

Calder Limited Conditions of Sale and Warranty

1. PARTIES

In these Conditions Calder Limited is referred to as 'the Company' and the person, firm, or company placing the order or otherwise dealing with the Company as 'the Customer'.

2. BASIS AND APPLICATION OF CONDITIONS

- (i) All prices quoted by the Company are based upon these Conditions and reflect the limitations upon the Company's liability which they contain. In the event of the Customer wishing to contract with the Company otherwise than on the basis of these Conditions, special arrangements can be made and a revised price quoted by the Company.
- (ii) In the absence of any such special arrangements (which shall not bind the Company unless made in writing and signed on the Company's behalf by a person duly authorised for that purpose) all quotations given and all contracts made by the Company and any additions or amendments thereto shall be subject to these Conditions which supersede and shall be taken to override any terms or conditions proposed or stipulated by the Customer.

3. ACCEPTANCE

- (i) No order from the Customer shall be binding upon the Company until the Customer has received from the Company an appropriate acknowledgement of order on the Company's printed form duly signed on the Company's behalf by a person authorised for that purpose, which shall constitute the Company's acceptance of the order.
- (ii) The Company reserves the right to change price and delivery for any items on a Customer's order which are subsequently altered in any way by the Customer.
- (iii) Conditions contained on Customer's order forms which are at variance with or in addition to the Company's Conditions of Sale are not binding, unless specifically referred to and accepted by the Company in writing. Any other such conditions so accepted will apply only to the particular order concerned. Otherwise these conditions supersede and override all other conditions and orders are accepted only on this basis.

4. PRICES

- (i) Prices are subject to alteration without notice by the Company at any time.
- (ii) Unless otherwise agreed in writing, orders are accepted by the Company on condition that delivery will be made at the price current at the date of despatch.
- (iii) All prices quoted by the Company are exclusive of Value Added Tax, unless otherwise stated.
- (iv) Unless otherwise agreed in writing, all goods are despatched by the Company on an 'ex-works' or 'FCA Calder Limited, Worcester' basis. The Company reserves the right to charge carriage, insurance in transit and packing as extra.

5. QUOTATIONS

- (i) Unless otherwise agreed in writing, all quotations given by the Company shall be valid for a period of 30 days only from the date thereof.
- (ii) All goods quoted 'ex-stock' are subject to prior sale.
- (iii) The Company reserves the right to correct at any time stenographic or clerical errors contained in any quotation.

6. DELIVERY AND COMPLETION DATES

The Company will use its best endeavours to adhere to any time or date given for the despatch or delivery of goods or for the commencement or completion of work but any such time or date whether specified in the contract or otherwise given by the Company either as a term of the contract or otherwise shall be an estimate only, shall not be binding on the Company and shall not make time of the essence. In no circumstances shall the Company be liable for any loss or damage sustained by the Customer in consequence of any failure by the Company to adhere to such times or dates, or in consequence of any other delay in such despatch, delivery, commencement or completion however caused.

7. THE COMPANY'S DRAWINGS, DESCRIPTIONS AND CONFIDENTIAL INFORMATION

- (i) All illustrations, drawings or other representations accompanying any quotation from the Company or contained in the Company's price lists, advertisements or other literature, shall be regarded as approximate representations only, except where otherwise stated, and shall not be binding in detail unless so stated in the Company's quotation.
- (ii) All weights, measurements, operating pressures, capacities and other particulars of goods offered by the Company are stated in good faith as being approximately correct but the Company shall not be liable for deviations therefrom, however arising, nor shall such deviations in any way invalidate any contracts between the Company and the Customer in respect of such goods.
- (iii) The Company has intellectual property rights (to include copyrights, database rights, design rights and knowhow) in all drawings documents and other information supplied by the Company with its quotations or Commercial Proposals and such material shall at all times remain the property of the Company and be supplied on the express understanding that the Customer will not without the written consent of a Director or other person duly authorized by the Company for that purpose:
 - (a) Give away, loan, exhibit, sell or disclose to any third party any such drawings or documents or extracts therefrom or copies thereof; or
 - (b) Use them in any way except in connection with the use of the products for which they are issued

8. CANCELLATIONS

Orders accepted by the Company shall not thereafter be cancelled by the Customer otherwise than with the written consent of the Company. Such consent will only be given upon terms providing the Company with an indemnity against all loss which it has incurred or may incur as a result of such a cancellation.

