



Innovation in Vacuum and
Conveying Technology

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CONDITIONS OF SALE

1. Definitions

In these Terms and Conditions the 'Seller' shall mean Quirepace Limited the 'Buyer' shall mean the person, firm or company whose order has been accepted, the 'Goods' shall mean all the goods to be provided and the 'Works' shall mean any work to be done by the Seller under the Contract which shall mean the Quotation and the Order (subject to the Seller's written acceptance of Order and any amendments set out therein) and these Conditions and such other specifications, drawings and documents to which the Contract makes express reference or which are attached thereto and initialled by an authorised signatory of the Seller.

2. Application

- (a) No terms or conditions other than these Conditions shall be binding on the Seller unless expressly agreed by it in writing by an authorised signatory of the Seller.
- (b) The Seller reserves the right to accept or reject any order and no binding contract shall exist until the Buyer's order is accepted in writing by an authorised signatory of the Seller.

3. Quotations

Quotations are valid for a period of 60 days, or as separately advised from the date of the quotation. The seller reserves the right to increase the Contract Price according to increases in cost of labour, materials, transport and any other matters outside its control taking effect between acceptance of order and delivery.

4. Information

The Buyer shall within 14 days of acceptance by the Seller of the Buyer's order (or within 14 days of any written request from the Seller from time to time if later) supply to the Seller such information as the Seller shall request in writing to enable it to proceed with the order. If the Buyer fails to supply such information within the time limit aforesaid the Seller may by notice in writing terminate the order and upon termination shall be entitled at its election in writing to claim damages for breach of contract or to claim liquidated and ascertained damages of 12% of the face value of the order which shall be recoverable as a debt.

5. Limits of Contract

The Contract relates to the supply of the Goods and other materials and the performance of the Works as specified therein. In the event after the date of the Contract the Buyer wishes to vary the terms of the Contract, the Seller shall not be required to implement such variations but may at its discretion do so subject to the written acceptance of the Buyer's written instructions which instructions must include acceptance of the Seller's revisions to the contract price and time for completion resulting from the variations.

6. Drawings and Specifications

- (a) All drawings, specifications, illustrations, brochures are particulars of weights, dimensions and performance supplied to the Buyer but which are not expressly referred to in the Contract or attached thereto are approximate only and constitute only a general description of the Goods or the Works as the case may be for the purposes of identification and do not form any part of the terms and conditions of the Contract and do not constitute any representation or warranty as to the description or performance of the Goods or their suitability for any particular purpose.
- (b) The copyright in all documents supplied by the Seller pursuant to any Goods or Works to be supplied or carried out under this Contract shall belong to the Seller and all such documents and materials and any 'know-how' so supplied shall be treated by the Buyer as confidential and shall not without the Seller's written consent be used by the Buyer or be communicated to third parties other than as may be strictly necessary in connection with the Goods and the Works.

7. Installation, Commissioning and Maintenance

Charges for the Works are based on an unimpeded period of work and ready and convenient access to all relevant areas of the site. The Seller reserves the right to make additional charges for any additional costs incurred due to delays beyond its control. In the event that the Buyer fails to permit the Works to commence when the Seller is ready or impedes their progress and does not comply within 3 days with notice in writing requiring the Buyer to allow the Seller to proceed then the Seller shall at its option be entitled to invoice and be paid for the full value of the Contract and to carry out the Contract at a later date at its convenience (and subject to payment by the Buyer of any increased costs) or to terminate the Contract and claim damages.

8. Inspection and Tests

- (a) Any tests required by the Buyer other than those normally carried out by the Seller must previously be agreed separately in writing and any additional costs incurred as a result of these other tests will be charged extra unless expressly included in the Contract.
- (b) Where the Contract provides that the Goods shall pass any prescribed tests or performance requirements they shall be tested by the Seller before delivery for compliance with these tests or performance requirements or for both as the case may be. If the Buyer requires such tests to be made in the presence of his representative the Seller will, upon request, give 14 days notice of the date and place at which any of the Goods will be ready for testing to enable the representative to be present. Should the representative fail to give the Seller not less than 48 hours notice in writing appointing a day within 7 days after the date specified in the Seller's notice or fail to attend on the date appointed the tests will proceed in the absence of the Buyer's representative and shall be deemed to have been made in the Buyer's presence.

