

## Calverley Control Installations Ltd

### Terms and Conditions of Sale

#### 1. Preamble

1.1 These conditions shall apply to any contract ("the Contract") for the supply of goods ("the Goods") by Calverley Control Installations Limited ("CCI LTD") to its customer ("Customer") and shall apply to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply).

#### 2. Conclusions and Scope of Contract

CCI LTD' offers are non-binding and the Customer's acceptance of offers does not constitute a binding contract. A Contract is only concluded, when CCI LTD has issued an Order Acceptance to the Customer and on the conditions stipulated or referred to therein.

2.2 Technical data, photos, drawings and other information contained in CCI LTD's brochures and other material and information issued by CCI LTD is approximate only, does not form part of the Contract and may not be relied upon by the Customer, except to the extent that CCI LTD has specifically referred thereto in the Order Acknowledgement. CCI LTD reserves the right to make changes to such information from time to time without prior notice to the Customer.

2.3 The quantity and description of the Goods shall be as set out in CCI LTD's Order Acceptance.

2.4 The Customer shall supply CCI LTD with all information, necessary for CCI LTD's fulfillment of the Contract.

2.5 CCI LTD reserves the right to make any changes in the specification of the Goods, which are required to conform with any applicable statutory requirements.

2.6 The copyright in all drawings, descriptions and other information supplied by or at the discretion of CCI LTD shall remain the property of CCI LTD.

#### 3. Prices and Payment

3.1 The price payable and date of payment shall be as detailed in the purchase order or sub-contract, and date of payment will be 30 days net monthly. Prices are exclusive of VAT and will be charged in addition at the rate current at delivery.

3.2 Time for payment of the price shall be of the essence of the Contract. No payment shall be deemed to have been received until CCI LTD has received cleared funds.

3.3 If the Customer fails to make payment on the due date, then without prejudice to any other rights or remedy available to CCI LTD, CCI LTD shall be entitled to charge interest on the sum outstanding at the rate of 8% above the base lending rate from time to time of [Barclays Bank Plc] accruing on a daily basis until payment is made, whether before or after judgment.

3.4 Payment shall be made in full without any deduction by way of set-off, counterclaim, discount, abatement or otherwise. This applies irrespective of whether the Customer's counterclaim arises from the same Contract or otherwise.

3.5 In the case of late payment by the Customer, CCI LTD shall be entitled to postpone delivery of all orders under the same Contract and/or other Contracts, and to cancel the Contract and/or other Contracts.

3.6 All payments payable to CCI LTD under the Contract shall become due immediately on termination of the Contract notwithstanding any other provision.

#### 4. Retention of Title

4.1 The goods shall be at the risk of the customer from the time of delivery.

4.2 Title in the goods shall not pass to the customer until CCI Ltd has received in full all sums due to it in respect of:

(a) the goods; and

(b) all other sums which are or which become due to CCI Ltd from the customer on any contract.

**4.3** Until title in the Goods has passed to the customer, the customer shall hold the goods on a fiduciary basis as CCI Ltd's bailee, and shall properly store, protect and insure the Goods. If so requested by CCI Ltd, the customer shall store the Goods separately from all other Goods of the customer, or any other third party in such a way that they are clearly identified as CCI Ltd's property.

**4.4** Until title in the Goods has passed to the customer, the customer shall upon request by CCI Ltd deliver to CCI Ltd such Goods. If the customer fails to deliver the Goods, CCI Ltd its agents and its employees may enter any premises where the Goods are or may be stored and repossess the Goods.

## **5. Delivery and Delay**

**5.1** Unless otherwise agreed in writing, delivery shall be effected ex CCI Ltd's works (as defined by Incoterms 2000) or, (where delivery is direct from CCI Ltd's suppliers), ex CCI Ltd's suppliers works.

**5.2** Any date specified by CCI Ltd for delivery of the Goods is intended to be an estimate only, and time for the delivery shall not be of the essence.

**5.3** CCI Ltd shall not be liable to the customer for any direct, indirect, or consequential loss (all three of which terms include without limitation, loss of profits, loss of orders, loss of production, loss of business, depletion of goodwill and similar losses, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor shall any delay entitle the customer to terminate or rescind the contract unless any such delay exceeds (90 days).

**5.4** If for any reason the customer failed to accept delivery of any of the Goods when they are ready for delivery, or the company is unable to deliver the Goods in time because the customer has not provided appropriate instructions, documents, licenses or authorizations:

(a) risk in the Goods shall pass to the customer (including loss of damage cause by CCI Ltd's negligence);

(b) the Goods shall have deemed to have been delivered;

(c) CCI Ltd may store all the Goods until delivery, whereupon the customer shall be liable for all related costs and expenses (including without limitation, storage, and insurance).

**5.5** The customer shall be responsible for all unloading, storage and handling of Goods at the time of delivery.

**5.6** CCI Ltd shall not be liable for any non-delivery of Goods unless the customer gives written notice to CCI Ltd of non-delivery within (10) days from the date when the Goods in the ordinary course of events would have been received.

**5.7** Any liability of CCI Ltd for non-delivery of the Goods shall be limited to the replacement of the Goods within a reasonable time or issuing a credit note against any invoice raised for such Goods to the customer.

