

Emtelle UK Limited Conditions Of Sale Of Goods

1. INTERPRETATION

1.1 In these terms and conditions the following words have the following meanings:

“Buyer”	the person(s) or company whose order for the Goods is accepted by the Company;
“Company”	Emtelle UK Limited of Haughhead, Hawick, Scotland, TD9 8LF;
“Contract”	any contract between the Company and the Buyer for the sale and purchase of the Goods;
“Goods”	any goods which the Company is to supply to the Buyer (including any of them or any part of them);
“Force Majeure”	means all causes beyond the reasonable control of a party to this Agreement including, without limitation, acts of god, war, fire, industrial disputes, flood, tempest, national emergencies and the difficulty in obtaining materials except at unreasonably enhanced prices due to any of the foregoing reasons;
“Intellectual Property Rights”	means patents, trade marks, service marks, copyright, design rights and moral rights together with any or all goodwill relating or attached thereto;

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

2. FORMATION AND INCORPORATION

2.1 Subject to any variation under conditions 2.4, the Contract will be on these terms and conditions set out below to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document.)

2.2 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these terms and conditions.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s purchase order, specification or similar document will form part of this Contract simply as a result of a reference to such document being referred to in this Contract.

2.4 Any variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.

2.5 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer’s acceptance of these terms and conditions.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgment of order to the Buyer. Any quotation is valid for a period of 30 days from its date provided the Company has not previously withdrawn it.

2.8 The Company accepts orders subject to the absolute right to cancel and rescind contracts in cases where the Buyer or the terms stated are not acceptable to the Company’s insurers or, where applicable, to the Export Credit Guarantee Department or to any other Governmental or other body guaranteeing overseas contracts.

3. DESCRIPTION

3.1 The description of the Goods shall be as set out in the Company’s quotation.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company or the manufacturer of the Goods and any descriptions or illustrations contained in the Company’s or manufacturer’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.

3.3 The Company may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory requirements.

4. DELIVERY

4.1 If the quoted price does not include carriage, delivery will take place at the Company’s place of business.

4.2 The Buyer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 If the quoted price includes carriage, delivery will be deemed to take place at the point of entry to the Buyer’s works or site specified in the Contract and the Goods shall be delivered by such means as the Company thinks fit unless the Buyer has specified in its order the details of the contract with a carrier which it reasonably requires, having regard to the nature of the Goods and the other circumstances of the case.

4.4 The carrier shall be deemed to be the Buyer’s agent except for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.

4.5 Delivery of the Goods shall be accepted at any time of day.

4.6 Any dates specified by the Company for delivery of the Goods are approximate only and may not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.7 Subject to the other provisions of these terms and conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses arising directly or indirectly out of delay or failure to deliver the Goods (even if caused by the Company’s negligence).

4.8 The Buyer must accept delivery of the Goods and pay for them in full unless the Buyer shall have served notice on the Company requesting delivery and shall not have received the Goods within four weeks thereafter in which event the Buyer may cancel this Agreement to the extent it relates to the Goods which were subject to such delivery without further liability for the Goods.

4.9 For orders of less than £1000 (ex VAT) the Company reserves the right to charge carriage at the rate charged by the haulier to the Company.

4.10 The Buyer will be responsible for loading and offloading and will, unless otherwise agreed, provide at its expense at the delivery point adequate and appropriate equipment and manual labour for off-loading or loading the Goods.

4.11 The Buyer will indemnify the Company against any liability and expense (whether arising under statute or common law) caused by the Buyer's failure to provide appropriate equipment and manual labour for off-loading or loading (whether or not the off-loading or loading is supervised by or on behalf of the Buyer) for:

4.11.1 any personal injury to or death of any of the Company's employees, agents or sub-contractors or any third party; and

4.11.2 any damage to or loss of any property of the Company, its employees, agents or sub-contractors or any third party.

4.12 The Company may deliver to the Buyer Goods up to 5% more or 5% less than the quantity ordered. The Buyer shall accept delivery of Goods within such limits without objection but invoices shall be adjusted to actual quantities.

4.13 Where the quoted price includes carriage the Company will not be liable for loss or damage in transit unless notice of such loss or damage is given to the carriers and to the Company:-

4.13.1 in the case of extrusions at the time of delivery, by endorsement on the delivery documentation;

4.13.2 in all other cases by written notification to the Company within 3 days of delivery and by endorsement on the delivery documentation.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the carrier and the Company within 3 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for the non-delivery of any one order of Goods shall be limited to replacing the Goods for that order within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.

6. PACKING

All pallets and returnable packaging and containers will remain the property of the Company at all times. It is the Buyer's responsibility to return all packing and containers to the Company and should such packing and containers not be returned within the period specified in the Company's quotation, in good condition and carriage paid, a charge shall be made in full for the loss of such packing and containers.

7. STORAGE

7.1 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations

required to enable the Goods to be delivered on time (except because of the Company's fault) risk in the Goods will pass to the Buyer (including, without limitation, for loss or damage caused by the Company's negligence), the Goods will be deemed to have been delivered and (without prejudice to its other rights) the Company may:

7.1.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or

7.1.2 following reasonable notice to the Buyer sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.

7.2 The Company is not responsible for demurrage charges or additional costs resulting from delay in unloading.

8. RISK/OWNERSHIP

8.1 Risk of damage to or loss of Goods shall pass to the Buyer upon delivery.

8.2 Notwithstanding delivery and the passing of risk, and solely for the purposes of securing payment of all monies due or to become due to the Company by the Buyer on any account, ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

8.2.1 the Goods; and

8.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

8.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

8.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

8.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

8.4 The Company shall be entitled to retake possession of any Goods for which the price shall not have been paid in full when due and for that purpose the Company is authorised to enter into any premises of the Buyer or any third party where the Goods are or may be stored and repossess the Goods.

8.5 The Company may in respect of all unpaid debts due from the Buyer under this or any other contract have a general lien on all Goods and property of the Buyer in the Company's possession (although such Goods or some of them may have been paid for) and shall after the expiration of twenty eight days written notice to the Buyer be entitled to dispose of such Goods and property as it deems fit and apply the proceeds towards such debts, and remaining sums shall be held on trust.

9. PRICE AND PAYMENT

9.1 The price for the Goods shall be the Company's quoted price which shall be binding upon the Company only if the Buyer accepts the Company's quotation within 30 days after which time it may be altered by the Company without notice.

9.2 The Company may increase the price of the Goods to reflect any increase in the cost of manufacture or distribution of the Goods which is due to any factor beyond the reasonable control of the Company; this includes (without limitation) foreign exchange fluctuation, currency regulation, alteration of duties and taxes, increase in cost of labour, materials and other manufacturing

costs and transport costs, changes in rates of insurance, alterations in duties or import variations, or by reason of any cause beyond the control of the Company

9.3 The price for the Goods is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods unless this is specifically shown.

9.4 All payments shall be made to the Company in the United Kingdom in the currency stipulated in the Company's quotation to the Buyer.

9.5 Unless otherwise stated, payment terms are "net monthly account", which is to be interpreted as "payment to be made before the end of the calendar month following the calendar month during which the Goods were invoiced". Time of payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds.

9.6 If the Buyer's account is overdue for payment, the Company reserves the right to withhold or suspend deliveries under this Contract or any other Contract with the same Buyer. Any such withholding or suspension shall not give rise to any claim whatsoever by the Buyer and shall be without prejudice to the Company's right to recover any amount due from the Buyer and to the exercise of any of its rights by the Company.

9.7 If the Buyer's account is overdue for payment, the Company reserves the right to charge interest at 4% per annum over the UK Base Rate of HSBC plc for the time being in force on the amount overdue.

9.8 The right of the Buyer to set off the value of any shortage, defective Goods or Goods not otherwise conforming to the Contract shall be restricted to the specific invoice for the Goods in question and shall not apply to previous or future accounts.

10. WARRANTY

10.1 In the event of any Goods supplied by the Company and not being of its own manufacture being proved to be defective or failing in service, the Buyer shall be entitled only to, and limited to, such restitution as the Company actually receives from the manufacturer and/or supplier to the Company.

10.2 The Company warrants that (subject to the other provisions of these terms and conditions) upon delivery the Goods are, and for a period of 12 months from the date of delivery will be, of satisfactory quality under the Sale of Goods Act 1994 and are fit for the normal purpose for which they have been designed and, where applicable conform to the relevant British Standard.

10.3 The Company shall not be liable for a breach of the warranty in condition 10.2 unless:

10.3.1 the Buyer gives written notice of the defect to the Company and, if the defect is as a result of damage in transit, to the carrier within 14 days of:

10.3.1.1 the date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or

10.3.1.2 the date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection); and

10.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company for the examination to take place there.

10.4 The Company shall not be liable for a breach of the warranty in condition 10.2 if:

10.4.1 the defect arises because the Buyer failed to follow the Company'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. The Buyer should carry out any and all tests specified in the Emtelle UK installation instructions for the Goods before and after installation as detailed in MHT2570. The latest version of these installation instructions can be found at www.emtelle.com/testprocedure or can be requested by e-mail from info@emtelle.com; or

10.4.2 the Buyer alters or repairs such Goods without the written consent of the Company; or

10.4.3 the defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Buyer.

10.5 If the Buyer makes a valid claim against the Company based on a defect in the quality of the Goods, the Company shall at its option repair or supply replacement Goods (or the defective part) or refund the price of such Goods at the pro-rata contract rate.

