

# CONDITIONS OF SALE

## 1. INTERPRETATION

In these Conditions:

"BUYER" means the person who accepts a quotation of the seller for the sale of the Goods or whose order for the Goods is accepted by the Seller

"GOODS" means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions

"SELLER" means JAMES THOMAS ENGINEERING LIMITED, Navigation Complex, Navigation Road, Diglis Trading Estate, Worcester WR5 3DE and/or JAMES THOMAS ENGINEERING, INCORPORATED, 10240 Caneel Drive, Knoxville Tennessee 37931

## 2. BASIS OF THE SALE

2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted, or any such is made or purported to be made, by the buyer

2.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorized representatives of the Buyer and the Seller

2.3. The Seller's employees or agents are not authorized to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waves any claim for breach of, any such representations that are not so confirmed.

## 3. ORDERS AND SPECIFICATIONS

3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorized representative

3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms

3.3. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller)

3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights or any other person which results from the Seller's use of the Buyer's specification

3.5. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specifications, which do not materially affect their quality of performance

3.6. No order which has been accepted by the Seller may be canceled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labor, design and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation

3.7. If the Goods are manufactured in accordance with the specification of the Buyer, the Seller shall be entitled to retain a copy of the specification (including any relevant designs or drawings) on its file

3.8. Where the Goods are manufactured in accordance with the Seller's specification, the copyright in all designs and drawings and all other intellectual property rights relating thereto belong to and remain the property of the Seller and the Buyer shall not unless the Seller otherwise agrees in writing acquire any rights therein. The Buyer shall return any copies of drawings or designs provided by the Seller to the Seller on request

## 4. PRICE OF THE GOODS

4.1. The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of dispatch of the goods. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer

4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture), any change in delivery dates, quantities or specification for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions

4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller F.O.B. Seller's warehouse, Knoxville, Tennessee, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance

4.4. The price is exclusive of any applicable value added tax including sales and use tax, which the Buyer shall be additionally liable to pay to the Seller

## 5. TERMS OF PAYMENT

5.1. Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods

5.2. The Buyer shall pay the price of the Goods within 28 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the title to the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract

5.3. If the Buyer fails to make any payment on the date due without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1. cancel the contract or suspend any further deliveries to the Buyer;

5.3.2. appropriate any payment made by the Buyer to such of the Goods

(Or goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

5.3.3. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 3 per cent per annum above the Prime rate of interest as reported in the Wall Street Journal, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.3.4. cancel or withdraw any discounts given or offered to the Buyer

## 6. DELIVERY

6.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place at the Buyer's cost and risk

6.2. Any dates quoted for the delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Times for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer

6.3. Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more installments in accordance with these conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated

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6.4. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods. In no event shall Seller be liable to Buyer for special or consequential damages including, without limitation, lost profits.

6.5. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract; or

6.5.3. terminate the contract; or

6.5.4. seek any and all damages or remedies available under the Uniform Commercial Code.

### 7. RISK AND PROPERTY

7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1. in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time at which the Goods leave the Seller's premises

7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title to the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due

7.3. Until such time as the title to the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and indemnified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured

7.4. Until such time as the title to the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods

7.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable

### 8. WARRANTIES AND LIABILITY

8.1. Subject as expressly provided in these Conditions. All warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

8.2. 2 weeks from the date of delivery. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.3. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace or repair the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.4. The Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty or common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

8.5. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing caused beyond the Seller's reasonable control shall include Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labor, fuel, parts or machinery, power failure or breakdown in machinery

### 9. INSOLVENCY OF BUYER

9.1. This clause applies if:

9.1.1. the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3. the Buyer ceases, or threatens to cease, to carry on business or

9.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

9.2. If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary

### 10. GENERAL

10.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice

10.2. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision

10.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby

10.4. The Contract shall be governed by the Laws of The State of Tennessee