9. GOODS RETURNED FOR CREDIT

Returned goods will only be accepted by the Company after agreement, and subject to a minimum handling charge of 20% in respect of standard, current products in a clean, re-saleable condition and subject to such goods being returned delivery free to the Company's works. The goods will be inspected upon receipt and credit will be allowed depending upon the condition as received, such credit being entirely at the Company's discretion.

10. PASSING OF PROPERTY AND RISK

Until full payment has been received by the Company for all goods whatsoever supplied (and all services rendered) at any time by the Company to the Customer:-

- (i) Property in the goods shall remain in the Company though risk shall pass on delivery even where installation or erection are part of the contract.
- (ii) Should the goods (or any of them) be converted into a new product, whether or not such conversion involves bolting on or the admixture of any other goods or thing whatsoever and in whatever proportions, the conversion shall be deemed to have been effected on behalf of the Company and the Company shall have the full legal and beneficial ownership of the new products, but without accepting any liability whatsoever in respect of such converted goods in relation to any third party, and the Customer hereby indemnifies the Company in relation thereto.
- (iii) Subject to (iv) and (v) below, the Customer shall be at liberty to sell the goods and the new products referred to above, in the ordinary course of business on the basis that the proceeds of sale shall belong to the Company to whom the Customer shall account.
- (iv) The Company may at any time revoke the Customer's power of sale by notice to the Customer, if the Customer is in default in the payment of any sum whatsoever due to the Company (whether in respect of the goods to be ordered hereunder or any other goods supplied) or services rendered at any time by the Company to the Customer or for any other reason whatsoever (or if the Company has bona fide doubts as to the solvency of the Customer).
- (v) The Customer's power of sale shall automatically cease if a Receiver is appointed over any of the assets, or the undertaking of the Customer or a Winding Up Order is made against the Customer, or the Customer goes into Administration or Voluntary Liquidation (otherwise than for the purpose of reconstruction or amalgamation) or causes a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy or allows execution to be levied against its goods.
- (vi) Upon the determination of the Customer's power of sale under (iv) or (v) above, the Customer shall place the goods and the new products at the disposal of the Company who shall be entitled using such force as is reasonably necessary to enter upon any premises of the Customer for the purpose of removing such goods and new products and to remove such goods and the new products from the premises (including severance from the reality where necessary).

11. DIVERSION

The Company reserves the right to divert orders to its official Stockist/Distributors without prior notification.

12. TERMS OF PAYMENT

- (i) Unless otherwise agreed in writing all accounts are monthly and strictly nett and are due for payment by the end of the month following the month of despatch. If despatch is delayed as a result of a Customer's inability to take delivery or otherwise at the request of the Customer, payments shall be made by the end of the month following that in which the Customer is notified that the goods are ready for despatch.
- (ii) If the price of any part thereof remains unpaid after the date of payment the amount unpaid shall bear interest at the rate of 4% over the Bank of England Base Rate for each month or part thereof during which the same amount remains unpaid.
- (iii) Unless otherwise agreed in writing goods for delivery abroad must be paid for in full before shipment.
- (iv) Notice of all payments made by Letters of Credit must be given to the Company within two days of the date of payment.

13. LOSS OR DAMAGE IN TRANSIT

- (i) In the event of it assuming responsibility for all or part of the carriage of goods the Company shall not be liable for any loss of, or damage to such goods while in transit unless written notice thereof is given to the Company by the Customer:
 - (a) in the case of loss from or damage to goods delivered to the Customer, within three days of the date of delivery;
 - (b) in the case of goods not delivered, within 21 days of the date upon which the Customer is notified that the goods have been consigned for delivery.Provided that if the Customer can show to the Company's satisfaction that it was not reasonably possible for it to give such notice to the Company within the appropriate period, and that notice was given within a reasonable period the Company shall not be entitled to reply upon the time limits stipulated by this condition.
- (ii) Any liability which the Company may incur for the loss of or damage to goods while in transit shall in any event be limited to the invoice value of the goods and in no circumstances shall the Company be liable for any indirect or consequential loss, however caused.

14. TESTING

The Company will provide facilities to the Customer for the inspection and where possible testing of goods at the Company's works prior to despatch; normally such facilities will be provided free of charge. Special test or tests/inspection in the presence of the Customer or its representative, unless otherwise agreed, must be made at the Company's works and will be charged for, as will tests/inspections made of necessity by independent organisations.

