

CYCLONE VENTILATION CONDITIONS OF SALE

1. GENERAL

All orders are accepted subject to the following Conditions of Sale and in the event of any conflict of inconsistency between these conditions and the terms of your order, these conditions will prevail otherwise agreed by us in writing.

2. PERIOD OF TENDER/PRICE

Unless previously withdrawn, tenders are open for acceptance in writing for thirty days from date of tender or from the date hereof. The price quoted is exclusive of Value Added Tax or any similar taxes, where applicable, and the Buyer shall pay such Tax or Taxes.

3. BASIS OF TENDER

- (1) This tender is conditional upon the Buyer having supplied the Seller ("Cyclone") with adequate drawings (where Cyclone is not responsible for design) and with such information regarding construction details and site conditions as will enable Cyclone to make reasonable estimate of the cost of the supply and installation and the work to which the tender relates (hereinafter referred to as "installation") and the time for its completion. In the event of the Buyer supplying inadequate or inaccurate drawings, information or details, the tender prices shall be adjusted accordingly and any additional and/or wasted cost be paid for by the Buyer.
- (2)(a) This tender covers the items in the specification and/or drawings only and, unless expressly stated, does not include the following items:
 - i) building, plumbing and electrical work or the associated work of other trades;
 - ii) the supply and erection of scaffolding, ladders, moveable platforms, hoisting and/or lowering plant necessary for the execution of the installation;
 - iii) the cost of operating any part of the installation;
 - iv) the cost of any fuel, water or electricity used on site.
- (b) Unless otherwise expressly stated, any costs incurred by Cyclone in providing any of the items referred to in paragraphs 3(2)(a) shall be reimbursed by the Buyer
- (c) Cyclone will not be liable for any design or drawing unless it has agreed to design any installation or prepare any drawing on the Buyers behalf and invoices the Buyer for the service, in which event the Buyer warrants that all information supplied to Cyclone for the purpose of preparing the design or drawing is full and accurate and Cyclones liability in respect of any defect in or damage resulting from its design or drawing shall be limited to the cost invoiced by Cyclone to the Buyer for such service.

4. CONTRACT PRICE VARIATION/FLUCTUATION

Unless a Fixed Price is agreed, orders are accepted only on condition that goods are paid for at the current rate at date of despatch. The tender price shall be adjusted in accordance with the contract price fluctuation.

5. FIXED PRICE BASIS

- (1) Where expressly stated to be on a fixed price basis, this tender is based upon the types and rates of contributions, taxes, levies and duties (hereinafter referred to as 'the tax items') payable by Cyclone in respect of the execution of the installation and which are current at the date of this tender.
- (2) If after the date of tender there is any increase or decrease in the cost to Cyclone of executing the installation caused by any change in or cessation of any one or more of the tax items or by the introduction of any new contribution, tax, levy or duty payable by Cyclone in connection with the execution of the installation, then the tender price shall be increased or decreased accordingly.

6. ACCEPTANCE

All orders must be accompanied by sufficient information to process the order forthwith, otherwise the Seller shall be at liberty to amend the price or prices to cover any increase in cost which has taken place after acceptance.

7. LIMITS OF CONTRACT

The acceptance of order includes only such goods, accessories and works as specified in the Tender.

8. EXTRA COST

In the event of variation or suspension of the work by the Buyers instructions or lack of instructions, Cyclone reserves the right to increase the price to cover any extra expense incurred.

9. OVERTIME

All additional costs caused by working overtime at the request or with the consent of the Buyer shall be charged as an addition to the tender price and paid by the Buyer.

10. DRAWINGS AND SPECIFICATIONS

All descriptive specifications, drawing, particulars of weights and dimensions submitted with tenders or included in Cyclones brochures, merely represent a general idea of the goods described therein and do not form part of a contract. After acceptance of an order, certified outline drawings may be supplied without charge, if so required.