## **6. Warranty**

**6.1** CCI Ltd warranty that (subject to the other provisions of these Conditions) upon delivery and for period of (12) months from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

**6.2** CCI LTD shall not be liable for a breach of the warranty in clause 6.1 unless:

(a) the Customer gives written notice of the defect to CCI LTD, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Customer discovers or ought to have discovered the defect; and

(b) CCI LTD is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by CCI LTD) returns such Goods to CCI LTD's place of business at CCI LTD's cost for the examination to take place there.

**6.3** CCI LTD shall not be liable for a breach of the warranty in clause 6.1 if:

(a) the Customer makes any further use of such Goods after giving such notice; or

(b) the defect arises because the Customer failed to follow CCI LTD's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) the Customer alters or repairs such Goods without the written consent of CCI LTD.

**6.4** Subject to clause 6.2 and clause 6.3, if any of the Goods do not conform with the warranty in clause 6.1 CCI LTD shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if CCI LTD so requests, the Customer shall, at CCI LTD's expense, return the Goods or the part of such Goods which is defective to CCI LTD.

**6.5** If CCI LTD complies with clause 6.4 it shall have no further liability for a breach of the warranty in clause 6.1 in respect of such Goods.

**6.6** Any Goods replaced shall belong to CCI LTD and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the [12] month period.

## **7. Limitation of Liability**

**7.1** The following provisions set out the entire financial ability of CCI LTD to the Customer (including any liability for the acts, omissions (negligent or otherwise) of its employees, agents and subcontractors) in respect of:

- (a) any breach of these conditions;
- (b) any tortious acts or omissions for which CCI LTD is liable; or
- (c) any action arising out of misrepresentation (save in the case of fraudulent misrepresentation).

**7.2** Except in respect of death or personal injury caused by CCI LTD's negligence, CCI LTD's total liability to the Customer in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising out of or in connection with the performance or contemplated performance of the Contract or otherwise of the subject matter hereof shall not exceed the Contract price.

**7.3** CCI LTD shall not be liable to the Customer for any indirect, special or consequential loss or damages, costs or expenses arising out of or in connection with the Contract.

**7.4** CCI LTD shall not in any event be liable to the Customer for any loss of profits, loss of orders, loss of production, loss of business or depletion of goodwill however so arising out of or in connection with the Contract.

**7.5** All warranties, conditions and other terms implied by statute or common law are to be the fullest extent permitted by law, excluded from the Contract.

## **8. Termination**

**8.1** Either party shall be entitled to terminate this Contract immediately if the other:

- (a) commits a material breach, which if remediable, has not been remedied within fourteen (14) days of being given notice of the breach by the other party;
- (b) has a receiver or administrative receiver (or the equivalent in any relevant jurisdiction) appointed over it or any part of its undertaking or assets or passes a resolution for winding up (otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction) or a Court of a competent jurisdiction makes an Order to such an effect or it becomes subject to an administration order or enters into any voluntary arrangement with its creditors or fails or becomes unable to pay its debts as they fall due; or
- (c) ceases or thereafter to cease carrying on in business.

## **9. Force Majeure**

**9.1** CCI LTD shall not be liable for any failure to deliver or any other failure to comply with any contractual obligation or delay in the performance of any of its obligations due to any cause beyond its reasonable control including but not limited to the late performance or non-performance or breach of contract by CCI LTD' sub-suppliers, acts of God or a public enemy, judicial action, shortage of materials, breakdowns in computer facilities, telecommunication delays or malfunctions, fire, flood, war, hostilities, riot, strike, lockouts, export and import restrictions, bad weather conditions, man power or energy supplies or breakdown of machines or any other cause beyond the reasonable control of CCI LTD.

**9.2** CCI LTD shall notify the Customer within a reasonable time of the force majeure event beginning of the nature and extent of the circumstances in question. If the circumstances are still continuing 3 months from and including the date CCI LTD notified the Customer of the force majeure event, then either party may give written notice to the other cancelling the Contract. The notice must be received whilst the circumstances are still continuing.

## **10. Amendments**

No variation or addition to the Contract shall be effective unless in writing and signed by or on behalf of both parties.

## **11. Severability**

If any provision of the Contract is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

## **12. Third Party Rights**

No term of the Contract shall be enforceable by a third party being any person other than the parties and their permitted successors and assigns.

## **13. Waiver**

Any waiver by either party of any breach of, or any default under, any provision of the Contract by either party shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of the Contract.

## **14. Notices**

**14.1** Any notice given under the Contract shall be in writing and may be served personally during the course of a business day or may be sent to the other party by registered or recorded delivery or by facsimile transmission (confirmed by post).

**14.2** A notice shall be deemed to have been served:

- (a) if it was served in person, at the time of service;
- (b) if it was served by post, 24 hours after it was posted; and
- (c) if it was served by facsimile transmission, at the time of transmission if sent during the course of a business day and otherwise on the next following business day.

**14.3** Each party's address for the service of notice shall be its address set out in the Order Acceptance or such other address as it specifies by notice to the other.

## **15. Venue and Governing Law**

Any dispute between CCI LTD and the Customer must be settled in accordance with English law and all actions arising there from shall be brought in the English Courts and the Customer submits to the exclusive jurisdiction of the English Courts provided that CCI LTD may at its discretion elect to bring an action against the Customer in any territory in which the Customer resides or carries on business.