

PRIMETAKE LTD GENERAL CONDITIONS OF SALE JUNE 2010
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1. **GENERAL** - The acceptance of our tender includes the acceptance of the following terms and conditions:
2. **VALIDITY** - Unless previously withdrawn, our tender is open for acceptance within the period stated therein or, when no period is so stated, within thirty days only after its date.
3. **ACCEPTANCE** - The acceptance of our tender must be accompanied by sufficient information to enable us to proceed with the order forthwith, otherwise we shall be at liberty to amend the tender prices to cover any increase in cost which has taken place after acceptance. Any samples submitted to you and not returned to our works within one month from date of receipt shall be paid for by you.
4. **PACKING** -
 - 4.1 **FOR DELIVERIES TO UK DESTINATIONS** if priced as an option on our tender, all packing cases, skids, drums and other packing materials must be returned to our works at your expense and in good condition within one month from date of receipt. If not so returned they will be charged for.
 - 4.2 **FOR EXPORT SHIPMENTS** and unless otherwise specified in our tender, packing shall be in accordance with our standard export practice.
5. **PASSING OF PROPERTY AND RISK** -
 - (i) The property in the goods shall remain in the seller until the full payment of all sums then owed by the purchaser to the seller and any other payment due to the seller from the purchaser have been made. Goods in respect of which property has remained in the seller shall be kept identifiable as those of the seller.
 - (ii) If payment of the total price or other sums is not made on the due date the seller shall have the right, with or without prior notice, at any time, to retake possession of the whole or any part of the products (and for that purpose to go upon any premises occupied by the purchaser thereof) without prejudice to any other remedy of the seller.
 - (iii) The risk in the goods passes to the purchaser on delivery or if the purchaser wrongfully fails to take delivery of the goods at the agreed delivery place when the seller has attempted to deliver the goods.
 - (iv) The purchaser may in the ordinary course of business sell the goods to a third party in which case the seller's beneficial entitlement shall attach to the proceeds of the resale or to the claim for such proceeds pending full payment.
 - (v) Nothing in this paragraph shall confer any right upon the purchaser to return any products or to refuse or delay payment for them, unless otherwise agreed.
6. **LIMITS OF CONTRACT** - Our tender includes only such goods, accessories and work as are specified therein.
7. **DRAWINGS ETC.** - All specifications, drawings and particulars of weights and dimensions submitted with our tender are approximate only, and the description and illustrations contained in our catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract.
8. **INSPECTION AND TESTS** - Our products are carefully inspected and, where practicable, submitted to our standard tests at our works before despatch. If tests other than those specified in our tender or tests in the presence of you or your representative are required, these will be charged for. In the event of any delay on your part in attending such tests or in carrying out any inspection required by you after seven days' notice that they are ready, the tests will proceed in your absence and shall be deemed to have been made in your presence.

In the case of tests being carried out on site, they shall be carried out within one month after completion of erection, installation and due notice in writing shall be given to us that our representative may have reasonable opportunity of witnessing these tests if we so desire. Should the results of the tests not come within, the margin specified the tests shall, if required by us, be repeated within one month after the date when the plant, equipment or goods are ready or re-test we shall repay to you all reasonable expenses to which you may be put by such retests.
9. **PERFORMANCE** - We will accept no liability for failure to attain any performance figures quoted by us unless we have specifically guaranteed them, subject to any tolerances specified or agreed to by us, in an agreed sum as liquidated damages. If the performance figures obtained on any test provided for in the contract are outside the acceptance limits specified therein, you will be entitled to reject the goods. Before you become entitled to claim liquidated damages or to reject the goods we are to be given reasonable time and opportunity to rectify their performance. If you become entitled to reject goods, we will repay to you any sum paid by you to us on account of the contract price thereof and any sum that may have accrued due to you in respect of delay in despatch under Clause 10 up to the date of such rejection. You assume responsibility that goods stipulated by you are sufficient and suitable for your purpose save in so far as your stipulations are in accordance with our advice.

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10. **LIABILITY FOR DELAY** - Any times quoted for despatch or delivery are to date from receipt by us of a written order to proceed and of all necessary information and drawings to enable us to put the work in hand. The time for despatch or delivery shall be extended by a reasonable period if delay in despatch or delivery is caused by instructions or lack of instructions from you or by industrial dispute or by any cause beyond our reasonable control.

