

FLUID RESEARCH LIMITED

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CONDITIONS OF SALE OF FLUID RESEARCH LIMITED

Note to buyer: Warranty protection applies only to machines and proprietary goods manufactured by seller and does not apply to auxiliary equipment or components that are manufactured or supplied by other manufacturers or dealers. For best results use only Fluid Research Ltd manufactured parts and recommended disposable motionless mixers.

1 GENERAL

Unless previously withdrawn our tender is open to acceptance within 30 days from the date of tender unless otherwise agreed at that time. An order shall not be binding on us unless and until such an order shall have been accepted by us in writing. No order shall be accepted by us until all necessary documents, technical or otherwise, have been supplied to us. The placing of an order implies acceptance of the following terms and conditions upon which such an order is accepted and no purported term or condition introduced by you which is inconsistent with any of these conditions shall have any effect and these conditions shall in all circumstances prevail unless varied by a document in writing signed by one of our duly authorised representatives.

2 DRAWINGS

All specifications, drawings and particulars of weights and dimensions submitted with our tender are approximate only, and the descriptions and illustrations contained in our catalogue price lists and other advertising matter are intended merely to present a general idea of the goods described therein and none of these shall form part of the contract. Copies of specifications and drawings will be supplied on request but the copyright of all such documentation and any designs derived from it remains vested solely in us.

3 MATERIAL DATA

Buyer shall provide all material specifications and OSHA safety data sheets for materials to be processed through the equipment upon the issuance of a purchase order to the seller.

4 EXTENT OF CONTRACT

Our tender includes only such goods accessories and work as are specified therein.

5 SAMPLES

- 5.1 Any samples submitted to you for inspection and not returned to us within 1 month from the date you receive them will be invoiced to you.
- 5.2 No contract shall be a sale by sample even where a sample has been provided for your general guidance unless otherwise stated in writing by us.

6 PRICE

- 6.1 Prices quoted in orders accepted by us are based upon the costs of materials, labour, fuel, transport and any other charges or taxation liabilities ruling at the date of such acceptance and we reserve the right to revise our prices to cover actual changes in any such costs occurring between the date of acceptance of orders and the date of commissioning, and any such revised price shall be due and payable by you in place of the contract price.
- 6.2 Prices on auxiliary equipment and accessories are subject to change without notice.
- 6.3 A fixed price contract will only be entered into by mutual written agreement.
- 6.4 Unless otherwise specified in our tender, all prices quoted are ex our works. Orders will, at your request, be consigned to you at an extra charge to cover carriage and insurance.
- 6.5 The amount of any present or future sales, revenue, excise or other taxes applicable to the goods purchased hereunder shall be added to the purchase price and shall be paid by the buyer, whether included in this quotation or not.

7 FINANCIAL RESPONSIBILITY

If we should reasonably doubt the buyers financial responsibility or a petition in bankruptcy shall be filed by or against the buyer, or if the buyer shall make an assignment for the benefit of its creditors, or shall apply to its creditors to compromise its debts, or if a receiver or trustee of the buyer or its property shall be appointed, we may stop further production hereof, refuse to make further deliveries and may stop any goods in transit. In such cases the buyer shall make no deductions (including, without limitation, any alleged damages) from payments due hereunder. Further we reserve the right to any other remedy, cancel this agreement or demand and receive all payments and debts owed which are or shall be owed by the buyer for the continuing performance thereof.

8 PAYMENT

- 8.1 The terms relating to payment will be as specified in the quotation but in the absence of such terms 50% of the total cost of goods sold must be paid immediately you receive notice that the testing procedures referred to in clause 10 below have been satisfactorily completed. Please note that no goods will be despatched until this payment has been received.
- 8.2 The balance of the price and any additional charges must be paid within 30 days of the goods having been delivered, or, where we undertake to install and commission the goods, within 30 days of such commissioning having been completed.
- 8.3 We reserve the right to charge interest from the date payment becomes due at the rate of 2% per month or part of the month until settlement in full after as well as before any judgement.
- 8.4 We reserve the right exercisable at our option by notice in writing to you to waive the provisions of clause 8.1 above at any time and to permit payment in accordance with clause 8.2 above.
- 8.5 The terms relating to payment for parts are net thirty (30) days from date of invoice.

9 CANCELLATION

Any order entered into on the basis of this agreement shall be subject to changes, specifications or cancellations by the buyer only with our written consent and at a charge that we shall determine sufficient to indemnify us against the loss.

10 INSPECTION AND TESTING

All goods are carefully inspected and subjected to our standard test routines before despatch, and the cost for this is included in the quoted price. If you require any additional or specific testing to be carried out this will be done at an additional cost. You will be notified immediately all testing has been completed.

