

TERMS OF PAYMENT AND CONDITIONS OF SALE

1. THE PARTIES

The "Seller" SCOTIA BEARINGS & HYDRAULICS LIMITED.
The "Buyer" the person purchasing any goods from the Seller.

2. THE AGREEMENT

The Seller shall sell and the Buyer buy the goods upon and subject to the express terms set out within these conditions.

3. PREVAILING CONDITIONS

- All orders are accepted only upon these conditions which shall override any terms or conditions howsoever incorporated or referred to buy the Buyer.
- No alteration or addition to these Conditions shall be incorporated into this Agreement unless expressly accepted by an authorised representative of the Seller in writing.
- These Conditions constitute all terms of the Agreement between the parties, and no other terms and conditions shall apply whether oral or in any other conditions.
- All quotations and tenders are subject to withdrawal or amendment at any time prior to the Seller's acceptance of the Buyer's order.
- The Seller shall not be bound by any clerical or arithmetical errors in any price list, invoice, statement, quotation, or other documentation whatsoever.

4. DELIVERY

- The time of delivery shall not be of the essence of the Contract and failure by the Seller to make delivery on any particular date shall not entitle the Buyer to terminate this Agreement or refuse delivery or to claim for any expenses, loss or profits or other consequential losses whatsoever.
- Delivery will be deemed to have been affected when the goods leave the premises of the Seller or as the case may be the premises of the supplier to the Seller in circumstances where the goods are delivered direct from such suppliers.
- The Seller reserves the right to make delivery by and to tender a separate invoice in respect of each instalment.
- When delivery is to be by instalments or the Seller exercises its rights to deliver by instalments under clause 4 (e) hereof or if there be delay in the delivery of any one or more instalments for whatsoever reason this will not entitle the Buyer to treat the contract as repudiated or to damages.
- Deviations in quantity of the goods delivered (representing not more than 10 per cent by value) from that stated in these terms and conditions shall not give the Buyer any right to reject the goods or to claim damages and the Buyer shall be obliged to accept and pay at the contract rate for the quantity of goods delivered.
- Carriage terms on orders delivered from SCOTIA BEARINGS & HYDRAULICS LIMITED are by mutual agreement

5. PRICE

- All goods are sold at prices ruling at the date of despatch and may vary at the Seller's discretion from those originally quoted or shown in the Seller's current price list or any brochure or advertising material.
- The Buyer shall in addition to the total price be liable to pay any Value Added Tax which may be payable and imposed on the goods.

6. PAYMENT

- The Buyer shall make payment in full for the goods within 60 days from end of month of invoice date.
- If the Buyer shall fail to make payment on or before the due date calculated in accordance with 6(a) above, then the Seller reserves the right to charge in addition to the price of the goods (and without prejudice to any other right of the Seller) interest which shall accrue on a daily rate of 3% above the National Westminster Bank base rate for the time being.
- Time for payment shall be of the essence.
- The Seller reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.
- The Seller reserves the right to charge a £50 administration cost on accounts more than seven days overdue.

7. COMPLAINTS

No claims regarding alleged defects to goods shall be considered by the seller unless:

- In the case of damage or loss in transit or shortage the Buyer advises the Seller's local office of the same within 7 days of delivery; and
- In other cases the goods concerned are inspected by the Buyer and the Buyer advises the Seller's Local sales office in writing of the alleged defects within 7 days of delivery in writing; and
- If the Buyer shall fail to give such notice the goods specified in 7 (a) or (b) above the goods shall be deemed to be in accordance with the Agreement and the Buyer shall be bound to accept delivery and make payment accordingly.
- Subject to Clauses (a) and (b) above defective goods will be replaced, provided that the goods are proved defective to the entire satisfaction of the Seller (and its opinion shall be conclusive) but no claims for expenditure upon any goods, loss of orders, loss of profits or for any other consequential loss or damage whatsoever will be accepted by the Seller and any liability in this respect is expressly excluded.

