

TCS Cellworks Limited
Abridged Terms & Conditions of Business

1. Contracts

- 1.1 Contracts with TCS Cellworks Limited ('the Company') shall be for the supply of the Company's Products ('the Products').
- 1.2 The catalogue, price list, estimate or quotation of the Company comprises an invitation to treat which is open for a period of twenty eight (28) days from the date thereof unless otherwise specified in writing by the Company **PROVIDED THAT** the Company has not previously withdrawn it. Any order issued by the Customer is subject to acceptance by the Company and a contract will only be formed when the Company has accepted the Customer's offer. The Customer must confirm any offer made by the Company orally or in writing within 7 days.
- 1.3 All orders are accepted under these Terms and Conditions alone and supersede all previous agreements and exclude any purported terms and conditions in the Customer's order.
- 1.4 No servant or agent of the Company has authority to make any representation or give any warranty in relation to the Products and if any statement or representation has been made to the Customer by the Company and its servants or agents upon which the Customer relies, other than in the documents enclosed with the Company's quotation or acknowledgement of order, then the Customer must set out that statement or representation in a document to be attached to or endorsed on the order and in any such case the Company may confirm, reject or clarify the same and submit a new estimate or quotation.

2. Quotations and Prices

- 2.1 Customers will be invoiced by the Company at the Company's prices ruling at the date of despatch of the Products.
- 2.2 Prices quoted in the Company's quotation or price lists:
- are those then current.
 - do not include Value Added Tax, or any other tax, levy, duty or surcharge whether imposed before or after making the Contract.
- 2.3 Packing and postage or carriage will be charged extra.

3. Orders

- 3.1 All Orders by the Customer:
- must be numbered.
 - must identify the Products by reference to a catalogue number and a description of the Products.
 - must specify the address to which the Products are to be delivered ('the place of delivery').
 - must specify the address to which the invoice is to be sent.
- 3.2 The Customer must confirm orders made by telephone in writing within 48 hours on order forms marked 'Confirmation of telephone order'.
- 3.3 By agreement between the Company and the Customer orders for the Products may be established for delivery by instalments.

4. Variation

No variation of any Contract shall be valid and binding unless the terms thereof have been agreed in writing by both the Company and the Customer.

5. Catalogues, etc

Any description of the Products appearing in the Company's catalogues, brochures, and other publications is believed to be correct and up-to-date but is not warranted by the Company, in so far as any such publication has been compiled from information supplied to the Company by any such manufacturer or supplier of any such Product the Company accepts no responsibility for the accuracy of any such description.

6. Specification and material

- 6.1 All Products will be supplied to the Company's specification current at the date of commencement of manufacture of the Products.
- 6.2 Products will be made from the Company's standard materials; but, if for any reason such materials are unavailable, the Company reserves the right to substitute the most suitable alternative that can be obtained at the time of manufacture.
- 6.3 The Company will replace any Product, which prove to be defective provided that claims are made by the Customer within ten days of the date of delivery. There will be no replacement of Products which have been processed or interfered with other than by the Company or which have not been stored according to the Company's instructions.

7. Limitations of Liability

- 7.1 The Company's compliance with its obligations under Condition 6 shall be in lieu of any guarantee, representation, warranty or condition (whether express or implied, statutory or otherwise) as to the quality or fitness for any particular purpose of the Products.

- 7.2 The Company shall not be liable for any consequential loss or indirect loss suffered by the Customer whether this loss arises from breach of a duty in Contract or tort or in any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations of consequential or indirect loss would be:
- loss of profits;
 - loss of Contracts;
 - damage to property of the Customer, or anyone else;
 - personal injury to the Customer or anyone else (except so far as such injury is attributable to the Company's negligence);
 - site labour costs including removal, replacement or making good or delay or disturbance to other works.

- 7.3 The Company's total liability for any one claim or for the total of all claims (other than personal injury claims arising from the Company's negligence) arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed the Contract price.
- 7.4 The Customer shall keep the Company indemnified against all actions, costs, claims and liability arising from faulty or unsuitable instructions given by the Customer or from allegations of breach of Intellectual Property rights of a third party arising out of the Customer's instructions.
- 7.5 In the case of Products not manufactured by the Company, the Company gives no representation, warranty or condition whatsoever that the sale or use of the Products will not infringe patent, copyright or other Intellectual Property rights of any person, firm or Company.

