

## AMEK LTD – TERMS AND CONDITIONS OF SALE

### 1. General

- 1.1 Unless other terms and conditions are expressly accepted by Amek Limited (hereinafter called "the Company") in writing signed by a director of the Company and referring specifically to the terms and conditions to be amended the Contract shall be on the terms and conditions set out below ( hereinafter called "the Contract Terms") to the exclusion of any other terms and conditions whether or not the same are endorsed upon or delivered with or referred to in any purchase order or other documents delivered by the Purchaser to the Company.
- 1.2 In the Contract Terms:-  
"Goods" shall mean the goods supplied by the Company to the Purchaser including replacement parts.  
"Work" shall mean work, plant supervisory repairs services or work of erection done or to be supplied by the Company and more particularly described in the Contract.  
"Specifications" means the technical description (if any) of the Goods and Work contained or referred to in the Contract.  
"The Contract" shall mean any contract with the Company incorporating these terms and formed when an acknowledgement is sent by the Company to the Purchaser for the supply of Goods or provision of Work.  
"The Purchaser" shall mean any person entering into a contract with the Company for the supply of Goods or the execution of Work.  
"The Site" shall mean the actual place or places to which Goods are to be supplied or Work done by the Company together with so much of the area surrounding the said place or places as the Company shall actually use in connection with the supply of Goods or Work together with all such rights of access as are necessary to enable the Company to perform the Contract.

### 2. Orders and Quotations

- 2.1 All quotations are invitations from the Company to the Purchaser to order Goods or Work. The Company reserves the right to accept or refuse orders.
- 2.2 Unless otherwise agreed in writing the Company will not accept any order placed by a Purchaser pursuant to a quotation unless such order is made in writing within sixty days of the date of the quotation.
- 2.3 Unless the price or rate stated in the quotation is expressed to be "fixed" then the price or rate quoted is that prevailing at the date of the quotation and is for guidance only and the Company reserves the rights to vary the price or rate and to charge in accordance with the price or rates prevailing on deliver of the Goods or completion of the Work.
- 2.4 The Purchaser's order must be accompanied by sufficient information to enable the Company to proceed with the Contract forthwith and in the event that the information so supplied is found at any time to be insufficient or inaccurate in any way whatsoever then the Company may at its option either (and without prejudice to any other remedy) cancel the Contract or proceed with the Contract but on a revised deliver programme and/or at an increased price to cover any increase in costs which are incurred as a consequence of the insufficient or inaccurate information.
- 2.5 All plans drawings specifications and other documents prepared or produced by the Company shall unless expressly agreed in respect of any particular document remain the property of the Company and shall be returned by the Purchaser on demand at the request of the Company or in any event on the completion of the Contract.
- 2.6 The Purchaser warrants to the Company that where it delivers to the Company any plan, drawing, specification or other document all patents, copyright registered design and other industrial property rights in such items are vested in the Purchaser and that the Purchaser has obtained all necessary consents and licenses to deliver the same to the Company and to allow the Company to make such use of the said documents as may be necessary for the performance of the Contract.
- 2.7 No variations to the Contract shall be effective unless made in writing and signed by the Director of the Company.
- 2.8 The Company may carry out any of its obligations by sub-contractors

### 3. Catalogue and Price

- 3.1 Catalogue, price lists and other advertising material are only an indication of the types or Goods and Work offered and no particulars therein shall be binding upon the Company.
- 3.2 All prices quoted in any catalogue or list are subject to alteration or withdrawal from time to time without notice and unless otherwise agreed in writing the Contract price will be the price ruling at the date when Goods are delivered (as hereinafter defined) or Work executed.
- 3.3 Except as provided in paragraph 3.2 above all prices are based on the cost of materials labour transport and of conforming to statutory obligations ruling at the date of order and if between that date and the date on which the Goods are delivered or Work executed variations (either by increase or decrease) shall occur in these costs then the Company (but not the purchaser) may amend the price to provide for these variations.
- 3.4 The Contract price is exclusive of an applicable value added tax which the Purchaser shall be additionally liable to pay to the Company.
- 3.5 Where the Company specifies that Goods will be supplied or Work done over a period of time then the Company reserves the right to call for payments by instalments in accordance with the schedule contained in the quotation.
- 3.6 The Purchaser shall be deemed to accept the Goods on the date of delivery (as hereinafter defined) or on the date of practical completion of the Work and any defects in the Goods or the Work that do not affect their use for the purpose for which they are intended shall not delay the terms of payment.