11. VARIATIONS

- (1) The term 'variation' refers to the alteration or modification of the design, quality or quantity of work executed for the Installation, and includes the addition, omission or substitution of any work and the alteration of the kind or standard of any of the materials of goods to be used in the Installation.
- (2) The Buyer may order variations to the Installation and Cyclone shall comply with such orders but not until:
 - i) The same have been ordered in writing by the Buyer or, where ordered orally, confirmed in writing by Cyclone; and
 - ii) The value of the variation has been agreed where it is reasonably possible to estimate such value and
 - iii) all charges, costs and/or expenses incurred up to the date of variation are paid by the Buyer unless waived in writing by Cyclone.
- (3) If it is not reasonably possible to estimate the value of a variation before Cyclone complies with the order, or if the order is complied with before such value has been agreed, then a fair valuation of a variation shall be made and paid in addition to the charges, costs and expenses of the original work unless waived by Cyclone in writing.
- (4) Where the value of a variation has not been agreed under paragraph 5(2)(ii) or a fair valuation under sub clause 5(3) is not made, then Cyclone shall be allowed in addition to the charges, costs and expenses of the original work (unless waived by Cyclone in writing) the prime cost of the variation work calculated in accordance with the "Definition of Prime Cost of Daywork Carried Out Under A Building Contract" current at the date of tender and issued by Royal Institution of Chartered Surveyors, together with such percentage additions to each section of prime cost as are given to the Buyer upon his application for the same or prior to the execution of such day work.

12. CANCELLATION

Where cancellation of an order is involved, a charge assessed on the costs incurred up to the date of cancellation will be made.

13. INSPECTION AND TESTS

Our goods are inspected and where practicable, given standard tests before despatch. Should special tests or tests in the present of the Buyer or his representatives presence be required, these must be made at the Sellers Works and will be charged extra. Should any delay on the Buyers part in attending such tests after seven days notice that the Seller is ready, the tests will proceed in his absence and shall be deemed to have been made in his presence.

14. PERFORMANCE

Any performance figures by Cyclone are based upon their experience and are those Cyclone would expect to obtain on test. Any departure from these figures shall not invalidate the contract or entitle the Buyer to compensation or damages. Cyclone is entitled to assume that the information and figures given by the Buyer or his representatives are accurate.

15. CARRIAGE

Unless otherwise stated goods are delivered carriage paid in the UK mainland.

16. DELIVERY DATES

Delivery periods stated on Tenders and acknowledgements are from receipt of full and final instructions, in writing, enabling the work to be put in hand, but exclude statutory holidays. Time lost in delay in providing such details will be added to the original period. If the work is delayed outside Cyclones control or modifications made by the Buyer or his representatives, Cyclone shall be entitled to an extension of the time stipulated for compensation. Valid reasons for extensions shall include strikes, lock-outs, war, fire accidents or defective materials. Cyclone shall not be liable for any penalty for late delivery nor for any payment of liquidated damages.

17. RESERVATION OF TITLE

- (1) Materials or goods ("the Goods") supplied by Cyclone shall be at the Buyer's risk as from delivery. If any part of the installation or any materials and/or goods are destroyed, damaged or lost through any cause then Cyclone shall be entitled to charge variation to the contract for the repair/restoration of any work or the replacement of any materials or goods destroyed, damaged or lost.
- (2) In spite of delivery of Goods being made, property in the Goods shall not pass from Cyclone until:
 - (i) the Buyer has paid the cost of all work and the Goods plus VAT in full whether in voiced or not; and
 - (ii) no other sums whatever are due from the Buyer to Cyclone.
- (3) Until property in the Goods passes to the Buyer in accordance with clause 19 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for Cyclone. The Buyer shall ensure that the Goods are not incorporated into or fixed to any other goods, structures or installations and that they are stored at no cost to Cyclone separately from all other Goods on site or in its possession, marked in such a way that they are clearly identified as the property of Cyclone.

- (4) Notwithstanding that the Goods remain the property of Cyclone, if the Buyer sells or uses the Goods in the ordinary course of the Buyers business it may only do so if the Goods (or goods into which the Goods have been incorporated) are sold at full market value for the account of Cyclone. Any such sale or dealing shall be a sale or use of Cyclone's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principle when making such sales or dealings. Until the property of the Goods passes from Cyclone the entire proceeds of the sale or otherwise of the Goods shall be held in trust for Cyclone and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified and traceable as Cyclone's money. If, in breach of this clause monies are co-mingled then without prejudice to Cyclone's rights and remedies, the Buyer agrees that the last monies paid into the Buyers account up to the value of the Price shall be treated as the proceeds of the sale and held in trust for Cyclone.
- (5) Cyclone shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from Cyclone.
- (6) Until such time as property in the Goods passes from Cyclone, the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or been sold to Cyclone. If the Buyer fails to do so Cyclone may enter upon any premises owned occupied or controlled by the Buyer where Goods are situated and repossess the Goods. On the making of such a request the rights of the Buyer under clause 18(4) shall cease.
- (7) The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of Cyclone. Without prejudice to the other rights of Cyclone, if the Buyer does so all sums whatever owing by the Buyer to Cyclone shall forthwith become due and payable.
- (8) The Buyer shall insure the Goods and keep them insured to the full amount of the Price against 'all risks' to the reasonable satisfaction of Cyclone until the date that property in the Goods passes from Cyclone and shall whenever requested by Cyclone produce a copy of the policy of insurance. Without prejudice to other rights of Cyclone, if the Buyer fails to do so all sums whatever owing by the Buyer to Cyclone shall forthwith become due and payable.
- (9) The Buyer shall promptly deliver the prescribed particulars of this contract to the Companies Registrar in accordance with Companies Act 1985 (as may be amended or varied or as may be required by any other legislation). Without prejudice to the other rights of Cyclone, if the Buyer fails to do so all sums whatever owing by the Buyer to Cyclone shall forthwith become due and payable. The Buyer further agrees that in the event that it does not deliver the prescribed particulars to the Companies Registrar as required to do so (or any liquidator, Administrator, Trustee or Receiver as may be appointed in respect of the Buyer or its assets) shall not be permitted to rely upon failure to do so in order to defeat this clause.

