



FlexLink Systems Ltd

TERMS AND CONDITIONS OF SALE

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The terms and conditions set out below are those upon which FlexLink Systems Limited (known as “the Company” hereafter) is willing to contract and no addition thereto or variation therefrom shall apply unless accepted in writing by the Company. These conditions shall apply in place of and prevail over any terms contained or referred to in the Customer’s Order or in correspondence or elsewhere and any purported provisions to the contrary are hereby excluded or extinguished. Any tender, quotation or acceptance of order made by or given by the Company shall be subject to the following conditions.

Acceptance of these Terms

Unless previously agreed or otherwise specified by the Company in writing all quotations and tenders are open for acceptance by the customer within 30 days from the date on which they are made. All orders placed with the Company require the Company’s written acknowledgement before any obligation attaches to the company. Where delivery is made by the manufacturer or other third party on the Company’s behalf, the acceptance by the Customer of such delivery will also be deemed as acceptance of these conditions. The Company’s employees or agents are not authorised to make any representations about the goods. Any representations that may be made to a prospective customer shall not be binding on the Company unless confirmed in writing.

Terms of Payment / Acceptance

- (a) On credit accounts approved by the Company unless otherwise agreed the terms of payment by the customer shall be:
- (i) On all contracts for the supply of labour only, payment shall be payable 30 days from date of invoice.
 - (ii) In those cases where the Company contracts to supply materials only, the Company reserves the right to call for payment by instalments comprising a payment of fifty percent (50%) of the price with order payable 7 days from date of invoice or prior to delivery whichever is sooner and the balance on delivery payable 30 days from date of invoice.
 - (iii) On contracts not exceeding Ten Thousand Pounds (£10,000) payment will be invoiced on order acceptance. On all other contracts the Company reserves the right to call for payments by instalments comprising the payment of thirty five percent (35%) of the price with order payable 7 days from date of invoice or prior to delivery which ever is sooner, sixty percent (60%) of the price upon delivery of materials to site, payable 30 days from date of invoice and the remaining five percent (5%) on acceptance/take-over or 30 days whichever is sooner, payable 30 days from date of invoice.
 - (iv) No disputes between the customer and a third party shall interfere with the prompt payment of the Company’s invoices. Customers shall not have a right of set-off or a counterclaim with respect to payments due to the Company.
 - (v) The customer shall be deemed to have accepted/taken over the materials and services on the date of practical completion and minor defects that do not affect their use for the purpose for which they were intended shall not delay acceptance/takeover and shall not delay the due date of any instalment related thereto.
 - (vi) Upon completion of assembly at our Works or site installation or commissioning (should this be part of the contract) the Company shall notify the customer in writing, of the readiness of equipment for inspection. The Customer will then nominate an agreed date for the acceptance tests to take place. Within ten (10) days after notification of readiness for inspection the customer will accept the work or notify the Company in writing of anything believed to be required to be done to make the work acceptable.
Unless otherwise agreed failure to provide written notification of work to be undertaken in order to comply with the agreed specification will be deemed to constitute acceptance.
It is understood that if the work conforms with the specification agreed at the time of placing the order by the Customer the work will be accepted by the customer without variance to the specification. Failure to provide a signed acceptance protocol shall not prevent acceptance from taking place in case agreed acceptance criteria are met. Any commercial use by the Customer or the Customer’s assignee of the goods or work (other than by way of testing purposes) will be deemed to constitute an acceptance by the Customer of the goods or work.
- (b) Where credit facilities do not exist terms of payment will be cash with order.

- (c) Time of payment shall be of the essence of the contract and the Company shall be entitled to charge interest at the rate of two percent (2%) above the base lending rate of the Company's Bankers current from time to time on all overdue accounts before or after judgements and the Company reserves the right to postpone fulfilment of its own obligations or to suspend work until such overdue payment is made.

The Company reserves the right to withhold deliveries if:

- (i) The Customer shall fail to comply with any request for payment made by the Company at any time prior to delivery, irrespective of whether the order has been accepted on credit terms or otherwise.
- (ii) Payment for previous deliveries has not been made on the due date.

