



## STANDARD TERMS AND CONDITIONS OF SALE

### QUOTATION

1 All orders placed pursuant to our quotation must be in writing and a binding contract will not exist until such orders are accepted by us in writing. Our scope of work shall be as specified in our quotation together with any variations agreed pursuant to the contract. All contracts will be deemed to be subject to our Standard Terms and Conditions of Sale as set out herein and any terms and conditions specified by the purchaser shall be ineffective, these Terms are not variable unless the Seller has expressly agreed in writing to such variation.

### VALIDITY

2 Subject to our right to withdraw our quotation at any time it will remain valid for a period of 30 days from the date thereof unless an alternative period of validity is specifically stated therein. At the end of the said period any extension to the validity is strictly at our discretion and subject to our written confirmation.

### PRICE

3 Price and terms of payment are as specified in our quotation. All additional cost and expense due to a variation in the goods to be supplied or work to be done or to changes in drawings, specifications or information provided by the purchaser on which the quotation is based will be paid by the purchaser. Delivery is not included unless specifically stated in our quotation.

4 The price specified in our quotation is based on the cost of all items including material, labour, utilities and transport on the date of the quotation.

5 Unless otherwise expressly stated in our quotation the price specified therein does not include United Kingdom value added tax, and where applicable this will be added thereto and paid by the purchaser. Responsibility for any other charges arising from the export, import, sale or delivery of the goods shall be determined by reference to the applicable Incoterm (2010) applying to the contract.

### DRAWINGS AND SPECIFICATIONS

6 All descriptions, drawings and details of weights and dimensions submitted with our quotation are approximate only. We reserve the right to make such reasonable changes as we consider are necessary to the quotation details either before any order is placed or during the course of the contract provided that we shall not thereby render the goods unsuitable for the purpose for which they are intended. Our quotation together with any accompanying reports, specifications, calculations and other documents and information submitted by us to the purchaser in connection with the contract shall be regarded as confidential and must not be disclosed by the purchaser to any third party without our prior written consent.



7 All information, specifications, drawings or other particulars to be provided by the purchaser must be supplied within a reasonable time of acceptance of the order.

## PACKING

8 Unless expressly stated otherwise in our quotation, all packing cases, pallets and crates accompanying the goods shall be disposed of by the purchaser at the purchaser's cost.

## TESTS AND PERFORMANCE

9 Our fabrications are carefully inspected and where practicable submitted to standard tests at our works, in accordance with the details stated in our quotation, before despatch. If any additional tests are required these, unless otherwise agreed, must be made at our works and will be the subject of an additional charge. In the event of the purchaser failing to attend any tests, having been given at least 3 days prior notice thereof, the tests will proceed in the purchaser's absence and shall be deemed to have been made in his presence.

10 The purchaser warrants the correctness and suitability of any particular design, make or type of plant, goods or material specified or supplied by the purchaser for inclusion in our supply.

## DELIVERY, SUSPENSION AND DELAY

11 The period within which the goods are to be delivered and/or services performed will commence from the date of our written acceptance of the order pursuant to clause 1 hereof and provided that the purchaser has supplied all necessary information and drawings or other particulars required for the work to be put in hand.

12 If work pursuant to the contract is interrupted by any cause outside our reasonable control the delivery dates will be varied to such an extent as may be reasonable.

13 If for any reason the purchaser is unable to accept delivery of the goods when the goods are ready for despatch we may at our option arrange storage of the goods at the purchaser's risk whereupon the goods shall be deemed to have been delivered for all purposes, and the purchaser shall be liable to us for the reasonable costs of such storage, including insurance, handling charges and any other charges. This provision is without prejudice to any other rights which we may have in respect of the purchaser's failure to take delivery of the goods or to pay for them in accordance with the contract.

14 Where goods are to be transported within the United Kingdom and where we are responsible under the contract for the transport of the goods then, unless stated otherwise in our quotation, we have based the price upon carriage by road to the specified destination by the most direct route on the assumption that the approval, if any, required for such carriage will be forthcoming from the appropriate authorities. Should such approval be refused rendering necessary changes in the goods, their mode



of carriage or the route to be taken then the purchaser shall bear the additional cost arising therefrom.

15 Save where expressly provided otherwise in these Standard Terms and Conditions of Sale, the definitions and rules in Incoterms 2010 shall apply and risk in the goods shall pass to the purchaser in accordance with the applicable Incoterm or, where no such Incoterm is specified, upon delivery.

