

MODEL FORM OF CONDITIONS OF SALE (EXPORT)

FOR USE IN CONNECTION WITH THE SUPPLY OF BOILER PLANT, ANCILLARY EQUIPMENT AND SPARE PARTS



Cochran Ltd
Newbie Works, Annan,
Dumfries & Galloway,
Scotland, UK DG12 5QU
Tel: +44 (0)1461 202111
Fax: +44 (0)1461 205511
www.cochran.co.uk
info@cochran.co.uk

1. GENERAL

- (i) The acceptance of this tender includes the acceptance of the following terms and conditions, and no alteration, variation, departure therefrom or addition thereto shall affect or be binding upon us, unless agreed in writing.
- (ii) Acceptance of the tender must be accompanied by sufficient information to enable us to proceed with the order (providing that in our quotation we have indicated the extent of information required) forthwith, otherwise we shall be at liberty to amend the tender prices to cover any increase in cost which has taken place after acceptance.
- (iii) In cases where a tender has not been given it is nevertheless to be understood that the acceptance of any order by us is subject to the said terms and conditions.
- (iv) In the event of purchaser's order containing conditions it is understood that such conditions shall not govern this contract in any way and that the order is accepted subject only to the terms and conditions mentioned herein or as may be agreed between the parties in writing.
- (v) We reserve the right to sub-contract the whole or part of manufacture.
- (vi) Unless previously withdrawn, the tender is open for acceptance within the period stated herein or, when no period is so stated, within sixty days only after its date.

2. CANCELLATION

Orders received and accepted by us shall not be subject to cancellation either wholly or partially without our consent in writing. If such consent is given we reserve the right to make a cancellation charge where it is in our opinion fair, reasonable or necessary to do so.

3. INSPECTION

All boilers and plant manufactured by us requiring a hydraulic test are carefully inspected and tested by our own staff before despatch and except in the case of stock boilers already tested and finished the final test and examination at our works may if so desired, be made in the presence of the purchaser's representative without extra charge therefor provided that such representative attends at our works for this purpose within a period of seven days after we have notified the purchaser that we are ready. In the event of approval of design plate examinations or examination of the boiler during construction by an external authority being required, these will be charged for extra unless such examinations have been definitely specified and included in the price.

In any case it is to be clearly understood that these tests and examinations are not to delay the progress of work in our shops.

4. STORAGE

If we do not receive forwarding instructions with the purchaser's order or within 14 days of notification to the purchaser that the boiler and plant are ready for delivery;

- (i) We shall remove the boiler and/or equipment to storage until such times as the purchaser can accept delivery and charge to the purchaser as an extra the nett costs of transporting and storing the boiler and plant.
- (ii) The boiler and plant shall be deemed to have been despatched 14 days after we shall have notified the purchaser that the boiler is ready for delivery and then Clause 10 (Terms of Payment) shall operate in respect of such goods accordingly.

5. DELIVERY

- (i) Delivery will be made ex-works/FOB at the Port stated in our tender unless otherwise agreed.

Unless otherwise specified in our tender, packing in accordance with our standard export practice is included in the FOB price.

- (ii) Alternatively, delivery may be made CIF by arrangement with us and in this case the Port will be stated in our tender. No lighterage, landing charges, dock, wharf or custom dues will be included. Freight and insurance charges will be based on the rates obtainable at the date of our tender. If these rates increase or decrease from any cause between the date of the tender and the date on which goods are shipped, the contract price will be increased or decreased by the net amount of the increase or decrease due to the variation of such rates.
- (iii) Where a time for delivery and/or completion is indicated, every reasonable endeavour will be made to adhere thereto but no liability shall attach to us for delay in delivery or completion.
- (iv) Any time named for delivery unless otherwise specified by us shall date from receipt of final particulars and approval of drawings.

6. COMMISSIONING AND ASSEMBLY ON SITE

Our standard tender does not include for commissioning and assembly on site. Any such work is to be the subject of an additional contract, separate from the contract for the supply of boilers and plant.

7. PERFORMANCE

In view of the numerous factors outside our control in respect of the performance of boilers and plant, no liability is accepted for the performance, efficiency or fitness for any particular purpose of the boiler or plant unless a definite guarantee in writing has been arranged on an agreed bonus and penalty basis, in which case the remedy shall be liquidated damages. In the event of the initial performance failing to fulfil the terms of such guarantee, a reasonable time and opportunity to make alterations or to comply with the terms of the guarantee shall be given to us before the remedy becomes operative. The purchaser is responsible for stipulating correctly the capacity and performance required from the equipment.

