

## **South Devon Railway Engineering Ltd - Terms and Conditions of Business**

### **1. Definitions:**

In these conditions the following words shall have the following meaning :-

**"Company"** - Means South Devon Railway Engineering Ltd, The Station, Dartbridge Road, Buckfastleigh, Devon, TQ11 0DZ.

**"The Customer"** - shall mean the person, firm or Company with whom the Company contracts.

**"Goods"** - Means the articles or things or service which are the subject matter of the Contract.

- 1.1** We reserve the right to amend these Terms and Conditions from time to time.
- 2.** These Conditions of Business shall apply to all sale and purchase transactions between the Company and the Customer. No terms and conditions put forward by the customer in conflict with these terms and conditions shall be incorporated into the Contract unless separately agreed in writing and signed by a director of the company.
- 2.1** Any quotation submitted by the Customer is an invitation to treat not offer. The placing of an order by the Customer orally or in writing shall constitute an offer and a Contract shall be effected if and when such offer is accepted by the Company and not at any earlier time. The Company will only accept offers subject to these Conditions of Business.
- 3.** All times quoted for dispatch or delivery dates are estimates only and while the Company will use all reasonable endeavours to ensure it complies with any estimates given, the Company will not be liable for any failure to comply with any such estimate or for any direct or consequential loss resulting therefrom.
- 4.** Unless otherwise agreed in the Contract the price of goods does not include the cost of delivery to the agreed place of delivery. The Company accepts no liability for damage, shortage, or loss in transit where the goods does not include the cost of delivery. Where the price of goods does include such cost, the Company accepts no liability for damage, shortage or loss in transit unless damages or shortages are recorded at the time of delivery on the relevant delivery note and are confirmed in writing to the Company within 2 days, thereafter and/or where goods are not received at all the Company is notified in writing within 7 days of dispatch.
- 5.** Subject to any other provisions of these conditions, the contract may not be cancelled without any prior written consent of the Company, which will only be given on terms that the Company is to be indemnified against all costs incurred up to the date of such cancellation. In the event that the Customer cancels the contract, the customer shall as regards any goods that are the subject of the Contract, reimburse the Company the amount or amounts of any work undertaken, time expended and costs incurred in connection with the Customers order together with a reasonable profit margin.
- 6.** All prices quoted are the Company's prices ruling at the date the relevant quotation is given and are based on current production costs. Orders are accepted only on the basis that the actual price payable under the Contract shall be the Company's price ruling at the date of the relevant invoice. If any extra cost is incurred by reason of any additional instructions, or any error or omissions in instructions submitted by the Customer, or if the Customer requests any special testing of the goods or any variation of the specification, or design of any modifications to the Goods, then the Customer shall bear any relevant extra costs.
- 7.** Payment must be made at the time or times specified in the Company's quotation. If no such time is specified then the payment for all the Goods must be made in full within 30 days of the end of the month after the goods are due and ready for delivery or collection and payment for any services in connection with the goods must be made in full within 30 days after the end of the month in which the services are performed. Where payment is agreed to be made by instalments, any delay or failure in payment of any one instalment may result in postponement of further works until the outstanding instalments are settled.
- 7.1** We reserve the right to charge for costs and expenses incurred in recovering late payments, and to charge interest on overdue amounts at the rate in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 as at the due date.
- 8.** Any liability upon the Company is subject to the terms of payment and all other obligations of the Customer being strictly observed. The customer shall not be entitled to withhold payment of any amount payable to the Company under any Contract or otherwise because of any disputed claim against the Company, except where the Customer gives the Company reasonable formal written notice of the cause of the dispute and cooperates fully with the company to resolve the dispute in a timely manner. In any case no sum greater in value than that of the disputed component or element of a larger contract may be withheld by the customer.
- 9.** Risk or damage to Goods shall pass to the Customer upon delivery (or upon collection if it is agreed between the Company and the Customer, that the Company shall not be obliged to deliver the Goods but the Customer shall collect them).
- 10.** All Goods are supplied to the Customer by the Company on the following terms:
  - 10.1** Notwithstanding delivery, property of Goods shall remain in the Company until the Customer has paid the price of those Goods and any sums owing from the Customer to the Company in full, and until all such amounts are duly paid by the Customer to the Company.
  - 10.2** The Customer shall deliver up to the Company and/or allow the Company to re-possess the Goods upon demand and grants irrevocable right to the Company through its employees or agents, with vehicles or otherwise, to enter at any reasonable hour upon the Customer's premises where the Goods are kept.
- 11.** The Company shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part any or every Contract between the Company and the Customer or to suspend any further deliveries under any Contract in any of the following events:
  - 11.1** If any sum owing from the Customer to the Company for any reason what so ever is unpaid after the due date for payment.
  - 11.2** If the Customer refuses to take delivery of or to collect (as the case may be) any goods.
  - 11.3** If the Company has any reason to doubt the credit worthiness of the Customer.
  - 11.4** If the Customer has a receiver, administrator, administrative receiver, liquidator or other supervisor appointed over any of its assets or undertaking or if the Company enters into any composition or arrangement with its creditors or commits any other act of insolvency.
  - 11.5** If the Customer commits any breach of any Contract between the Company and the Customer:

