

Unless otherwise agreed in writing by TEW Engineering Limited, hereinafter referred to as "TEW", these terms and conditions of sale supersede all other and all previous agreements. These terms and conditions apply to all trading divisions of TEW Engineering Limited.

1. Limitation of Liability

TEW shall carry out the contract with reasonable care and skill and shall in relation to its carrying out not be liable (whether in contract, tort or otherwise) so far as permitted by law for any loss or damage of whatsoever nature (including indirect or consequential loss or damage) suffered by the Client whether arising from any act, default or neglect on the part of TEW, its employees, agents or subcontractors to the extent of the greater of:

The value of the work carried out by TEW, or

The amount (if any) TEW is entitled to claim under the terms of any insurance policy in force at the time.

The Client will indemnify and hold TEW harmless against any claim, losses, costs or expenses arising out of the negligence, error or omission of the Client, its employees or agents. Where free-issue equipment is accepted by TEW in the course of work for the Client, liability for loss or damage to the goods (including process damage) will be limited to the market value of the goods to an absolute maximum of £100 per item unless otherwise agreed in writing prior to acceptance of the goods at TEW's premises.

2. Offers and Quotations

All offers and quotations provided by TEW are given on the basis of prompt acceptance by the Client. All quotations are valid for a period of 30 days from the date of issue unless subsequently revoked or withdrawn or otherwise stated within. There is no charge for a quotation but TEW reserves the right to make a charge where it has been involved in consultancy work to compile a formal response and the quotation is not accepted. TEW reserves the right to accept or decline any order. All prices stated in any quotation exclude delivery and installation unless otherwise stated. All sums referred to in any quotation are exclusive of VAT, which will be charged at the rate applicable at the time of the invoice. Unless stated otherwise within the quotation no retention provisions are to be applicable to the Works. The rates and sums stated in the quotation, except where stated otherwise therein, are based on the carrying out of the Works during normal working hours (07.30 to 16.00 hrs. Monday to Friday). Enhancements for weeknight shifts will apply to any part of the Works carried out between the hours of 16.00 to 07.30 Monday to Thursday. Enhancements for weekend shifts will apply to any part of the Works carried out between the hours of 16.00 on Friday and 07.30 on Monday inclusive.

3. Additional Charges and Expenses

Additional charges will be made for all services performed by TEW, at the specific request of the Client or Client's Agent, outside of the terms of the contract in force. These services will attract further additional charges when performed on-site. Delays at the Client's instruction or due to the Client not providing information or providing incomplete or faulty information will incur additional charges if additional costs are incurred by TEW as a result. Should any part of the works be cancelled or postponed within 7 days of their agreed commencement date, the Client will be liable for payment in full of the lump sum quotation less the cost of any resources that can be re-deployed elsewhere. The Client will also be liable for any additional expenses incurred by TEW in the provision of materials, plant or any other services not included within the original lump sum quotation. Where resources can be re-deployed the Client will be liable for an administration charge of £250 per operative. Should any isolation or possession be altered or cancelled at short notice for any reason beyond TEW's control, TEW will not be held liable in any way or entertain any claim for losses in connection therewith. In addition the Client will also be liable for any additional costs incurred by TEW as a result of disruption or the works being delayed or prolonged as a consequence of an isolation or possession being altered or cancelled.

4. WEEE

TEW complies with the requirements of the WEEE Directive and will take back life-expired equipment for treatment, recovery and environmentally sound disposal free of charge. To arrange take back please contact sales@lbfooster.co.uk or 0115 9354 354.

5. Confidentiality

The Client should not disclose any contractual or operational techniques of TEW to any third party; and should treat the information with at least the same degree of care as it would preserve its own confidential information; and should only disclose the information to those of its employees who have a need to know and shall ensure that such employees are under a similar obligation of confidentiality. TEW should not disclose any contractual or business related information of the Client to any third party; and should treat the information with at least the same degree of care as it would preserve its own confidential information; and should only disclose the information to those of its employees who have a need to know and shall ensure that such employees are under a similar obligation of confidentiality. On termination of the contract all confidential information held by the Receiving Party shall be returned to the Disclosing Party.