9. Performance

The Seller shall be under no liability for failure to attain during the tests on completion any performance figures quoted unless they have been specified and guaranteed in the Contract and they shall in any event be subject to the recognised tolerances applicable to such figures. If the performance achieved is outside the rejection limits specified in the Contract, the Buyer will be entitled to reject the Goods and the Works if the Seller is unable to meet the rejection limits having been given reasonable time and opportunity to achieve the performance specified. Without intention to limit the foregoing the Buyer shall not be entitled to reject the Goods and the Works without giving the Seller final notice in writing of not less than 21 days of his intention to do so if the performance specified is not achieved in that time.

10. Time

- (a) Save where time for delivery or completion of the Works is specifically guaranteed in writing any time given by the Seller in Contract or otherwise is an approximate estimate only of the probable time taken to complete the Seller's obligations under the Contract, is given for the Buyer's general guidance only and is not binding on the Seller. Subject to Clause 3 any time fixed by the Contract shall run from the Seller's acceptance of the Buyer's order.
- (b) If for any cause whatsoever beyond the Seller's reasonable control or by reason of any industrial dispute, performance of the Contract shall be delayed or impeded, any time fixed by the Contract shall be extended by such period as may be reasonable in the circumstances.

11. Payment

- (a) Save as provided in this clause, all payments shall be made within thirty days of the date of the relevant invoice. If payment is not received within terms of payment, interest may be charged at 0.1% per day from the date of invoice/supply. Further, an administration charge may be levied for the collection of overdue debts.
- (b)
 - i) For contracts for the supply of Goods only, the full contract price of the Goods shall be invoiced to the Buyer and is payable within 30 days from the date of delivery of the Goods, unless otherwise agreed in writing.
 - ii) If the Contract is for the supply of Goods and the performance of Works direct to the Buyer, the Seller shall render invoices as follows:
 - 20% of the Contract price on receipt of the Buyer's Order.
 - 70% of the Contract price on delivery of the Goods (under Clause 13).
 - 10% of the Contract price on take-over or deemed take-over of the Works (under Clause 27(a)).
 - Each invoice shall be payable within 30 days of being rendered to the Buyer.
 - iii) If the Contract is for the supply of Goods and the performance of Works through an agent or contractor, invoices and claims for measurement will be rendered in accordance with the form of Contract, published by a professional body, agreed to on acceptance by the Seller of an order by the Buyer or where none in accordance with (ii) above.
 - iv) The above arrangements are subject to the provision of Clauses 13 and 14 below and in any event may be varied by the Seller in the event that it considers there is any risk of any invoice not being met when due and in particular the Seller reserves the right to insist that part or all of the price be paid before or upon delivery.

12. Defects after Delivery

- (a) The Seller shall make good by repair or, at its option, by the supply of a replacement, defects which under proper use appear in the Goods or the Works within a period of twelve months after delivery (or as otherwise provided in sub-clause (d) hereof, if longer) and arise solely from faulty design, materials or workmanship. The Seller's liability under this clause shall be in lieu of any condition or warranty implied by law as to the quality of the Goods save to the extent that any such implied condition or warranty is not capable at law of being excluded or qualified.
- (b) The Seller hereby excludes any condition or warranty implied by statute or otherwise that the Goods or the Works are fit for any particular purpose save insofar as the Seller has advised the Buyer in writing (signed by an authorised officer of the Seller) as to the use or purpose to which the Goods or the Works may be put and save to the extent that any such implied condition or warranty is not capable at law of being excluded or qualified.
- (c) Subject to sub-clause (a) hereof, the Seller shall not be under any liability in tort or otherwise in respect of defects in the goods or the Works or for any loss or damaged (including indirect or consequential loss or damage) save (other than if the Contract is an international supply contract) in respect of i) death or personal injury ii) damage to property caused directly as a consequence of the negligence of the Seller's employees in the course of carrying out the Seller's obligations under the contract.
- (d) If the Contract is for the supply of Goods and Works the liability of the Seller under sub-clause (a) of this clause shall cease twelve months after the taking over or deemed taking over (as specified in Clause 27(a)) or eighteen months after delivery of deemed delivery (as specified in Clause 13) whichever occurs earlier.
- (e) Without intention to limit or qualify the foregoing exclusion and limitation of liability for misrepresentation, breach of warranty or breach of contract or tort by the Seller or the provisions of Clause 23 below the Seller's liability to the Buyer in respect of any claim arising out of or in any way related to the Contract shall not in any event exceed the face value of the Order.