### 4. Despatch and Packing

- 4.1 The Company will use its best endeavours to supply the Goods or complete the Contract within the time agreed (if any) but in no circumstances will it be liable for any loss or damages of any kind whatsoever caused directly or indirectly by any delay in the completion of the Contract or delivery of the Goods and any delay shall not be a sufficient reason to allow a Purchaser to rescind the Contract.
- 4.2 In any event if by reason of force majeure the completion of the Contract is in the opinion of the Company rendered impracticable the Company shall be at liberty to terminate the Contract by sending by ordinary post or by delivering to the Purchaser a notice in writing to that effect. Thereupon the Purchaser will pay to the Company such sum as will together with any other sums previously paid bear the same proportion of the Contract price (including any variation thereof) as the Goods or Work contract to be supplied.
- 4.3 If the price in the Contract is expressed to be "ex works" then all Goods shall be delivered at the expense of the Purchaser.
- 4.4 In respect of all other Contracts the Goods will be despatched carriage paid by road or goods train to the nearest convenient unloading point to the Purchaser's works or appropriate Site and the Purchaser shall be responsible to notify the Company of any restrictions of access such as weight, width, height or loading hours for unloading vehicles or containers and transportation to the site of erection. Provided however that the cost of any excess for special or express deliver (if requested by the Purchaser) shall be borne by the Purchaser. The Company shall have the sole right to determine the relevant unloading point.
- 4.5 If deliveries are required over an extended period each consignment shall be considered a separate transaction and invoiced separately.
- 4.6 All goods shall be deemed to be delivered by the Company to the Purchaser when they are handed over to a carrier or appropriated to the Contract by the Company.
- 4.7 All Goods are at the risk of the Purchaser immediately from the date of delivery to the Purchaser (or into custody of a third party on the Purchaser's behalf) whichever is the sooner and the Purchaser should therefore insure accordingly.
- 4.8 Where the Purchaser alleges that the Goods are deficient in numbers upon delivery or defective at that time (as opposed to having been damaged in transit) the Company shall not be liable for such claims unless they and the carrier concerned are advised in writing within 48 hours of the actual receipt of the Goods by the Purchaser.
- 4.9 In the event that the Purchaser alleges that the Goods were not received the Company shall not be liable unless notified in writing within 10 days of the estimated date of receipt by the Purchaser (which date shall be determined by the Company having regard to the actual date of despatch and making allowance for a reasonable transit time).
- 4.10 Where the Purchaser alleges that the Goods have been damaged in transit the Purchaser must supply full particulars to the carrier and to the Company within 48 hours to enable a claim to be made against the carrier. The Company shall not be liable for such damage.