15. INSTALLATION

- (i) When any installation services provided for in the contract are limited to supervision the Company will supply the necessary competent personnel for supervision purposes only. The Customer will supply all other necessary skilled and unskilled labour

and all equipment and tools for the installation of the Company's products and a safe working environment for the Company's personnel.

- (ii) When the contract provides for actual installation by the Company it will supply all necessary personnel and hand tools for the installation of the Company's products according to the details of the installation services specified in the Company's quotation.
- (iii) In either case, unless otherwise specifically stated in the Company's quotation, the Customer will be responsible for
 - (a) all necessary preparation of the site including all appropriate health and safety procedures, all work to buildings, foundations, supporting structures and fixing points.
 - (b) the proper unloading and safe keeping of the products from the time of delivery.
 - (c) the provision of scaffolding, lifting equipment and any other equipment (excluding hand tools) and all services required to install or operate the products.
 - (d) any work whether preparatory to installation or in the installation itself not specifically included in the Company's quotation.
 - (e) giving the Company access to and possession of the site at such time and in such state as may enable the Company to complete the installation within any agreed time limit.
- (iv) The Company reserves the right to suspend all further installation work if the Customer is in breach of clause 15 (iii) above or of the terms of payment.

16. EXTRA COSTS

The Company reserves the right to charge any extra costs incurred as a result of the variation, delay or suspension of work arising from any act or omission by the Customer or its sub-contractor or by any other circumstance for which the Company is not responsible.

17. WARRANTY

- (i) The Company warrants that the goods at the time of delivery shall be free from defects in workmanship and materials. If any goods do not conform to that warranty the Company will at its option:-
 - (a) replace the goods found not to conform to the warranty;
 - (b) take such steps as the Company deems necessary to bring the goods into a state where they are free from such defects; or
 - (c) take back the goods found not to conform to the warranty and refund the appropriate part of the contract price: PROVIDED THAT the liability of the Company shall in no event exceed the purchase price of the goods and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty.
- (ii) The foregoing warranty is conditional upon:-
 - (a) The Customer giving written notice to the Company of the alleged defect within twenty eight (28) days of the time when the Customer discovers or ought to have discovered the defect and within twelve (12) months of the date of delivery or when commissioning is undertaken by the Company the shorter of twelve (12) months from the date of commissioning or eighteen (18) months from the date of delivery;
 - (b) The Customer affording the Company a reasonable opportunity to inspect the goods and, if so requested by the Company, returning the allegedly defective goods to the Company's works, carriage pre-paid (subject to refund in the event that the claim is found to be justified), for inspection to take place there;
- (iii) Warranty Exceptions
 - (a) Consumable parts e.g. packings, liners, hoses and seals are covered for a period of ninety (90) days. All engines, motors and pumps are warranted only to the extent of the warranty given by the engine, motor and pump manufacturer.
 - (b) The Company shall in no event be responsible or liable for the cost of labour or other charges incurred by the Customer in removing, repairing, replacing and/or re-affixing any product, part or component thereof supplied by the Company or any labour or other charges incurred by the Customer in removing or replacing any part of the Customer's products or equipment into which the Company's products are installed
 - (c) This Warranty does not apply:-
 - (i) to defects or malfunctions resulting from failure to properly store, install, operate or maintain the goods in accordance with printed instructions provided
 - (ii) to failures resulting from abuse, accident or negligence
 - (iii) to normal maintenance services and the parts used in connection with such services
 - (iv) to goods which are not installed in accordance with applicable codes, ordinances and good trade practices
 - (v) if the goods are moved from their original installation location
 - (vi) if the goods are used for purposes other than for which they were designed and manufactured
 - (vii) where repairs or modifications have been carried out to the goods without the prior written consent of the Company
 - (viii) to goods or any part thereof not manufactured by the Company (though the Company will pass on to the Customer the benefit of any manufacturer's warranty which is given) or the supply of second hand or reworked goods
 - (d) Product Improvements
The Company reserves the right to change or improve its products or any parts thereof without being obligated to provide such a change or improvement for units sold and/or shipped prior to such change or improvement
 - (e) Liability Limitation
 - (i) Save as provided above, all conditions, warranties and representations, express or implied, as to the quality, fitness for purpose, merchantability or durability are hereby expressly excluded to the fullest extent permitted by law.
 - (ii) In no event shall the Company be liable or responsible for consequential, incidental or special damages resulting from or related in any manner to any product or parts other than for death and personal injury proved to be as a result of the Company's negligence
 - (iii) All recommendations and advice given by or on behalf of the Company to the Customer as to the methods of storing or using the goods, the purposes to which the goods may be applied and the suitability of using the goods in any

process or in conjunction with any materials or equipment or for any other purpose are given without liability on the part of the Company, its servants or agents.