16 Any requests by the purchaser to suspend work or delay delivery ("Suspension") must be made in writing. Any agreement to comply with this request shall be at our absolute discretion and subject to the following conditions:

- (i) any additional cost we reasonably and necessarily incur in complying with a purchaser's request for Suspension will be to the purchaser's account and payable as a variation to the contract, in full, with the next payment milestone due;
- (ii) if, as a result of a Suspension, a contractual milestone for payment is not achieved, we will be entitled, on the original milestone date, to the payment that would otherwise have become due together with additional costs referred to in 16(i) above;
- (iii) requests to resume work are to be made to us in writing;
- (iv) following a request to resume work we will be entitled to an extension of time to complete all work and we will notify the purchaser of the revised delivery date;
- (v) we will not be required to resume work if any payments are outstanding, and will be entitled to cease work if payments subsequently become overdue;
- (vi) if a request to resume work is not received by us within 60 calendar days of receipt of a Suspension request then we will be entitled at our discretion to consider the contract as cancelled or agree with the purchaser a further period of Suspension;
- (vii) if we decide pursuant to 16 (vi) that the contract is cancelled, then the provisions of clause 17 will take effect;
- (viii) if after 60 days no extension period is agreed pursuant to clause 16 (vi) then we shall be entitled at our discretion to consider the contract as cancelled and the provisions of clause 17 will take effect.

## TERMINATION

17 To the extent permitted under the applicable law and without prejudice to any other rights and remedies under the contract, we shall be entitled to terminate the contract forthwith by written notice to the purchaser if:

- (a) the purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the purchaser; or
- (c) the purchaser ceases or threatens to cease its business; or
- (d) we reasonably consider that any of the events mentioned in (a),



- (b) or (c) above is about to occur in relation to the purchaser and we notify the purchaser accordingly; or
- (e) the purchaser shall fail to pay any amounts falling due to us within seven days of the date payment is due; or
- (f) the purchaser shall commit a breach of any term or condition of any contract with us and shall fail to remedy such breach within fourteen days of dispatch by us of a letter requiring him to remedy such breach; or
- (g) we consider pursuant to clause 16(vi) and 16(viii) that the contract is cancelled.
- In the event of termination under this clause 17, the purchaser shall pay to us the valuation of the work undertaken as at the date of termination, any expenditure reasonably incurred by us in the expectation of the performance of, or in consequence of the termination of, the contract and our loss of anticipated profit.

## PURCHASER'S MATERIAL

18 Where the contract includes or is limited to the fabrication or machining of the purchaser's material the work is undertaken on the basis that such fabrication or machining of the purchaser's material shall be at the purchaser's risk. In the event of damage to the purchaser's material we shall have no liability for the value thereof nor for the cost of prior operations performed thereon. All excess material removed becomes our property. All damage to our or our subcontractors' machinery caused by unsuitable or defective purchaser's material will be made good at the expense of the purchaser. The purchaser shall also pay at our standard contract rates for any additional work due to greater than normal processing allowances on purchaser's material and for all work on purchaser's material where that material in the course of fabrication or machining or processing proves to be unsuitable or defective.

## GUARANTEE

19 We will repair or replace, as we shall at our discretion determine, any part of the goods which within 12 calendar months from the date the goods are put into service, but not exceeding 18 calendar months from the date of despatch from our works, proves defective by reason of faulty design (to the extent we are responsible for design), materials or workmanship. We will not be liable in respect of repairs made or attempted to be made without our express sanction in writing. Replacement parts supplied pursuant to this clause 18 will be delivered free within the United Kingdom (or FOB UK port in the case of goods for export), provided that the defective parts (which thereafter become our property) are promptly returned to our works at the purchaser's cost.

20 We will re perform any part of the services which within 3 months from the date of completion of the services proves to be inadequate or defective provided, however, that where we are required to take such steps outside of mainland UK then the Purchaser shall pay to us the difference between the expenses actually incurred by us and the expenses that would have been incurred by us had such steps been taken within mainland UK.



21 Our liability under clause 18 and clause 19 shall, to the fullest extent permitted under the applicable law, be the sole remedy for defects and in lieu of any warranty or condition implied by law as to the quality, workmanship or fitness for any particular purpose of the goods to be supplied hereunder and/or the services to be performed.

## LIMITATION OF LIABILITY

22 a) We shall not, to the fullest extent that we are permitted to exclude our liability under the applicable law, be responsible whether in contract or in tort (including negligence, economic tort or otherwise) or by operation of law or by way of any indemnity obligation arising under the contract or howsoever arising for incidental, special, economic, indirect or consequential loss and/or damage of whatever nature (whether or not claimed or suffered by the purchaser and/or any person, business or entity not a party to the contract) including, but not limited to, loss of use or availability of the goods and/or other equipment and/or systems, loss of production, down time costs, loss of contract, loss of business opportunity, loss of profits (including overheads and fixed costs), and/or loss of revenue arising out of or in connection with the performance of our obligations under the contract and/or the performance, adequacy and/or suitability of the goods and/or service supplied, including any such damages as may be reasonably foreseeable at the date of the contract.

