

## Weighwell Engineering Ltd Terms & Conditions of Sale

### **1: Application of Terms and Conditions**

1.1.1 The below applies to the Terms and Conditions relating to the Sale of Goods and/or Supply of Services by Weighwell Engineering Ltd (who hereinafter are referred to as Weighwell) to the customer.

1.1.2 An agreement (the agreement) shall be concluded upon acceptance by Weighwell of the customer's order in writing or by commencement by Weighwell of work or procedures which assume its acceptance. The application of these Terms and Conditions of Sale result in the entire exclusion of any other Terms or Conditions which maybe preferred by the customer (including the customer's purchase order) and which are anyway in conflict or inconsistent with the below and might otherwise have applied if it were not for this clause.

### **2: Terms of Payment**

2.1 Unless otherwise agreed:

- Payment for goods or services must be made within seven days of the date of issue of an invoice to the customer by Weighwell.

2.2 Weighwell may as its option:

- Reserve the right to require advance payment for delivery of the goods or provision of services.
- Suspend delivery of goods or the provision of services if payment is not received by the due date and shall be entitled to immediately accelerate the entirety of its outstanding purchase price claims, including such claims as may arise from other contractual relationships or other orders.
- Weighwell shall be entitled to defer its obligations until such time as outstanding payment(s) (or other contractual obligations) have been made.
- Require a deposit and subsequent payments for goods or services and a delivery or supply schedule of 1 month or more.
- Require an irrevocable letter of credit (LC) from a reputable bank within seven days from the purchase order by the customer.

2.3 Should the customer cancel their purchase order the deposit paid will be forfeited to Weighwell.

- 2.4 Additional costs incurred by Weighwell over and above the forfeited deposit amount up to the date of purchase order cancellation shall also be borne by the customer.
- 2.5 If goods are to be dispatched by instalment, the customer must pay Weighwell all monies owing on account of each instalment dispatched.
- 2.6 The customer will not be entitled to cancel or otherwise avoid acceptance and payment for goods awaiting dispatch or dispatched by instalment.
- 2.7 Weighwell shall not be bound by any conditions attached to the customers purchase order or acceptance of the quotation, unless such conditions are accepted by Weighwell in writing. If the customer accepts the quotation by delivery of an order form or document which stipulates or purports to impose conditions, such conditions shall not be applicable to the contract without written acceptance.
- 2.8 Any bank charges or other charges in connection with bank transfers, documentary collections or documentary letters of credit shall be charged to the customer.

**3: Delivery of goods**

- 3.1 Weighwell shall use its best efforts to meet agreed delivery dates but time shall not be of the essence and Weighwell shall not be liable for any loss arising out of any delay in delivery.
- 3.2 When tendered the customer shall accept delivery before or after the agreed delivery date.
- 3.1 The customer is liable for all shipping and handling charges in connection with the delivery of goods.
- 3.2 If the customer engages its own transportation carrier:
- The customer engages Weighwell as its agent for the purpose of arranging delivery of goods through Weighwell's preferred carrier.
  - The customer must pay the applicable transportation fee to Weighwell prior to shipment.
  - Weighwell will be entitled to retain any surplus of the transportation fee paid by the customer by way of agent's commission.
- 3.3 Goods will be delivered to the customer's place of business, or as otherwise notified to Weighwell at the time of purchase order.

3.4 Weighwell will not be liable for any failure to deliver goods if the failure arises as a consequence of fire, embargo, strike, inability to secure materials or labour, or any other circumstances beyond the control of Weighwell.

3.5 Any and all technical advice provided by Weighwell, either in writing or verbally, shall not be deemed binding on Weighwell, and shall not relieve the customer of its own duty to inspect any delivery of goods for their fitness and for their intended use.

3.6 The customer will provide reasonable means of access at the place of delivery and any necessary equipment and labour to facilitate the efficient delivery and unloading of goods.

#### **4: Valued Added Tax**

4.1 The customer shall pay all Value Added Tax or similar tax chargeable in respect of the goods or any services supplied pursuant to the agreement whether stated in any quotation or not. The customer indemnifies Weighwell in respect of any claims for such items.

#### **5: Interests on overdue amounts**

5.1 If Weighwell is not paid for any goods or services on the due date specified in the agreement:

- The customer shall pay interest on any sums overdue for payment at a rate of four percentage points above the base rate declared by National Westminster Bank PLC from the due date for payment until payment is made.
- Weighwell may recover the price of goods or services together with all interest from the customer as a liquidated debt in a court or tribunal of jurisdiction irrespective of any claim the customer may have against Weighwell for any matter related to goods or services.

