

# **Excel Machine Tools Terms and Conditions.**

## **1. INTERPRETATION**

- i. In these conditions "the Company" means Excel Machine Tools Limited whose registered office is at Colliery Lane, Exhall, Coventry, CV7 9NW; "the Customer" means the person firm company or body who accepts a quotation of the Company for the sale of Goods or whose order for Goods is accepted by the Company; "Goods" means the goods (including any instalment of the goods or any part of them) which the Company is to supply or has supplied to the Customer in accordance with these Conditions; "Conditions" means the standard terms and conditions of sale as set out in this document, and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Company and the Customer; "Contract" means the contract for the sale and purchase of the Goods; "Writing" includes facsimile transmission and comparable means of communication
- ii. Any reference in these Conditions to any provision of any statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time

## **2. BASIS OF THE SALE**

- i. The Company shall sell and the Customer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Customer or any written order of the Customer which is accepted by the Company, 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 Customer
- ii. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Company and the Customer
- iii. These Conditions shall apply to the Contract between the Company and the Customer and to all subsequent contracts between the Company and that Customer unless and until replaced by a revised edition of which the Customer has received a copy
- iv. Save as hereinafter provided no communication from the Company or any of its servants or agents is of any contractual effect or is to be treated as a representation condition or warranty affecting the contractual obligations of the Company and the Customer under this or any other contract unless expressly incorporated in writing in the Company's form of acceptance signed by a director of the Company. In entering into the Contract, the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations, conditions or warranties which are not so expressly incorporated

- v. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information used by the Company shall be subject to correction without any liability on the part of the Company

### **3. ORDERS AND SPECIFICATION**

- i. No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the company's authorised representative. Any such acceptance shall be on the terms of these Conditions
- ii. The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms
- iii. The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company)
- iv. If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification
- v. The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC Requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance
- vi. No order which has been accepted by the Company may be cancelled by the Customer Except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the company as a result of cancellation

### **4. PRICE OF THE GOODS**

- i. The price of the Goods shall be the Company's quotation price or, where no such price has been quoted (or the quoted price is no longer valid), the price listed in the Company's published price list current at the date of the acceptance of the Customer's order. Where the Goods

are supplied for export from the United Kingdom the Company's published export price list (if any) shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the customer, after which time they may be altered by the Company without giving further notice to the Customer

- ii. The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Company which is due to any factor beyond the Company's control (such as, without limitation, any foreign exchange fluctuations, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other cost of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions
- iii. Except as otherwise stated under the terms of any quotation or on any price list of the Company and unless otherwise agreed in Writing between the Company and the Customer, all prices are given by the Company on an ex-works basis and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance
- iv. The price is exclusive of any applicable Value Added Tax which the Customer shall be additionally liable to pay to the Company
- v. The cost of pallets and returnable containers will be charges to the Customer in addition to the price of the Goods, but full credit will be given to the Customer provided they are returned undamaged to the Company before the due payment date

## **5. TERMS OF PAYMENT**

- i. Subject to any special terms agreed in Writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods on delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods
- ii. Unless otherwise agreed payment for any Goods (credit being duly allowed for any deposit paid by the Customer) shall be made in cash upon delivery of the Goods unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods in which case payment shall be made in cash upon submission by the Company to the Customer of an invoice for the Goods in accordance with Clause 5.1 The time of payment for the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request

- iii. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
  - a. cancel the Contract or suspend any further deliveries to the Customer
  - b. repossess the Goods
  - c. appropriate any payment by the Customer to any debt due from the Customer to the Company however long-standing as the Company may in its absolute discretion think fit notwithstanding any purported appropriation by the Customer
  - d. charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of 4% per annum above the base rate of National Westminster Bank PLC from time to time

## 6. DELIVERY

- i. Any dates given for delivery are estimates only and in no circumstances shall the Company be liable for any delay in delivery or performance howsoever arising. Time for delivery shall not be the essence of the Contract unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer
- ii. Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection, or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place
- iii. Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and where for any reason howsoever arising the Company considers that it is unable to make complete delivery of any parcel or instalment of Goods the Company may delay such delivery or make such partial delivery on one or more occasions as it considers possible and the Customer's obligation to pay shall be correspondingly delayed or as the case may be proportionately reduced. Failure by the Company to deliver any one or more of the instalments in accordance with these Conditions, or any claim by the Customer in respect of any one or more such instalments shall not entitle the Customer to treat the Contract as a whole as repudiated
- iv. If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the amount (if any) by which the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered exceeds the price of those not delivered
- v. If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's

reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

- a. store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- b. sell the Goods at the best price reasonably obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract

## **7. RISK AND TITLE**

- i. The risk of damage to or loss of the Goods shall pass to the Customer (notwithstanding that the property may not have been passed to him) on the earlier of the following:
  - a. where delivery is to be ex-works, at the time when the Company notifies the Customer that the Goods are available for collection or
  - b. where the Company and the Customer agree that the Goods are to be delivered otherwise than at the Company's premises at the time of delivery or, if the customer wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery of the Goods
- ii. 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 Customer until the Company 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 Company to the Customer for which payment is then due
- iii. Until payment of the price as aforesaid, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property
- iv. Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) the Company shall (without prejudice to any other available rights and remedies of the Company) be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, the Company may by its servants or agents enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods
- v. The Customer 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 Company and if the Customer does so, all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable

## 8. EXTENT OF OBLIGATIONS, OF LIABILITIES AND REMEDIES

- i. Subject to the conditions set out below, the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from the date of delivery
- ii. The above warranty is given by the Company subject to the following conditions:
  - a. The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer
  - b. The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Company's approval;
  - c. The Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- iii. Subject as expressly provided in these Conditions, and except where the Customer is dealing as a consumer (as defined by the Unfair Contract Terms Act 1977), all conditions, warranties or other terms implied by statute or common law in respect of the Goods are excluded to the fullest extent permitted by law
- iv. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements Order 1976 ) the statutory rights of the Customer are not affected by these Conditions
- v. Within 14 days of becoming aware of any alleged defect, the Customer shall notify the Company in writing of such alleged defect in the Goods, the nature thereof and the respect in which the Company is alleged to be in breach of contract or duty. If the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Settler shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract
- vi. Where any 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 Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion refund to the Customer the price of the Goods (or a proportionate part of the price) but the Company shall have no further liability to the Customer
- vii. Save as provided for in these Conditions and except in respect of death or personal injury caused by the Company's negligence the Company shall not be liable to the Customer by reason of any representation, or

any implied warranty condition or term, or any duty at common law, or under the express terms of the Contract for any loss or damage, costs, expenses or claims for consequential compensation ( whether for loss of profit or otherwise) whatsoever (and whether caused by negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Customer

- viii. The requirements and recommendations of the Company relating to the fitting and /or installation servicing inspection testing and use of any Goods must be strictly adhered to. Without prejudice to the generality of the foregoing Conditions or any other Condition herein contained, the Company shall be under no liability whatever for or in respect of any damage or loss arising directly or indirectly from the failure to comply with or adhere to the provisions contained or referred to in this Condition 8.8

## **9. EXPORT SALES**

- i. In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Incoterms shall apply to this Contract save to the extent that they are inconsistent with any of the Conditions herein. Unless the context otherwise requires, any term or expression which is defined or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, provided that if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail
- ii. When the Goods are supplied for export from the United Kingdom the provisions of these Conditions shall apply and in particular the provisions of Conditions 9.3, 9.4 and 9.5 shall (subject to any special terms agreed in Writing the Company and the Customer) apply notwithstanding any other provisions of these Conditions which may be inconsistent with Condition 9
- iii. Prior to the anticipated date of delivery of any Goods, the Customer shall obtain all consents licences and permissions which are required for the import of the Goods into the country or place where the same are to be delivered and shall be liable for the payment of any duties thereon. If any such consents, licences or permissions are not obtained prior to such anticipated date of delivery, this shall not in any way relieve the Customer of its obligations to pay for the Goods but the Customer shall forthwith notify the Company in writing of the failure to obtain the same and (notwithstanding any other terms in this or any other contract relating to the Goods) the Company shall be deemed to have made complete delivery when such Goods are available for collection ex-works from the Company's premises
- iv. Unless otherwise agreed in Writing between the Company and the Customer, delivery of the Goods shall be made in accordance with Condition 6.2 herein, and in no circumstances shall the Company be

under any obligation to give notice under Section 32(3) of the Sale of Goods Act 1979

- v. The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, nor any liability in respect of any damage during transit

#### **10. FORCE MAJEURE**

- i. The Company shall not be liable to the Customer 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 Company's obligations in relation to the Goods, if the delay or failure is due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as being beyond the Company's reasonable control; (a) Act of God, explosion, flood, tempest, fire or accident; (b) war or threat of war, a national emergency, an outbreak of hostilities (whether or not involving the United Kingdom and whether or not war is declared), sabotage, insurrection, civil disturbance or requisition; (c) acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; (d) import or export regulation or embargoes; (e) strikes, lock-outs, trade disputes or other industrial actions (whether involving employees of the Company or any third party); (f) power failure or breakdowns in machinery, other breakdowns, delays in transport, accidents, fire, delay in delivery of raw materials or components or difficulties in obtaining raw materials, labour, fuel, parts or machinery or contracts under priority directions so as to prevent, hinder or delay work on other contracts
- ii. Should the performance by the Company of any of its obligations under the Contract be prevented hindered or delayed by or in consequence of any occurrence referred to in Condition 10.1 above, the Company shall be entitled at any time, on notice to the Customer, to make partial deliveries only or to determine the Contract without liability and without prejudice in any case to rights which have already accrued to the Company in respect of deliveries already made

#### **11. INSOLVENCY OF THE CUSTOMER**

- i. This Condition applies if (a) the Customer makes any voluntary arrangement with its creditors or becomes subject to any administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of bona fide amalgamation or reconstruction) or (b) any resolution or petition to wind up the Customer's business shall be passed or presented otherwise than for a bona fide amalgamation or

reconstruction or (c) an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer or (d) the Customer shall have any distress or execution levied upon it, its property or assets or (e) the Customer ceases, or threatens to cease, to carry on business or (f) a partner in the Customer (being a firm) shall have any distress or execution levied on him, his property or assets, or shall become insolvent or make or offer to make any arrangement or composition with his creditors, or commit any act of bankruptcy, or shall have any petition or receiving order in bankruptcy presented or made against him (g) the Company suffers the equivalent of any of the above events in any other jurisdiction or (h) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

- ii. If Condition 11.1 above applies then, without prejudice to any other rights or remedy available to the Company, the Company shall be entitled to cancel the Contract or to suspend further deliveries under the Contract without any liability to the Customer, 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

## 12. GENERAL

- i. 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
- ii. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver for any subsequent breach of the same or any other provision
- iii. The Contract between the Company and the Customer shall be governed by the laws of England and Wales and the Parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales