

# U K Exchangers Ltd Conditions of Sale

## 1. Preamble

- 1.1 These Conditions, and any attached Acknowledgement of Order [and/or Specification] shall constitute the entire agreement between U K Exchangers Ltd (Company Number 02928899) (Seller) and the party referred to in the Order (Buyer).
- 1.2 Subject to Clause 12.2, these Conditions may only be varied by agreement in writing signed by the Seller and the Buyer.
- 1.3 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. When making an Order, the Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 1.4 The Order shall be deemed to be accepted either when the Seller issues the Acknowledgement of the Order or on dispatch of the Goods by the Seller (whichever is the earlier), at which point the Contract shall come into existence.

## 2 Interpretation

### 2.1 Definitions

**Acknowledgement of Order** means any acknowledgement of the Buyer's Order of the Goods.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions** means the terms and conditions set out in this document as amended from time to time in accordance with Clause 1.2.

**Contract** means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions [and any Specification as supplied by the Seller to the Buyer].

**Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation, acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors; and interruption or failure of utility service.

**Goods** means the goods (or any part of them) as set out in any Acknowledgement of Order or if no Acknowledgement of Order is issued then as set out in any dispatch note.

**Intellectual Property Rights** means any right, title or interest in drawings or technical documents, patents, rights to inventions, copyright and related rights, trade marks, trade names and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order** means the Buyer's order for the Goods..

**[Specification** means any specification for the Goods including any performance and material data sheet, and any related plans, and sales drawings and other technical documents that are supplied by the Seller.]

### 2.2 Interpretation

- 2.2.1 Any phrase introduced by these Conditions including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- 2.2.2 A reference to writing or written includes emails.

## 3 Basis of Contract

- 3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.2 Any samples, drawings, product information or advertising provided by the Seller for the Buyer is for the Buyer's guidance only and it is hereby agreed that such information shall not be incorporated into the Contract.

## 4 Drawings and other Documentation

The Seller shall, on request from the Buyer, provide the Buyer with one copy (which may consist of an electronic copy) of drawings and other technical documents. However, the Seller shall not be obliged to supply manufacturing drawings of the Goods or spare parts.

## 5 Intellectual Property Rights

All Intellectual Property Rights in relation to the Goods shall remain the property of the Seller, and the Seller grants the Buyer a non-exclusive licence to use the Intellectual Property Rights for the duration of the Contract only insofar as necessary for the use of the Goods and the fulfilment of the Contract. The Buyer shall not use the Intellectual Property Rights without the written consent of the Seller for any other purpose than that for which they were submitted. They may not without the consent of the Seller be copied, reproduced, transmitted or otherwise communicated to a third party.

## 6 Pre-Delivery Test

- 6.1 Where a Pre-Delivery Test (as defined in sub-clause 6.2 below) has been agreed, it shall, unless otherwise agreed, be carried out where the Goods are manufactured. If technical requirements for the test have not been agreed upon, the test shall be carried out in accordance with general practice in the industry concerned in the country of manufacture.
- 6.2 Pursuant to sub-clause 6.1 above, a Pre-Delivery Test shall mean a hydrostatic pressure test only. Such hydrostatic pressure test shall be used to confirm the integrity of the heat exchanger (in relation to design pressure, and to ensure the heat exchanger does not leak) (**Pre-Delivery Test**).
- 6.3 If requested by the Buyer at the time of Order, the Seller shall notify the Buyer of a Pre-Delivery Test in sufficient time to permit the Buyer to be present at the test. The Pre-Delivery Test report shall, unless otherwise shown by the Buyer, be considered to correctly record the test and its results.
- 6.4 If at the Pre-Delivery Test the Goods are found not to be in accordance with the Contract, the Seller shall without delay ensure that the Goods comply with the Contract. A new test shall be carried out if so required by the Buyer.
- 6.5 If no other division of the costs have been agreed, the Seller shall bear all costs for Pre-Delivery Tests carried out where the Goods are manufactured. The Buyer shall, however, bear all costs for his representatives, attending any Pre-Delivery Tests including costs for travel and subsistence.

## 7 Delivery

- 7.1 The delivery dates and times quoted are for guidance only and are subject to further confirmation by the seller. Delivery

times and dates shall not be of the essence of the Contract. The Seller shall not be liable for any loss or damage to the Buyer arising from the failure to deliver. Delivery shall be to the name and address in the Order unless the Buyer otherwise specifies in writing.

- 7.2 The Buyer shall be obliged to unpack and inspect all Goods on receipt of delivery, for defects, damage and/or deficit in respect of any part of the Order. Defective Goods must be rejected and not signed for. Unless it has been stated on the Order that the Order shall be fulfilled on one instalment Seller shall be entitled to make deliveries by instalments.
- 7.3 The Seller reserves the right to charge a fair and reasonable amount for storage charges of goods that have been made ready and available to the Buyer for the agreed date and the Buyer delays collection or delivery of the goods for any reason. The agreed dispatch date is detailed on the Seller order acknowledgement document.