Prices

- (a) Prices are quoted EXW the Company's ordinary place of business according to Incoterms® 2010 unless otherwise stated.
- (b) It is an express condition that the Company may at any time in its discretion amend the price for all or any part of the goods that are to be supplied under the contract to the current price for such goods at the time of delivery. In the event that the quantity or service ordered is different from that originally quoted for the Company reserves the right to amend the price.
- (c) Prices are quoted on the basis of cost of labour, materials, overheads, currency and taxation at the date of quotation. The Company may at its discretion add to quoted prices any increase in such costs or any added cost resulting from Government orders or regulations (whether new or existing) arising after the date of quotation up to the date of delivery to site or where the Company is responsible for installation the date of practical completion.
- (d) The Company reserves the right to make an additional charge in respect of variations requested by the Customer to the terms and specifications of the contract and in circumstances where work of installation is on any basis other than that of one shift straight time working during normal working hours. Variations shall be dealt with as Engineering Change Notes.

Delivery and Delay

- (a) Dates quoted for delivery and performance are subject to confirmation at the time any order is placed. Such dates are not to be liable for loss or damage occasioned by delay nor shall the Customer have any right to impose penalties or to cancel the order for delay from any cause.
- (b) The Customer shall notify the Company in writing of all necessary forwarding instructions within seven days of notification that materials are ready for despatch and in the event of delay in such instructions the Customer shall pay the costs and expenses including a charge for storage occasioned thereby and the Company shall be entitled to arrange transport and storage at the Customer's expense and risk at suitable alternative premises to those of the Company.
- (c) All terms implied by statute are hereby excluded to the fullest extent permitted by law.

Risk and Title

- (a) Risk shall pass to the Customer on delivery to the Customer or his Agent or any Carrier acting for the Customer (including any such Agent or Carrier instructed by the Company acting on behalf of the Customer).
- (b) The property in materials supplied shall remain vested in the Company and the Customer shall hold materials supplied as bailee only until the Customer shall have paid the Company all sums owing from the Customer in respect of goods delivered by the Company. In the event of any resale by the Customer of the Company's goods the beneficial entitlement of the Company shall attach to any claim against the Customer's purchases and to any proceeds of that sale so that such claim or proceeds of sale shall be held in trust for the Company and the Customer shall have a fiduciary duty to account to the Company for the claim and any proceeds of sale. Where proceeds of such resale are received by the Customer he shall keep them in a separate account as Agent for the Company until the proceeds are handed over to the Company. The Company shall account to the Customer for any excess of such monies over the amount due to the Company.
- (c) The Customer grants an irrevocable licence for the Company or its Agents with or without vehicles to enter onto the Customer's premises to take possession of the Company's goods at any time prior to payment of the sums owing to the Company.
- (d) The Customer will not be responsible for any losses resulting from the negligent acts of the Customer's agents or carriers.

Carriage and Packing

Prices unless otherwise stated are quoted EXW the Company's ordinary place of business according to INCOTERMS® 2010 and the Company will charge for packing and carriage to the point of delivery nominated by the Customer.

Loss or Damage in Transit

All materials are carefully inspected and packed before despatch. Claims in respect of any shortage, damage or defective packing must be made in writing within seven (7) days of receipt accompanied by the packing note. Any claims relating to total loss of goods must be made in writing within twenty-one (21) days of notification of despatch or receipt of invoice whichever is the earlier.

Cancellation

No cancellation or variation of an order will be accepted by the Company other than by express agreement in writing and the Company shall charge for materials obtained and /or work done costs incurred and loss of profit. In no case can cancellation be recognised or accepted within thirty (30) days prior to the agreed delivery date of the materials.

Installation

- (a) When work on site is undertaken the Customer shall provide:
- (i) Safe and good access to the Site for delivery of plant and materials together with off loading facilities.
 - (ii) A clear, secure and level site with sufficient space adjacent for the placing of materials.
 - (iii) The necessary foundations and cover over the site to protect materials and construction work.
 - (iv) Free use of water, light, compressed air, power and any lifting gear necessary in connection with the installation of materials supplied, the Customer undertaking all filling in or making good of floors, roofs and provision of cover plates over inspection pits and other engineering work including removal of rubbish.
 - (v) Health and Safety facilities, which may be required by law, under regulations current from time to time for employees of the Company while they are engaged at the Customer's premises in the performance of the contract.
 - (vi) All service connections for fuel, electricity, air, water and drains, both to main plant and auxiliary equipment.
- (b) In the event that the Customer shall fail to produce the facilities or services specified above, then any extra costs incurred by the Company shall be paid for by the Customer.
- (c) The Customer shall indemnify the Company in respect of all claims made or proceedings taken against the company by any third party in respect of personal injury or damage to property (including damage as a result of fire or explosion) caused by or arising out of the materials or the installation thereof in any manner whatsoever except to the extent that it results from the negligence of the Company, its officers, servants or employees.
- (d) All persons provided by the Customer to assist the Company shall in all respects remain employees of the Customer.
- (e) Unless otherwise stated a sufficient area of work shall be available daily to ensure reasonable continuity and any cost of standing time due to delays in the preparation of the site or its availability shall be paid for by the Customer. This area should be suitable for the cutting of aluminium sections where necessary.
- (f) The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations.