8. INTERVENING EVENTS

The Seller shall not be liable for any breach of this Agreement caused by the Seller's inability to produce materials or articles required for the performance of the Agreement or caused directly or indirectly by anything outside the Seller's reasonable control including without limitation to the generality of the foregoing, war, hostilities, government action, breakdown, delay in transportation, any form of labour dispute, fire, flood or act of God.

- Should the Seller be prevented from delivering in the above circumstances, it shall give the Buyer written notice of this fact as soon as reasonably practical after discovering it.
- If the circumstances preventing delivery are still continuing 3 months after the Buyer receives the Seller's notice, then either party may give written notice to the other cancelling the contract.
- If the contract is cancelled in this way, the Seller will refund any payments which the Buyer has already made on account of the price (subject to deduction of any amount the seller is entitled to claim from the Buyer) but the Seller will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

9. THE BUYER'S POSITION

- The Buyer shall not be entitled to withhold payment of any disputed claim by the Buyer against the Seller nor amount payable any monies which are not presently payable by the Seller or for which the Seller disputes liability.
- The Seller shall be entitled (without prejudice to its other rights against the Buyer) by notice in writing to the Buyer to rescind any agreement between the seller and the Buyer or to suspend delivery should the Buyer (in the case of an individual enter into any agreement with or for the benefit of its creditors to have a Receiving Order in Bankruptcy made against him or (if a body corporate) have a petition presented for its winding up or for an Administration Order under the Insolvency Act 1986 or pass a resolution for a voluntary winding up (otherwise than a bona fide amalgamation or reconstruction of a solvent company) or has a receiver appointed over all or part of its assets or has a judgement levied on it or, in any case, be breach of the terms and conditions of this agreement.

10. PASSING OF RISK AND RETENTION OF TITLE

- Risk in the goods shall pass to the Buyer upon delivery.
- Notwithstanding the above condition, the property in all goods delivered by the Seller shall remain with the Seller until full payment of all monies owed to it by the Buyer.
- Until full payment has been made the Buyer shall hold the goods only as the Seller's bailee and will keep the same at no cost to the Seller so that they are clearly identified as belonging to the Seller.
- Until such payment as aforesaid has been made the Buyer shall not remove or allow them to be removed from the address to which they are delivered and shall keep the goods in good condition and shall not allow them to become the subject of any charge or lien whether by operation of law or otherwise.
- The Buyer shall permit any judgement to be taken or levied against it (being a corporation) go into liquidation or have a receiver approved or (being partnership or individual) enter in to any agreement with or for the benefit of its creditors or have a receiving order in Bankruptcy made against it or upon any breach by the Buyer of any of its obligations under any of its other rights and remedies) by notice in writing (and shall be deemed to do so at the request of the Buyer) enter in to any land or building to recover the goods and to take all necessary steps to enable the Seller to recover and dispose of the goods.

11. WARRANTY

- The Seller warrants that it has title and the unencumbered right to sell the goods.
- No representation or warranty is given as to the suitability or fitness of the goods for any or any particular purpose and the Buyer shall satisfy himself in this respect and shall be totally responsible thereafter. c) If the goods are in such a state as would but for this condition entitle the buyer to repudiate the contract and/or claim damages from the Seller the Seller reserves the right to repair or replace the goods.