#### **6: Sample goods**

6.1 Any sample of goods inspected by the customer are inspected solely to enable the customer to judge for itself the quality of the goods and does not constitute a sale by sample under the agreement. The customer takes the sample goods at their own risk in relation the quality, condition or sufficiency for any purpose.

**7: Installation of goods**

7.1 If the customer requires Weighwell to install any goods. The customer must notify Weighwell within 30 days of receiving the goods that:

- They have received the goods.
- They require Weighwell to install the goods.
- The customer's premises are ready and fit for installation.

7.2 The customer will, at their own expense and in accordance with the directions from Weighwell, prepare their premises to enable Weighwell to install the goods. The preparation of the premises will include but will not be limited to:

- The procurement of all necessary labour, lifting gear, supporting steel work, electricity and other facilities required for installation.
- The hire and transportation of test and calibration equipment where necessary.
- The provision of all fixed runs of electrical wiring connecting the goods to mains power.

- The repair or reconditioning of any existing machinery, plant or equipment which may be used in conjunction with the goods.

- The obtaining of all necessary permits and licenses required by all relevant authorities, bodies and governmental departments.

7.3 Weighwell takes no responsibility for the condition of any existing machinery, plant or equipment which may be used in conjunction with any goods, and any effect that such machinery, plant or equipment may have on the goods.

**8: Passage of risk (acceptance)**

8.1 Any goods which cannot be delivered by reason of the customer's default under the agreement will be stored and handled by Weighwell at the customer's risk.

8.2 If the customer does not take delivery when tendered, Weighwell shall be deemed to have performed its obligations in respect of the goods and the customer shall pay or reimburse any additional expenses incurred by Weighwell including (but not limited to) a storage, insurance and handling charge.

8.3 Delivery shall be ex works from Weighwell company offices from when the goods are ordered unless otherwise stated.

8.4 The customer shall within seven days from delivery of the goods give notice in writing to Weighwell whereof it is alleged that the goods are not in accordance with the agreement. If the customer shall fail to give such notice the goods shall be deemed to be in all respects in accordance with the agreement and the customer shall be bound to accept and pay for the goods under the terms of this agreement.

**9: Reservation of title**

9.1 Until Weighwell has received payment in full for all monies (and any other accounts owed) payable by the customer under this agreement:

- Goods are merely entrusted to the customer as fiduciary and Weighwell remains the legal and absolute owner of the goods with full power to dispose, resell and regain possession of all goods until such time as the entire amount of the invoice (including ancillary charges such as interest and costs) has been fully paid.

- The customer is obligated to store all goods in a separate and proper way (safekeeping) as to indicate that the goods are not the property of the customer or any third party but remain the property of Weighwell.

- The customer must not remove any markings, tags or labels from the goods which may indicate that the goods are and remain the property of Weighwell, to the extent that the goods may be used in connection with any business conducted by the customer.

- The customer must advise any potential customer, purchaser or other third party in writing that the goods are the property of Weighwell.

9.2 In the event of any default by the customer, the customer becomes bankrupt or any termination of this or any other agreement Weighwell may:

- Recover and re-sell all or any of the retained goods.
- Without notice enter upon the customer's premises and/or any other premises at which the goods are situated for the purpose of recovering possession of the goods.

- If the goods have been sold, utilised, mixed with, built into any other products, disposed of or stored in such a manner as to render the goods unrecoverable or unidentifiable by the customer, the purchase price for the goods, together with any interest payable under the agreement, maybe recovered from the customer as a liquidated debt in a court or tribunal of jurisdiction.

**10: Proceeds from on-sale of goods**

- 10.1 Before all monies for the goods have been paid in full, the customer must receive any proceeds from the sale of goods on trust from Weighwell to be applied in payment towards the purchase price. Those proceeds must be kept separate and dealt with separately by the customer at all times until the all monies have been paid in full.

**11: Variation and cancellation of order**

- 11.1 The customer must give written notice to Weighwell of any variation to the specifications of goods required for which an order has already been placed. In these circumstances, Weighwell reserve the right to adjust the price for goods and anticipated delivery date accordingly.