8. Products to the Customer's Specification

Where the Company supplies Products to a Customer in accordance with the Customer's specification, any addition or alteration shall be subject to an extra charge and the Customer shall indemnify the Company against all claims, damages, penalties, costs and expenses to which it may become liable through the infringement of the rights of third parties.

9. Delivery

- 9.1 Delivery will be deemed to have been effected when the Products are delivered to the Customer or order of the Customer or its Agents unless agreed otherwise by the Company in writing.
- 9.2 Time of delivery is not of the essence.
- 9.3 The Company shall not be liable for any loss, whatsoever and howsoever arising, caused by its non-delivery.
- 9.4 When delivery is by instalments in accordance with Clause 3.3 then any delay in the delivery of any one or more instalments for whatever reasons will not entitle the Customer to treat the Contract as repudiated or to damages.
- 9.5 When the Company conveys the Products the Customer shall be responsible for providing proper unloading facilities (including adequate plant and labour) and storage facilities.

10. Inspection/Shortages/Defects

- 10.1 The Customer is under a duty wherever possible to inspect the Products on delivery or on collection as the case may be.
- 10.2 Where the products cannot be examined, the carrier's note or such other note as appropriate shall be marked 'not examined'.
- 10.3 The Company shall be under no liability for any defects or shortages that would be apparent on careful inspection if the terms of Clauses 10.1 and 10.2 are not complied with, and, in any event, will be under no liability if a written complaint is not delivered to the Company within seven (7) days of delivery detailing the alleged defect or shortage. Damage in transit by a carrier must also be notified to the Company within the time imposed by its contract.
- 10.4 Subject to Clause 10.3, all Products manufactured and supplied by the company are guaranteed against faults in workmanship or materials which have been notified to it within three (3) months of delivery and will be repaired and replaced by it free of charge as soon as reasonably practicable **PROVIDED THAT** no liability arising out of any of the following circumstances shall be accepted by the Company:
- work carried out by others to the Products;
 - Customer's neglect or misuse;
 - unsuitability of the Products for use with other materials unless the Customer has previously notified the Company in writing of the specific materials with which the Products are to be used;
 - failure to give reasonable opportunity for the Company to inspect, repair or replace Products.
 - unsuitable storage of the products

