

TERMS AND CONDITIONS OF SALE AND SUPPLY



Burnhouse Engineering and Fabrication Limited

Company Number: SC185494

Registered Office: Block 6, Lochview Road, Willowyard Industrial Estate, Beith, KA15 1LY

1. DEFINITIONS

1.1 In these Terms and Conditions:

- “Company” means Burnhouse Engineering and Fabrication Limited.
- “Customer” means the person, firm, company or organisation purchasing goods or services from the Company.
- “Goods” means any fabricated items, products, materials, components or equipment supplied by the Company.
- “Services” means fabrication, installation, maintenance, repair, design, drawing, engineering or associated works carried out by the Company.
- “Contract” means the agreement between the Company and the Customer incorporating these Terms and Conditions.
- “Site” means any premises where the Services are to be performed.
- “Quotation” means any written quotation issued by the Company.

2. APPLICATION OF TERMS

2.1 These Terms and Conditions apply to all quotations, orders, contracts, supplies of Goods and Services by the Company.

2.2 No terms or conditions submitted by the Customer shall apply unless expressly agreed in writing by a director of the Company.

2.3 Any instruction to commence work, acceptance of a quotation, issue of a purchase order, payment of a deposit, electronic acceptance, or written/email confirmation by the Customer shall constitute acceptance of these Terms and Conditions.

2.4 Email acceptance shall only be binding where the Customer is an existing approved account customer or where expressly accepted by the Company.

2.5 These Terms shall prevail over any conflicting terms contained within any Customer purchase order or other documentation.

3. QUOTATIONS

3.1 Quotations remain valid for fourteen (14) days from the date of issue unless otherwise stated. Where the quotation includes stainless steel, aluminium, imported specialist materials or other volatile commodities, validity shall be limited to seven (7) days unless otherwise agreed in writing.

3.2 Quotations are based upon:

- current labour rates;
- material prices;
- supplier costs;
- transport costs;
- and prevailing economic conditions.

3.3 The Company reserves the right to revise prices following acceptance of any quotation or order and at any time prior to delivery, installation or completion where there is:

- an increase in raw material prices;
- an increase in supplier pricing;
- any tariff, duty, levy, trade defence measure, customs charge or import surcharge;
- material freight or transport increases;
- exchange rate fluctuation exceeding 3%;
- delays caused by the Customer or third parties.

Any increase exceeding 5% in the Company's direct material and supplier input costs shall entitle the Company to adjust the Contract price accordingly.

3.4 Quotations are based upon information supplied by the Customer and may be revised where inaccurate or incomplete information has been provided.

3.5 Unless expressly stated otherwise, quotations exclude:

- VAT;
- statutory fees;
- permits;
- testing;
- certification;
- lifting equipment;
- specialist access equipment;
- utility connections;
- work by third parties.

3.6 All additional works, variations, modifications or delays shall be chargeable in addition to the quoted price.

3.7 Where the Works are quoted on a lump-sum or fixed-price basis, the Contract Price represents the Company's commercial price for carrying out the Works and is not offered on an open-book basis.

Unless expressly agreed otherwise in writing by the Company prior to commencement of the Works, the Company shall have no obligation to provide, and may at its sole discretion decline to provide, any breakdown, substantiation or disclosure of the Contract Price, including but not limited to labour hours, labour rates, material costs or purchase prices, subcontractor or supplier costs or quotations, plant or equipment costs, overheads, profit margins, mark-ups or any other internal or commercially confidential pricing information.

The Customer shall have no entitlement to require such information before, during or after completion of the Works.

Any request for a price or cost breakdown following acceptance of the Company's quotation or commencement of the Works shall not alter or suspend the agreed Contract Price, payment terms, invoicing arrangements or the Customer's obligation to make payment when due.

Where the Company elects to provide a breakdown or supporting pricing information, whether as a commercial courtesy or otherwise, such disclosure shall not constitute an agreement to operate on an open-book, cost-plus or remeasurement basis, nor shall it create any continuing obligation to provide equivalent information in respect of the Works or any future contract.

3.8 Where materials are procured specifically for the Contract, the Company may require immediate payment in full or in part for such materials prior to order placement. Such materials shall be non-cancellable and non-refundable once ordered. Title in such materials shall remain with the Company until paid in full.

3.9 Where increases in material, supplier, tariff or import-related costs exceed 10% after acceptance, the Company may suspend performance pending agreement of revised pricing.

3.10 Where the Customer does not accept a revised price under Clauses 3.3 or 3.8, the Company may terminate the Contract without liability and recover all costs incurred up to the date of termination, including materials ordered, design work completed and supplier commitments entered into.

4. PAYMENT TERMS

4.1 Credit facilities are strictly subject to prior written approval following satisfactory credit checks.

4.2 Unless otherwise agreed in writing:

- deposits and/or pro-forma payment may be required before commencement;
- staged payments may be required depending upon project value and duration.