- 11.2 No order(s) may be cancelled except with Weighwell's written consent and on terms which will indemnify Weighwell against all losses, damages or expenses suffered or incurred as a result of that cancellation.

- 11.3 The minimum cancellation charge shall be 30% fee of the purchase price for all products. All customised or outsourced products are non-refundable.

**12: Return of goods**

- 12.1 Weighwell will not be under any duty to accept goods returned by the customer and will do so only on terms to be agreed in writing for each individual case.

- 12.2 The customer will be responsible for the immediate examination of goods after arrival at the place of delivery and Weighwell shall not be liable for any claim for which it would be otherwise liable in respect of damaged goods including goods damaged in the course of transit unless particulars of such claim are notified to the seller in writing within seven working days after arrival of the goods at the place of delivery.

- 12.3 The customer shall be deemed to have accepted the goods to be of the description, quality and quantity ordered unless particulars of any claim notify Weighwell in writing within seventy-two hours after arrival of goods at the place of delivery.
- 12.4 Weighwell will not accept the return of goods unless such return is authorised by Weighwell. A re-stocking fee will be charged to the buyer.
- 12.5 Products that are purchased, manufactured, machined or specific to a customer's specifications are non-refundable.
- 13: Goods warranty**
- 13.1 The limitation period for claims relating to the defects of goods supplied by Weighwell as well as for any claims for damages or other claims against Weighwell shall be twelve months from the written agreement.
- 13.2 Weighwell warrants that goods will be free from defects in manufacturing and materials for a period of one year from the arrival at the customer's place of delivery ("Goods Warranty Period").
- 13.3 Weighwell shall be obliged to remediate and rectify all such defects which impair the functionality of the goods which were already present at the time of delivery and were due to a defect in manufacturing or design or of the material used by Weighwell.
- 13.4 The customer shall inspect the goods received by Weighwell at once to verify that they are free of defects. Any defects of which the customer has not given immediate notice to Weighwell or of which the customer has not given notice within three days of the arrival of the goods at their specified destination, at the latest, in writing and precisely indicating the defect, shall be deemed approved. In such cases, the customer's right to assert any claims for statutory warranty and/or compensatory damages and its right to challenge the transaction for mistake based on defects shall be deemed forfeited.
- 13.5 The customer's warranty claim shall only arise where the customer has given written notice to Weighwell without delay of the defect which has appeared and has produced a detailed description thereof.

- 13.6 In the case of a timely complaint pursuant, the customer shall consult with Weighwell and return the goods to Weighwell for its inspection of the asserted defects.
- 13.7 The customer may not derive any claims or legal consequences as a result of Weighwell's acceptance of goods returned to it. Likewise, Weighwell's inspection of the defect shall not give rise to any claims on the part of the customer or other legal consequences.
- 13.8 In the event of an unjustified complaint for defects, the customer shall, in any event, bear the costs of shipping incurred for returning the goods as well as any other expenses which may arise.
- 13.9 In the event of well-founded complaints for defects within the "Goods Warranty Period", Weighwell shall be entitled to avoid any claim of the customer for abatement of the purchase price by remediating the defect or supplying replacement goods at our cost.
- 13.10 The customer shall not be authorised to rectify the defect itself or to cause a third party it has engaged to do so. Following the customer's discovery of a defect, the customer is not permitted to effect any further disposition over the goods without Weighwell's consent. Where the customer nevertheless does so, it is deemed to waive any warranty claims and claims for damages it may have against Weighwell.
- 13.11 Where Weighwell rectifies defects not subject to warranty or performs other services or customer service work, such work shall be charged in accordance with Weighwell's valid price schedule or on the basis of time and expense incurred.
- 13.12 Assertion of a defect shall not relieve the customer of its duty to make payment.
- 13.13 The provision or replacement of spare parts during a warranty period shall not extend the warranty period.

**14: Software warranty**

14.1 If within seven days of delivery the customer gives written notice to Weighwell specifying a defect or material and substantial failure in the software to operate in accordance with the specifications provided by Weighwell and agreed by the customer at the time of supply, then Weighwell are entitled to:

- Attempt to correct the defect or failure.
- Replace the software.

**15: Warranty of non-Weighwell products**

15.1 No warranty applies to goods manufactured by a party other than Weighwell.

15.2 Any defect of non-Weighwell products must be determined according to the terms of warranty offered by that manufacturer.

**16: Services repair warranty**

16.1 Weighwell warrants that services performed in connection with the repair of any goods will be carried out in a proper manner.