18. STORAGE

Any delivery will be delayed to meet the Buyers wishes, where possible without charge, but Cyclone shall be entitled to recover storage and insurance costs from the Buyer for goods retained at their request if incurred. Goods so held will be invoiced in full or in part pending release instructions and our terms of payment apply.

19. PASSING OF RISK

Risk in the Goods shall pass to the Buyer at point of delivery, except that where delivery 'ex works' is stipulated, risk shall pass to the Buyer when Goods are loaded into vehicles at Cyclone's works. In the absence of written advice by the Buyer to Cyclone within three days of delivery for any damage or within ten days of despatch for non-delivery. Goods shall be deemed to have been delivered complete and in a satisfactory condition and accepted by the Buyer. If the Buyer does not accept any Goods when delivered, Cyclone may at his option, exercisable by notice in writing to the Buyer, either treat the property and risk in the Goods as having passed to the Buyer, or may sell the Goods for the account of the Buyer who shall make good on demand any loss, damage and expenses incurred by Cyclone.

20. LOSS OR DAMAGE IN TRANSIT

Cyclone will repair, or at his option, replace free of charge goods lost or damaged in transit, provided that Cyclone and the carriers receive written notification of such damage within three days of delivery or if lost, within ten days from date of advice. Cyclone shall not be under any obligation to give the Buyer any further notice, statutory or otherwise that he accepts no such responsibility. If Bills of Lading are taken out by Cyclone, he will, on the Buyers instructions and at his expense, insure against loss or other risk, and will on receipt of the Buyers indemnity take all reasonable steps, apart from legal proceedings, to recover from the insured any loss or damage for which they are liable.

21. GUARANTEE

- (1) The Seller will replace or make good by repair free of charge, any equipment wholly of Cyclones manufacture, accepted by him to be defective due to faulty material or workmanship notified to Cyclone within twelve calendar months from date of delivery. Equipment to be repaired at Cyclones Work to be returned to Cyclone carriage paid.
- (2) No liability will be accepted for goods failing due to wear and tear, corrosion, electrolytic, galvanic or other destructive action, damage caused by carelessness, incompetence or faulty maintenance or deterioration during any storage period.
- (3) Goods or materials supplied which are not wholly of the Sellers manufacture are sold under such warranty as the manufacturers or suppliers of such goods or materials shall give and which Cyclone is able to enforce without expense but are not guaranteed by Cyclone in any way.
- (4) Cyclone shall not be liable in any way for any repair, making good or replacement not carried out by Cyclone, unless otherwise agreed in writing.
- (5) In fulfilling Cyclones guarantee under this clause he shall not in any circumstances be liable to the Buyer for any loss or damage direct or indirect howsoever arising. All implied conditions, warranties or other terms, whether implied by statute, common law or otherwise are hereby expressly excluded. No warranty, guarantee, condition or terms as to the fitness for purpose, safety, avoidance of risks to health and performance suitability, or quality of the goods whatsoever except as appears in the Tender, Cyclone shall not be liable in any way for any innocent misrepresentation.
- (6) Where equipment has been supplied outside the UK, the Cyclone guarantee covers only the provision of replacement parts or materials and the responsibility for fitting replaced parts or materials rests with the Buyer.