Descriptions, Drawings, Data, Confidential Information

- (a) As part of its commitment to quality, the Company reserves the right to change and improve the design of some or all of the component parts included in its quotation and thereafter supply accordingly.
- (b) All drawings, documents and other information supplied by the Company are supplied on the express condition that the Customer shall not without the written consent of the Company:
- (i) Give away, lend, exhibit or sell such drawings or extracts therefrom or copies thereof or
 - (ii) Use them in any way except for the purpose of installing or operating the materials for which they are issued.

- (c) Illustrations, weights, measures, temperatures, capacities and performance schedules contained in the Company's printed brochures and sales literature form no part of the contract. The Customer shall be responsible for the accuracy of all information and drawing supplied by it, and the Company shall be under no responsibility to check the accuracy thereof, any variations to contract due to these inaccuracies will be borne by the customer.
- (d) Copyright in respect of all drawings and other documents prepared by the Company shall vest in and remain the property of the Company. No intellectual property rights are implied or granted to the customer by these terms. The customer shall acquire no right, title or interest in any tangible or intangible property, patent, copyright, trademark or other intellectual property of FlexLink or its affiliates.

Trade Mark, Patents, Copyrights

The Customer shall indemnify the Company against any claim made against the Company in respect of materials designed and supplied by the Company to the specification of the Customer.

Force Majeure

The Company shall be excused from liability if performance of the contract is prevented or hindered by any cause whatsoever beyond the Company's control and in particular, but without prejudice, to the generality of the foregoing by act of God, war, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, fire, floods, subsidence, sabotage, strike lockout, transport, manufacturing processes or machinery and shall not be liable for any loss or damage resulting from any such circumstances.

Planning Permission, Licence, Regulations and Bye-Laws

- (a) No responsibility is accepted by the Company for failure to comply with any statutory or other regulation or local bye-law affecting the site in use or the operation or contraction of materials supplied and all consents and approvals required shall be obtained by the Customer.
- (b) All fees or charges made by local Authorities in connection with regulations or the passing of plans will be payable by the Customer and the Customer shall be responsible for seeing that the materials supplied comply with all Health and Safety at Work regulations as installed.

Determination of Contract

The Company (without prejudice to any other rights) may terminate any contract forthwith in any of the following events:

- (a) If the Customer shall default in any of the Customer's obligations to the Company.
- (b) If the Customer shall make or offer to make any arrangement or composition with creditors or permit any act of bankruptcy or any petition or receiving order in bankruptcy should be presented or made against the Customer.
- (c) Where the Customer is a limited company, if any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a receiver of such Company's undertaking property or assets or any part thereof shall be appointed.

Warranty & Guarantee

- (a) Subject to the correct use (as detailed at time of purchase) and adequate cleaning and maintenance, the Company agrees to replace or repair at its option materials supplied by it and proved to its satisfaction to be faulty (fair wear and tear or damage due to misuse or improper operation excepted) provided that such fault is notified in writing to the Company within twelve months from the original date of despatch from the Company's works or those of its sub-contractors or from acceptance in case of project delivery, or two thousand hours of use whichever occurs first. Any replacement shall include free delivery to the Customer's works. The Customer acknowledges and agrees that when replacement parts are fitted during the guarantee period parts removed are the Company's property.
- (b) In cases where the Company undertakes to supply materials or components only (i.e. no added value by the Company) the manufacturers guarantee will apply.
- (c) The Company's liability and the Customer's remedy for breach of warranty or otherwise is expressly limited to the remedies set forth in this clause and the guarantee is given in lieu of custom usage or common law. The Customer hereby acknowledges:
 - (i) That it purchased the materials in a competitive market and that the bargaining strength of the Company was in no way a relevant factor in the purchase of the materials from the Company.
 - (ii) That the Purchaser purchased the materials in the course of business and not for private use.