The Company shall be entitled to exercise its rights of termination or suspension at any time during which the event or default giving rise there to has not ceased or been remedied and in the event of any suspension the Company shall be entitled as a condition of resuming delivery to require pre-payment of the price of any further delivery.
- 12.** The Company's liability is limited to reimbursement of the price or repair or replacement of the Goods or remedying any defects in any services rendered by the Company in connection therewith. Apart from such reimbursement, replacement, repair or remedial work the Company and its employees and agents shall be under no liability for any injury, loss, or damage of any kind whether direct, consequential or special and howsoever caused resulting from or arising out of or incidental to:
  - 12.1** Any negligence on the part of the Company or its employees (except insofar as the same causes death or personal injury. Or
  - 12.2** The Company's performance of or failure to perform or breach of any of its express implied obligations under the Contract. Or
  - 12.3** The supply, installation, repair and/or maintenance of any Goods. Or
  - 12.4** Any defects in any Goods
- 12.5** Any advice given or representations made by the Company in relation to the quality, performance, use or installation of the Goods or any part thereof. Notwithstanding the foregoing, where there is any defect in Goods supplied, but not manufactured by the Company, the Customer shall (subject to compliance by the Customer with all conditions, stipulations and provisos contained in such guarantee or warranty and with the terms of these Conditions) be entitled to the full benefit of any guarantee or warranty given to the Company by the manufacturer or supplier thereof and the Company will notify defect to such manufacturer or supplier and will attempt to procure for the Customer the benefit of such guarantee or warranty, but the Company shall be under no further liability to the Customer in respect of such defect.
- 13.** The Company accepts no liability for delay or non fulfilment of any term of the Contract caused wholly or in part by "force majeure", which expression shall be deemed to include war, strikes, lockouts, accidents, fire, scarcity or materials or any other cause or causes not within the Company's direct control.
- 14.** No failure or delay on the part of the Company to exercise its rights under the Contract shall operate as a waiver thereof nor shall any single nor partial exercise of any such right exclude any other or further exercise thereof. Any waiver of a breach of any provision of the Contract shall not affect the Company's rights in the event of any further or additional breach or breaches.
- 15.** Notwithstanding termination of the Contract these Conditions shall continue in full force and effect for so long as is necessary after such termination to give full effect to the provisions contained in these Conditions.
- 16.** The Contract shall be construed in accordance with English law which shall be the proper law of the Contract and the English Court shall have sole jurisdiction in relation to the provisions contained in these Conditions.
- 17.** The clause headings in these Conditions are for convenience only and shall not effect the interpretation hereof in any way whatever.
- 18.** Each and every obligation contained in the clause or sub-clause of these Conditions shall be treated as a separate obligation and shall be severally enforceable as such and the non-enforceability at any time of the clause or sub-clause of these Conditions shall be treated as a separate obligation and shall be severally enforceable as such and the non-enforceability at any time of the clause or sub-clause of these Conditions shall not prejudice the enforceability of the remainder.
- 19.** The Company assumes that the Customer has complied with every applicable statute, by-law and other requirements of the Government or any local authority. The obtaining by the Customer of all necessary licenses, permits and consents, that may be required is a condition precedent to the performance by the Company or any of its obligations under the Contract.
- 20.** These Conditions are stipulated by the Company on its own behalf and on behalf of all its employees and agents and apply for the protection of all its employees and agents as for the Company. The Customer undertakes not to sue or make any claim whatever against any employee or agent of the Company in respect of any alleged negligence or other default of that employee or agent in relation to the carrying out, failure to carry out or breach of any Contract.
- 21.** The Customer acknowledges and agrees by placing orders with the Company that:
  - 21.1** This is a transaction into which both parties are freely entering.
  - 21.2** There are clauses contained in these Conditions which exclude, limit or modify the liability of the Company its employees and agents.
  - 21.3** The prices and charges quoted in these Conditions or Business by the Company are based on the exclusions and restrictions on liability set out in these Conditions. On the basis that the Customer may seek to re-negotiate the prices quoted by the Company, the Customer and the Company accept that the exclusions and restrictions on liability referred to in these Conditions are reasonable.