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- 10.5 Returns of either defective or non-defective Products must be cleared with the Company before their return. In the case of defective Products returned with prior approval for the Company to replace, these must be returned to the Company delivery paid. In the case of non-defective Products approved for return, these must be returned to the Company works delivery paid and, in addition, the Company reserves the right to charge fifteen per cent (15%) handling charge.
- 11. Non-acceptance of delivery**
If the Customer fails to take or accept delivery of the Products in accordance with Condition 9 hereof the price shall nevertheless be paid in accordance with Condition 14 as if delivery had taken place. The Company shall be entitled to charge the Customer for storage, insurance and other expenses reasonably incurred or suffered by the Company as a result of such failure but the Company shall not be bound to take any steps for the custody or care of the Products or be liable for any loss or damage suffered by the Customer arising therefrom.
- 12. Delay**
Any times quoted for delivery are to be treated as estimated only and will not involve the Company in any liability for failure to deliver the Products within such time.
- 13. Force majeure**
The Company shall not be liable for failure to comply with the terms of the Contract owing to Acts of God, force majeure, riots and civil commotion, war, disease, strike, lock-out, labour disputes, fire or any other cause whatsoever beyond the Company's control.
- 14. Payment**
14.1 Except where a credit account has been opened for the Customer by the Company, payment shall be made in cash as soon as the Products have been delivered or against a pro-forma invoice.
14.2 Credit account invoices are due for payment on the twenty-first of the month following that in which the invoice is dated. All invoices are strictly net.
14.3 Payment of credit account invoices by their due date is a condition precedent to the fulfilment of the Company's further obligations under the Contract in respect of which such default has been made or any other Contract then subsisting between the Company and the Customer.
- 15. Risk and Passing of Title**
15.1 Products supplied by the Company shall be at the Customer's risk immediately on delivery in accordance with Clause 9 and the Customer should therefore be insured accordingly.
15.2 Property in the Products supplied hereunder will pass to the Customer when:
15.2.1 the Products, the subject of this Contract, have been paid for in full; and
15.2.2 all other Products, the subject of any other Contract between the Company and the Customer which at the time of payment of the full price of the Products sold under this Contract, have been delivered to the Customer but not paid for in full, have been paid for in full as well.
15.3 Until full payment has been received by the Company, the Customer shall hold the Products in a fiduciary capacity for the Company in a manner which enables them to be identified as the Products of the Company and the Customer shall immediately return the Products to the Company should its authorised representative so request. All the normal incidents associated with a fiduciary relationship shall apply.
15.4 The Customer's rights to possession of the Products shall cease if he does anything or fails to do anything which would entitle an Administrator or Administrative Receiver to take possession of any assets or would entitle any person to present a Petition for winding-up.
15.5 The Customer grants the Company irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing and removing any such Products the property in which has remained with the Company pursuant to Clause 15 hereof. The Company shall not be responsible for and the Customer will indemnify the Company against liability in respect of damages caused to such vehicles or premises in such re-possession and removal being damage it was not reasonably practicable to avoid.
15.6 Notwithstanding Clause 15.3 hereof the Customer shall be permitted to sell the Products to third parties in the normal course of business. In this respect the Customer shall act in the capacity of a Commission Agent and the proceeds of any such sale shall be held in trust for the Company in a manner which enables the Customer as Commission Agent a commission depending upon the surplus which the Commission Agent can obtain over and above the sum stipulated under the original Contract of supply which will satisfy the Principal.
- 15.7 If the Product being the property of the Company is admixed with products being the property of any person other than the Customer the product thereof shall be deemed to be owned in common with that other person.
- 16. Instalments**
Where the Products are delivered by instalments in accordance with Condition 3.3:
a) each delivery shall be deemed to constitute a separate enforceable Contract and
b) no delivery may be changed or cancelled unless the Customer has given the Company 14 days written notice prior to the date of despatch.
- 17. Cancellation**
Contracts and special orders may not be cancelled by the Customer without the written consent of the Company, in the event of the Products being returned to the Company as a result of the cancellation of a Contract, the Company reserves the right to make a cancellation charge calculated by the Company based on the costs of the Company which cannot be recovered together with a handling or restocking charge.
- 18. Insolvency**
The Company shall have the right to terminate the Contract forthwith by notice in writing where the Customer becomes insolvent or bankrupt or makes any arrangement with its creditors or suffers a receiver to appointed or being a body corporate enters into liquidation (other than in connection with a reconstruction or amalgamation) in any of which the cases the Company shall have no further obligation hereunder and the price for all the Products delivered or despatched from the Company's premises shall become immediately due and payable.
- 19. Protection of Intellectual Property**
19.1 The trademarks, trade names, know-how, copyrights, design rights, goodwill, patents and all other proprietary rights ('the Intellectual Property') arising out of or existing in or upon the Products or the documentation referred to in Clause 5 are the property of the Company or are licensed to the Company.
19.2 The Customer shall not cause or permit anything which may damage or endanger the Intellectual Property of the Company or the Company's Title to it, nor assist nor allow others to do so and shall maintain as confidential both during the Contract as well as at all times thereafter all information relating to the Company, the Products and the Intellectual Property.
19.3 The Customer shall notify the Company of any suspected infringement of the Intellectual Property.
19.4 The Customer shall not tamper with any markings or nameplates or other indications of the source or origin of the Products, which may be placed by the Company upon its Products.
19.5 The Intellectual Property is licensed on a non-exclusive basis to the Customer but such Licence shall automatically be revoked in the event that any of the circumstances mentioned in Clause 18 apply and in the event that payment is not made in accordance with Clause 14.
- 20. Notice**
Any notice to be served on either of the parties shall be in writing and sent to the last known address of the recipient or to such other address as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter, e-mail, or facsimile transmission and shall be deemed to have been effectively served if by hand when delivered, if by first class post forty-eight hours (48) after posting and if by e-mail or facsimile transmission when despatched.
- 21. Non-assignment**
The Customer shall not assign his rights or liabilities under a Contract made subject to the Conditions.
- 22. Waiver**
Failure by the Company to endorse a term of the Contract shall not prevent the subsequent enforcement of that or any other term of the Contract.
- 23. Proper Law**
Contracts made with the Company shall be governed by and construed according to the laws of England, and the Customer agrees to submit to the jurisdiction of English Courts.