16.2 Weighwell will, at its own cost, remedy any defect in services provided and supply any replacement part if the customer gives Weighwell written notice of the defect within seven days from the date the services were provided.

16.3 Weighwell warrants that any parts sold for the repair of any goods and in conjunction with services performed will be free from any defect.

**17: Exclusion of Warranty**

17.1 To the extent permitted by law and except as provided for in 'the agreement', no warranty, condition, description or representation on behalf of Weighwell has/is given or implied or from anything said or written in the negotiations between the parties or their representatives.

17.2 Any statutory or other warranty, condition, description or representation, expressed or implied as to the state, quality or fitness of goods or services is expressly excluded.

- 17.3 No warranty expressed or implied will be given where the customer has failed to promptly comply with all its obligations to make payment or provide any guarantees or other documents as specified in these Terms and Conditions.
- 17.4 The customer acknowledges that it has satisfied itself that goods and services meet their requirements and the benefit to be derived by their acquisition.
- 17.5 Weighwell makes no representation or warranty that goods or services will meet any requirements of the customer.
- 17.6 Weighwell takes no responsibility for any gratuitous assistance or advice provided to the customer in connection with the supply and/or installation of goods or services.
- 17.7 The customer shall be deemed to have no claims for warranty or damages in cases of defects caused by:
- Over-stress of the goods
  - Misapplication, negligence, abuse or improper handling and installation of goods (except where goods are installed by Weighwell technicians).
  - Abnormal or extreme temperatures outside the operating range of goods, abnormal power source, or power disturbance.
  - Other abnormal conditions including the presence of dirt, water or corrosive materials and effects of chemical, electrical or mechanical sources which are not envisaged.
  - The operation of goods above the rated capacity of or in any other improper or unsuitable manner
  - Unauthorised modification, tampering or maintenance repairs of goods.
  - Failure to comply with Weighwell's operating instructions as well as the use of goods beyond the specifications specified.
  - Weighwell shall not bear liability for damage to the goods resulting from actions by third parties.
  - The unauthorised use of goods in conjunction or interfaced with other equipment or software not supplied by Weighwell.
  - Damage during transportation of goods

- Failure to ensure proper storage, maintenance and operation of goods.

**18: Use of software**

- 18.1 The customer acknowledges that the software may be subject to copyright and if so, will be marked accordingly.
- 18.2 Weighwell grants to the customer a limited non-exclusive license to use the software to the extent necessary for the proper use of goods in relation to which the software is supplied and for no other purpose.
- 18.3 The customer may not modify, copy, amend or adapt (other than configuring where configuring is implicit in the design of the software) the software nor reverse compile or do anything else to produce the source codes of the software.

- 18.4 The customer acknowledges that the content of the software is confidential information, and will be marked accordingly (“Confidential Information”). Unless the confidential information is or becomes public knowledge (other than by reason of the customer’s default), the customer must keep confidential all confidential information and must not disclose the confidential information to any third party.
- 18.5 If the customer breaches any term of clause 18 they must return the software and any copies of the software immediately to Weighwell upon demand.
- 18.6 The customer shall not provide, disclose, otherwise make available or permit to be made available any software supplied by Weighwell in any form to any person other than an employee of the customer in the course of using goods for the purposes of the customer’s business.
- 18.7 No copies of any software supplied by Weighwell shall be made without the consent of Weighwell

**19: Liability**

- 19.1 The liability of Weighwell for any breach of this agreement any other person for whom it may be vicariously liable shall not exceed the price for the goods under the agreement.
- 19.2 Weighwell shall be in no manner liable for any failure to perform any of all of its obligations under the agreement in consequence of any liability to secure or procure labour materials or other supplies of any kind as a result of any Act of God, war, strike, lockout or other labour dispute, fire, flood, drought, legislation, order of public authority or any other cause (whether included in the foregoing or not) beyond the control of Weighwell.
- 19.3 The customer indemnifies Weighwell on a continuing and full indemnity basis against any liability, loss, expense (including legal costs) or demand for or arising from:
- Any false, misleading, or deceptive representation or statement made by the customer.
  - Any breach of the agreement by the customer.