## 8 Payment

- 8.1 Unless otherwise agreed, the purchase price shall be paid 30 days from the end of the month in which the invoice is dated.
- 8.2 If the Buyer fails to pay by the due date, the Seller shall be entitled to interest from the day on which payment became due at the rate of interest of four percentage points above the Bank of England base rate or such rate as is payable by the Seller to its supplier pursuant to its contract with the supplier, whichever shall be the greater.
- 8.3 If the Buyer has not paid the amount due within one month of the due date the Seller may at its option terminate the Contract and may suspend any further obligations under the Contract until full payment has been received.
- 8.4 In the event of termination by the Seller pursuant to sub-clause 8.3, the Seller shall be entitled to claim compensation from the Buyer for any and all losses sustained by the Seller in addition to any interest charged pursuant to sub-clause 8.2.
- 8.5 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing (including email) of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation.

## 9 Reservation of Title and Risk

- 9.1 Title in the Goods will remain with the Seller until:
- 9.1.1 the Goods have been paid for in full; or
- 9.1.2 the Buyer resells those Goods in the ordinary course of business, in which case title in the Goods shall pass immediately before the resale occurs.
- 9.2 If before title in the Goods has passed to the Buyer any of the events set out in 9.2.1 – 9.2.4 occur, the Seller may require the Buyer to deliver the Goods to the Seller, and should the Buyer fail to do so the Buyer hereby irrevocably permits the Seller access to the Buyer's premises to repossess the Goods:
- 9.2.1 If any receiver, administrator or manager of the Buyer is appointed or proposed to be appointed; or
- 9.2.2 If any action is taken or proposed to be taken for the dissolution, administration or liquidation of the Buyer (save for the purposes of reconstruction or amalgamation); or
- 9.2.3 If the Buyer shall cease to trade or appears unable to pay a debt or appears to have no reasonable prospect of being able to pay a debt (within the meaning of Section 268 of the Insolvency Act 1986) so as to entitle a creditor to bring a creditor's application under the Insolvency Act 1986 or any subsequent amendments thereof; or
- 9.2.4 If the Buyer shall sell or otherwise dispose of all or any part of the Buyer's interest in the land upon which the Seller's Products are situated, or if all or any part of the assets of the Buyer shall be attached or distrained upon.
- 9.3 The Buyer agrees to mark the Goods as the Seller's property

and store the Goods separately. Where the Goods have been mixed with other goods the Buyer agrees that the Seller shall be entitled to retain ownership of the Goods where they have been mixed with other goods, provided they remain identifiable and can be easily removed without causing damage.

- 9.4 Any Goods repossessed by the Seller hereunder may be resold by the Seller on such terms as it may determine and the Buyer shall remain liable to the Seller for the difference between the net proceeds of such resale and all outstanding sums due to the Seller hereunder and for all costs and expenses incurred by the Seller in repossessing, storing and reselling the Goods.
- 9.5 This right shall not prevent the Seller from also claiming damages and pursuing any other rights and remedies available to it.
- 9.6 Notwithstanding that title to the Goods does not pass to the Buyer, risk in the Goods passes to the Buyer at the delivery address as set out in the Acknowledgement of Order or dispatch notice (as appropriate) and accordingly the Buyer shall take out and maintain with reputable insurers such policies of insurance as necessary to keep the Goods insured against all risks for their full price from the date that risk passes to the Buyer.

## 10 Liability for Defects

- 10.1 The Seller shall, pursuant to the provisions of this Clause 10, by repair or replacement remedy any defect in the Goods resulting from faulty design, materials or workmanship.
- 10.2 The Seller's liability is limited to defects which appear within a period of one year from the date of delivery of the Goods. Notwithstanding the above, in the event that the Goods (i) are used more intensely than as set out in the Specification; or (ii) in the absence of an agreed use in the Specification, are used more intensely than could be reasonably foreseen at the formation of the Contract, then in either case the warranty will be void.
- 10.3 The Buyer shall notify the Seller in writing of any defect without delay after the defect becomes apparent, and in no case later than two weeks after its discovery. The notice shall contain a description of how the defect manifests itself. Notice of a defect must be given immediately if there is reason to believe that the defect may cause damage or loss, and the Buyer agrees that it shall not be entitled to pursue any claim for loss resulting from its failure to notify the Seller of a defect. If the Buyer fails to notify the Seller of a defect in writing within the time limits set forth in this Clause, he shall forfeit his right to make any claim in respect of the defect.
- 10.4 On receipt of the written notice according to Clause 10.3 the Seller shall notify the Buyer whether remedy of the defect is to take place at the Buyer's premises or whether the Seller requires the Buyer to return the defective part or the Goods to the Seller for repair or replacement at the Seller's premises. The Buyer shall carry out dismantling, and re-installation of the part.
- 10.5 If the Buyer gives such notice as described in Clause 10.3 and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for the work and costs which he has incurred as a result of the notice.
- 10.6 If dismantling or re-installation of the Goods necessitates intervention in other equipment than the Goods, the labour and costs resulting therefrom shall be the Buyer's responsibility.
- 10.7 All commercially reasonable transport in connection with repair or replacement shall be at the Seller's risk and expense, and such expense shall be limited to transport by road vehicle or such other form of transport as specified by the Seller.
- 10.8 The Buyer shall bear the increase in costs for remedying a defect which the Seller incurs when the Goods are situated elsewhere than at the destination stated in the Contract or - if no destination has been stated - the place of delivery.
- 10.9 If the defect is substantial and not capable of repair, the Seller may at its option replace the defective part.