13. **Delivery**

Save where the Contract specifies otherwise, delivery shall be ex works of the Seller. If the Buyer is unable or unwilling to take delivery of the Goods at the time they are ready for despatch the Seller shall arrange storage at his works or elsewhere on the Buyer's behalf and the Buyer shall pay to the Seller the reasonable cost (including insurance) of so doing. Delivery to such storage shall be deemed to be delivery in accordance with the Contract and the Seller shall be entitled to invoice and be paid the full value of the order. In the event that the Buyer does not within 28 days take delivery and make payment in full the Seller shall be and is hereby authorised to dispose of the Goods (without any duty to the Buyer to obtain the best price) and to credit the net return on such disposal against the debt owing by the Buyer save that the Seller shall only be required to account for the cost price of the Goods or the price obtained on disposal whichever is the lower.

14. **Passing of Ownership or Property**

Unless otherwise expressly agreed in writing by the Seller, the Goods are not sold or delivered on credit, but the title to all Goods whether or not delivered or installed shall remain with the Seller and shall not pass to the Buyer until the whole value of the Contract has been paid. If the price or any installment thereof be not paid at the time or times or in the manner stipulated, the Seller shall be entitled on giving 14 days notice, to cancel the Contract, to retake possession of and to remove all Goods whether or not installed and/or fixed and to retain any installments of purchase money which may have been paid pending determination of the claim for damages for breach of Contract to which the Seller shall be entitled, and to apply the same to settlement of any sums awarded to the Seller. The foregoing is without prejudice to any other remedies the Seller may have in the circumstances. Notwithstanding the retention of ownership by the Seller, risk passes to the Buyer the moment the Goods leave the Seller's premises. When the Goods have been delivered the Buyer shall be responsible for the safe-keeping of the Goods and will indemnify the Seller against loss by fire, theft, or any other cause until the Goods have been paid for.

15. **Cancellation or Variation**

- (a) Cancellation of an Order can only be made by mutual consent and on terms which indemnify the Seller against all loss (including loss of profit).
- (b) In the event of the Buyer altering the requirements of the Contract after instructions have been received by the Seller, then the Seller reserves the right to amend the delivery time quoted and to charge for any costs incurred as a result of the alteration.

16. **Transit Damage**

In the event of the Seller undertaking transit of the Goods from its Works and the Contract is for the Goods only, the Buyer should advise the Seller within three days of receipt of any Goods damaged and return them complete in the original package carriage paid quoting the Seller's advice note giving the reasons for the return and date and number of the Seller's invoice and securely packed and the Seller will not be liable for any damage which is apparent upon a reasonable inspection and is not notified to the Seller within such period. The Seller's liability for loss or damage of the Goods in transit shall be limited to the repair or replacement of the Goods or of the damaged parts of such Goods.

17. **Short Delivery**

The Seller will consider claims for shortage or pilferage only if the Seller and the carriers receive written notification within three days of delivery. The packing and the contents should be retained for examination.

18. **Non-delivery**

In the case of non-delivery of the Goods for which the Seller has arranged transit failure to advise the Seller in writing of non-delivery within 10 days from the date of despatch as notified to the Buyer will free the Seller from responsibility for such non-delivery.

19. **Insolvency of Buyer**

If the Buyer (a) is adjudicated bankrupt or commits any act of bankruptcy or makes any arrangement or composition with his creditors or (being a company) enters into liquidation (not being a voluntary liquidation for the purposes only of reconstruction or amalgamation) or (b) has a receiver of any of its assets appointed or (c) defaults in payment of any invoice delivered by the Seller under the Contract or (d) is reasonably believed by the Seller to be suffering any financial difficulty then the Seller shall be entitled by notice in writing to inform the Buyer that it will not make any further delivery of the Goods nor carry out any further Works until the Buyer has met such requirements as the Seller may stipulate therein in respect of payment or the securing of payment of the Contract Price. If the Buyer fails to meet such requirements then the Buyer shall be deemed to be in breach of contract and the Seller shall be entitled without prejudice to any other remedies available to invoice for the full value of the Contract and recover the same from the Buyer as a debt and the Seller shall give credit for any part of the Works or the Goods disposed of by the Seller at the lower of cost or the value realised on disposal less all costs associated therewith.

