

# ENTROTEC LTD

1. **General** – Unless previously withdrawn, our tender is open for acceptance within thirty days from date of tender only, or for such other period as is stated in our quotation. Any order shall not be binding on us unless, and until, such an order shall have been accepted by us in writing. The placing of an order implies acceptance of the following terms and conditions, upon which alone such an order is accepted, and no purported terms and condition introduced by you, which is inconsistent with any of these conditions, shall have any effect and these conditions alone shall, in all circumstances, prevail.

2. **Price – Standard Products:** All standard catalogue products will be invoiced at prices ruling at the end of despatch. All our clerical errors are subject to correction.

3. **Acceptance** – The acceptance of our tender must be accompanied by sufficient information to enable us to proceed with the order forthwith otherwise we shall be at liberty to amend the tender prices to cover any increases in cost which have taken place after acceptance, and also to amend any estimated delivery date resulting from such delays. Any samples submitted to you and not returned to our works within one month from date of receipt shall be paid for by you.

4. **Limits of Contract** – Our tender includes only such goods, accessories and work as are specified therein.

5. **Drawings, etc** – All specifications, drawings and particulars of weights and dimensions, submitted without tender are approximate only, and the descriptions and illustrations contained in our catalogue, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract. After acceptance of your order a set of non site-specific drawings will be supplied free of charge. Site specific drawings can be supplied, price on application.

6. **Inspection and tests** – Our products are carefully inspected, and where practicable, submitted to our standard tests at our works before despatch. If tests other than those specified in our tender, or tests in the presence of you or your representative are required, these will be charged for. In the event of any delay on your part in attending such tests after seven days notice that we are ready, the tests will be performed in your absence and shall be deemed to have been made in your presence.

7. **Performance** – We will accept no liability for failure to attain any performance figures quoted by us unless we have specifically guaranteed them, subject to any tolerances specified or agreed to by us, in an agreed sum as liquidated damages.

If the performance figures obtained on any test provided for in the contract are outside the acceptance limits specified therein, you will be entitled to reject the goods.

Before you become entitled to claim liquidated damages or to reject the goods we are to be given reasonable time and opportunity to rectify their performance. If you become entitled to reject the goods, we will repay to you any sum paid by you to us on account of the contract price thereof and any sum that may have accrued due to you in respect of delay in despatch under Clause 9 up to the date of such rejection.

You assume responsibility that goods stipulated by you are sufficient or suitable for your purpose save in as far as your stipulations are in accordance with our advice.

8. **Liability for Delay** – Any times quoted for despatch are to be treated as estimates only and we shall not be liable for failure to despatch within such time. In all cases, whether a time be quoted for despatch or not, the time for despatch shall be extended by a reasonable period if delay in despatch is caused by instructions or lack of instructions from you, or by industrial dispute, or by any cause whatsoever beyond our reasonable control.

9. **Small Order Charge** – The Company reserves the right to impose a small order charge to cover cost of administration of low value orders.

10. **Rejection** – Unless otherwise agreed goods rejected by you as not complying with the contract must be rejected within 7 days of receipt by you.

11. **Loss or Damage in Transit** – 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 carrier's 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, and provided further that you give us full co-operation in making claims against the carriers for such loss or damage.

12. **Terms of Payment** – Terms of payment, unless otherwise notified are CASH IN FULL WITHIN 30 DAYS FROM END OF MONTH. NO DISCOUNT IS ALLOWED.

If, in the opinion of the Company, the financial conditions of the Purchaser at any time does not justify continuance of production or shipment on the terms of payment previously agreed in writing, the Company may require full or partial payment in advance. The Company shall have no obligation to state any reason therefore.

Interim payments become due as deliveries are made.

# CONDITIONS OF SALE

If despatch is delayed by the Purchaser, payments shall become due from date when the Company is ready to despatch goods.

Any liability on our part is subject to the terms of payment and all your other obligations to us under the contract being strictly observed.

13. **Failure to Pay** – Failure on your part to pay in accordance with the terms of the contract for goods delivered shall entitle us (without prejudice to any other remedy we may have) to withhold further deliveries both in respect of the Contract or series of Contracts in question and any other Contract for delivery of goods to you or any subsidiary parent or any other company with which you may be associated either at the same time or subsequently until such payment has been made, but you shall in such event also be liable to us for the cost of all materials and work in connection with manufactured or partly manufactured articles acquired or made by us for the purpose of future deliveries to you less an allowance of the value thereof as realised or as utilised by us for other purposes. In addition thereto the Company shall have the right to charge compound interest on payments overdue at a rate of 3% above Bank of England minimum lending rate for the time being.

14. **Storage** – If we do not receive forwarding instructions sufficient to enable us to despatch the goods within 14 days after the 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 damage shall be payable by you. Any necessary testing or refurbishing after such storage shall be carried out at your expense.

15. **Defects after Delivery** – We will make good, by repair or, at our option, by the supply of a replacement, defects which, under proper use, appear in the goods within a period of twelve calendar months after the goods have been delivered and arise solely from faulty design (other than a design made, furnished or specified by you for which we have disclaimed responsibility in writing), materials or workmanship: Provided always that defective parts have been returned to us if we shall have so required. We shall refund the cost of carriage on such returned parts and the repaired or new parts will be delivered by us free of charge. Our liability under this clause shall be in lieu of any warranty or condition implied by law as the quality of fitness for any particular purpose of the goods and save as provided in this clause we shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects or from any work done in connection therewith. Any equipment returned as faulty but upon investigation is found not to be so shall incur a testing charge of £42 whether within or without the warranty period.

