

# VALE ENGINEERING (YORK) LIMITED

## TERMS AND CONDITIONS OF SALE

<p><b>1. DEFINITIONS</b></p> <p>1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (<b>Conditions</b>). "Buyer": means the person, firm or company placing an order with the Seller. "Contract": the Buyer's purchase order and the Seller's acceptance of it, or the Buyer's acceptance of a quotation for the supply of Goods by the Seller. "Goods": means all goods, products and materials which are the subject of the Buyer's order. "Guarantee": the Seller's standard form of guarantee a copy of which is available upon request. "Seller": means Vale Engineering (York) Limited. "VAT": means value added tax chargeable under English law for the time being and any similar additional tax.</p> <p><b>2. FORMATION OF THE CONTRACT</b></p> <p>2.1 These Conditions shall: (a) apply to and be incorporated into the Contract; and (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Buyer's purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by the Buyer, or implied by law, trade custom, practice or course of dealing. The Buyer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.</p> <p>2.2 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller.</p> <p><b>3. DELIVERY</b></p> <p>3.1 Unless otherwise agreed by the Seller, delivery of the Goods shall take place at the Buyer's place of business.</p> <p>3.2 Any dates specified by the Seller for the delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.</p> <p><b>4. RISK AND TITLE</b></p> <p>4.1 The Goods are at the risk of the Buyer from the time of delivery.</p> <p>4.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of the Goods.</p> <p>4.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall: (a) Hold the Goods on a fiduciary basis as the Seller's bailee; (b) Maintain the Goods in satisfactory condition; (c) Store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or a third party in such a way that they remain readily identifiable as the Seller's property; (d) Grant the Seller an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or to recover them.</p> <p><b>5. ACCEPTANCE</b></p> <p>5.1 The Goods must be examined by the Buyer upon delivery or collection and signed for. In the case of a defect that is: (a) apparent on normal visual inspection the Buyer must notify the defect to the Seller in writing within 14 days of delivery or collection; (b) a latent defect the Buyer must notify the defect to the Seller in writing within 14 days of the latent defect having become apparent.</p> <p>5.2 Any damaged goods must be retained for inspection by the Seller.</p> <p>5.3 If the Buyer fails to give notice in accordance with condition 5.1 it shall be deemed to have accepted the relevant Goods and pay for the same accordingly.</p>	<p><b>6. PRICE</b></p> <p>6.1 Unless otherwise agreed by the Seller in writing, the price for the Goods shall be the price set out in the Seller's current list price.</p> <p>6.2 The price for the Goods is exclusive of any VAT and all costs or charges in relation to carriage and insurance all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.</p> <p><b>7. PAYMENT</b></p> <p>7.1 The Buyer shall pay each invoice submitted to it by the Seller, in full and in cleared funds, within 28 days (unless otherwise stated) of the date of the Seller's invoice.</p> <p>7.2 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Seller on the due date, the Seller may: (a) charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Buyer shall pay the interest immediately on demand. The Seller may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and (b) suspend all pending deliveries of Goods until payment has been made in full.</p> <p>7.3 Time for payment shall be of the essence of the Contract.</p> <p>7.4 The Buyer shall pay all money due under the Contract to the Seller without any discount, deduction, set off or counterclaim regardless of any claim or dispute which the Buyer has or alleges it has against the Seller.</p> <p><b>8. QUALITY</b></p> <p>8.1 Where the Seller is not the manufacturer of the Goods it will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.</p> <p>8.2 The Seller provides a Guarantee in respect of the Goods sold to the Buyer.</p> <p>8.3 Except as set out in the Guarantee and these Conditions 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, to the fullest extent permitted by law, excluded from the Contract.</p> <p><b>9. LIMITATION OF LIABILITY - THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION</b></p> <p>9.1 This condition 9 sets out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Buyer in respect of: (a) any breach of the Contract; (b) any use made by the Buyer of the Goods or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.</p> <p>9.2 Nothing in these Conditions limits or excludes the liability of the Seller: (a) for death or personal injury resulting from negligence; or (b) for any damage or liability incurred by the Buyer as a result of fraud or fraudulent misrepresentation by the Seller.</p> <p>9.3 Subject to condition 8.3 and condition 9.2: (a) The Seller'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 the Contract shall be limited to the price paid (exclusive of VAT) for the relevant Goods; and (b) The Seller shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.</p>	<p><b>10. FORCE MAJEURE</b></p> <p>The Seller shall have no liability to the Buyer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.</p> <p><b>11. ENTIRE AGREEMENT</b></p> <p>11.1 The Contract, the Guarantee and any applicable quotation constitute the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.</p> <p>11.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.</p> <p>11.3 Nothing in this condition shall limit or exclude any liability for fraud.</p> <p><b>12. ASSIGNMENT</b></p> <p>12.1 The Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract.</p> <p>12.2 The Seller may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.</p> <p>12.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.</p> <p><b>13. RIGHTS OF THIRD PARTIES</b></p> <p>A person who is not a party to the Contract shall not have any rights under or in connection with it.</p> <p><b>14. NOTICES</b></p> <p>14.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid registered first-class post, recorded delivery or by commercial courier to the other party at such address as has been specified by the relevant party by notice in writing to the other party.</p> <p>14.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to in clause 14.1 or, if sent by pre-paid registered first-class post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.</p> <p>14.3 This condition 14 shall not apply to the service of any in any proceedings or other documents in any legal action.</p> <p>14.4 A notice or other communication required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.</p> <p><b>15. GOVERNING LAW AND JURISDICTION</b></p> <p>15.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.</p> <p>15.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.</p>
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