

STANDARD CONDITIONS OF TRADING

1. GENERAL

- 1.1 These Conditions constitute the only conditions and terms upon which Cockayne Systems Limited ("Cockayne") is willing to supply goods ("the Goods") and provide engineering and electrical services ("the Services") to any person to whom a quotation, estimate or other method of costing, (hereinafter referred to as "quotation"), confirmation of order or contract is addressed ("the Customer").
- 1.2 These Terms and Conditions will supersede any previous communications, representations or agreements by either party whether verbal or written including any terms and conditions in the Customers' order or any other documentation issued by the Customer except where specifically agreed to by Cockayne in writing.
- 1.3 No employee or representative of Cockayne has any authority to: (i) alter, modify, vary or waive these Conditions in any way; (ii) given any representation or warranty whatsoever in relation to either the Goods and/or Services unless expressly authorised in writing by a Director of Cockayne.
- 1.4 Orders given by the Customer in respect of a quotation are not binding on Cockayne until they have been accepted in writing by Cockayne from their Registered Offices.
- 1.5 No clerical errors or omissions in any quotation or in the acceptance of orders shall annul the agreement but shall be subject to subsequent correction or rectification by Cockayne and no compensation will be allowed to the Customer in respect of same.
- 1.6 Cockayne may engage in services of independent contractors for any part of the Contract and in that event such independent contractors shall be entitled to the same rights and protections under these Terms and Conditions.

2. PRICE

- 2.1 Prices or quotation are open for acceptance within the period stated therein or when no period is so stated, within 30 days after its date. Cockayne reserves the right to vary, modify, rectify or amend prices by notice to allow for (i) increases in raw materials or costs of production or other costs including those referred to in Clause 2.7 outside Cockayne's control; (ii) any increase in the price of bought-in equipment, machinery, components between the date the quotation was given and at the time of delivery or completion of the services.
- 2.2 All prices are subject to the addition of V.A.T. where applicable.
- 2.3 All prices are net ex-works and do not include the cost of packaging or delivery.
- 2.4 Unless otherwise specified, prices do not include packing cases and packing materials which are the property of Cockayne and must be returned to Cockayne's premises at the Customer's expense and in good condition within one month from the date of receipt. If not so returned a charge will be made for their replacement.
- 2.5 If the Customer requests any variation of goods and/or services during the course of the contract adjustment to the price shall be charged on a fixed rate basis or a unit rate whichever is deemed appropriate by Cockayne.
- 2.6 Cockayne reserves the right to refuse to accept variations to the contract.
- 2.7 Should Cockayne incur extra costs due to the suspension, interruption, hindering or curtailment of their services due to the Customer's (or their agents, employees, representatives, independent contractors, sub-contractors) instructions or lack of instructions or technical details or information, interruptions, delay, unusual hours, mistakes or for works for which Cockayne are not responsible, such extra cost, and (where the contract provides for erection) the cost incurred in keeping any of Cockayne's employees or representatives or sub-contractors on the site during and after completion or erection, will be added to the contract price and payable to the Customer.

3. DESCRIPTION OF GOODS

- 3.1 All illustrations, literature, leaflets, drawings, catalogues or other matter issued by Cockayne or on their behalf and particulars of size, weight, measurements, output and performance contained in any of them or in any quotation are approximate only and not binding on Cockayne.
- 3.2 Information, descriptions and illustrations in the publications referred to in Clause 3.1 and any price lists supplied are subject to alteration, are illustrative only and do not form part of the contract and the use of same shall not constitute such contract a sale by description. Any deviations in the publications referred to in Clause 3.1 shall not be taken to vitiate the contract.
- 3.3 Cockayne reserves the copyright of its drawings, graphics and other matters containing technical descriptions, or design calculations, or performance specifications and they shall not be divulged to third parties without the written consent obtained from a Director of Cockayne.
- 3.4 The Customer agrees that any software or automation controlling code supplied will remain the property of Cockayne and the customer shall not amend, rewrite or adapt such software without the explicit consent of Cockayne.

4. AVAILABILITY

- 4.1 All goods supplied, manufactured or assembled are sold on the basis that the goods or materials components for assembly will be available to Cockayne at the time of delivery.
- 4.2 Cockayne reserves the right to withdraw goods, products and components and services without prior notice.

5. PAYMENT

- 5.1 Unless otherwise agreed by Cockayne in writing, payment shall be made in one of the following ways to be decided at the sole discretion of Cockayne: (i) net cash within 30 days after the end of the month of delivery, or (ii) 10% with the order and 90% on delivery, or (iii) 15% with the order, 80% on completion or erection/installation and 5% on commissioning or within 12 weeks after delivery, whichever is the earlier, or (iv) deposits with order, further payment on delivery and balance within 30 days.
- 5.2 Interest will be charged on overdue accounts at the rate of 5% over the Royal Bank of Scotland base lending rate.
- 5.3 Cockayne reserves the right to require payment before delivery.
- 5.4 Payments will be made in full without any deduction or delay in respect of any set-off, counter claim, compensation or dispute unless agreed in writing by a Director of Cockayne.
- 5.5 Payment terms for goods to be dispatched outside the UK including off-shore installations and bases will be agreed prior to the contract coming into effect.
- 5.6 In the event that the Customer refuses delivery or fails to arrange agreed collection of goods, payment for the goods and services contracted for will be due at the latest by the last day of the month following the month of notification of availability.

6. TIME

- 6.1 Cockayne agree to exercise all reasonable endeavours to manufacture or supply goods or complete the services on the date agreed or in absence of agreement, in reasonable time from the date of the contract.
- 6.2 Time shall not be of the essence of this contract either in relation to the manufacture of the Goods or the completion of the Services and Cockayne shall not be liable for any loss or damage howsoever arising directly or indirectly from failure to manufacture the Goods or complete the Services by any date stated in the contract.
- 6.3 Time referred to in 7.1 shall be an estimate by Cockayne and shall not constitute a guarantee nor shall any failure by Cockayne to adhere to time constitute ground for the Customer to cancel the contract.

7. RISK

- 7.1 The Customer will bear the risk of loss or damage to the Goods from the earlier of: (i) the delivery of the goods to the customer or where applicable to a destination stated by the Customer; (ii) the time the Goods are collected by the Customer or his agents, employees, representatives or sub-contractors from Cockayne.
- 7.2 In the event that the Contract provides for the erection of plant (which shall include, without prejudice to the foregoing generality installation, machinery, fabrication, steelworks, structures) then the same shall be deemed to have been taken over by the Customer when the erection, installation, fabrication, machinery, steelwork, structure and any testing provided for in the contract is completed, or one calendar month after it shall have been put into commission (whichever may be the earlier). The time of taking over shall not be delayed on account of additions, minor omissions, or defects which do not materially affect the commission of the plant. The Customer shall hold the material and plant supplied under contract fully insured against all risks from the dates of its delivery or collection (whichever is the earlier).
- 7.3 On collection of the Goods by the Customer or delivery of the Goods to the Customer, the Customer shall carefully examine same and shall notify Cockayne by written notice to be received by Cockayne at their Registered Office within 3 days of collection or delivery (whichever is the earlier) of any defects in the Goods which are reasonably ascertainable on careful examination.
- 7.4 Cockayne shall be discharged from all potential liability in respect of such defects unless written notice of such defects is received by them within 3 days of collection or delivery (whichever is the earlier).
- 7.5 Notwithstanding Clause 8.4 written notice of defects received within 3 days by Cockayne shall not constitute an admission of liability by Cockayne.

8. TITLE

- 8.1 The property in the Goods shall not pass to the Customer and shall remain with Cockayne until they are paid for in full.
- 8.2 Where the price of the Goods is not paid by the Customer by the due date then Cockayne reserves the right either to recover the Goods or maintain an action for the price of the Goods.
- 8.3 For all purposes the Customer grants to Cockayne an irrevocable lien on the Goods until the price is paid and permits Cockayne, their agents, employees and representatives access to recover the Goods wherever located.

9. WARRANTY AND LIMITATION OF LIABILITY

- 9.1 Cockayne shall at its option either (i) credit the customer with the price paid by the Customer, or (ii) make good by repair, or (iii) supply a replacement where defects which under proper use appear in the Goods supplied which are of Cockayne own manufacture or in respect of services rendered within 6 months of the date when Cockayne notified that the Goods were ready for collection or the services are completed PROVIDED THAT: (a) the defects arise solely from faulty design (other than a design made, furnished or specified by the Customer) materials or workmanship, (b) the Goods have been used in accordance with the recommendations or instructions of the manufacturer (c) notice of any defect shall have been given to Cockayne immediately and in writing and in any event not later than 6 months of the date when Cockayne notified the Customer the Goods were ready for collection or the Services were completed.
- 9.2 Cockayne do not accept any liability for any Goods which they have not manufactured or fabricated. In the case of such Goods, Cockayne shall, if required to do so by the Customer in writing, use all reasonable endeavours to procure for the Customer the benefit of any warranty or guarantee provided to Cockayne by any third party.
- 9.3 Cockayne do not accept any liability for: (i) information or plans or drawings relating to builder's or structural work; (ii) the requirements of Local or other Authorities in respect of planning, building or safety regulations and provisions.
- 9.4 Cockayne liability under this Clause shall be in place of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the Goods or Services.
- 9.5 This Clause shall represent the entire liability of Cockayne, its employees, servants and agents in respect of defective Goods manufactured by Cockayne and Services provided by Cockayne and Cockayne shall not be under any liability whether in contract, delict or otherwise in respect of defects in the Goods and Services supplied (as defined in the Unfair Contract Terms Act 1977) damage or loss whatsoever howsoever resulting directly or indirectly from such defects or from any work done in connection with the contract.
- 9.6 Should the Customer specify any particular make or design of Goods then Cockayne shall have no liability for failure of that design or quality of said Goods.
- 9.7 Should the Customer specify any particular design or mode of manufacture to be used in the supply of Services then Cockayne shall have no liability for the failure of that design or quality of those Services.