4.2.1 For contracts exceeding £25,000, the Company reserves the right to invoice for materials upon order, with staged applications thereafter.

4.3 Approved credit account customers shall pay all invoices within thirty (30) days from invoice date.

4.4 The Company reserves the right to:

- suspend work;
- withhold deliveries;
- refuse site attendance;
- or terminate the Contract without liability where payment is overdue.

4.5 Interest shall accrue on overdue sums at a rate of 8% per annum above the Bank of England base rate from the due date until payment in full.

4.6 The Customer shall indemnify the Company for all reasonable:

- legal costs;
- debt recovery costs;
- tracing fees;
- collection agency fees;
- and administrative costs incurred recovering overdue sums.

4.7 Time for payment shall be of the essence.

4.8 No retention, set-off, counterclaim or deduction shall be permitted unless agreed in writing by the Company.

4.9 The Company reserves the right to require revised payment terms, deposits or security where there is a material deterioration in the Customer's creditworthiness or where project risk materially increases after order acceptance.

5. RETENTION OF TITLE

5.1 Ownership of all Goods supplied shall remain vested in the Company until payment in full has been received for:

- the Goods;
- Services;
- and all other sums due from the Customer.

5.2 Until ownership passes:

- the Customer shall hold the Goods as bailee for the Company;
- keep the Goods insured;
- and store them separately where reasonably practicable.

5.3 The Company may enter any premises to recover unpaid Goods.

5.4 Risk in the Goods shall pass upon delivery, collection, installation or attempted delivery.

5.5 Where Goods are incorporated into the Customer's property or project before full payment is made, the Company reserves the right to recover the value of such Goods and associated Services as a debt.

6. DELIVERY AND COMPLETION

6.1 Any delivery or completion dates are estimates only.

6.2 The Company shall not be liable for:

- delays;
- liquidated damages;
- consequential losses;
- or project overruns
arising from circumstances beyond its reasonable control.

6.3 The Company may deliver Goods in instalments.

6.4 The Company reserves the right to charge for:

- aborted visits;
- waiting time;
- storage;
- re-delivery;
- crane standby;
- access delays;
- or customer-caused downtime.

6.5 Where collection or delivery is delayed by the Customer:

- risk shall transfer immediately;
- and storage charges may apply.

6.6 Where delays arise due to material shortages, supplier allocation, import restrictions, customs delays or quota restrictions, the Company shall be entitled to extend delivery dates without penalty.

6.7 Delay, Disruption, Aborted Works and Additional Costs

Where the Company is delayed, disrupted, prevented from commencing or completing the Works, or is required to suspend, abort, postpone or reschedule any part of the Works due to circumstances outside the Company's reasonable control, the Customer shall be responsible for all reasonable additional costs and charges incurred by the Company as a consequence.

This shall include circumstances caused by or arising from the Customer, its employees or representatives, the Principal Contractor, site operator, other contractors or trades, third parties, or conditions at the Site, including but not limited to:

- restricted or unavailable access;
- the Site or work area not being ready;
- incomplete preparatory or enabling works;
- electrical, mechanical or process services not being isolated, disconnected or made safe;
- permits, permissions or authorisations not being available;
- other contractors or trades preventing or delaying the Company's Works;
- unsafe or unsuitable site conditions;
- lifting areas, access routes or working areas being unavailable or unsuitable; and
- any other matter outside the Company's reasonable control.

The Customer shall be liable for all reasonable additional costs incurred by the Company arising from such delay, disruption, suspension, postponement or aborted attendance, including labour and waiting time, travel, accommodation, additional site attendance, remobilisation, transport, haulage, storage, plant and equipment hire, access equipment, crane hire, contract lift charges, subcontractor charges, cancellation charges, postponement charges, standby charges and rebooking charges.

Where the Company has committed to or booked plant, equipment, craneage, lifting services, transport, subcontractors or other third-party services for the Works, any costs or charges incurred by the Company as a result of cancellation, postponement, delay, standby, aborted attendance or rebooking shall be chargeable to the Customer, except to the extent that such costs arise directly from the Company's own breach or negligence.

Any agreed programme, delivery date or completion date shall be extended by a reasonable period to reflect any such delay, disruption, suspension or rescheduling.

7. CUSTOMER RESPONSIBILITIES

7.1 The Customer shall:

- provide safe access;
- ensure the Site complies with health and safety legislation;
- provide utilities where required;
- obtain necessary permissions;
- and ensure the working environment is suitable.

7.2 The Company may suspend work where:

- unsafe conditions exist;

- asbestos or contamination is discovered;
- access is restricted;
- or Site conditions materially differ from those anticipated.

