

THE ESAB GROUP OF COMPANIES

GENERAL TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:

"Conditions" means these terms and conditions of sale.

"Contract" means a contract for the sale of Goods and/or Services made by or on behalf of the relevant ESAB group company ("we" and "us") with the party to whom we supply Goods and/or Services pursuant to a Contract ("you") which arises upon our acceptance of an Order.

"Goods" means the machinery, equipment, welding consumables and related services which we supply pursuant to a Contract.

"Incoterms(s)" means the International Chamber of Commerce terms for the international supply of goods (2000).

"Order" means an order for the Goods and/or Services received by us from you.

"Services" means the services which we supply pursuant to a Contract.

"Working Day" means any day from Monday to Friday (inclusive) which is not a statutory holiday in your country of domicile.

2. APPLICATION

These Conditions shall govern every Contract made by us in connection with the supply or sale by us of the Goods and/or Services. In default of our written agreement expressly overriding any or all of these Conditions:

2.1 no other terms or conditions howsoever arising whether express or implied, or whether contained in any Order or otherwise implied by custom, practice or course of dealing, shall govern or affect any Contract;

2.2 your acceptance of delivery of the Goods and/or Services shall (without prejudice to Condition 2.3 or any other manner in which acceptance of these Conditions may be evidenced) constitute unqualified acceptance of these Conditions;

2.3 our quotations do not constitute an offer and we reserve the right to withdraw or revise a quotation at any time before we accept an Order in accordance with Condition 3.1. Our acceptance of an Order shall be effective only where such acceptance is in writing and signed by our authorised representative; and

2.4 no representation purporting to be made by us or on our behalf in respect of or in connection with the Goods and/or Services shall bind us or become a term of any Contract and we shall be under no liability to you in respect thereof. In the event that you wish to rely upon any representation made by us or on our behalf, you must make an express agreement in writing with us in that respect.

3. PRICE AND PAYMENT

3.1 The price payable by you for the Goods and/or Services will be the price quoted in a valid quotation from us or, in the absence of a valid quotation, our current list price for the Goods and/or Services, less any discount if agreed in writing by us. Our quotations are valid for a period of 30 days from the date thereof unless otherwise agreed by us in writing. Copies of our current price list are available on request. We reserve the right to change our prices at any time.

3.2 Where applicable, we may add to the price of the Goods and/or Services and you will pay, an amount equal to any sales tax or duty applicable from time to time to sales or supplies of the Goods and/or Services.

3.3 In respect of all sums payable to us, time of payment shall be of the essence and unless other terms are expressly agreed in writing, our terms of payment are net cash payment in full within one month following the end of the month of invoice. No discount, set-off or allowance may be made unless expressly agreed in writing by us. Where Goods and/or Services are supplied in instalments or at different times, they may be invoiced separately whether or not the proportionate price thereof has been agreed.

3.4 If you fail to comply with our terms of payment without prejudice to our other rights we reserve the right to discontinue forthwith the provision to you of any further Goods and/or Services whatsoever under any Contracts then existing between us without any liability whatsoever on our part. Upon discontinuance and before acceptance of repudiation of a Contract, we shall be entitled to make a charge payable forthwith for that part of the cost of any Contract already incurred by us together with the full profit which would have been obtained less the scrap value of any item retained.

3.5 We shall be entitled at our sole discretion to make a surcharge upon all sums remaining unpaid after the due date for payment at a rate not exceeding five per cent per annum above Lloyds Bank base lending rate calculable from day to day with monthly interest rates.

4. CHANGES TO SPECIFICATIONS

In the interest of continuous product improvement, we reserve the right to change the design or specification of any of our Goods without prior notice. Any documents containing drawings, specifications, particulars of weight, dimensions or illustrations shall not form or represent any part of the Contract unless expressly agreed in writing by us.

5. TESTING OF THE GOODS

5.1 Type tests on machinery and equipment are carried out by us to ensure that in any test conditions prescribed by the authority administering any relevant national or international standard quoted by us, the performance criteria of the authority are met.

5.2 In the case of machinery and equipment being constructed or modified to your requirements, tests will be carried out to ensure that the machinery and equipment complies with our obligations under Condition 6.2.

