

**CONDITIONS OF SALE
OF
G.S.BROWN (PRECISION ENGINEERS) LIMITED**

1 INTERPRETATION

1.1 In these conditions:

‘Buyer’ means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the goods is accepted by the Seller.

‘Goods’ means the goods (including any instalment of the goods or any part for them) specified on the order or quotation form to which these conditions are attached.

‘Seller’ means G.S.Brown (Precision Engineers) Limited, a Company incorporated under the Companies Act, having its place of business at, The Beeches, Ladybank, Fife.

‘Conditions’ means the standard terms and conditions of sale set out in this document (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

‘Contract’ means the contract for the purchase and sale of the Goods.

‘Writing’ includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted, or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to the Conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted, or any such order is made or purported to be made, to the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.3 Any typographical, clerical or other error or omission on any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller’s authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and for supplying all tools and/or gauges or materials which in terms of the Contract the Buyer is bound to supply within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller’s quotation (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller).

3.4 Where the contract provides for the provision of tools and/or gauges by the Buyer, any so supplied by the Buyer remain at the Buyer’s risk (except in the case of loss by the Seller).

3.5 The Seller will accept no liability for the non-conformity with specification of the goods in circumstances where the Buyer has supplied tools and/or gauges to the Seller to carry out the contract and the non-conformity to specification is caused by the condition or lack of calibration to these tools and/or gauges.

3.6 Where the Contract provides for the supply of materials by the Buyer, the Seller will not be obliged to account to the Buyer for any surplus materials following completion of the Contract.

3.7 No order which has been accepted by the Seller or quotation which has been accepted by the Buyer may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs including the costs of all labour and materials used, damages, charges and expenses incurred by the Seller as a result of cancellation.

4 PRICE OF THE GOODS

4.1 The price of the Goods shall be the Seller’s quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the seller adequate information or instructions.

- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis as defined in the INCOTERMS 1990.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay the Seller.

5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the goods at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 Cancel the Contract or suspend any further deliveries to the Buyer;
 - 5.3.2 Appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other Contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer; and
 - 5.3.3 Charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of five per cent per annum above the base rate from time to time of the Royal Bank of Scotland plc until payment in full is made.

6 DELIVERY

- 6.1 Unless otherwise agreed in writing, delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises within 7 days after the Seller has notified the Buyer that the Goods are ready for collection.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Buyer fails to take delivery of the Goods (otherwise than by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.4.1 Store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.4.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.5 If the Goods or any part thereof are received in a damaged condition or if any part thereof is not received, the Buyer shall advise the Seller within three days of receipt of the Goods or other part thereof and shall confirm the same to the Seller in writing within seven days of such receipt otherwise the Seller will accept no responsibility for such damage or loss.

7 RISK AND PROPERTY

- 7.1 No damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, property of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of all debts due by the Buyer to the Seller.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and shall keep the Goods in good and substantial repair and condition and separate from those of the Buyer and third parties and properly stored, protected and identified as the Seller's property.
- 7.4 Each Contract for the sale or supply of Goods shall be treated as a separate Contract.
- 7.5 Until the Seller receives payment in full of all monies due by the Buyer, the Buyer shall not have nor shall it allow any party to acquire an interest in the Goods or title to them and without prejudice to the generality thereof the Buyer shall not pledge, part with possession of, or allow any charge, lien or other encumbrance to affect the Goods or the Goods to be installed as a fixture of any property.
- 7.6 The Buyer shall maintain insurance against loss or damage of the Goods for all normal and usual commercial risks in the full replacement value thereof and shall hold any proceeds of such insurance and all rights to obtain payment under such insurance in trust for the Seller.
- 7.7 In the event of the Buyer failing to make payment in accordance with these conditions, the Seller shall have the right to retake possession of and permanently retain any unpaid for Goods and to revoke all liability of the Seller to the Buyer under any Contract relating to such Goods. Further, the Buyer shall permit the Seller, its employees or agents to enter any premises in which the Goods are housed and to remove the Goods and shall pay all reasonable costs incurred by the Seller in effecting such entry and removal and the transport of the same to the Seller's premises.

8 UNDERTAKINGS

- 8.1 Subject to the conditions set out below the Seller undertakes that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of one year from the date of delivery.
- 8.2 The above undertaking is given by the Seller subject to the following conditions:
- 8.2.1 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
- 8.2.3 The Seller shall be under no liability under the above undertaking (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 8.2.4 The Seller shall be under no liability under the above undertaking to the extent that the Seller intimated a valid claim under Clause 10.
- 8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specifications shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery of (where the defect or failure was not apparent on reasonable inspection) within six months from the date of delivery. If the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer. Where it is necessary to return the Goods to the Seller, this will be done at the Buyer's expense. The Seller will then meet the cost of redelivery of the Goods to the Buyer.
- 8.5 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any consequential loss or damage (whether for loss or profit or otherwise, costs expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arises out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these conditions.
- 8.6 The Seller shall not be liable to the Buyer or to be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control;
- 8.6.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.6.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.6.3 Acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any government, parliamentary or local authority;
- 8.6.4 Import or export regulations or embargoes;
- 8.6.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.6.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.6.7 Power failure or breakdown in machinery.

9 INSOLVENCY OF BUYER

- 9.1 This clause applies if:
- 9.1.1 The Buyer makes any voluntary arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or apparently insolvent or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or
- 9.1.2 The holder of a heritable security takes possession, or a receiver is appointed, of any of the property or assets of the Buyer, or
- 9.1.3 The Buyer ceases, or threatens to cease, to carry on business, or
- 9.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10 INDEMNITY

The Buyer hereby binds and obliges itself to indemnify and keep indemnified the Seller from and against all costs, claims, demands, expenses, and liabilities of whatsoever nature made by third parties and caused in whole or in part or arising out of any act or omission of the Buyer in connection with the use or storage of the Goods.

11 SET-OFF

The Buyer shall not be entitled to withhold payment of any sum due to the Seller under this or any other contract in relation to any claim made against the Company whether under this contract or otherwise. The Buyer has no right to set-off or compensation against the Seller in respect of any claim whatsoever.

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GENERAL

- 12.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 The Contract shall be governed by the law of Scotland and the Buyer and the Seller hereby prorogate the non-exclusive jurisdiction of the Scottish Courts.