20. **Patents**

The Seller will indemnify the Buyer against any claim for infringement of letters patent, registered design, trade marks or copyright by the use or sale of any article or material supplied by the Seller to the Buyer and against all costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to the Seller having followed a design or instruction furnished or given by the Buyer or to the use of such article or materials in a manner or for a purpose or in a foreign country not specified by or disclosed to the Seller or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by the Seller or to actions by the Buyer after the Buyer has been notified of any infringement. Provided also that

this indemnity is conditional on the Buyer giving to the Seller immediate notice in writing of any claim being made or action threatened or brought against the Buyer and on the Buyer permitting the Seller at its own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. The Buyer on his part warrants that any design or instruction furnished or given by him shall not be such as will cause the Seller to infringe any letters patents, registered design, trade mark or copyright in the execution of his order and shall indemnify the Seller against all claims costs damage and expenses arising out of any claims by third parties by reason of such infringement or alleged infringement.

21. **Liability for Misrepresentation**

The Buyer acknowledges that the Contract represents the entirety of the Agreement between the Buyer and the Seller and that the Buyer did not enter into the Contract in reliance on any representation (whether written or oral) other than those incorporated in writing in the Contract.

22. **Notices**

Any notice purported to be given under the Contract shall be deemed to have been duly served and have been received by the Buyer or the Seller in the course of post if sent by prepaid letter addressed to the Buyer at the Buyer's last known address or to the Seller at the address stated in the Contract.

23. **Limitation of Liability**

The Seller shall not be liable to the Buyer by way of indemnity or by reason of any breach of the Contract for loss of use or of profit or of any consequential loss however caused that may be suffered by the Buyer.

24. **Prices**

All prices are nett fixed unless otherwise agreed and are for delivery ex works the Seller exclusive of Value Added Tax and any other sales taxes customs or duties and all discounts. When prices are stated to be subject to variation they shall be varied in accordance with the Formula annexed to the Contract.

25. **Assignment and Sub-contracting**

- (a) The Buyer shall not, without the Seller's prior written consent in writing, assign or transfer the Contract or any part of it to any other person.
- (b) The Seller reserves the right to make any sub-contract with any person or persons for the manufacture of any part of the Goods or the execution of any part of the Works but such sub-contracting shall not relieve the Seller of its obligations to the Buyer under these conditions.

26. **Product Improvement**

The Seller may make minor changes in matters of detail to the specification of the Goods or the Works if the faculties or performance are not thereby impaired or to include Goods of equivalent performance if the Goods specified in the Contract are not available on the date scheduled for delivery.

27. The following shall apply in addition to the other Clauses, to Contracts which include the Works:

(a) **Time of Taking Over**

The Works shall be deemed to have been taken over when installation has been completed and such tests on completion as are specified in the Contract have been passed or on the date the Works shall have been put into commercial use (whichever is the earlier), provided that in any case the Works shall be deemed to have been taken over at a date two months after the completion of installation unless in the meantime tests shall have shown that the Works do not substantially comply with 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 Works.

(b) **Other Trades**

The Contract price for the Works excludes the work of other trades including but not limited to cutting away and making good wall surfaces, ceilings, floors, etc. and/or any re-decorating unless such work has been specifically included in the Contract specification.

(c) **Site Services**

Except where otherwise specified the Buyer shall provide free of charge such labour, materials, electricity and other utilities, stores, lifts, hoists, cranes, scaffolding apparatus and safe secure accommodation as may be requisite and as may be reasonable demanded to carry out installation, commissioning and tests on site efficiency. The Buyer shall permit the Seller such free and unrestricted access to the site as is necessary for the Contract to be completed in the specified time.

(d) **The cost to the Seller of work outside the normal working hours recognised in the district shall be borne by the Buyer except to the extent that such Works arise out of the default of the Seller.**

(e) **If the Seller's progress of work on site is materially disrupted or prolonged, such disruption or prolongation being outside the Seller's control, any additional expenses thereby incurred by the Seller shall be added to the Contract price.**