22. LIABILITY FOR ACCIDENT OR DAMAGE

Applicable only when the Seller provides services on site and such services are not subject to the terms of any other contract with the Seller. Notwithstanding the provisions of clause 21, the Seller will indemnify the Buyer against direct damage or injury to its property or person that of other occurring while Cyclone is working on site to the extent caused by the negligence of them or its servants, but not otherwise by making good such damage to property or compensating personal injury. Provided that a) Cyclones total liability shall not in any case exceed £500,000 or the contract price, whichever is the lesser and b) the Seller shall not be liable to the Buyer or user for any loss of profit or contracts, or except aforesaid, for any loss, damage or injury of any kind whatsoever. Except as provided under clause 21 Cyclone shall not be liable for any damage or injury occurring when Cyclone or its servants are absent from site after completion of work on site.

23. DRAWINGS

The copyright in any drawings, illustrations or descriptive matter (hereinafter referred to as 'documents') submitted by Cyclone shall remain its property. The copyright in any documents submitted by the Buyer shall remain its property.

24. TERMS OF PAYMENT

A first time Buyer will be issued with a Pro Forma invoice for 25% of the cost of the order. The remaining amount is payable 30 days after installation completion. Thereafter, unless specifically agreed, payment in full is due at the end of the month following the month of invoice. All works carried out exclude any form of Contractor retention unless specifically agreed in writing prior to works to be carried out by Cyclone.

- (1) During works being carried on Installation, Cyclone shall be entitled to be paid in instalments.
 - (i) Cyclone may apply for interim payment to the Buyer at any time or at such specific intervals as are agreed between the parties in writing, stating the total value of work to date properly executed (including the value of any materials or plant intended for incorporation into the installation provided the same have been delivered to site in respect of what Cyclone has paid his supplier or is legally bound to make such payment, and of any fluctuations assessed in accordance with Clause 4 & 5, and of any variations which have been executed) and of any Value Added Tax.
 - (ii) Within 14 days of receipt of such application the Buyer shall pay to Cyclone the full amount properly applied for less any agreed retention percentage and less any amounts previously paid. Provided that any Value Added Tax properly due to Cyclone from the Buyer shall not be subject to the deduction of retention money.
- (2) The retention money referred to in paragraph 24(1)(ii) shall be paid in full to Cyclone within one month of the completion date of the installation or immediately in the event that any execution is levied over the assets of the Buyer or any Liquidator, Administrator, Receiver, Supervisor or Trustee is appointed or is proposed by appointed over the Buyer or its assets.
- (3) If the Buyer fails to make any payment in accordance with these Conditions, and such failure continues for seven days after Cyclone has given written notice of the same, then without prejudice to any other rights or remedies of Cyclone, he may suspend the further execution of the Installation until such payment is made and any such period of suspension shall be deemed to be an extension of the period for completion determined in accordance with Clause 24 and shall not be deemed a delay in the completion of the installation for which Cyclone is responsible.
- (4) Where an invoice is marked as a Sales Invoice all monies due under that invoice are due for immediate payment.
- (5) In the event that the payment is not received in full by the due date interest on the amount due may be charged from the date of the invoice until payment in full.

25. TIME FOR COMPLETION

- (1) Subject to sub-clause 24(3) Cyclone shall, so soon as he has possession of the site, proceed regularly and diligently with the execution of the installation.
- (2) Upon it becoming reasonably apparent that the progress of the installation is delayed, Cyclone shall forthwith give written notice of the delay to the Buyer stating the cause and, where reasonably practicable, the extent of the delay. Upon receipt of the said notice and where the delay is due to circumstances beyond Cyclone's control, the Buyer shall forthwith grant Cyclone a fair and reasonable extension of time for completion of the installation.

26. FAILURE TO PAY

- (1) Cyclone reserves the right to charge interest at a rate of 5% above the Barclays Bank Minimum Lending Rate on all overdue payments – such interest to be calculated from the date when payment is due until the date when the same is received by Cyclone
- (2) Failure on the Buyers part to pay in accordance with the terms of the contract for goods delivered shall entitle the Cyclone to cease work on this and/or any other contract with Buyer or at Cyclones option to cancel this and/or any other contract with the Buyer until payment has been made to Cyclone in full.

27. LEGAL CONSTRUCTION

The contract shall in all respects be construed in conformity with English Law and to be subject to the exclusive jurisdiction of the English Courts.

28. ENTIRE AGREEMENTS

This Contract constitutes the entire agreement between the parties hereto and supersedes all other representations, terms or conditions whether expressed or implied/made by either party hereto either in antecedent negotiations or contained in the Buyers order and not amendment shall be made hereto except by written consent of both parties.