Unless otherwise stated, we do not accept penalties for late delivery. If a fixed time be quoted for despatch or delivery and we explicitly agree to liquidated damages and we fail to despatch or deliver within that time or within any extension thereof provided by this clause, and if as a result you shall have suffered loss, we undertake to pay for each week or part of a week of delay, liquidated damages at the rate of 0.25 per cent up to a maximum of 2.5% per cent of that portion of the price named in the contract which is referable to such portion only of the contract goods as cannot in consequence of the delay be used commercially and effectively. Such payment shall be in full satisfaction of our liability for delay.

Any time described as an estimate is subject to capacity being unsold and shall not be construed as a fixed time quoted for the purpose of this clause.

11. **VARIATIONS** - In the event of variations or suspension of work by your instructions or lack of instructions the contract price shall be adjusted accordingly. Should we incur extra cost owing to suspension of the work by your instructions, lack of instructions, interruptions, delays, overtime, unusual hours, mistakes, work for which we are not responsible or for keeping any of our personnel on site after completion of erection (where applicable), a reasonable sum in respect of such extra cost incurred by shall be added to the contract price and paid for accordingly.

12. **DELIVERY**

- 12.1 **GENERAL** - Unless otherwise specified in our tender, the price quoted excludes delivery. Unless otherwise specified, we shall not be responsible for offloading. For export contracts, delivery will be EXW (ex-works) our factory unless otherwise specified.

- 12.2 **INCOTERMS** - Unless otherwise stated, the delivery terms will be interpreted pursuant to INCOTERMS 2010.

12.2 **ERECTION/INSTALLATION (WHERE APPLICABLE AND EXPLICITLY INCLUDED IN OUR TENDER)**

Unless otherwise stated, our tender includes the supervision of erection only.

You shall provide suitable access to the possession of the site, proper foundations ready to receive the goods as and when delivered, adequate lifting facilities and scaffolding, all skilled and unskilled labour, masons', joiners' and builders' work, suitable protection for the goods from time of delivery, any lighting and heating necessary on the site during erection and all necessary facilities and adequate assistance. All of these are to be supplied at your expense to enable the work to be expeditiously and continuously carried out.

The goods shall be deemed to have been taken over by you when erection has been completed and the plant has passed tests on site when these are included, or one calendar month after it shall have been put into commercial use (whichever may be earlier): Provided that in any case the goods shall be deemed to have been taken over at the expiration of two calendar months after we shall have given you written notice that erection is complete, unless in the meantime tests shall have been made showing that it does not comply with the terms of the contract. The time of taking over shall not be delayed on account of additions, minor omissions or defects, which do not materially affect the commercial use of the plant.

13. **LOSS OR DAMAGE IN TRANSIT** - When the price quoted includes delivery other than at our works, we will repair or at our option replace free of charge goods lost or damaged in transit; provided that we are given written notification of such loss or damage within such time as will enable us to comply with the carrier's conditions of carriage as affecting loss or damage in transit or, where delivery is made by our own transport, within a reasonable time after receipt of the Advice Note.
14. **TERMS OF PAYMENT** - Unless otherwise agreed, payment in full shall be due for goods on notification by us that they are ready for despatch.
- 14.1 Where the contract involves erection/ installation, payment for that part of the contract is due on completion. Minor defects in the plant, not of such importance as to affect materially its commercial use, shall entitle you to retain from the payment only such sum as represents the value of such incomplete or defective details, and any sum so retained shall be paid upon such omissions or defects being remedied, which will be done by us at the earliest opportunity. In the event of a portion of the plant being rejected under Clause 16, any sums paid to us shall be applied to payments due for the expected portions of the plant, and the balance shall be refunded; should the whole plant be rejected all sums paid shall be refunded. Any liability on our part is subject to the terms of payment and all your other obligations to us under the contract being strictly observed.
- 14.2 If we are unable by reason of your instruction or lack of instructions or from causes beyond our control, to deliver all or any of the plant when ready, or to proceed with the supervision of erection of such plant as we have already delivered, you shall take delivery or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to arrange storage either at our own works or elsewhere on your behalf and all charges for storage, for insurance or for demurrage shall be payable by you. In any case, you will make full payment as if delivery had been made. Subject to clause 16 you shall pay any balance of the contract price outstanding in respect of plant lost or damaged after delivery.
- 14.3 For export contracts, the prices quoted are strictly net and payment in full shall be due according to terms of contract. Or, if we are unable by reason of your instruction or lack of instructions to deliver goods when ready, payment in full shall be due upon presentation of invoices and notification from us that the goods are ready for despatch.

