

**CONDITIONS OF SALE  
EMCEL FILTERS LIMITED**  
(Hereinafter called 'the Company')

**1. GENERAL**

(1) All products are sold and services are supplied subject to the following terms and conditions which unless and to the extent otherwise expressly agreed in writing by the Company's authorised representative, shall prevail to the exclusion of all terms and conditions put forward by the customer which shall be of no contractual effect whatsoever.

(2) Unless specifically agreed in writing by the Company's authorised representative no verbal, written or other addition hereto variation or waiver hereof shall be effective.

**2. QUOTATION**

Unless previously withdrawn, the Company's quotation is open to acceptance within the period stated therein or if no period is stated within 90 days after the date of quotation. The Company's quotation is deemed an invitation to treat and no contract shall arise until the customer's acceptance is in turn accepted by the company.

**3. PRICE**

All prices are ex works and are subject to the addition of carriage and package charges unless otherwise agreed in writing by the Company. Prices are exclusive of V.A.T and are based on raw materials and labour costs current at the date of contract and if, before delivery of all the products, there occurs any increase in any way of such cost, the Company shall be entitled to increase the price payable in respect of products which have not been delivered to take account of such variations.

**4. ACCEPTANCE OF ORDER**

Adequate information, instructions and, where applicable, materials and special equipment must be made available to the Company by the customer in sufficient and reasonable time prior to the delivery dates to enable the Company to execute the order. Any cost incurred as a result directly, or indirectly of delay in, lack of variation of such instructions, information, materials or equipment shall be borne by the customer.

**5. CANCELLATION OF PURCHASER'S ORDER**

Cancellation of an order shall only become effective upon the written confirmation by the Vendor.

For special orders, those in which the goods are not normally in stock or orders in which the product is designed, manufactured or modified specifically for the customer, cancellation will not be accepted.

**6. PASSING OF PROPERTY**

(1) Property and title in the goods shall not pass to the customer until the total price of the goods has been paid to the Company.

(2) In any case of default by the customer in paying the total price due to the Company, the Company may, without notice and at any time retake possession of the whole or any part of the products without prejudice to any other remedies.

**7. DELIVERY**

Any date for delivery given by the Company shall be an estimate only and the Company shall not be liable to make good any damage in loss whether arising directly or indirectly out of delay in delivery. Where the Company is to carry to the customer, delivery shall be taken by the customer within the period (if any) estimated by the Company for delivery and the customer shall supply the Company with all such details as may be necessary to enable the Company to effect the delivery within such a period. If, for any reason, the customer is unable to accept delivery at the time when the goods are due and ready for delivery, the Company may, at its discretion, store the goods (but at the customer's risk) and the customer shall be liable to the Company for the reasonable cost of its so doing. The provision shall be in addition to any other payment or damages for which the customer may become liable in respect of failure to take delivery at the appropriate date. In the event, the customer shall be responsible for off-loading and any assistance given by the Company's servants or agents shall be without responsibility.

**8. TRANSFER OF RISK AND INSURANCE**

The risk of the product shall pass to the purchaser as follows:

- (1) Where products are to be delivered by us or our carrier to an address in the UK designated for delivery by the customer, the risk will pass when so delivered.
- (2) Where products are to be collected by the customer, the risk shall pass when the product has been loaded onto the transport of the customer or his carrier or, if the customer fails to collect the products within a period of 14 days after the Company has given the customer written notice that the products are ready for delivery and collection.

**9. PART DELIVERIES**

(1) In the case of a contract for delivery of products by instalments, every instalment shall be deemed to be the subject matter of a separate contract and, unless otherwise agreed in writing by the Company's authorised

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representative, failure in delivery of any one or more of the said instalments shall not, subject to the other provisions of these conditions, entitle the customer to treat such failure as a repudiation of the whole contract. Provided always that the customer fails to make payment in respect of any instalment on the due date, the Company shall, at its option, be entitled to determine the contract in respect of instalments then to be delivered or to make delivery only on such terms as to payment as it shall consider acceptable.

### **10. DAMAGE OR LOSS IN TRANSIT**

Where the transport of products to be delivered to the customer is to be effected by the Company or its carrier, the products must be examined by the customer on receipt and the customer must assure themselves that the goods have not been damaged during transportation. It is the customers' responsibility to annotate the delivery paperwork before they sign for acceptance if they have any doubt about the condition of the goods. Comments such as "Un-inspected" or "Not Checked" are inconclusive and are deemed as acceptance by the customer. Similarly, if the goods are to be delivered to a third party at the request of the customer, they must ensure that this third party is aware of their responsibilities in accepting delivery of the goods as above. In the event that packaging is intact but goods are found to be damaged upon removal of the packaging, the customer must notify the Company within 3 working days of receipt. The customer will indemnify the Company against any loss suffered by the Company as a result of any such notification being received too late to enable the claim against any carrier or insurer in respect thereof within the time limit applicable thereto.