6. Intellectual Property Rights

All inventions, knowledge, documentation, code, techniques, processes and procedures developed by TEW shall remain the property of TEW and no transfer of ownership is granted or implied unless agreed in writing prior to acceptance of a contract. On termination of the contract, TEW reserves the right for all inventions, knowledge, documentation, code, techniques, processes and procedures to be returned to TEW; or to sell a non-exclusive licence to use sufficient inventions, knowledge, documentation, code, techniques, processes and procedures to the Client at an agreed price. Any sale implies sold-as-seen. No guarantee, warranty or enhancement policy is implied. The Client will treat all inventions, knowledge, documentation, code, techniques, processes and procedures furnished by TEW as commercially confidential material. TEW agrees to defend the Client against any claim alleging the equipment supplied infringes any existing patent, copyright or intellectual property rights providing that:

- i) The Client immediately notifies TEW of any potential claim
- ii) TEW are afforded full control of the defence of any claim including any legal proceedings and/or negotiations arising.
- iii) The Client provides TEW all reasonable assistance in dealing with any claim as may be requested at TEW's expense.
- iv) If the equipment is found to infringe any existing third party rights, TEW at its sole option will offer either of the following remedies:
 - a) obtain for the Client the right to use the equipment from the third party, or
 - b) without detracting from the functionality of the equipment, modify it such that it no longer infringes the third party rights, or
 - c) take the equipment back from the Client and provide a refund less a reasonable sum for its use in service.

7. Contract Term

The contract will run to a mutually agreed duration. Variations to contract term and deliverable milestones will be mutually agreed as required. An agreed completion date is subject to the Client placing the order in good time to facilitate mobilisation of the project. In addition the Client is responsible for providing the relevant information, site access and any isolations and possessions that may be required to facilitate the work as detailed in the project programme. The contract may also be summarily terminated by the Client for reasons of poor performance on completion of the grievance procedure, defined under Settlement of Disputes, at which TEW is found to be at fault. On termination of the contract TEW reserves the right to have all intellectual property, documentation, software and techniques returned to TEW. All confidentiality clauses shall remain in force. Unless by reason of Force Majeure (clause 7), if delivery is delayed for more than 26 weeks beyond the date of delivery detailed in the order acknowledgement, or otherwise agreed in writing, the Client is entitled to cancel its contract for all remaining undelivered items subject to giving one month's written notice. TEW reserve the right to subcontract any order or part thereof.

8. Force Majeure

TEW shall not be liable for any loss or damage including consequential loss from the failure wholly or in part to fulfil the terms of the contract by reason of any circumstances falling within the term "force majeure", including without prejudice to the generality of the term, armed conflict, strike, lock-out, trade dispute, fire, drought, flood, bad weather, interruption of transport, restriction by Government or other competent authority, destruction or damaging of premises, plant or machinery failure, or failure of National power, water or other major resources. During any period of delay TEW reserve the right to appropriate and apportion, amongst its Clients, available equipment and resource at its absolute discretion.

9. Staff Substitution

Whilst all reasonable efforts will be made to use the designated staff on the contract TEW reserves the right to replace any nominated staff if it becomes necessary or expedient so to do. If the Client requests substitution of TEW staff or agents on the contract then TEW will give due consideration to the request but retains sole discretion over the final decision.

10. Non-Solicitation

The Client shall not seek to recruit or retain the services of the employees or contractors of TEW without the express written permission from TEW, unless and until the employee or contractor has ceased to be employed by TEW for a minimum of twelve (12) months.

11. Notices

All notices required or permitted to be given under the contract shall be in writing and sent by registered letterpost, facsimile or delivered by hand to TEW or their representative responsible for liaison at TEW's normal working address. Proof that an envelope containing a notice was correctly addressed, prepaid and posted, shall be proof that it was sent. Notices are assumed to have arrived 48 hours after the date of posting.

12. Risk and Title

All goods and sundries remain the sole and absolute property of TEW until payment in full has been completed. Where goods are shipped at TEW's risk, goods are deemed to be delivered satisfactorily if accepted at the Client's specified delivery address and no written notification of fault or damage is received within 3 working days of delivery. Where goods are shipped using Client's services or agents, all risk will be passed to the Client upon leaving TEW's premises. Receipt of payment for goods and services will be deemed to confirm full and final acceptance of goods and services as fit for purpose. Where delivery is delayed at the request or due to actions by the Client, risk in the goods will not pass to the Client whilst the goods are in TEW custody. However, TEW reserve the right to charge the Client for storage, insurance and any other legitimate costs resulting from the delay

13. Site Access and Security

The Client must provide sufficient access both to technical and management personnel and its equipment to allow the contract to be fulfilled. The Client shall use his best endeavours to ensure that the premises in which TEW's employees or contractors may have to work are safe and without risk to them. All known risks must be clearly identified and marked by the Client. The Client shall provide free and uninterrupted access to the site for duration of the works unless the Client has advised otherwise in writing, prior to TEW submitting a quotation. TEW shall comply with the normal access procedures determined by the Client. The Client shall not hold TEW at fault where these access procedures hinder the normal or exceptional performance of TEW's obligations. The Client is to allow TEW free use of electricity and fuel for the purposes of carrying out, illuminating or testing the works. The Client is to allow TEW's personnel free access and use of any messing and toilet facilities at site, whether these lie within the Client's direct control or have been provided by him in connection with the works.