10. CANCELLATION AND VARIATION

- 10.1 Cockayne is under no obligation to accept cancellation of the contract by the Customer or their employees, agents or representatives.
- 10.2 The Customer will not be entitled to rescind the contract in respect of any Goods supplied which are specially ordered, manufactured or fabricated for the Customer.

11. INDEMNITY

- 11.1 The Customer shall fully indemnify Cockayne against all actions, expenses, claims and demands by third parties and whether arising in Contract or breach of Statutory duty or in delict, or otherwise howsoever arising directly from (i) Goods or Services supplied by Cockayne, (ii) any failure by the customer to obtain any necessary permissions, consents, licences for the manufacture or use of Goods or the provision of Services.
- 11.2 The Customer warrants that any design or instruction furnished or given by the Customer or their agents, employees, representatives and sub-contractors shall not be such as will cause Cockayne to infringe any letters, patent, registered design, trade-mark, copyright, industrial or intellectual property rights whatsoever in the execution of the order.

12. TERMINATION

- 12.1 If the Customer becomes insolvent, or is unable to pay its debts, enters into liquidation either compulsory or voluntarily or passes a resolution for a creditors winding up or if a receiver of the Customer's undertaking property or assets or any part of the same shall be appointed then Cockayne shall have the right to immediately terminate the contract and shall be entitled to recover from the Customer or their representatives, agents or successors (which shall include without prejudice to the foregoing generality any trustee in bankruptcy, receiver liquidator, creditor) all Goods and losses which arise as a result of such termination.
- 12.2 Cockayne reserves the right to terminate the contract at any time without prior notice.

13. FORCE MAJEURE

- 13.1 Cockayne shall not be liable for any delay or failure in carrying out its obligations caused wholly or in part by an Act of God, war, fire, storm, flood, strike, lock-out, force majeure, inability to obtain adequate labour, materials, manufacturing facilities or any other cause beyond the control of Cockayne.
- 13.2 In the event that Cockayne have only been able to partly complete their obligation arising out of the contract by reason of the events referred to in Clause 14.1 then Cockayne shall be entitled to a quantum meruit payment of all work done by them.

14. PUBLIC LIABILITY

- 14.1 Customers are advised to note that Cockayne's Product and Public Liability Insurance Cover in respect of goods and service provided by them is limited to £5,000,000.00 (Five Million Pounds). In the event of injury, damage or loss being sustained for which Cockayne may be responsible resulting in claims in excess of said sum Cockayne will not be liable for such excess. Customers wishing cover in excess of said sum should advise Cockayne in order that they may at their discretion arrange additional cover.

15. WAIVER

- 15.1 No waiver (which shall be in writing) by Cockayne in respect of any breach by the Customer of its obligations shall operate as a waiver in respect of any subsequent breach by the Customer of those obligations.

16. ARBITRATION

- 16.1 If at any time question, dispute or difference whatsoever shall arise between the Customer and Cockayne upon, in relation to, in connection with, or arising out of the contract either of the parties shall give the other notice in writing of the existence of such question, dispute or difference and it shall be referred to the arbitration in Scotland or a person to be mutually agreed upon, or failing agreement to some person appointed by the Sheriff of Tayside, Central and Fife at Perth. Parties may be represented before the Arbitrator by Solicitor or Counsel.

17. LAW OF CONTRACT

- 17.1 The proper law governing the Contract shall be Scots Law and the forum for settling any competent dispute hereunder, without prejudice to Clause 16.1, shall be the Scottish Courts.
- 17.2 The titles of the Clauses utilised in these presents shall not affect their legal construction.