16. **Return of Equipment** – No goods supplied pursuant to your order may be returned for any reason without first obtaining our written permission, and all transportation charges shall be prepaid by the purchaser. Any cost incurred by us to put equipment in first class condition as a result of damage during transportation, or any other reason, will be charged to the purchaser. All returns of equipment not required as part of the contract shall incur a restocking charge of 25% of equipment value.

17. **Patents** – We will indemnify you against any claim for infringement of Letter Patent, Registered Design, Trade Mark or Copyright (published at the date of 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 to the use of such article or material in a manner or for a purpose or in a foreign country not specified or disclosed to us, or for 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 on 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 settlement of the claim. You on your part warrant that any design or instruction furnished or given by you shall not be such as will cause us to infringe and Letters Patent, Registered Design, Trade Mark or Copyright in the execution of your order.

18. **Liability for Accidents and Damages** – If we, our agents or sub-contractors are on site for the purposes of the contract then, notwithstanding the provisions of Clause 15 we will indemnify you against direct damage or injury to your property or person or that of others occurring while we are working on the site to the extent caused by negligence of ourselves, our sub-contractors or agents, but not otherwise by making good such damage to property or compensating personal injury. Proving that (a) our total liability to your property shall not exceed £250,000, or the contract price whichever is greater, and (b) we shall not be liable to you for any loss of profit or of contract or, save as aforesaid for any loss, damage or injury of any kind whatsoever. Save as provided in Clause 15 we shall not be liable for any damage or injury occurring after our completion of work on site. You shall be deemed to undertake responsibility at all times to ensure that the equipment is properly installed, commissioned, operated and maintained by competent persons and in accordance with instructions available.

19. **Fair Wages Clause** – We undertake to be bound by a fair wages clause in the terms of the House of Commons Resolution of 14<sup>th</sup> October 1946. We also undertake that when the installation of machinery and equipment is carried out by persons sent from the Contractor's or Sub Contractor's establishment they shall receive the same rate payable in terms of the Fair Wages Clause to such workpeople in such establishment, and in addition shall receive the outworking allowances recognised for outworkers sent from such establishment.

20. **Arbitration** – If at any time any questions, dispute or difference whatsoever shall arise between you and ourselves upon, in relation to, or in connection with the contract, either of us may give to the other notice in writing of the existence of such questions, dispute or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon, or failing agreement within 14 days of receipt of such notice, or some person appointed by the President for the time being of the Institution of Electrical Engineers.

21. **Legal Construction** – Unless otherwise agreed in writing, the contract shall in all respects be construed and operate as a Scottish contract and in conformity with Scottish law.

22. **Notice** – Any notice required or permitted to be given hereunder may without prejudice to the use of any other method be given by sending the same pre-paid post to either the Registered Office for the time being of the addressee or its last known business address and any Notice so sent shall be deemed to have been given at the time when in ordinary course the letter would reach its destination.

23. **Radio and Mains Interference** – Unless otherwise agreed in writing it is the responsibility of the user to apply any necessary suppression at the point of installation.

24. **Variations** – No understanding, promise or representation and no waiver, alteration or modification of any of the provisions hereof shall be binding on the seller unless given or approved in writing by an authorised representative of the seller.

25. **Health and Safety at Work** – The goods that we manufacture are designed in accordance with accepted International and British standards and are as far as it is reasonably practicable, so designed and constructed as to be safe without risk to health and safety when used properly. It is the obligation of the purchaser to ensure that the goods are properly installed, commissioned, operated and maintained by competent persons and in accordance with any instructions made available, relevant regulations including IEE wiring regulations and the accepted rules of the art.

## 26. Risk and Title

26.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the goods:

- If the Company delivers the Goods by its own transport or in accordance with a specific contractual obligation arranges transport for the Goods at the time when the Goods or a relevant part thereof arrives at the place of delivery or
- In all other circumstances at the time when the Goods or a consignment or other part thereof leaves the premises of the Company.

26.2 Title to the Goods or any relevant part thereof shall only pass to the Customer upon the happening of any one of the following events:

- the customer has paid to the company all sums due and payable by it to the Company under the Contract and all other prior contracts between the Company and the Customer, or
- when the Company serves on the Customer notice in writing specifying that title in the Goods or such part thereof has passed.

26.3 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licences the Company its officers, employees and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that the condition 26.4 below is being complied with by the Customer or of recovering any Goods in respect of which property has not passed to the Customer.

26.4 Until title of the Goods has passed to the Customer pursuant to the terms hereof it shall possess the Goods as a bailee of the Company on the terms of this contract. If the Company so requires the Customer shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company.

26.5 The Customer shall only be at liberty to sell the Goods or any of them, whether in their original state or combined with other goods, prior to passing of title on the understanding that if a Customer does sell the Goods then the Customer will hold the whole of the proceeds of sale received by it, including the proceeds of sale of other goods combined with the Goods, on trust for the Company. The Company will, after all sums owing by the Customer under this contract and any other sums owing by the Customer to the Company under any other contract or contracts in existence between the Company and the Customer at the date of this contract (whether or not such sums are then due for payment), have been settled out of the trust fund, account to the customer for surplus sums included in the trust fund.