14. Payment Terms

Invoices will be submitted to an agreed invoicing schedule. Credit accounts will only be granted and approved following receipt of satisfactory credit and trade references. Credit terms are detailed on the Application for Credit Facilities form and are strictly net unless otherwise agreed with an officer of TEW in writing. Where payment is not received by the due date TEW reserves the right to impose a surcharge on all outstanding balances at the rate of 3% above Bank of England base interest rate compounding monthly. TEW reserves the right to revoke credit facilities at any time due to poor payment history, change of Client credit rating or annual turnover with TEW falling below £2,000 per annum exclusive of VAT. Where the Client does not have an approved credit account, or where it has been revoked, payment is due upon presentation of a pro-forma invoice. The goods will not be despatched until payment has been received in full. If the Client enters into liquidation, has a receiver appointed or enters an arrangement or composition with its creditors, TEW may suspend further deliveries and take whatever further actions it considers appropriate including cancelling the order or contract. These rights are in addition to any other legal remedies or rights TEW may have at its disposal. The Client has no right of setoff.

15. Bank Details

National Westminster Bank
148-149 Victoria Centre
Nottingham
NG1 2QT

TEW Engineering Limited
Sort Code 60-80-09
Account 96940530

16. Warranty

TEW will warrant supplied equipment and replace or repair, at its cost and option, parts that are defective by virtue of defective workmanship and/or defective materials for a period of 12 months commencing from when the equipment was available for delivery on condition that:

- i) The equipment has been maintained in accordance with and at intervals recommended by TEW.
- ii) No modifications, attachments or additional equipment has been added to or linked to the equipment, which can cause damage or defect.
- iii) Transportation, positioning and use of the equipment has not been such so as to cause damage or defect to the equipment either through neglect or wear and tear.

In the event that any or all of the above conditions are breached, the Client will be liable for the costs of the repair and will reimburse in full to TEW all costs associated in making good the damage or defect. Under no circumstances will TEW be liable to the Client for any indirect or consequential loss or damage including but not limited to loss of use revenue or profit. The Client should notify any defect to TEW within 72 hours of its occurrence. The faulty part(s) should be returned to TEW by the Client at the Client's cost. Goods repaired under warranty by TEW will be returned to the Client carriage paid by TEW. TEW's maximum liability in respect of making good any defects or faults in accordance with the above terms and conditions will be limited to the value of the contract or the amount received by TEW, whichever is the lower.

17. Settlement of Disputes

Any disputes of a technical nature arising during the performance of the contract should follow a process of complaint and escalation. The initial complaint should be raised in writing, within 7 days, with the project personnel directly responsible for the Client's support. If no satisfactory remedy can be achieved the complaint should be escalated to the Client's assigned contract manager. If no resolution can be achieved at this level the complaint should be taken to the board level sponsor. Any dispute of a technical nature, where the parties are unable to reach an agreement at board level, shall be referred for determination by appropriate legal dispute mediation.

18. Jurisdiction

If any legislation is compulsorily applicable to any business undertaken, these conditions shall as regards such business be read as subject to such legislation and nothing in these conditions shall be construed as a surrender by TEW of any rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation or if part of these conditions be repugnant to such legislation to any extent such part shall as regards such business be void to that extent but no further. All agreements between TEW and its Clients shall be construed and governed by the Law of England and be subject to the exclusive jurisdiction of the English Courts.

19. Entire Agreement

TEW's terms and conditions ("conditions") are set out here to the exclusion of all other conditions. No additions to or variations of these conditions will bind TEW unless it is specifically agreed in writing and signed by a director or secretary of TEW. No agent or person employed by or under contract with TEW has authority to alter or vary in any way these conditions except as stated above. Of these conditions so varied then subject to the express terms of such variation these conditions shall continue to apply mutatis mutandis as if such variation were incorporated herein. If any document placing an order on TEW includes or refers to other conditions of contract then no account shall be taken of such other conditions.