10.6 If the Company complies with condition 10.5 it shall have no further liability for breach of the warranty in condition 10.2 in respect of the quality of such Goods.

10.7 Any defective Goods will belong to the Company and any Goods which are repaired or which are re-supplied will be warranted on these terms and conditions for the unexpired portion of the 12 month period.

11. LIMITATION OF LIABILITY

11.1 The following provisions set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

11.1.1 any breach of these terms and conditions; and

11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract;

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract.

11.3 Nothing in these terms and conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CONDITIONS 11.4 AND 11.5

11.4 Subject to conditions 11.2 and 11.3:

11.4.1 notwithstanding the provisions of any other terms and conditions herein, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this contract shall be limited in amount to the amount of the price of the Goods; and the parties agree that this condition is reasonable and that the contract price is based on the level, exclusions and limits of liability in this condition 11.

11.4.2 the Company shall not be liable to the Buyer for:

- (I) loss of profit; or
- (II) loss of business; or
- (III) business interruption; or
- (IV) depletion of goodwill and/or similar losses; or
- (V) loss of anticipated savings;

in each case whether direct, indirect or consequential, or for any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Contract, in each of the above cases whether or not caused by the negligence of the Company, its employees, agents or sub-contractors.

11.5 The Buyer shall indemnify the Company against all liability, actions, proceedings, costs, claims, damages or demands in any way connected with this contract brought or threatened to be brought against the Company by any third party except to the extent the Company is liable to the Buyer in accordance with these terms and conditions.

11.6 The Buyer shall indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable through any work done in accordance with specifications, drawings or special requirements of the Buyer which may involve an infringement or alleged infringement of any Intellectual Property Rights of a third party or may cause any actionable damage or loss to any third party.

12. PERFORMANCE OF CONTRACT

12.1 The Company may deliver the Goods by installments and each installment shall be deemed to be sold under a separate contract, and no failure of or delay in delivery of any installment nor any defect in the contents thereof shall entitle the Buyer to treat the contract as repudiated with regard to any remaining installments.

12.2 If subsequent to any contract of sale which is subject to these conditions a contract of sale is made with the same Buyer without express reference to these conditions, such contract, howsoever made, shall be deemed to be subject to these conditions.

13. TECHNICAL ADVICE AND INFORMATION

13.1 The Company may at the request of the Buyer, without being under any obligation to do so, furnish technical advice concerning the use of the Goods and such assistance will be given to the best of the Company's ability but this shall be on the express understanding that any such advice or assistance is given and accepted at the Buyer's risk and the Company shall not be liable for any loss, damage or claims arising therefrom.

13.2 No liability will be accepted for work carried out or material supplied to the Buyer's own drawings, design or specification.

13.3 The submission of a quotation or acceptance of an order by the Company in no way implies any responsibility on its part for any bye law, planning or other approval, which may be required by the Buyer.

14. FORCE MAJEURE

Deliveries may be partially or totally suspended by either party during any period in which it is prevented from manufacturing, delivering or taking delivery of the

Goods through any event of Force Majeure and if such party notifies the existence of such Force Majeure to the other party in writing. If, because of such Force Majeure, the Company is unable to supply the total requirement of the Goods the Company may allocate its available supply among all of its customers, including those not under contract, as the Company thinks fit. Deliveries so suspended for three months may thereafter during such suspension be cancelled without liability but the Contract between the parties shall otherwise remain unaffected.

15. PATENTS AND TRADEMARKS

No representation warranty or indemnity is given by the Company that the Goods do not infringe any Intellectual Property Rights of a third party.

16. TERMINATION

16.1 The Contract will terminate immediately upon service of a written notice of termination by the Company on the Buyer on the happening of any one or more of the following events; the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer or the Buyer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations or duties under the Contract or any other contract between the Company and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.

16.2 The Company's rights contained in condition 8 (but not the Buyer's rights) shall continue beyond the discharge of the Buyer's and the Company's primary obligations under the Contract consequent upon its termination.

16.3 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Company accrued prior to termination.

17. GENERAL

17.1 Time for performance of all obligations of the Buyer is of the essence.

17.2 Each right or remedy of the Company under this Contract is without prejudice to any other right or remedy of the Company whether under this Contract or not.

17.3 Any provision of this Contract which is held by a competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of this Contract and the remainder of such provision shall not be affected.

17.4 Failure by the Company to enforce or partially enforce any provision of this contract will not be construed as a waiver of any of its rights under this Contract.

- 17.5 The Company may assign, license or sub-contract all or any part of its rights or obligations under this contract without the Buyer's consent.
- 17.6 This Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under this Contract without the Company's prior written consent.
- 17.7 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 17.8 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.
- 17.9 The formation, construction, performance, validity and all aspects of this Contract are governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.