11 DELIVERY

- 11.1 Unless otherwise agreed in writing delivery shall take place at our premises.
- 11.2 Any times quoted for delivery are from the date of our written acceptance of your order, but are intended as estimates only, and we accept no liability for any loss you may suffer by reason of any delay in delivery. In particular (but without limiting the remainder of this clause) we can accept no liability for any delay caused by any fact or thing which is not within our immediate control, including failure by you to supply any relevant information, technical or otherwise.

12 RESERVATION OF TITLE

- 12.1 We remain the owners of the goods until you have paid all sums due to us under this or any other contract.
- 12.2 If you have purchased the goods for resale, then until full payment is received by us you will hold the goods as our agent and bailee and will store them in such a way as to be clearly identifiable as our goods and those supplied under this contract. If you sell the goods before paying us in full, you do so under a fiduciary duty to account to us immediately for the price of the goods less any sums already paid.
- 12.3 Should the goods or any of them be affixed or added to any other items such affixation shall be effected by you as our agent and we shall have full legal and beneficial title to the whole of the new product thereby created.
- 12.4 We reserve the right to revoke your power of sale by written notice if you are in default for longer than 7 days in the payment of any sum whatsoever due to us, and your power of sale will automatically cease if a Receiver or Administrator is appointed over any or all of your assets or undertaking or a winding up order is made against you or you go into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or you call a meeting of or make any arrangement or composition with your creditors or commit an available act of bankruptcy.
- 12.5 We reserve the right at any time before you have paid us in full to retake possession of our goods and to enter upon any premises where they are kept in order to do so, even though the goods have then been annexed to other goods or incorporated in some larger construction or equipment, and you hereby grant to us an irrevocable license to enter upon your premises for this purpose.
- 12.6 Notwithstanding that property in the goods shall not have passed as well as pursuing other remedies available to us we reserve the right to sue for the monies due in the respect of the goods supplied.

13 RISK

Notwithstanding clause 12 above, the goods will be at your risk from the time they are delivered to you or your authorised agent and until we have been paid in full it is your duty to insure the goods to their full replacement value.

14 DAMAGED OR LOST GOODS

- 14.1 It is your responsibility to inspect the goods as soon as they are delivered to you and we can accept no liability in respect of any claim for damaged goods or incomplete or incorrect supplies of goods unless you notify us in writing of the damage within 48 hours of delivery.
- 14.2 Without prejudice to 14.1 above when the price quoted includes delivery other than at our works, we will repair or at our option replace free of charge goods lost or damaged in transit provided that we are given written notification of such loss or damage within such time as will enable us to comply with the carriers conditions of carriage as affecting loss or damage in transit or, where delivery is made by our own transport, within a reasonable time after receipt of the Advice Note.

15 PACKING

Unless otherwise specifically stated in writing, packing cases and materials will be charged for extra at cost. Disposal of these items are the buyers responsibility.

16 STORAGE

If we do not receive forwarding instructions sufficient to enable us to despatch the goods within 14 days after the date of notification that they are ready for despatch, you shall take delivery or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to arrange storage either at our own works or elsewhere on your behalf and all charges for storage, for insurance or for demurrage shall be payable by you.

17 **COMMISSIONING**

Upon request and unless specifically stated on the proposal otherwise, seller will provide, at the current rate plus expenses, a technician to supervise the setting up and starting of the goods. Seller accepts no responsibility for material and equipment or the acts of personnel furnished by the buyer. Seller strongly recommends the buyer engage a technician from seller to assure proper implementation of equipment furnished. Seller shall not be responsible for the performance of goods that are not set up or started by a technician provided by seller.

18 **HEALTH AND SAFETY**

Your attention is drawn to the provision of Section 6 of the Health and Safety at Work Act 1974. We shall make available, on request, such information on the design or construction of the goods as is in our possession to ensure that as far as is reasonably practicable that the goods are reasonably safe and without risk to health when properly used.

19 **WARRANTY**

- 19.1 The warranties contained herein are not made in regard to auxiliary equipment and components (see section 20 below).
19.2 Unless otherwise specifically stated in writing, warranties are limited to all goods designed, manufactured and sold by the seller.
19.3 We warrant that the goods have been manufactured in a good and workmanlike manner and that they have passed all standard inspection and testing procedures. We undertake to make good, by repair or replacement at our option, any defects in the goods appearing within 1 years from the date of delivery and arising solely out of defects in materials or manufacture.
19.4 This warranty shall not be effective unless:
a). The goods have been used for proper purposes and strictly in accordance with our operating instructions; and
b). Any defective goods or parts have been returned to our works promptly and free of charge, or where because of installation it is not practical for any goods or parts to be returned to us, we are notified in writing of the defect within the 1 year period.
19.5 This warranty is given in substitution for all other warranties express or implied, statutory or otherwise, and in particular, but without prejudice to the generality of the foregoing, you should note that no warranty is given that the goods are fit for a particular purpose, unless you have advised us before we accepted the order of that purpose, nor is any warranty given that the goods will attain any performance figures unless those figures are expressly included in our quotation or acceptance of order or in your order.
19.6 We assume no liability for warranty claims that are found to be attributable to components or mixers that are not supplied by Fluid Research Limited. Any services and/or parts provided to correct problems associated with components and mixers not supplied by Fluid Research Limited shall be provided at the buyers expense.
19.7 This warranty does not cover seals, components or consumables that are out of specification due to normal wear and tear or improper maintenance of the equipment.