- 10.9.1 Defective parts which are replaced in accordance with Clause 10.1 shall be placed at the Seller's disposal and shall become its property.
  - 10.9.2 The Seller is not liable for defects arising out of materials provided or specified by, or a design stipulated or specified by the Buyer.
  - 10.9.3 The Seller is only liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Goods. The Seller's liability does not extend to defects which are caused by or on behalf of the Buyer. The Seller's liability does not cover fair wear and tear or deterioration, and the Seller shall not be liable for any defect which arises as a result of the Buyer's action, inaction (including failure to comply with any Specification) or negligence including but not limited to, corrosion, erosion or fouling.
- 10.10 Except as may be otherwise expressly agreed in writing:
- 10.10.1 the Seller's liability in connection with any Contract for the supply of any Goods is solely as stated in the Conditions;
  - 10.10.2 the Seller shall not be under any liability to the Buyer for any loss of profit; loss of sales or business; loss of agreements or contract; loss of anticipated savings; loss of or damage to goodwill; or any indirect or consequential loss arising out of this Contract whether liability in contract, tort or otherwise and whether by reason of the negligence of its employees or its breach of Contract or otherwise, provided that this condition shall not apply to any liability which may not be excluded by virtue of any statute, including liability for death or personal injury;
  - 10.10.3 if any liability on the Seller's part shall arise (whether under the express or implied terms of the Contract or common law or in any other way) to the Buyer for any loss or damage of whatever nature arising out of this Contract for the Goods supplied hereunder, such liability shall be limited to the payment by the Seller by way of damages of a sum not exceeding a maximum of the purchase price of the Goods and the Buyer shall insure for any other potential losses accordingly, or if the Seller agrees to do so, the Seller will arrange insurance on the Buyer's behalf, with any premiums to be paid by the Buyer, provided that this condition shall not apply to a consumer contract nor to any liability for death or personal injury.

#### **11 Liability for Damage to Property caused by the Goods**

- 11.1 The Buyer shall indemnify and hold the Seller harmless for any damage or loss which occurs in accordance with the provisions of Clauses 11.2 and 11.3.
- 11.2 The Buyer shall indemnify the Seller for loss or damage caused:
  - 11.2.1 by the Goods to any (movable or immovable) property where the damage occurs while the Goods are at the Buyer's risk, or
  - 11.2.2 to products manufactured by the Buyer or to products which the Buyer's products form a part or for loss or damage to any property, where the damage is caused by these products because of properties in the Goods.
- 11.3 The Seller shall under no circumstances be liable for loss of production, loss of profit or any economic, consequential or indirect loss.
- 11.4 If a claim for loss or damage as described in this Clause is raised by a third party to the Contract, the Buyer and Seller shall forthwith notify the other thereof.

#### **12 Price**

- 12.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery.
- 12.2 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- 12.2.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 12.2.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 12.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 12.3 The purchase price of the Goods:
  - 12.3.1 excludes amounts in respect of any applicable value added tax (VAT), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - 12.3.2 excludes the costs and charges of packaging, insurance and delivery of the Goods, which shall be invoiced to the Buyer.

#### **13 Force Majeure**

- 13.1 Provided it has complied with Clause 13.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 13.2 The Affected Party shall:
  - 13.2.1 As soon as reasonably practicable after the start of the Force Majeure Event, but no later than seven days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
  - 13.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 13.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party who is not the Affected Party may terminate this Contract by giving four weeks' written notice to the Affected Party.

#### **14 Termination**

- 14.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:
  - 14.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Buyer being notified in writing to do so;
  - 14.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, where the Buyer is an individual, is the subject of a bankruptcy petition, application or order;
  - 14.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 14.1.4 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's ability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in Clause 14.1.1

to Clause 14.1.4, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

- 14.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 14.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 14.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 14.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

#### **15 Assignment and other dealings.**

- 15.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

#### **16 Notices.**

- 16.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 16.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 16.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 16.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

#### **17 Third party rights**

No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

#### **18 Severability and waiver**

- 18.1 Severability: If any provision in these Conditions or part thereof shall be found to be invalid or unenforceable, the invalidity of unenforceability of such provisions or part thereof shall not affect any other provision or any other part of the provision.
- 18.2 Waiver: The Seller's failure to insist on strict performance of any of the Buyer's obligations hereunder shall not be construed as a waiver and shall not affect the Seller's right to require strict performance of all the Buyer's obligations.

#### **19 Applicable Law and Jurisdiction**

These Conditions and the Contract into which they are incorporated shall be subject to and construed in accordance with the law of England and Wales exclusively and the jurisdiction of those Courts.