8. GUARANTEES AND LIABILITIES

- (i) We undertake to replace any defect in the equipment supplied, under the contract on an FOB UK basis, which arises solely from faulty material or workmanship or any damage to such equipment or work arising from such defect which becomes apparent during the period of twelve months from commissioning or eighteen months from the date of despatch (as defined in paragraph (ii) of this clause) of the equipment; and, allowing for fair wear and tear, to provide without charge to the purchaser replacement parts or materials required for this purpose; provided that:
 - (a) Notice in writing is given of any such defect or damage within 14 days of it becoming apparent and that no repair or replacement is made or attempted other than with our express written consent.
 - (b) Defective or damaged parts are promptly returned to our works at the purchaser's expense and that they thereafter become our property.
 - (c) All materials, fittings and components supplied by sub-contractors shall carry the supplier's guarantee, beyond which we accept no responsibility.
 - (d) Our obligations hereunder are subject to the purchaser's complete compliance with terms of payment and all other terms and conditions contained herein.
- (ii) For the purpose of paragraph (i) of this clause the date of despatch shall be the date when the equipment leaves our works, or 14 days after we have notified the purchaser that the equipment is ready for despatch, whichever shall be the earlier.
- (iii) All materials and fittings supplied by sub-contractors shall carry the sub-contractor's guarantee, beyond which we accept no responsibility.
- (iv) Save and except the supply of the replacement part, we shall not be liable for and the purchaser hereby expressly agrees to indemnify us against any liability attaching to us at Common Law or under any Statute or Regulation or Order made by Competent Authority in respect of any claims, loss, damage or expenses directly or indirectly due to or caused by or consequential upon the existence or occurrence of any such defect or for any personal injury or damage to property attributable hereto.
- (v) This guarantee and undertaking is in lieu of and excludes all other guarantees, conditions, warranties, representations and liabilities whatsoever, whether express, implied, statutory or otherwise, which might exist but for this provision.
- (vi) Any liability on our part is subject to the terms of payment and all purchaser's other obligations to us under the contract being strictly observed.

9. TERMS OF PAYMENT

All payments are to be made in full, no discounts or deductions on the contract price once it is agreed whatsoever being allowed. We reserve the right to charge interest of 3 per cent above current U.K. base rate with a minimum of 8 per cent per annum upon all overdue accounts. The times of payment in this condition hereafter referred to are to be deemed to be of the essence of the contract.

Boilers and Plant Terms shall be:-

100% Payment against Shipping Documents by means of a confirmed and Irrevocable Letter of Credit established in our favour on a bank in the United Kingdom (for details of Letter of Credit requirements refer to tender documentation).

The above shall only be amended by an agreement confirmed in writing by the Seller.

10. ILLUSTRATIONS, ETC.

- (a) All descriptive and forwarding specifications, drawings and particulars of dimensions submitted with the tender are approximate only and descriptions and illustrations contained in catalogues, price lists and other advertisement matter are intended merely to present a general idea of the equipment described therein and none of those shall form part of the contract.
- (b) All drawings and designs and other information submitted in connection with the tender or any contracts arising out of it will remain the vendor's property and be subject to recall at any time; they are submitted in strict confidence and for the sole purposes of the tender, the contract and subsequent maintenance of the equipment, none of the drawings or designs or written matter, nor any of the information contained in them or otherwise supplied may be loaned, copied or otherwise be communicated to any third party, nor may any use be made of them for any purpose whatsoever except for the purposes of the tender, the contract and subsequent day to day maintenance of the equipment.

11. SPECIAL RISKS

We are not responsible for any consequences whether direct or indirect of War, Invasion, Act of Foreign Enemy, Hostilities (whether War be declared or not), Civil War, Rebellion, Revolution, Insurrection or Military or Usurped Power, Riot, Strike, Lock-out, Epidemics, Pandemics or Civil Commotion ("Force Majeure Events"). We shall notify you if Force Majeure Events arise and shall thereafter be excused from performance or punctual performance of the order for as long as Force Majeure Events continue.

12. LIMIT OF LIABILITY

- (i) We shall not be liable in any circumstances whether by way of indemnity, tort (particularly negligence), breach of contract or otherwise howsoever for loss of use of the Boiler plant or ancillary equipment, loss of production, loss of profit(s), loss of contract(s), increased costs and expenses, wasted expenditure and any indirect or consequential losses whatsoever and howsoever caused.
- (ii) Unless in accordance with clause 12(iii) below our maximum aggregate liability arising out of or in connection with this contract shall not exceed the payment received by us under this contract.
- (iii) Nothing in this contract shall exclude or limit our liability for death or personal injury caused by our negligence; fraud and any other liability, which cannot be lawfully excluded or limited.

13. LEGAL CONSTRUCTION AND INTERPRETATION

- (i) The contract and these conditions shall in all respects be subject to English Law.
- (ii) The titles of these conditions shall not affect their legal construction.
- (iii) The expression "purchaser" wherever used in these conditions includes any person for whom work is undertaken or to whom materials are supplied and the expression "purchase price" wherever used in these conditions shall be construed accordingly.