**20: Intellectual property claims**

- 20.1 The customer shall notify Weighwell of all infringements of Weighwell's intellectual property which have come to its knowledge in the course of its business operations without delay and attaching all information and documents it has in this regard.
- 20.2 The customer will fully co-operative with Weighwell, at the customer's sole expense, in such procedures as may be necessary to protect the copyright, patent, trademark or other intellectual property rights in relation to goods supplied by Weighwell under the agreement and on Weighwell's request must execute documents evidencing Weighwell ownership of such intellectual property rights.
- 20.3 The customer must promptly notify Weighwell of any assertion that the manufacture, supply or use of any goods infringes the intellectual property rights of any third party and will consult with Weighwell to determine the course of action to be followed in respect of the assertion. Weighwell does not undertake, but will nevertheless be entitled to defend any suit brought by our infringement of any intellectual property rights of any third party.

20.4 The customer is prohibited from itself copying or having any third party copy of the products/services covered by the agreement, or to undertake reverse engineering with respect to the goods/services for such purposes.

## **21: Quotations**

21.1 Weighwell's offers shall at all times be deemed subject to change and without obligation even where Weighwell specifies prices, deadlines or furnishes other specifications in such offers. This shall apply irrespective of whether an offer of this kind is made on the basis of an enquiry by a customer or without any such enquiry. Weighwell shall not be deemed bound by the agreement until such time as it forwards its written confirmation of order pursuant.

21.2 Quotations given by Weighwell shall not constitute an offer and may be withdrawn or revised in any particular way at any time until written acceptance by Weighwell of the customers purchase order.

21.3 Quoted prices expire thirty days from the date of publication and may be withdrawn or varied by Weighwell at any time.

21.4 Weighwell reserves the right to extend the period of quotation for a period not exceeding six months from the date of publication.

21.5 Prices quoted in publications of Weighwell do not constitute unconditional offers to sell, and are subject to change without notice.

21.6 Unless stated to the contrary, any goods quoted by Weighwell:

- Include packaging in accordance with recognised standards. However the customer must bear the cost of any special packing requested or required or deemed necessary by Weighwell.
- Does not include any allowance for installation and/or final on-site adjustment.

21.7 Weighwell's prices are quoted in the currency set out in its offer, and absent of any such specific reference, they are deemed quoted in Great British Pounds (GBP). Where offers are made in currencies other than the GBP, Weighwell reserves the right to adjust the prices to take account of currency fluctuations relative to GBP occurring on or before the date of delivery (in the event of a default of payment by the customer; on or before the date of payment).

21.8 Information contained in catalogues, brochures and the like as well as Weighwell's other verbal or written statements shall only be deemed to govern where Weighwell has expressly confirmed them in its written order confirmation.

**22: No merger**

22.1 The continued operation of these Terms and Conditions shall not be affected by any repudiation or other termination of any contract or transaction relating to the goods or services between Weighwell and the customer.

**23 Waiver**

23.1 The failure of Weighwell to enforce the provisions of the agreement or to exercise any rights expressed in a contract is not to be regarded as a waiver of such provisions or rights and does not affect the enforcement of the agreement.

23.2 The exercise by Weighwell of any of its rights under a contract does not preclude or prejudice Weighwell from exercising the same or any other right it may have irrespective of any previous action taken by Weighwell.

**24: General**

24.1 We may advertise and make known that we are undertaking work for the customer.

24.2 The customer warrants and undertakes that during the agreement, and for a period of five years following the completion of the agreement, it will not without our prior written acceptance, employ or offer to employ or to introduce to any third party any person employed by us at the time of the making of this agreement and not directly or indirectly induce any such person to leave our employment as aforesaid.

24.3 The provisions of Incoterms 2010 shall apply to these conditions where they are inconsistencies.

24.4 The customer shall not at any time during the continuance of this agreement or for a period of five years thereafter make any public statements regarding us which could in any manner bring us or our services or products into disrepute.

**25: Applicable Law**

25.1 The agreement shall in all respects be governed and construed in accordance with English Law. The parties submit to nonexclusive jurisdiction of the English courts. Nothing in this condition shall limit our right to take proceedings against the customer in any other Court of competent jurisdiction.

25.2 In the event that individual terms of these Terms and Conditions should be or become invalid, unenforceable or illegal in whole or in part, this shall not affect the validity of the remaining terms and the validity of these Terms and Conditions. The parties shall be deemed to have agreed to replace the invalid, unenforceable or illegal terms by such valid, enforceable and legal terms as come as close as possible to the commercial objectives envisaged by the invalid, unenforceable or illegal terms.