5.3 Welding consumables manufactured by us are, where practicable, subjected to a system of sample testing at our works.

5.4 In the event that machinery, equipment and welding consumables tests (other than those specified by us) or other tests in the presence of your representative are required, a reasonable charge will be made. In the event of any delay on your part in attending such tests or in carrying out an inspection required by you, the test will proceed after seven days notice of our readiness, and our results will be deemed to be accurate whether or not you have attended.

6. PERFORMANCE OF THE GOODS

6.1 Where machinery and equipment is constructed or modified to your requirements, our liability shall only be to carry out such construction or modification to meet those requirements that are based strictly on the measurements, assembly tolerances and details of components and materials supplied by you, or as amended by agreement. No conditions or warranties are given by us that the machinery or equipment, as constructed or modified, will meet any other requirements whatsoever including compliance with any legal requirements.

6.2 All technical data, specifications and performance figures are given by us based on the national or international standard indicated by us, or otherwise on the detail of the item currently in production on our own operating experience, and on the tests we or our suppliers have carried out in normal test conditions. We accept no responsibility for the suitability or fitness for purpose of the Goods and/or Services.

7. FORCE MAJEURE

Our performance of any term of any Contract, and in particular (without prejudice to the generality of the foregoing) of any guarantee of any delivery, is open to variation by agreement in writing with us. Any contract is subject to cancellation by us upon the happening of any event beyond our reasonable control including (without the generality of the foregoing) any act of God, war, civil commotion, strike, lock out, government order or regulation, national or local emergency, fire, flood, earthquake, drought, tempest, fog, accident, strikes or industrial disputes or lack of materials, labour or transport.

8. DELIVERY

8.1 We will deliver the Goods/Services to you as set out in our order acknowledgement form, which, in relation to export sales, shall be in accordance with the relevant Incoterms set out therein.

8.2 Unless the date and time of despatch has been guaranteed by us in writing and you have suffered loss as a result of our delay in despatch and there is a written agreement whereby we are liable for liquidated damages, *our liability shall be limited to the cases where despatch would occur beyond expected reasonable time*. Should the delivery of any Service to be carried out by us be hindered or delayed by you, your servants or agents, whether directly or indirectly, any loss or damage caused to us shall be reimbursed by you and shall constitute an increase in the Contract price.

8.3 We shall be entitled to deliver and invoice for the Goods and/or Services by instalments and any such Goods and/or Services shall be deemed to be the subject of a severed and separate Contract.

8.4 In the event that we are responsible for the transportation of the Goods, unless otherwise agreed in writing, we shall have the right to choose the mode of delivery which will normally be the most economical means of transport. If you require delivery by any different form of transport, any additional costs shall be payable by you when they are invoiced by us.

8.5 If we are not given delivery instructions sufficient enough to enable us to despatch the Goods within 14 days after the date of notification that they are ready for despatch, you shall take delivery at the premises from which the Goods are available for despatch or arrange storage. If you do not do so, delivery shall be deemed to have occurred and we shall be entitled to arrange and charge for storage wherever we choose as your agent and at your risk and all charges, storage, insurance and demurrage shall be payable by you when they are invoiced by us. All payments shall be due as if delivery has been made and until all payments due from you to us have been made, we shall have a general lien on the Goods.

9. PACKAGING

You will dispose of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment. We are entitled to invoice and you will pay, for the cost of all packaging materials unless they are stated to be returnable and you return them to us carriage paid in good condition within 10 Working Days of the date of receipt by you.

10. LICENCES AND CONSENTS

If a licence or consent of any government or other authority is required for the supply, carriage or use of the Goods by you, you will obtain such licence or consent (at your expense) and produce evidence of it to us on demand. You are not entitled to withhold or delay payment of the price if you fail to obtain any licence or consent, and will pay any additional costs or expenses incurred by us as a result of such failure.

11. RETENTION OF TITLE AND TRANSFER OF RISK

11.1 Goods supplied by us shall be at your risk immediately on delivery to you or into custody on your behalf and you should be insured accordingly.

11.2 Property in the Goods supplied hereunder will pass to you when you pay to us the agreed price for the Goods and Services (together with any accrued interest) and all other amounts owed to us for goods and services supplied to you under any other agreements between us. From the time of delivery until title in the Goods passes to you, you will insure the Goods for their full replacement value with a reputable insurer and will hold the proceeds of any claim on such insurance policy on trust for us.