- (iii) That the Purchaser knows the extent and the meaning of this clause and all other warranties and terms, expressed, implied or otherwise, except as stated explicitly in these terms, including warranties and terms implied by statute are hereby excluded to the fullest extent permitted by law.

Minimum Order Charge

The Company reserves the right to apply a service charge on all small value orders.

Special Manufacture

Orders for goods specially manufactured for the Customer will only be accepted subject to the Company's right to deliver and charge for up to ten percent (10%) more or less than the quantity ordered. The Company will not accept any restriction of its right to manufacture, sell or offer to any other customer goods which may be manufactured specially for a specific customer or customers.

General Limitation of Liability

- (a) To the fullest extent permitted by law, the Company shall not be liable to the Customer regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise howsoever caused for:
- (i) any delay in delivery of goods, or
 - (ii) any loss of profit, business, contracts or other revenue, or
 - (iii) failure to achieve anticipated savings in costs or expenses, or
 - (iv) any special, indirect or consequential losses or damage, or
 - (v) damage to property, floor coverings or the fabric of the premises to which the goods are delivered or removal or rectification work in connection with installation work.
- (b) To the fullest extent permitted by law and notwithstanding any provision to the contrary in contract, equity, tort, strict liability or otherwise, the Company's liability (if any) to pay damages to the customer or any third party arising under or in connection with these terms or the goods or services provided by the Company shall be strictly limited to fifteen (15) percent of the purchase price of the goods to which the damage pertains.
- (c) The Customer agrees that the above exclusion and limitation clause is reasonable.

Indemnity

The Customer shall indemnify the Company against all losses, liabilities, claims, costs and expenses that may result from loss of or damage to any property or injury to or the death of any person (including any employee of the Company) that may arise out of any act or omission of the Customer, his employees, agents or sub-contractors in connection with the contract.

Service

Any service or advice which may be offered by the Company to users of its products is rendered in all good faith, but the company shall not be liable for any loss or damage arising therefrom.

Returned Goods

No returns will be accepted by the Company other than by express agreement in writing. Unauthorised returns received by the Company will be returned to the Sender carriage forward.

Exclusion Provisions

The Company does not exclude liability for either of the events specified in clause 2(i) of THE UNFAIR CONTRACT TERMS ACTS 1977 to the extent that it results from the negligence of the Company, its officers, servants or employees and accepts liability for any breach on its part of any undertaking as to title, quiet possession and freedom from encumbrance implied by statute.

Nominated Sub Contractors and Suppliers

Where the contract between the Company and the Customer requires the Company to sub-contract part of the work to a named Sub-Contractor or to purchase components from a named supplier or the specification is such that some necessary components can only be purchased by the Company from a particular supplier or are manufactured only by a single manufacturer, although that supplier or manufacturer is not named in the contract (all of these cases being in this clause referred to as nominated sub contracts) then the following provisions shall apply:

- (a) If the nominated sub-contractor will not undertake by the nominated sub-contract such obligations and liabilities as will enable the Company to discharge its own obligations and liabilities to the Customer under the contract and will not agree to indemnify the Company against all claims and proceedings whatsoever arising out of failure by the nominated sub-contractor to perform the nominated sub-contract, then the Company shall not be bound to discharge its own obligations to the Customer.
- (b) If the nominated sub-contractor shall be in breach of the nominated sub-contract and that breach causes the Company to be in breach of its contract with the Customer, the Customer shall not enforce any award of any arbitrator or any judgement which it may obtain against the Company except to the extent that the Company may have been able to recover the amount thereof from the nominated sub-contractor.
- (c) Where the delivery is effected by the nominated sub-contractor to the Customer acceptance of such delivery by the Customer will constitute acceptance of these Terms and Conditions.

Exhibitions

Except with the Company's prior approval in writing, goods sold by the Company may not be exhibited or advertised at any show display or exhibition other than on the Customer's own premises and may not be entered for any event. In accordance with s 1 (2) (a) of the *Contracts (Rights of Third Parties) Act 1999* third parties shall not have the right to enforce the contract between the Company and the Customer.

Legal Interpretation

The contract is governed by English Law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts. The Company reserves the right to refer any dispute under the contract to arbitration in London in accordance with the Arbitration Acts 1950 to 1995 and any amendments thereto.

June 11