- (iv) The Customer shall not be permitted without the prior agreement of the Company in writing and signed on the Company's behalf by a person duly authorized for the purpose to assign the benefit of this Warranty to any third party

18. EXCLUSION OF LIABILITY

- (i) The Company's liability in negligence or otherwise in tort arising out of or in connection with the supply of any goods or materials to or to the order of the Customer or the execution of any work for the Customer and all such liability however arising, is hereby expressly excluded. Provided that nothing in this condition shall excuse the Company from any liability which it may incur for death or personal injury resulting from its negligence.
- (ii) Except for any such liability as it may incur for death or personal injury resulting from negligence, the Company shall not be liable in any manner whatsoever, whether under this contract in tort, in misrepresentation or otherwise for any indirect or consequential loss, damage or injury however caused which may arise out of or in connection with the supply of goods or materials to or to the order of the Customer or the execution of any work for the Customer.
- (iii) In this condition the words 'goods', 'materials' and 'work' shall include goods and materials supplied and work executed under the Company's warranty at Clause 17 above.

19. ADVICE

The Company shall be under no liability whatsoever in respect of any advice given or views expressed to the Customer whether or not such advice or such views are expressed at the Customer's request.

20. LIEN

The Company shall have a lien over all goods of the Customer in the Company's possession not only for monies due in respect of such goods but also for any other monies due from the Customer to the Company. If any monies due from the Customer to the Company remain unpaid at the expiry of six months after notice has been given that such goods are being detained the Company shall thereupon have the irrevocable authority of the Customer to sell the goods by public auction or otherwise and to apply the proceeds of sale (after deducting the expense thereof) in discharge of the Customer's indebtedness and thereafter to account to the Customer for the balance, if any.

21. FORCE MAJEURE

- (i) The Company shall not be liable or responsible for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Company's reasonable control.
- (ii) Non-exhaustive illustrations of such circumstances would be act of God; war (whether declared or not); civil disturbance; requisitioning; governmental (UK or otherwise) regulations, enactments, prohibitions or restrictions of any kind; strike, lock-out or industrial dispute (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials including (but not limited to) fuel, breakdown or machinery fire or accident; non-availability or delay of other transport.
- (iii) Should any such event occur the Company may cancel or initially suspend then cancel the contract without incurring any liability for any loss or damage whatsoever thereby occasioned.

22. EXPORT CONTRACTS

The following additional provisions will apply to any order for the sale of goods when goods are exported outside the United Kingdom:-

- (i) Orders are accepted subject to the Company receiving any necessary export licences.
- (ii) Unless otherwise agreed in writing by the Company the Customer shall be solely responsible for the payment of all import duties, charges and assessments and the obtaining of any necessary import licences in respect of the goods and the Company shall be under no liability whatsoever in respect of goods exported without the necessary import licences.
- (iii) Any term or expression which is defined by Incoterms (Edition 2010) shall have the same meaning in these Conditions, but if there is any conflict between Incoterms and these Conditions, the latter will prevail
- (iv) Where goods are sold f.o.b ship the Company shall be under no obligation to give the Customer notice in accordance with Section 32(3) of the Sale of Goods Act 1979, the goods shall be deemed to be at the Customer's risk and it shall be for the Customer to take out an appropriate contract of insurance.
- (v) In respect of contracts where the Company agrees to supply on a delivered duty paid basis all claims for damage or loss in transit must be made in accordance with the instructions of the Company's insurance company, details of which are given on the insurance certificate in the applicable shipping documentation.

23 DISPUTES

These Conditions of Sale and any Contract shall be subject to and construed in accordance with English Law and the parties hereto submit to jurisdiction of the High Court of Justices of England or, at the option of the Company, to arbitration by the Judge of the Commercial Court in London acting as Arbitrator and sitting with an Assessor or Assessors nominated by such Court.