

# Terms & Conditions

## 1. INTERPRETATION

1.1 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 and/or services (including any instalment of the goods and/or services or any parts for them) which the Seller is to supply in accordance with these Conditions. 'Seller' means MEI Brakes Limited of 58 Newhall Road, Sheffield, S9 2OD, UK. 'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller. 'Contract' means the contract for the purchase and sale of the Goods. 'Writing' includes telex cable facsimile transmission email and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 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 such quotation is accepted or purported to be accepted or any such order 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 authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised 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 waives any claim for breach of any representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice recommendation which is not so confirmed.

2.5 Any typographical clerical or other error or omission in any sales literature quotation prices list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 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 authorised 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 any specification for the Goods shall be 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 Seller shall indemnify the Seller against all loss damage costs and expenses awarded 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 of 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 specification which do not materially affect their quality or performance.

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

3.7 In the event of the Seller being required to install the Goods the Seller shall not be liable to make good any damage caused by such installation except where such damage was caused by the negligence of the Seller.

## 4. PRICE OF THE GOODS

4.1 The Seller issues price lists for guidance purposes only and the Seller reserves the right to alter or revise those prices at any time.

4.2 There is a minimum invoice value of £10.00 (excluding VAT or carriage).

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 on an ex works basis 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 which the Buyer shall be additionally liable to pay the Seller.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

## 5. TERMS OF PAYMENT

5.1 Subject to any special term 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 Where the Goods are to be delivered in instalments the Seller shall be entitled to separate payment for each instalment delivered in accordance with clause 6.4 hereunder.

5.3 The Buyer shall pay the price of the Goods in cash (without any deduction) not later than the 30th day of the month following the date of the Seller's delivery note notwithstanding that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be the essence of the Contract. Receipts for payment will be issued only upon request.

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

5.4.1 cancel the contract or suspend any further deliveries to the Buyer.

5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the 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); and

5.4.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of five per cent per annum above Barclays Bank base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.5 The Seller shall be entitled to demand a non-returnable deposit in respect of the Contract the amount of such deposit to be at the sole discretion of the Seller.

5.6 The Seller shall be entitled to demand payment of the price of the Goods by instalment the amount of such instalment payments to be notified to the Buyer by the Seller.

## 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.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time 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 delivery of the Goods is to be made by the Seller in bulk the Seller reserves the right to deliver up to five per cent more or five per cent less than the quantity ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.

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

6.5 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.

6.6 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 the Seller's fault) then without prejudice to any right or remedy available to the Seller the Seller may store the Goods until actual delivery and charge the Buyer for the actual costs (including insurance and additional carriage) of storage in addition to and not in substitution of any other payment or damages for which the Buyer may be or become liable in respect of his failure to take delivery.

6.7 Without prejudice to clause 6.6 above the Seller may require the Buyer by notice in Writing to accept delivery of the Goods within a period of 14 days from the time stated for delivery. If the Buyer is unable or fails or refuses to do so or is unable or fails or refuses to provide safe and adequate access or adequate unloading facilities at the address for delivery within such time the Seller may terminate the Contract in respect of such portion of the Goods as is by reason of the inability failure or refusal of the Buyer aforesaid not delivered and thereupon to recover from the Buyer any loss sustained by or caused to the Seller by reason of such failure and may suspend any further deliveries or terminate the Contract insofar as any Goods remain to be delivered thereunder.

## 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 of delivery or if the Buyer wrongfully fails to take delivery of the Goods at the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in 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 is then due.

7.3 Until such time as the property in 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 identified 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 intangible including insurance proceeds and shall keep all such proceeds properly stored protected and insured.

7.4 Until such time as the property in 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. LIMITATION OF LIABILITY

8.1 No conditions warranties guarantees or undertakings are given by the Seller or to be implied in respect of the goods whether implied by statute or common law and/or whether as to the life or wear of the Goods or whether as to quality condition fitness for a particular purpose or purposes or for use under any specific conditions notwithstanding that such purpose or purposes or conditions may be known or made known to the Seller and/or whether in respect of any other matter whatsoever save where such conditions warranties guarantees or undertakings are given by the Seller to the Buyer in Writing.

8.2 The Buyer agrees and confirms and will be deemed to have agreed and confirmed on the placing of an order with the Seller that no representations have been made to him regarding the Goods and/or that he has not relied and does not rely on any statement made by the Seller or any person in the employment of the Seller or acting otherwise as agent of the Seller or purporting to do so.

8.3 If the Goods are at the date of delivery or under proper and reasonable use by the Buyer become within 10 days of the date of delivery defective by reason only of faulty or incorrect design materials and/or workmanship the Seller will at its option either repair or replace such Goods provided always:

8.4 Without prejudice to the aforesaid any liability of the Seller to the Buyer shall be limited to and not exceed the total price actually paid in respect of any defective Goods unless the Seller is proven liable for death or personal injury resulting from negligence of itself its servants or its agents.

8.5 The Buyer shall not under any circumstances be entitled to reject any defective Goods or any Goods constituting or forming part of a delivery which is in whole or in part in any respect not in accordance with the contract whether by reason of quantity loss damage or any other matter or thing.

8.6 The foregoing states the entire liability in contract and in negligence of the Seller in respect of his liability under the contract and without prejudice to the generality of the foregoing the Seller shall under no circumstances be liable for:

8.8.1 Act of God explosion tempest fire or accident;

8.8.2 War or threat of war sabotage insurrection civil disturbance or requisition;

8.8.3 Acts restrictions regulations by-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;

8.8.4 Import or export regulations or embargoes;

8.8.5 Strikes lock outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.8.6 Difficulties in obtaining raw materials, labour, fuel parts or machinery;

8.8.7 Power failure or breakdown in machinery.

## 9. INSOLVENCY OF BUYER

9.1 This clause applies if:

9.1.1 the Buyer makes any voluntary arrangements 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 purpose 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 or arrangement 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 other 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 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.

10.5 The Contract shall be governed by the laws of England.