(b) To the fullest extent that it is permitted to limit liability under the applicable law, and regardless of any provision to the contrary contained elsewhere in the contract, our total cumulative liability to the purchaser arising from the contract for any acts or omissions whether in contract and/or in tort (including negligence, economic tort or otherwise) and/or by operation of law and/or by way of any indemnity obligation arising under the contract or howsoever arising shall in all cases be limited to, and in no case exceed, either (i) the contract price or £250,000 (two hundred and fifty thousand pounds) whichever is the lesser or (ii) where the purchaser's claim is recoverable under our insurance, the aggregate of the sum specified in 21 (b)(i) plus the sums recovered under our insurance.

(c) In the event of there being any ambiguity or discrepancy between the provisions of this clause 21 and any other clause in the contract then this clause 21 shall take precedence.

(d) Nothing contained in this Clause 21 is intended to, or shall be construed as, limiting and/or excluding our liability for (i) personal injury and/or death arising out of negligence; (ii) liability for fraud or fraudulent misrepresentation; and/or (iii) any other liability which cannot be limited or excluded by applicable law.

## PATENTS

23 All reasonable care is taken to ensure that the use of the goods in the normal course in the United Kingdom does not infringe any patent or other intellectual property right of third parties. The purchaser will indemnify us in the event of an infringement or alleged infringement of any patent or other intellectual property right by us as a consequence of our acting in accordance with instructions, designs or specifications supplied wholly or in part by the purchaser.



## PAYMENT AND TITLE

24 The purchaser shall pay the contract price at the time the same falls due. If the whole or any part of the contract price shall not be paid at such time, for whatever reason, we reserve the right to charge interest at 2% per annum above the base lending rate of Barclays Bank plc on the unpaid amount accruing daily from the due date until the date of payment. Any interest which is due to us pursuant to this clause will be paid by the purchaser upon our demand.

25 Title to the goods shall not pass to the purchaser until the purchaser has paid in full the contract price for the goods. If the goods or any part thereof are delivered to the purchaser before the purchaser has paid the contract price in full for the goods, then the purchaser shall hold the delivered goods as our bailee and to our order (and comply with such instructions as we shall give in respect thereof) and any sums received by the purchaser for or on account of the delivered goods shall be held by the purchaser on behalf of and in trust for us and shall be paid to us by the purchaser on our demand.

26 Where the contract specifies or implies payment against documents and it is the purchaser's responsibility to provide transport and such transport is not provided promptly, then we shall be entitled to place the goods in a warehouse at the risk and cost of the purchaser and we may present the warehouse receipt to obtain payment. Any commercial payment documents shall so provide.

## WARRANTIES AND REPRESENTATIONS

27 Any warranties and guarantees intended to be provided by us to the purchaser are those expressly included herein and in our quotation and no additional warranties, guarantees or representations shall be implied into the contract and are to the fullest extent permitted under the applicable law expressly and intentionally excluded. The purchaser acknowledges and agrees that, in entering into a contract with us, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to the contract or not) other than as expressly set out or referred to herein and in our quotation. For the avoidance of any doubt, nothing herein shall exclude or limit our liability for fraudulent misrepresentations or shall exclude our liability for any fundamental misrepresentation.

## THIRD PARTY RIGHTS

28 A person who is not a party to the contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the contract but this does not affect any right or remedy of any third party which exists or is available apart from that Act.

## ASSIGNMENT AND SUBCONTRACTING

29 The purchaser shall not assign the contract or delegate the performance of its duties under the contract unless our prior written consent is given in writing. We reserve the right to sub-contract the whole or any part of the contract.



**Francis Brown Ltd**

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#### INVALIDITY

30 The invalidity of any provision of these Standard Terms and Conditions of Sale shall not affect the validity of the remaining provisions. If any provision of these Standard Terms and Conditions of Sale proves to be invalid or inoperable then the parties shall replace the invalid or inoperable provision with a new one reflecting as closely as possible the original provision.

#### HEADINGS

31 Headings used herein are provided for convenience only. They shall form no part of the contract and shall not be used to construe meaning or intent.

#### LAW

32 The contract shall be governed by English law.

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Company Number 446866

Registered Address;  
Francis Brown Limited  
Church Road  
STOCKTON ON TEES  
TS18 2HL



***Francis Brown Ltd***

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