11.3 Until full payment for the Goods has been received by us, you shall hold the Goods for us in a manner which enables them to be identified as our Goods. You shall not attach the Goods to real property and you shall immediately return the Goods to us should our authorised representative so request.

11.4 Your right to possession of the Goods on our behalf shall cease if you do anything or fail to do anything which would entitle a receiver, liquidator or administrator to be appointed in respect of your business to take possession of any assets or would enable any person to present a petition for winding-up.

11.5 You grant us an irrevocable license to enter at any time any vehicles or premises owned or occupied by you (or in your possession) for the purpose of removing any Goods in respect of which ownership has not passed from us to you. We shall not be responsible for, and you will indemnify us against any claims for damage caused to such vehicles or premises during the removal of the Goods, to the extent that it was not reasonably practicable to avoid such damage.

11.6 You must ensure that if the Goods are or become affixed to any land or building they shall be capable of being removed without material injury to such land or building and take all necessary steps to prevent title to the Goods from passing to the owner or occupier of such land and or building. You shall warrant to repair and make good any damage caused by the affixation of the Goods to or their removal from any land or building and to indemnify us against all loss damage or liability we may incur or sustain as a result of such affixation or removal.

12. OUR LIABILITY

12.1 Subject to the provisions of this Condition 12, in the case of Goods not of our manufacture, whether they constitute or form part of Goods supplied by us, all liability whatsoever on our part, save liability for death or personal injury resulting from our negligence, is hereby expressly excluded, and without prejudice to the generality of the foregoing, all such liability for loss and damage howsoever arising whether caused directly or consequentially is hereby excluded, but we will use all reasonable endeavours to ensure that any benefit available to us in respect of Goods supplied to us is made available to you. Except as set out in these Conditions, all conditions, warranties and representations express or implied by statute, law or otherwise in relation to the supply or delay in supplying the goods/services are excluded to the fullest extent permitted by law.

12.2 In the case of Goods of our own manufacture, we will make good (at our option) by repair or replacement of the Goods, any defects which after proper use appear in the Goods within such warranty period, if any, as has been agreed between us in writing. This warranty is limited to defects which arise solely from faulty design materials or workmanship on our part provided always that defective Goods or parts of Goods are promptly returned by you at your expense to our works unless otherwise agreed in writing. Where by agreement with you we cause one of our servants or agents to carry out work or repair or replacements at your premises, we shall have the right to charge for the whole or any part of the cost and overheads involved in such additional services which shall be payable on invoice.

12.3 We shall not be liable, either in part or in full, for any claim whatsoever for failure of products or fabrications to meet specifications or performance criteria of any form or type. It is your responsibility to determine that use of the Goods supplied by us are fit for the purpose to which you put them.

12.4 We shall not be liable in any manner whatsoever to you for any loss of profit, market or contract or for any consequential loss sustained or alleged to be sustained by you.

12.5 We shall not be liable for the cost of removal and/or replacement of weld material proven or suspected to be unsuitable for the purpose to which it was put by you whether or not this is due or believed to be due to failure of our Goods to meet specifications or performance criteria claimed by you.

12.6 When the price quoted includes delivery we will repair or replace the Goods lost or damaged in transit free of charge provided that both the carriers and ourselves receive notification of such loss or damage within three Working Days of the delivery of the Goods or the expected date for delivery, followed by written confirmation within seven days.

12.7 In the event of incomplete delivery arising otherwise than through loss or damage in transit, we shall be under no liability whatsoever unless we receive notification of all relevant details within three days of the delivery of the Goods and/or Services, followed by confirmation in writing within seven days of delivery.

12.8 If your servants or agents are on our premises for the fulfilment of any agreement, we will, at our option, repair or indemnify you against damage or injury directly caused to your servants or agents or to your property by our servants' or agents' negligence while working on our premises, but not otherwise, provided that:

12.8.1 our total liability to you or any third party hereunder (whether involving breach of contract or statutory duty or not) shall not exceed the price paid by you for the Goods or Services;

12.8.2 we shall not be liable to you for any loss of profits or loss of contract or for any indirect or consequential losses whatsoever and howsoever arising, and

12.8.3 save as provided in Condition 12.1, we shall not be liable for any damage or injury occurring after your servants or agents have left the site.

12.9 In no case whatsoever shall our liability exceed the price of the Goods and/or Services sold.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 We are not liable to you if the Goods infringe or are alleged to infringe the rights of any third party in the event that such Goods are supplied pursuant to an international supply contract.