5. Description of Goods
  - 5.1 All Goods will be supplied as specified subject to availability to the Company of necessary materials. Where specific materials are not so available the Company reserves the right without further notice to substitute.
  - 5.2 All descriptions, specifications and drawings, all particulars of weights and dimensions and all forwarding specifications issued by the Company are approximately only.
  - 5.3 Variation by the Company within the specification of the Goods will not constitute a breach of Contract or impose upon the Company any liability whatsoever.
  - 5.4 The Company reserves the right to make any changes in the Specifications which are required to conform with any applicable safety or other statutory requirements.
6. Access to Site
  - 6.1 The Purchaser shall on the date specified in the Contract allow the Company to have free and unhindered access to the Site for the purposes of completing the Contract.
  - 6.2 Unless specific arrangements are made to the contrary the Purchaser shall at his own expense provide all materials, labour, power, tools, tackle and apparatus necessary to unload and position the Goods at the Site.
  - 6.3 When work on the Site is undertaken, the Purchaser shall provide:
    - 6.3.1 a clear and level Site with sufficient space adjacent for the placing of material and shall supply necessary foundations and temporary cover over the Site to protect the Goods and construction work effectively from the elements.
    - 6.3.2 Water electricity compressed air power lifting tack and fort lift truck with driver necessary in connection with the erection and shall undertake all filling in or making good of floors, roof, provision of cover plates over inspection pits and any other civil engineering work including removal of rubbish.
    - 6.3.3 A satisfactory and continuous means of access to the Site free from all obstructions together with off-loading facilities and parking facilities for vehicles of the Company, its employees and agents.
    - 6.3.4 Health and welfare facilities which may be required by law under the regulations current from time to time for employees of the Company while they are engaged at the Purchaser's premises in the performance of the Contract.
    - 6.3.5 Service connections permanent and temporary for fuel, electricity, air, water and drains both to main plant and auxiliary equipment.
  - 6.4 Before delivering any Goods or Work the Company shall if the Contract so provides inspect and test the Site for compliance with the Contract and if so requested will supply to the Purchaser a statement of the results of such test.
  - 6.5 If by reason of any act or omission of the Purchaser the Site is not suitable for the installation of the Goods or Work then the Company in its sole discretion may either cancel the Contract or carry out such Works as are necessary to make the Site suitable for the Goods or Work in respect of such additional Works shall be entitled to charge the Purchaser a fair and reasonable sum.
  - 6.6 Where the Company shall be required to deliver to the Site plant tools or machinery for the purposes of carrying out the Contract then the Purchaser shall take all necessary steps to protect such items and to safeguard them at all times when the Company is not at the Site.
  - 6.7 The Purchaser shall indemnify the Company in respect of all damage or injury occurring before the Contract shall have been completed to any persons or to any property (including property forming part of the Contract) and against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith howsoever occasioned.
  - 6.8 Where contractors other than those employed by the Company are involved, their programmes will be arranged by the Purchaser to permit the Company's work to be carried out with continuity and with one visit to the Site. Should the Company be subject to delays or required to make a return visit to the Site, additional costs will be chargeable to the Purchaser.
  - 6.9 On completion of the Contract all surplus materials supplied by the Company shall unless otherwise agreed, remain the property of and be removed from the Site by the Company. Until such material is removed, the purchaser shall take reasonable precautions for the safe custody of such surplus materials.
7. Storage
  - 7.1 If by reason of lack of instructions or upon the express instruction of the Purchaser despatch in accordance with the Contract is delayed for 21 days after the Purchaser has been notified that the Goods have been delivered then the Company if and for so long as its storage facilities permit may its option store the Goods and the Purchaser shall pay a reasonable charge therefore provided always that the Company shall be under no obligations whatsoever to the Purchaser in respect of the Goods so stored and neither shall the Company be liable for any loss or damage howsoever arising caused as a result of their failing to keep such Goods safe or free from charge.
8. Patents
  - 8.1 No right or licence is granted by the Contract to the Purchaser in respect of any patent, copyright, sketches, designs, inventions, processes or other industrial property right except the rights to use or resell the Goods.
  - 8.2 It is an express condition of the Contract that the Goods or Work shall not be exhibited by the Purchaser nor shall they permit them to be exhibited at any exhibition without the prior approval in writing of the Company.
9. Payment
  - 9.1 Unless otherwise agreed the Contract price shall be payable on delivery of the Goods or on completion of the Work.
  - 9.2 In the event that the Purchaser shall fail to pay for the Goods or Work on the due date then the Purchaser shall pay to the Company interest (both before and after any judgement) at the rate of 2% per calendar month or any part calendar month until payment.
  - 9.3 Notwithstanding that delivery may have taken place the property in the Goods shall not pass to the Purchaser save as hereinafter provided and the Company shall be entitled to sue or otherwise effect recover of any money due to the Company.
  - 9.4 In the event that the Company shall recover possession of the Goods pursuant to the powers hereinafter contained or otherwise then such recovery shall not extinguish the debt due from the Purchaser to the Company save that the Company shall make due allowance in respect of the value of such goods so recovered.
  - 9.5 In the case where the Contract consists of more than one article or piece of work, payment for that article or piece of work shall be due when that article is delivered or the piece of work completed as the case may be.
  - 9.6 The Company shall not be under any liability to continue work or to make deliveries while payment for any previous work or deliveries has not been made.
  - 9.7 No dispute arising as to quality or performance of the Goods or Work or defects or omissions on the part of the Company shall entitle the Purchaser to delay payment unless the Company shall agree liability in writing for a specified sum or the same shall have been determined by a Court of competent jurisdiction.
  - 9.8 The Purchaser shall not be entitled to set off any sums (ascertained or contingent) as may be due or claimed from the Company to the Purchaser in respect of the Contract or otherwise against any sums due to the Company under the Contract.
10. Ownership of Goods
  - 10.1 Notwithstanding that the Goods shall be at the risk of the Purchaser from the date of deliver the property in the Goods shall not pass to the Purchaser until all monies owing to the Company in respect of the Goods or Work have been paid to the Company.
  - 10.2 Where Goods are in possession of the Purchaser they shall be held by the Purchaser as the Company's fiduciary agent and bailee but at the risk of the Purchaser and stored separately from other goods and clearly marked in such a way that they can be readily identified as the property of the Company.
  - 10.3 The Purchaser shall be entitled in his own name to sell in the ordinary course of business Goods which remain the property of the Company and shall do so as agent for the Company. Pending payment in full for all goods supplied under the Contract by the Company the proceeds of any such sale shall be the property of the Company and the Purchaser shall pay such proceeds into a separate account to the Purchaser's Bankers and shall be accountable to the Company for all Goods sold and the proceeds of their sale.
  - 10.4 The Purchaser's power of sale shall be determined automatically if a receiver is appointed over any of the assets of the undertaking of the Purchaser or a winding up order is made against the Purchaser or the Purchaser does into voluntary liquidation or commits any act of bankruptcy./
  - 10.5 Notwithstanding anything to the contrary herein contained the Company shall be entitled at any time and in any event upon the termination of the power of sale as herein provided by servants or agents to enter upon the Purchaser's premises for the purposes of recovering any Goods which form the property of the Company or which have not been paid for in full.
  - 10.6 The Purchaser shall not be entitled to pledge any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Purchaser does so all monies owing by the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

