



BEAMA CONDITIONS OF SALE (B) FOR MACHINERY AND EQUIPMENT (Including Supervision of Erection) United Kingdom

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 **VALIDITY** - Unless previously withdrawn, our tender is open for acceptance within the period stated therein or, when no period is so stated, within thirty days only after its date.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** - Unless otherwise specified in 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.
5. **LIMITS OF CONTRACT** - Our tender includes only such plant, accessories and work as are specified therein.
6. **DRAWINGS, ETC.** - All specifications, drawings and particulars of weights and dimensions submitted with our tender are approximate only, and the descriptions and illustrations contained in our catalogues, price lists and other advertisement matter are intended merely to present a general idea of the plant described therein, and none of these shall form part of the contract. After acceptance of our tender, a set of certified outline drawings will be supplied free of charge on request.
7. **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 we are ready, the tests will proceed in your absence and shall be deemed to have been made in your presence, and the inspection will be deemed to have been made by you.

In the case of tests being carried out on site, they shall be carried out within one month after completion of erection and due notice in writing shall be given to us so that our representative may have reasonable opportunity of witnessing these tests if we so desire. Should the result 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 is ready for re-test, and we shall repay to you all reasonable expenses to which you may be put by such re-tests.

8. **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 plant.

Before you become entitled to claim liquidated damages or to reject the plant we are to be given reasonable time and opportunity to rectify its performance. If you become entitled to reject plant,

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 delivery or completion under Clause 10 up to the date of such rejection. You assume responsibility that plant stipulated by you is sufficient and suitable for your purpose save in so far as your stipulations are in accordance with our advice.

- 9. DELIVERY** - Unless otherwise specified in our tender, the price quoted includes delivery by any method of transport at our option. Unless otherwise specified, we shall not be responsible for off-loading.
- 10. LIABILITY FOR DELAY** - Any times quoted for delivery or completion 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 delivery or completion shall be extended by a reasonable period if delay in delivery or completion is caused by instructions or lack of instructions from you or by industrial dispute or by any cause beyond our reasonable control.

If a fixed time be quoted for delivery or completion, and we fail to deliver or complete 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 per cent. up to a maximum of per cent. of that portion of the price named in the contract which is referable to such portion only of the contract plant 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 shall not be construed as a fixed time quoted for the purpose of this clause.

- 11. ERECTION** - Unless otherwise stated, our tender includes the supervision of erection only. You shall provide suitable access to and possession of the site, proper foundations ready to receive the plant as and when delivered, adequate lifting facilities and scaffolding, all skilled and unskilled labour, masons', joiners', and builders' work, suitable protection for the plant from time of delivery, any lighting and heating necessary on the site during erection, and all necessary facilities and adequate assistance. All of these to be supplied at your expense to enable the work to be expeditiously and continuously carried out.
- 12. EXTRA COST** - Should we incur extra cost owing to suspension of the work by your instructions or lack of instructions, interruptions, delays, overtime, unusual hours, mistakes or work for which we are not responsible, a reasonable sum in respect of such extra cost, as well as the cost incurred by keeping any of our men on the site after completion of erection, shall be added to the contract price and paid for accordingly.
- 13. TIME OF TAKING OVER** - The plant 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 the earlier): Provided that in any case the plant 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.

- 14. TERMS OF PAYMENT** - Unless otherwise agreed, payment shall be made by you as follows:-

[a] Ninety five per cent of the contract value of plant as and when delivered to site from time to time and of work done on site respectively.

- [b] Two and one-half per cent of the contract price as and when plant has been taken over, or has been deemed to have been taken over, by you.
- [c] The balance of the contract price one calendar month after payment of the above two and one-half per cent has become due.

Minor defects in the plant, not of such importance as to affect materially its commercial use, shall entitle you to retain from the payment mentioned in [c] 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 8, any sums paid to us shall be applied to payments due for the accepted 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.

If we are unable by reason of your instruction or lack of instructions or from causes beyond our control, to delivery 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 the payments of ninety five per cent. as if delivery had been made; further, you will make the first abovementioned payment of two and one-half per cent. within one calendar month from the date of notification that the plant is ready for delivery, and the final payment of two and one-half per cent. within three calendar months from date of such notification.

Subject to Clause 15 you shall pay any balance of the contract price outstanding in respect of plant lost or damaged after delivery.

15. LIMITATION ON CONTRACTORS' LIABILITY - We will indemnify you against damage or injury to your property or person or that of others occurring before the plant is taken over to the extent directly caused by the negligence of ourselves, our sub-contractors or agents, or by defective design (other than a design made, furnished or specified by you for which we have disclaimed responsibility in writing), workmanship or materials, but not otherwise, by making good such damage to property or compensating personal injury. Provided that:

- [a] 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 -
- [b] 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 the next following paragraph and in Clause 16, we shall not be liable for any damage or injury occurring after the plant has been taken over.

If we, our agents or sub-contractors are on site after taking over for the purpose of remedying a defect pursuant to Clause 16 or for any other purpose of the contract, the provisions of Clause 15 shall apply as though the plant had not yet been taken over. Save as provided in clause 16, we shall not be liable for any damage or injury after the completion of work on site as aforesaid.

16. DEFECTS AFTER TAKING OVER - We will make good, by repair or by the supply of a replacement, defects which, under proper use, appear in the plant within a period of twelve calendar months after the plant has been taken over 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 9 (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 plant, 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 plant taken over 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 or material not supplied by us. And provided also that this indemnity is conditional on your giving to us the earliest possible 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 negotiations for a settlement of the claim. You on your part warrant that any design or instructions 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. 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 immediately upon expiry of the said period of 14 days or, 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.
- 19. 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 President for the time being of the Chartered Institute of Arbitrators.
- 20. 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.
- 21. STATUTORY AND OTHER REGULATIONS** - If the cost to us of performing our obligations 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.

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JANUARY 1991