way improperly use the same and shall not do any act or thing which leads or may lead to the goods being seized under distress or any legal process;
  - (iii) shall at all times keep the goods comprehensively insured against all risks to their full price and shall take steps to effect that an endorsement be made on the policy recording the Company's interest in the goods and providing that all the money payable to the Customer under the policy shall be paid to the Company as agents for the Customer and the Customer hereby appoints the Company as agents for the Customer for the purpose of receiving the said money and grants to the Company the right to satisfy from such sums any claims outstanding in the Company's favour against the Customer. If for any reason such insurance monies are not paid to the Customer but are paid to the Customer, the Customer shall hold such monies up to the amount due to the Company as trustee for the Company. Further at all times while the goods are in the possession of the Customer but while the property therein remains in the Company's the Customer shall notify immediately any defect arising in the condition of the goods and shall at all times allow the Company access to the goods for the purpose of inspection and or work to the goods and the Company shall be entitled to but not obliged to carry out such works as the Company deem necessary to the goods and only such work and shall be entitled to render to the Customer charges for such work unless such work is in respect of defects which are the subject of an express warranty under these conditions.

(c) Where goods which have not been paid for are not clearly identifiable by way of serial number or otherwise to particular invoices the following rules shall apply to enable attribution to particular invoices:-

- (i) Goods sold or supplied by the Company and held by the Customer shall be attributed to the last unpaid invoice rendering charges in respect of that type of goods;
- (ii) If the number of goods of a particular type sold or supplied by the Company and held by the Customer exceeds the number of goods of that type covered by the last unpaid invoice, then the goods un-attributed to the last unpaid invoice shall be attributed to the penultimate unpaid invoice rendering the charges in respect of that type of goods;
- (iii) If the number of goods of a particular type sold or supplied by the Company and held by the Customer exceeds the number of goods of that type covered by the last and penultimate unpaid invoices then the remaining goods shall be attributed to the pre-penultimate relevant unpaid invoice and so on until so far as is possible all the goods sold or supplied by the Company held by the Customer have been attributed to unpaid invoices.
- (d) Where such goods which have not been paid for have been sold on by the Customer then so much of the proceeds of such onward sale as is equivalent to the sum due to the Company shall be held on trust by the Customer for the Company and the Company shall be entitled to trace the same into the Customers bank account. Where goods sold or supplied by the Company have been sold on by the Customer but cannot be attributed by serial number or otherwise to particular invoices of the Company then they shall be attributed to the last unpaid invoice in accordance with the rules set at sub-clause (c) above or (where the goods have already been attributed to invoices in accordance with sub-clause (c) above) to the latest unpaid invoice to which goods have already been attributed.
- (e) Where goods which have not been paid for have been incorporated into or with other goods so as to be no longer identifiable as the goods supplied or sold by the Company then so much of any proceeds of sale of the article(s) into or with which our goods have been incorporated as is equivalent to the sum due to the Company shall be held in trust by the Customer for the Company, the Company shall be entitled to trace the same into the Customer's bank account(s). Where goods the subject of this sub-clause cannot be attributed by serial number or otherwise to particular invoices of the Company then they shall be attributed to the last unpaid invoice in accordance with the rules set out at sub-clause (c) above or (where goods have already been attributed to invoices in accordance with sub-clause (c) above) to the latest unpaid invoice to which goods of the relevant type have not already been fully attributed.

### 11. REPRESENTATIONS BEFORE CONTRACT

In accepting delivery of goods supplied by the Company, the Customer is deemed to acknowledge that no representation, whether oral or in writing, has been made by the Company or by any servant or agents of the Company, which has induced the Customer to enter into the contract for the purchase of the goods. No representation or warranty is made, given or to be implied except as expressly stated in these Conditions of Sale.