20 **AUXILIARY EQUIPMENT AND COMPONENTS**

To the extent that auxiliary equipment and components of other manufacturers (e.g. logic control hardware, valves transfer pumps, motors etc.) are included as part of the machine or system described in the quotation and data sheet attached hereto, it is understood that the seller acts only as an agent of buyer in making such quotations and these products which are not manufactured by seller are subject to the original manufacturer's warranty policy. FURTHER, SELLER MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR ANY PURPOSE AND ASSUMES NO LIABILITIES WITH RESPECT TO AUXILIARY EQUIPMENT AND COMPONENTS WHICH ARE MANUFACTURED BY OTHERS.

21 **MATERIAL EVALUATION TEST**

Seller does not manufacture or supply any of the reactive chemical components that are used in this equipment. Seller is not responsible for the effects of such reactive chemical components. Because of the vast number of chemicals that could be used and their varying chemical reactions, buyer and users of this equipment should determine all facts relating to the materials used, including any of the potential hazards involved. Particular inquiry and investigation should be made into the potential dangers relating to toxic fumes, abrasion, fires, explosions, reaction time and exposure of human beings to the individual components or their resultant mixtures.

22 **LIMITATION OF LIABILITY**

Unless personal injury or death arises solely or substantially out of a defect in the materials or manufacture of the goods, our liability in respect of any defect shall not extend beyond a duty to repair or replace the goods as provided in clause 19 or, where this is not possible to pay a sum equal to the total purchase price of the goods. Under no circumstances can we accept liability for indirect, secondary or consequential losses and damages.

23 **CONFIDENTIALITY**

This quotation and contract, including any accompanying, or subsequent, prototypes, samples, information, specifications, data, drawings, or other materials, related hereto, are confidential between Fluid Research Limited and the party named in the quotation/contract. Any release to a third party must be with the express, prior written consent of Fluid Research Limited. Breach of this provision shall entitle Fluid Research Limited to obtain immediate injunctive relief.

24 **PATENTS**

We will indemnify you against any claim for infringement of Letters Patent, Registered Design, Trade Mark or Copyright (published at the date of the contract) by the use or sale of any article or material supplied by us to you and against all costs and damages which you may incur in any action for such infringement or for which you may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to our having followed a design or instruction furnished or given by you or disclosed by us, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by us. And provided also that this indemnity is conditional upon your giving to us the earliest possible notice in writing of any claim being made or action threatened or brought against you and on your permitting us at our own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. You on your part warrant that any design or instructions furnished or given by you shall not be such as will cause us to infringe any Letters Patent, Registered Design, Trade Mark or Copyright in the execution of your order.

25 **RETURN OF GOODS**

No equipment may be returned without first obtaining our written permission, and all transportation charges shall be prepaid by you. Any cost incurred by us to put equipment in first class condition as a result of damage during transportation will be charged to you.

26 **NOTICES**

Where any notification is required to be given under these conditions it shall be given in writing by hand or first-class prepaid post or by facsimile and shall be deemed to have been received (where delivered by hand) on delivery or (when sent by post) 48 hours after it was posted or (when sent by facsimile) immediately upon transmission.

27 **WAIVER**

The waiver by us of any condition or of the breach of any condition hereof shall not prevent the subsequent enforcement of that condition and shall not be deemed a waiver of any subsequent breach.

28 **CONTROLLING PROVISIONS**

These terms and conditions shall supersede any provisions, terms and conditions contained on any confirmation order, or other writing, the buyer may give or receive, and the rights of the buyer and seller shall be governed exclusively by the provisions, terms and conditions thereof. The seller makes no representations or warranties concerning this quotation except such as are expressly contained herein.

29 **ENTIRE AGREEMENT AND MODIFICATIONS**

This proposal and contract contains the entire agreement as to the standard terms and conditions governing the sale of goods. These standard terms and conditions of this proposal and contract may be modified or rescinded only by written agreement signed by an authorised representative of seller.

30 **CONSTRUCTION**

- 30.1 Headings have been inserted in these conditions for convenience only and shall not affect the construction or interpretation of the text.
30.2 These conditions shall be interpreted under English Law and all disputes arising out of them shall be submitted to the jurisdiction of a competent English Court.