11. **Guarantee and Liability**
  - 11.1 The Company will as far as they reasonably can transfer or make over to the Purchaser the benefit of any guarantee or warranty which may have been given by the manufacturer in respect of any Goods which are not made by the Company at the request and expense of the Purchaser.
  - 11.2 All conditions warranties or terms as to the fitness quality or accordance with sample description or specification of such Work, Goods, components and materials are excluded save that the Company warrants to the Purchaser in respect of Goods supplied by the Company that for a period of 24 months (12 months for Roller Drive products) from the date of supply the Company will free of charge replace or repair any part or parts thereof proved to its satisfaction to be defective owing to faults in workmanship or materials. All labour, travel and carriage costs involved in effecting such replacement or repair will be borne by the Purchaser. This warranty shall not apply where in the opinion of the Company the defect has arisen through misuse, neglect or accident or where any fault has not been immediately notified to the Company.
  - 11.3 Save as aforesaid the Company shall not be liable to the Purchaser for:
    - 11.3.1 any negligence or breach of contract arising out of any defects in any work done or any goods components or materials supplied or used by the Company
    - 11.3.2 any loss of profit sustained by the Purchaser
    - 11.3.3 except as provided by the Contract any claim made against the Purchaser
    - 11.3.4 any damage or injury caused by or arising from the acts or omissions of the Purchaser or others (not being the Company's servants or agents)
    - 11.3.5 any loss or damage in circumstances over which the Company has no control
    - 11.3.6 any slight variations in the colour, texture, or appearance of finishing materials
  - 11.4 Save as aforesaid and so far as is required by law the Company will in no other circumstances be liable for any loss or damage of any kind howsoever caused directly or indirectly by and defect in material or statutory or otherwise are hereby expressly excluded.
  - 11.5 Where the Goods are sold or Work supplied under a consumer transaction (as defined by the Sale of Goods Act 1979) the statutory rights of the Purchaser are not affected by the Contract Terms
12. **Third Parties**
  - 12.1 The Purchaser undertakes to bring the relevant terms and conditions of the Contract to the notice of all persons to whom the Goods or Work or any of them are sold. Offered for sale, let, hired or otherwise disposed of an undertakes to ensure that the contract or other arrangements between the Purchaser and such other persons requires such other persons to comply with the said stipulations and also contains a provision in like terms mutatis mutandis to those contained in this clause.
13. **Cancellation**
  - 13.1 The Company reserves the right (without prejudice to any other remedy) to cancel any incomplete Contract or suspend delivery or performance of the Contract in the event that any of the Purchaser's commitments with the Company are not met or if the Company are of the opinion that such commitments will not be met by the Purchaser.
  - 13.2 If the Purchaser cancels or purports to cancel the Contract or any part thereof or refuses to accept delivery of any Goods at the time agreed (if any) and should such cancellation or failure cause disruption to the Company's production the Purchaser shall be liable without prejudice to any other rights of the Company to indemnify the Company against any loss damages or claim resulting from such disruption and against any intended to be used and the cost of labour and other overheads.
  - 13.3 In the event that the Company cancels the Contract by reason of any breach on the part of the Purchaser then the Purchaser shall remain liable to the Company in respect of the full purchase price save that the Company will make due allowance in respect of any materials saved or salvaged or labour not expended.
14. **Miscellaneous**
  - 14.1 Failure by the Company to enforce any of the Contract Terms shall not be construed as a waiver of any of the Company's rights hereunder.
  - 14.2 This Contract shall be construed and operate in accordance with English Law and the Purchaser hereby submits himself to the jurisdiction of the English Courts.
  - 14.3 Nothing in this Contract other than the following sub-clause shall exclude or restrict any liability to which the Company may be subject by reason of any of any misrepresentation made by it before this Contract was made or any remedy available to the Purchaser by reason of such misrepresentation.
  - 14.4 The Company shall not incur any liability nor shall any right accrue to the Purchaser by reason of any misrepresentation arising from:
    - 14.4.1 printing and clerical errors
    - 14.4.2 statements in oral written or any other form by third parties accepted by the Company in good faith and repeated by it
    - 14.4.3 oral statements not confirmed by the Company in writing,
  - 14.5 The Purchaser agrees that he has not relied upon any verbal representation made by the Company or its representatives in any way.
  - 14.6 In the event of any conflict between terms and conditions and any sought to be imposed by the Purchaser, these terms and conditions shall apply.
  - 14.7 Any Contract shall be deemed to have been made at the premises of the Company.