12. LIABILITY

- Introduction
 - Nothing in clause 12 shall be deemed to exclude or restrict the Seller's liability for death or personal injury resulting from negligence.
 - Each of the subclauses in clause 12 is to be treated as separate and independent.
 - The Seller is willing to undertake liability in addition to that provided by this clause in exchange for a higher price.
- Exclusion
 - Clause 12(b) only covers defects caused by faulty design, manufacture, materials or workmanship. It does not cover defects caused by abnormal use, misuse or neglect. It does not cover faulty design manufacture, materials or workmanship supplied or undertaken by third parties. In respect of goods not designed or manufactured by the Seller the Seller only gives such guarantee or warranty to the Buyer as the Seller itself receives.
 - The Seller agrees that if the defect covered by clause 12(b) is discovered during the period of twelve months commencing with the date of dispatch; the Seller will either repair the goods at its own expense, or if it chooses to do so, replace them.
 - The Buyer cannot claim the benefit of this clause unless it informs the Company of the relevant defect within 7 working days of discovering it and returns the goods to the Seller at its own expense.
 - The risk of accidental loss whilst the goods are being returned will be borne by the Buyer.
 - In consideration for receiving the benefit of this clause, the Buyer agrees that, apart from those terms set out in clause 7 and 12, no other terms, conditions, warranties or in nominate terms, express or implied statutory or otherwise, shall form part of this contract where the Buyer deals as consumer within the meaning of section 12 of the Unfair Contract Terms Act 1977 when the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 shall be implied to the contract.

c) Exclusion of Consequential Loss

The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of duty in contract or tort in any other way (including loss arising from the Seller's negligence). Non-exhaustive illustrations of consequential or indirect loss would be loss of profits, loss of contracts, damage to property of the Buyer or anyone else, and personal injury to the Buyer or anyone else (except so far as such injury is attributed to the Seller's negligence).

13. LIEN AND STOPPAGE

- Until such time as the title in the goods has passed to the Buyer, the Seller has the right to withhold delivery if the Buyer (being a Company) has a petition presented for its winding up or for an administration order under the Insolvency Act 1986 or passes a resolution for voluntary winding up (otherwise than for purposes of a bona fide amalgamation or reconstruction of a solvent company) or compounds with its creditors or has a receiver appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangement with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes an analogous act or proceedings under foreign law.
- When the title in the goods has passed to the Buyer if the Buyer (being a company) has a petition presented for its winding up or for an administration order under the Insolvency Act 1986 or passes a resolution for voluntary winding up (otherwise than for purposes of a bona fide amalgamation or reconstruction of a solvent company) or compounds with its creditors or has a receiver appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangement with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes an analogous act or proceedings under foreign law then the Seller has:
 - a lien on the goods so long as the Seller is in possession of them.
 - a right of stoppage in transit.
 - a right of resale
- For the avoidance of doubt it is hereby declared that nothing in this clause shall affect the rights given to the Seller by ss. 38-48 of the Sale of Goods Act 1979.

14. SALES PROMOTION AND DOCUMENTATION

Whilst the Seller takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Seller and the Seller shall not be bound thereby.

15. INVALIDITY OF PART

The invalidity or enforceability for any reason or any part of this Contract shall not prejudice or affect the validity or enforceability of the remainder.

16. HEADINGS

The headings contained in these terms and conditions do not form part of them and such headings shall be ignored in constructing each of the conditions herein contained.

17. NOTICES

Any notice consent or the like required to be given under these conditions shall be in writing and sent by first class pre-paid post to the address of the party as herein set out or at such changed address as shall for that purpose be notified to the other by facsimile or comparable means of communication and every such notice consent or the like shall be deemed to have been given two days after transmission at the address to which it was sent in the case of a letter, and in the case of a facsimile on the date of transmission provided that a confirming copy is sent by first class pre paid post to the address of the other party herein set out within 24 hours of the date of transmission.

18. JURISDICTION

This contract shall be considered as a contract made in Scotland, The Seller and the Buyer accept the exclusive jurisdiction of the Scottish Courts and agree that this contract is to be governed by and construed according to Scots Law

19. ASSIGNMENT

The Buyer shall not assign or transfer the purport to assign or transfer the contract or the benefits thereof to any other person without the prior written consent of the Seller.

20. WAIVER

The rights and remedies of the Seller under the contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Seller nor by any failure of any delay by the Seller in asserting or exercising any such rights or remedies.