13.2 If at any time it is alleged that the Goods infringe the rights of any third party or if in our reasonable opinion such an allegation is likely to be made, we may at our option:

13.2.1 modify or replace the Goods without reducing the overall performance of the Goods in order to avoid the infringement; or

13.2.2 procure for you the right to continue using the Goods; or

13.2.3 repurchase the Goods at the price paid by you less depreciation at the rate we apply to our own equipment.

13.3 If any claim is made or action brought or threatened which alleges infringement of the rights of any third party:

13.3.1 you shall notify us as soon as you become aware of any such claim;

13.3.2 we shall have control over and shall conduct any such proceedings in such manner as we shall determine; and

13.3.3 you shall provide all reasonable assistance as we may reasonably request.

13.4 You shall indemnify us against all loss, liability and costs which we incur in carrying out any work required to be done on or to the Goods in accordance with your requirements or specifications which give rise to any infringement or alleged infringement of the rights of any third party.

14. TERMINATION RIGHTS

14.1 Without prejudice to our other rights and remedies we shall be entitled to terminate any Contract with you, suspend further deliveries to you and stop Goods in transit forthwith upon the happening of any of the following events:

14.1.1 your failure to pay any sums due to us on the due date in respect of any agreement;

14.1.2 your breach of any of these Conditions or any Contract with us;

14.1.3 if you have an administrator, administrative receiver or liquidator appointed or if you go into any form of liquidation or enter into any composition with your creditors or commit an act of bankruptcy or are the subject of claims or if execution is levied against you or any similar action is taken in respect of you in any jurisdiction;

14.1.4 you cease to be able to pay your debts as and when they fall due;

14.2 In the event of termination, without prejudice to our other rights and remedies we shall be entitled:

14.2.1 to enter upon premises in your possession, occupation or control or to which you have any right of access and to repossess any Goods owned by us;

14.2.2 to be paid all sums then due to us by you in respect of all Goods and/or Services whatsoever provided by us to you; and

14.2.3 to be paid forthwith on invoice the loss of profit and actual cost of work, service and materials of partially completed Goods and/or Services giving credit for such value if any as they may have for us or for the net proceeds of their disposition and to be paid forthwith on invoice the Contract price due in respect of completed Goods and/or Services whether delivered or not, less whichever shall be the lesser of their proceeds of sale or the value of their materials.

15. CONFIDENTIALITY

15.1 You shall treat all product, business information, drawings, designs and specifications submitted by us to you as confidential and shall not disclose them to any third party without our prior written consent or use them for any purpose except where authorised to do so by us. This Condition does not apply to information which:

15.1.1 is at the date of disclosure or becomes at any time after that date publicly known other than by your breach of this Condition;

15.1.2 can be shown by you to our satisfaction to have been known by you before disclosure by us to you;

15.1.3 is or becomes available to you otherwise than from us and free of any restrictions as to its use or disclosure; or

15.1.4 is required to be disclosed by law.

16. GENERAL

16.1 If any of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other Conditions which shall remain in full force and effect. If any of these Conditions is found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

16.2 You may not assign or deal in any way with all or any part of the benefit of, or your rights or benefits under, a Contract without the prior written consent of us (which consent shall not be unreasonably withheld or delayed).

16.3 Any notice given to us by you under these Conditions must be in writing and may be delivered personally or by recorded delivery. Notices shall be delivered or sent to our usual place of business with a copy of the notice sent to the ESAB Global Legal Director at ESAB Holdings Ltd, 50 Curzon Street, London, W1J 7JW, United Kingdom.

16.4 A person who is not a party to a Contract shall have no rights under any statute or regulation to enforce any term of a Contract to which they are not a party. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to statute.

16.5 Our rights shall not be prejudiced, waived or affected by any time, forbearance or indulgence extended by us, our servants or agents to you, your servants or agents.

16.6 These Conditions and any variations thereto agreed by ESAB authorised representative in writing contain the entire agreement between the parties.

16.7 Each Contract shall be governed by and construed in accordance with Tunisian law and each party submits to the non-exclusive jurisdiction of the Tunisian courts as regards any claim or matter arising under any Contract provided that any dispute between us and you in relation to an export sale/purchase may be referred by us to arbitration in London, United Kingdom in accordance with the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator whose decision shall be final and binding on the parties.