7.3 Any delays or additional costs arising from Site conditions or Customer actions shall be chargeable.

8. DRAWINGS, DESIGN AND APPROVALS

8.1 All drawings, designs and technical information supplied by the Company remain the intellectual property of the Company.

8.2 Fabrication drawings, CNC files, CAD models, tooling, jigs and manufacturing methods shall remain confidential and shall not be reproduced or distributed without written consent.

8.3 The Customer shall be responsible for the accuracy of all information, drawings, dimensions and specifications supplied by them.

8.4 The Company accepts no liability for errors arising from Customer-supplied information.

8.5 Unless otherwise agreed in writing:

- two drawing revisions are included;
- additional revisions shall be chargeable.

8.6 Manufacture shall not commence until written approval of drawings is received where approval is required by the Company.

8.7 Delays in approvals shall entitle the Company to revise delivery dates and costs.

9. SUBCONTRACTING

9.1 The Company reserves the right to subcontract any part of the works.

9.2 Specialist calculations, certifications or testing may be undertaken by third parties.

10. WARRANTIES

10.1 Subject to full payment being received, the Company warrants workmanship for a period of twelve (12) months from completion.

10.2 Manufacturer warranties are passed through only to the extent provided by the original manufacturer.

10.3 The warranty excludes:

- fair wear and tear;
- corrosion;

- misuse;
- accidental damage;
- lack of maintenance;
- unauthorised modifications;
- Customer-supplied materials;
- or operation outside intended use.

10.4 Any remedial works undertaken by third parties without prior written consent shall invalidate warranty claims.

10.5 The Company shall not be liable for defects arising from Customer specifications or designs.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Terms excludes liability for:

- death or personal injury caused by negligence;
- fraud;
- or any liability which cannot legally be excluded.

11.2 Subject to Clause 11.1:

- the Company's total aggregate liability shall not exceed the contract value of the relevant works.

11.3 The Company shall not be liable for:

- indirect losses;
- consequential losses;
- loss of profits;
- loss of production;
- loss of business;
- downtime;
- loss of contracts;
- or economic losses.

11.4 The Company shall not be liable for:

- Customer-supplied materials;
- Customer designs;
- structural calculations by third parties;

- or misuse of supplied Goods.

11.5 The Customer shall indemnify the Company against claims arising from Customer-supplied specifications, designs or instructions.

12. FORCE MAJEURE

12.1 The Company shall not be liable for failure or delay arising from circumstances beyond its reasonable control including:

- pandemics;
- labour shortages;
- transport disruption;
- material shortages;
- supplier failures;
- utility failures;
- severe weather;
- industrial disputes;
- government restrictions;
- tariffs;
- trade sanctions;
- customs restrictions;
- anti-dumping measures;
- safeguard measures;
- government-imposed import quotas;
- and acts of God.

12.2 The Company may revise delivery dates and pricing where such events occur.

13. CANCELLATION

13.1 Orders may not be cancelled without written agreement.

13.2 The Customer shall indemnify the Company for:

- all work completed;
- materials ordered, including any restocking fees, non-returnable material costs, supplier cancellation charges, and loss arising from material market movements;
- design time;
- administrative costs;
- and loss incurred up to the cancellation date.

14. INTELLECTUAL PROPERTY

14.1 All intellectual property created by the Company remains vested in the Company.

14.2 No licence or ownership rights are transferred unless expressly agreed in writing.

14.3 The Customer shall not reproduce or share Company drawings or designs with third parties without consent.

15. MARKETING

15.1 Unless subject to confidentiality obligations, the Company may:

- photograph works;
- and use images for marketing, portfolio or promotional purposes.

16. CLAIMS

16.1 Any visible defects, shortages or damage must be notified promptly in writing.

16.2 The Customer shall provide the Company reasonable opportunity to inspect alleged defects before remedial works are undertaken.

16.3 Failure to notify defects within a reasonable period may invalidate claims.

17. INSURANCE AND RISK

17.1 Risk transfers to the Customer upon:

- delivery;
- collection;
- installation;
- or attempted delivery.

17.2 The Customer shall insure Goods from the point risk transfers.

17.3 Customer-owned property and materials remain entirely at the Customer's risk.

18. CONSUMER CUSTOMERS

18.1 Where the Customer is acting as a consumer, nothing within these Terms shall affect statutory rights under applicable consumer legislation.

18.2 Any clauses deemed unenforceable against consumers shall apply only to the maximum extent permitted by law.

19. GOVERNING LAW

19.1 These Terms and any Contract shall be governed exclusively by Scots Law.

19.2 The Scottish Courts shall have exclusive jurisdiction.

20. ENTIRE AGREEMENT

20.1 These Terms constitute the full agreement between the parties.

20.2 No verbal representations or prior discussions shall form part of the Contract unless confirmed in writing by the Company.