### 12. DEFECTIVE GOODS

- (i) All goods should be inspected by the Customer on delivery, and before installation, to ensure that they are as ordered, suitable for the purpose required, and in good condition. Any visible damage should be photographed before site distribution (preferably whilst goods on the lorry / in the container) and reported by the Customer to the Company in writing (by e-mail) with photographs on the day of delivery. It is imperative for the Customer to record any damage on the hauliers delivery note at the time of delivery in order to act on a claim for goods being delivered in a damaged state.
- (ii) Whilst every endeavour is made by the Company to supply goods as ordered and of sound workmanship and material, no guarantee or warranty is given or implied as to the correctness, soundness, workmanship or efficiency of any goods supplied for any particular purpose, but in the event of any goods supplied proving to be wrongly delivered or defective in material or workmanship, the Company undertakes to repair or replace the goods free of charge if returned to their works and at the Company's sole discretion if goods have been installed by the Customer with a visible defect and / or damage. The Company shall be under no liability whatsoever for repair or replacement of defective goods unless written notice of such defect is given to the Company at the time of delivery or within 2 months of the date of delivery. Any alleged faulty and/or defective goods are to be returned by the Customer to the Company for the Company to investigate cause of fault and/or defect if the Customer wants repair or replacement. If goods not found to be faulty then the Customer to collect goods or goods to be disposed by the Company within 2 months of inspection. The Company's Warranty to repair or replace defective goods does not include the cost of removing the goods, re-fixing or making good materials, or any other consequential loss or damage.
- (iii) The above undertaking is given in lieu of all conditions or warranties, express or implied, statutory or otherwise which are hereby expressly excluded, and no liability is accepted by the Company for damage, loss or injury of any kind, whether arising by reason of negligence or otherwise by the Company. The Company shall not be liable for any goods being returned, which are lost or damaged in transit. It is the sender's responsibility to insure goods in transit to their full value by reason of negligence or otherwise by the Company.
- (iv) Where manufacturers of goods or materials have limited their liability in respect thereof or in respect of any liability direct or indirect in connection therewith, and such limitation has been advertised or announced in writing or otherwise, the Company shall not be deemed to have come to the Customer's notice whether generally or specifically, the same limitations shall apply to the Company's liability on the sale of those goods by the Company and such limited liability shall be in lieu of all other conditions or warranties, express implied or statutory, which are hereby expressly excluded.
- (v) Warranty will not apply where goods are installed in hazardous and / or aggressive environments. Similarly warranty regards goods with water conduits will not apply if water conditions are aggressive – for more information regards water quality see Technical Data Sheet TDS 36W (C).

### 13. HEALTH AND SAFETY AT WORK

All goods are sold subject to the requirements that the Customer shall give the following undertaking: The Customer undertakes to make available to those persons who will use these products at work all information concerning the products which the Customer shall receive from the Company or component manufacturers and the Customer further undertakes to take measures to ensure that such information is properly used, so far as is reasonably practicable, that the goods will be safe and without risk to health when utilized in use.

### 14. PAYMENT AND ACCOUNTS

- (i) Full payment of invoice(s) must reach the Company 30 days following the month end in which invoice raised unless otherwise specified in the Company's quotation and / or OA. The Customer has no right of "offset" unless agreed in writing by a director of the Company. If payment is not made by the due date the Company at its option may:-
  - (a) Suspend all further deliveries or cancel the Contract / OA so far as any goods remain to be delivered there under and resell such goods.
  - (b) Decline to accept warranty responsibility in respect of such goods.
  - (c) Cancel all discounts quoted or shown on the invoice.
  - (d) Charge the Customer interest at 2% per month on all monies not paid within the Company's terms of payment.
- (ii) The Company invoice (as supplemented by these Terms) shows all offers of discount, early payment credits and overdue account charges relating to the sale, consequently the Company must be notified immediately of any error on an invoice.
- (iii) The opening and maintenance of a credit account and the acceptance of any order against that account is subject to satisfactory ongoing conduct of the Customer (i.e. no indications of Customer intent to withhold future payments or part thereof, or apply any offset of monies), good references being received and the Customers observance of the terms on which the credit is given. The Company reserves the sole right at any time to refuse to accept any orders against a credit account or to continue to supply an existing order on credit.

### 15. OPERATION & MAINTENANCE

Operation & Maintenance (O&M) manuals are usually issued electronically following completion of the deliveries of goods. At special request by the Customer during the Contract these may at the sole discretion of the Company be issued earlier. The Company operates several web sites internationally which has much of the O&M information as downloadable data. Bespoke projects however may require the Company to formulate the O&M data.

### 16. DEFAULT IN PAYMENT AND BANKRUPTCY

In the event of non-payment for whatever reason if unauthorised by the Company the Company may withhold, cancel or suspend any outstanding deliveries for goods ordered under any outstanding contract between the Company and the Customer in accordance with the Company's credit terms. If the Customer becomes bankrupt or goes into liquidation or makes any composition with its creditors or if a Receiver or Manager is appointed, the Company reserves the right to withhold deliveries and cancel or suspend outstanding orders and to recover the goods delivered or collected, unless payment in full is made to the Company for the whole of the goods ordered.

### 17. OTHER TERMS

In the event any one or more of the Terms or Conditions contained within this document are invalid the remainder shall remain in full force. The Contracts (rights of Third Parties) Act 1999 shall not apply to this document.

### 18. LEGAL CONSTRUCTION

Every contract to which these General Conditions of Sale apply shall be construed and operate as an English contract and in accordance with English Law.

Unless agreed by the Company in writing the Company's standard Conditions of Sale as above will override the Customers conditions of purchase and any offer made by the Company is given strictly under these conditions.