

## **M.J. ALLEN GROUP OF COMPANIES**

### **TERMS AND CONDITIONS OF SALE**

#### **1. GENERAL.**

For the purposes of these Conditions of Sale, "the seller" means M.J. Allen Holdings Ltd and all its subsidiary companies, including but not limited to M.J. Allen (Pattern Makers) Ltd, M.J. Allen (Iron Founders) Ltd, M.J. Allen (Non Ferrous Founders) Ltd, M.J. Allen – ENC Ltd, Mather & Smith Ltd, Verdict Gauge Ltd, Rydal Precision Tools Ltd, British Midland Tool Ltd, Countytrac Ltd.

These Conditions of Sale contain the entire bargain between the Seller and the Buyer, and in the case of any inconsistency between these terms and the terms of any other contractual or other document sent by the Buyer to the Seller (whatever their respective dates) in respect of the Goods, these terms shall prevail. These Conditions shall apply except as may be expressly agreed by the Seller in writing. Any waiver made by the Seller at any time shall not prejudice the exercise of its rights hereunder. "Goods" in these conditions means the goods the subject of the contract between the Seller and the Buyer. The " Buyer" means the customer and party to such contract.

#### **2. PAYMENT.**

All accounts are due for payment no later than the end of the month following that of delivery. If payment is not made in full by the due date the Seller may without notice revoke all credit facilities and withhold all deliveries. Time of payment is essence of the contract. The Buyer shall not be entitled to withhold or set-off payment for Goods delivered for any reason whatsoever.

#### **3. PRICES.**

The Seller may at any time amend prices at its discretion without notice.

#### **4. CARRIAGE.**

The Seller reserves the right to charge carriage on all deliveries.

#### **5. VALUE ADDED TAX.**

All prices quoted are excluding VAT. Value added tax will be charged at the rate applicable at the time of invoice.

#### **6. DESCRIPTION.**

The description of Goods is given by way of identification only, and the use of such description shall not constitute this contract a sale by description. Any statement description or conditions continued in any catalogue or advertisement or communication or made verbally by any employee of the Seller shall not be construed as enlarging, varying or overriding any of the conditions herein stated.

#### **7. DELIVERY-DAMAGE OR SHORTAGE.**

Any claim shall be absolutely barred unless receipt of the goods has been signed for as "damaged" or "shortage on item..." All claims must be in writing within seven days of receipt of delivery.

#### **8. DELIVERY-GENERAL.**

- (a) Whilst every effort is made to adhere to the delivery times stated by the Seller, such times are not guaranteed and the Seller accepts no liability for delay in delivery.
- (b) Unless otherwise specifically agreed in writing the Seller may effect delivery of the Goods by whatever means it thinks most appropriate.
- (c) Where the Seller dispatched the Goods on the Buyer's behalf they will ordinarily be sent at the Buyer's risk and the Seller will determine the method and time of delivery.

#### **9. DELIVERY DATES/TIMES.**

The Seller whilst endeavouring to effect prompt delivery, accepts no liability whatsoever for the consequences of any delay or failure in delivery.

#### **10. TITLE AND RISK.**

- (a) Risk in the Goods shall pass to the Buyer upon delivery.
- (b) Notwithstanding the above ownership, title and legal property in the Goods will not pass to the Buyer until payment has been made in full in the matter specified in these Conditions together with the full price of any other goods the subject of any other contract with the Seller.
- (c) Until the time of actual payment to the Seller of the total amounts owing in respect of the Goods and any other goods as specified in sub condition (b) hereof the Buyer shall keep the Goods as agent and trustee for the Seller and shall store the goods in such a way that they are separately identifiable.
- (d) If as a result of anything done or suffered by the Buyer legal property in the goods passes to a third party or (notwithstanding the immediately preceding sub-condition hereof) to the buyer before they have been paid in full, any proceeds of sale of other property representing the goods or into which the goods have been converted or incorporated shall be the property of the Seller until the goods have been paid for in full as aforesaid and any such proceeds of sale or other property shall be received and held by the buyer as agent and trustee for and to the order of the Seller.
- (e) The Buyer therefore stands in a fiduciary relationship to the Seller and must strictly account to the Seller for the Goods or proceeds thereof and any such proceeds shall be kept in a separate bank account to the order of the Seller.
- (f) Until payment in full has been made for the Goods together with the final price of any other goods the subject of any other contract with the Seller, the Seller shall have the right to repossess the Goods and to enter through its agents or servants on the premises of the Buyer (with such transport as may in the opinion of the Seller be necessary) for this purpose and the Buyer grants irrevocable licence so to enter for such purposes to the Seller.
- (g) The Buyer's right to possession of the Goods shall in any event cease if he, not being a company, commits an act of bankruptcy or if it, being a company, does anything or fails to do anything, which would entitle a receiver or administrator to take possession of any assets or which, would entitle any person to present a petition for winding up. The Seller may for the purpose of recovery of the Goods enter upon premises where the Goods are stored or where they are reasonably thought to be stored and may repossess the same.
- (h) If the Buyer has not received the proceeds of sale of the Goods in the circumstances set out in sub-condition (d) hereof the Buyer will, if called upon to do so by the Seller, within seven days thereof assign to the Seller all rights against the person to whom the Buyer has supplied any of the Goods or any product to chattel made from or with the Seller Goods and in default of such voluntary assignment he will after the expiration of a further two days after the said period of seven days be deemed to have assigned all rights as aforesaid.