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15. **STORAGE** - If we do not receive forwarding instructions sufficient to enable us to despatch the goods within 14 days after the date of notification that they are ready for despatch you shall take delivery or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to arrange storage either at our own works or elsewhere on your behalf and all charges for storage, insurance or demurrage shall be payable by you.
16. **DEFECTS AFTER DELIVERY** - We will make good, by repair or the supply of a replacement, defects which, under proper use, appear in the goods within a period of twelve calendar months after the goods have been delivered and arise solely from faulty design (other than a design made, furnished or specified by you for which we have disclaimed responsibility in writing) materials or workmanship provided always that defective parts have been returned to us if we shall have so required. We shall refund the cost of carriage on such returned parts and the repaired or new parts will be delivered by us free of charge as provided in Clause 12 (Delivery). Our liability under this clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the goods, and save as provided in this clause we shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in goods delivered or for any injury (other than personal injury caused by our negligence as defined in Section 1 of the Unfair Contract Terms Act, 1977), damage or loss resulting from such defects or from any work done in connection therewith.
17. **PATENTS** - We will indemnify you against any claim for infringement of Letters Patent, Registered Design, Trade Mark or Copyright (published at the date of the contract) by the use or sale of any article or material supplied by us to you and against all costs and damages which you may incur in any action for such infringement or for which you may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to our having followed a design or instruction furnished or given by you or to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to us, or to any infringement which is due to the use of such article or material in association or combination with any other article not supplied by us. And provided also that this indemnity is conditional on your giving to us at the earliest possible time notice in writing of any claim being made or action threatened or brought against you and on your permitting us at our own expense to conduct any litigation that may ensue and all negotiation for a settlement of the claim. You on your part warrant that any design or instruction furnished or given by you shall not be such as will cause us to infringe any Letters Patent, Registered Design, Trade Mark or Copyright in the execution of your order.
18. **LIMITATION ON CONTRACTORS LIABILITY WHILST ON SITE** - If we, our agents or sub-contractors are on site for the purposes of the contract then, notwithstanding the provisions of Clause 16 we will indemnify you against direct damage or injury to your property or person or that of others occurring while we are working on site to the extent caused by the negligence of ourselves, our sub-contractors or agents, but not otherwise, by making good such damage to property or compensating personal injury. Provided that:
(i) Our total liability for damage to your property (including damage caused by our breach of contract, tort or breach of statutory duty) shall not exceed £1,000,000 or the contract price, whichever sum is the greater and -
(ii) We shall not be liable to you for any loss of profit or of contracts or, save as aforesaid, for any loss or damage of any kind whatsoever and whether caused by our breach of contract, tort, breach of statutory duty or otherwise howsoever.
Save as provided in Clause 16, we shall not be liable for any damage or injury occurring after our completion of work on site.
19. **INTELLECTUAL PROPERTY** - The copyright and design rights and all other intellectual property rights in and relating to goods sold or supplied by us whether upon these Conditions or otherwise and whether arising prior to or in the course of our supply of such goods shall at all times remain our absolute and exclusive property.
20. **INSURANCE** - We accept responsibility for designing and manufacturing products to the specifications agreed with you. We agree to maintain product liability insurance in respect of all proper claims (but excluding all consequential loss) that may arise from any failure or defect in our products so designed and manufactured. We do not accept any liability for any loss or damage however arising from goods designed but not manufactured by us.
21. **FINAL CERTIFICATE** - Upon expiry of the defects liability period specified in Clause 16, we shall be under no further obligation or liability to you either under the contract or in tort (including but not limited to negligence), unless within 14 days thereafter you shall have given us written notice of any matter in respect of which we remain obliged or liable to you. You shall issue to us a final certificate to the effect that we have fulfilled all our obligations and liabilities to you, in the event that you have given us notice as aforesaid which we have not disputed, immediately upon our having dealt with the matter(s) specified therein.
22. **ARBITRATION** - If at any time any question, dispute or difference whatsoever shall arise between you and ourselves upon, in relation to, or in connection with the contract, either of us may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration of a person to be mutually agreed upon, or failing agreement within 30 days of receipt of such notice, of some person appointed by the CEO for the time being of the Chartered Institute of Arbitrators
23. **LEGAL CONSTRUCTION** - unless otherwise agreed in writing the contract shall in all respects be construed and operate as an English contract and in conformity with English law and the English courts shall have exclusive jurisdiction over any matter arising out of the provisions of Clause 22 (Arbitration).
24. **STATUTORY AND OTHER REGULATIONS** - If the cost to us of performing our obligation under the contract shall be increased or reduced by reason of the making or amendment after the date of tender of any law or of any order, regulation, or bye-law having the force of law that shall affect the performance of our obligations under the contract, the amount of such increase or reduction shall be added to or deducted from the contract price as the case may be.