### **11. TERMS OF PAYMENT**

- (1) The terms of payment (unless otherwise agreed in writing by the Company's authorised representative) are:
  - a. Deliveries in the United Kingdom: Payable in full within 30 days from the date of invoice.
  - b. Export Shipments: Net cash payable in full by irrevocable documentary letters of credit (providing for part shipment) opened by the customer with bank in London to be approved by the Company and payable against delivery of the relevant bill of lading/airway bill in favour of the covering products. All the prices quoted are actual amounts payable to us free of all deductions whatsoever and ex works unless otherwise agreed in writing by the Company.
- (2) Stipulations as to time of payment shall be deemed to be the essence of the contract.
- (3) If the purchaser fails to make payment for any products supplied to him on the due date therefore, as above provided, without prejudice to any other rights the Company may have, the Company shall be entitled to charge in addition to any monies due hereunder, interest on any other amount as outstanding at the rate (as well after as before any judgement) of 2% per annum above the base rate of the Company's principal bankers for the time being, calculated on a daily basis on the outstanding balance and the due date for payment down to receipt by us of payment.
- (4) Default by the customer in making any payment on the due date therefore will also entitle the Company to refuse to make a delivery of any further products (where ordered under the same contract as that under which the default is made or not) without thereby incurring any liability whatsoever to the customer.
- (5) No deduction shall be made by the customer in respect of any set-off or counterclaim howsoever arising.

### **12. INSOLVENCY**

If the customer should in any way default in his obligation to the Company under this or any other contract or if distress or execution shall be levied upon the customer's property or if the customer shall make or offer to make an arrangement with creditors or to commit any act of bankruptcy or if any petitioning bankruptcy shall be presented against him or in the case of a company 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 the company's undertaking or any part thereof shall be appointed, the Company shall be entitled forthwith to determine any contract then subsisting by written notice to the customer's last known address without prejudice to any right of the Company to which the Company may otherwise be entitled.

### **13. FORCE MAJEURE**

All reasonable efforts will be made to carry out any contract to which these conditions apply but if the Company is prevented (directly or indirectly) from making delivery of the products, or performing or completing any of its obligations hereunder by acts of God, war, strikes, disputes, or other industrial action, fire, drought, floods, explosions, breakdowns, interruption of transport, refusal of licence, government or administration action, delays in delivery to us or increases in the price of any goods or materials, any statute, rule or regulation, order, requisition, recommendation or directive of any government, agency or other authority or any other body of competent judicial authority, or any other cause whatsoever (whether or not of a like nature to those specified above), which shall reasonably be considered to be outside the Company's control, the Company shall be under no liability whatsoever to the customer and shall not be entitled at the Company's option (to be notified to the customer in writing by our authorised representative) either to cancel the contract (where upon the Company shall be relieved of all liabilities hereunder) or to extend the time of its performance by a period equivalent to that during which performance by us has been prevented by the circumstances herein before referred to.

**14. WARRANTY**

(1) Unless the Company's authorised representative shall have otherwise agreed in writing with the customer, we will at our option either repair, or replace without charge, for delivery ex-factory, unpacked any part or parts of the products of the product which are shown to our satisfaction to be or which have become defective (other than as a result of fair wear and tear) within 12 calendar months from the date on which the original goods shall first have been dispatched from our factory and which are carefully packed and returned at the purchaser's expense to our factory; provided that notice of such defects and satisfactory proof thereof is given by the customer promptly after discovery and provided further that the defect is not due in whole or in part to mistreatment, lack of improper maintenance or failure to observe any operation instructions issued to us in connection therewith.

(2) Save as in this condition hereinbefore expressed and except in those cases where the absolute prohibitions against exclusions or restriction of liability contained in Sections 2 (1), 6 (1) and 6 (2) of the Unfair Contract Terms Act 1977 apply, the Company shall not be under any liability whatsoever and howsoever arising (including without prejudice to the generality of the foregoing liability whether founded in common law or statute arising from our negligence or that of any person for whom we are vicariously liable ) in respect or in connection with:

(a) any defect in the products which should reasonably been discovered by the customer on inspection or test prior to acceptance.

(b) any loss or injury or damage including without prejudice to the generality of the foregoing any loss of profit or other consequential loss of any description in connection with the products or any work done in connection therewith. The customer is advised to obtain appropriate insurance cover to protect himself against such risk in (b) above for which the Company's liability is excluded.

(3) Nothing in this condition affects the statutory rights of the consumer pursuant to a customer transaction.

**15. SUITABILITY**

The customer assumes responsibility that products stipulated by him are suitable for his purpose, save in so far as specific mention thereof is made in any quotation or offer, the customer shall not rely upon our skill or judgement as to whether the products are fit for any particular purpose or as to the manner in which the product shall be used, irrespective of any advice which may have been given by the Company, its servants or agents in good faith.

**16. JURISDICTION**

Unless otherwise agreed in writing, the contract shall in all respects be governed by and construed in accordance with English Law.