#### **11. FORCE MAJEURE ETC.**

If events beyond the Seller's reasonable control prevent the Seller from delivering any of the Goods by the appropriate delivery date, such date shall be suspended (for a reasonable period). Beyond such period the Seller may without liability cancel this contract as regards such Goods or the Buyer may without liability cancel this contract as regards such Goods unless either have been or are in the course of being made or have been appropriated by the Seller to this contract.

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**12. RETURN OF SURPLUS GOODS.**

The return of surplus Goods will only be accepted with the Seller's prior agreement in writing. All Goods will be subject to a minimum of 15 per cent handling charge to cover re-testing, re-boxing, etc.

**13. LIMIT OF LIABILITY.**

**The Seller Shall Not be Liable For:**

- (a) Expenditure incurred by the Buyer in respect of the Goods proved or alleged to be defective other than reasonable postage or carriage involved in returning the Goods to the Seller.
- (b) Loss of profit nor the consequential loss of any kind direct or indirect to the Buyer, however caused; nor
- (c) For any Goods which have been processed in any way by the Buyer or damaged after the risk in the Goods has passed to the Buyer.
- (d) No liability in respect of Goods undelivered, lost, pilfered or damaged in transit will be accepted by the Seller where the ownership of the Goods has passed to the Buyer before the occurrence of where the carrier has been given a clear receipt for the Goods.
- (e) Subject to the forgoing parts of this clause. No condition is made or to be implied in respect of the Goods nor is any warranty given or to be implied as to the fitness of the Goods for any particular purpose or that the Goods will be suitable for use under specific conditions unless such purposes or conditions are made known in writing to the Seller and are acknowledged in writing by the Seller prior to the acceptance to the contract.

**14. PATTERNS & TOOLING**

- a) Where the buyer supplies patterns or tooling the quotations of the seller assume that such patterns or tooling are in good condition, true to drawing and entirely suitable for the seller's methods of production and for the production of the castings or other products in the quantities required.
- b) For mutual benefit, when new patterns or tooling are to be made, the seller requires to be consulted.
- c) Replacement of and alterations or repairs to buyer's patterns or tooling due to normal wear and tear shall be paid for by the buyer.
- d) Where patterns or tooling are not supplied by the buyer, only such patterns or tooling as are specially made and separately charged in full shall become the property of the buyer when paid for in full.
- e) Carriage on patterns and tooling supplied by the buyer will be paid by the seller in one direction only.
- f) The seller takes all reasonable care to protect buyer's patterns and tooling while they are on the seller's premises but does not accept liability for any loss, damage or expense arising from any cause whatsoever which does not directly and solely result from a failure by the seller to exercise such reasonable skill and care.
- g) The buyer shall be responsible for the custody of his patterns and tooling from which no castings have been ordered for a period of three years.

**15. INFRINGEMENTS.**

The Buyer shall be solely responsible for the consequences of any patent, trade mark, design or copyright infringement or any infringement of a third party's legal rights resulting from the Buyer's specification or use of any of the Goods or from the use of any specification drawing or other material supplied by the Buyer or from the application of any motif jacquard or symbol (or drawing thereof) supplied by the Buyer and the Buyer shall fully indemnify the Seller in respect of all costs charges and expenses incurred by the Seller as a result of any infringement or alleged infringement.

**16. SEPARABILITY.**

Subject entirely to the Seller's rights under clause 15 hereof each delivery of a quantity of Goods under this contract shall be deemed to constitute a separate contract to which the terms and conditions hereof shall apply, provided that this condition shall be subject to and shall in no way effect the Seller rights under clause 15 hereof to suspend or terminate the whole contract in the circumstances there mentioned.

**17. TERMINATION THROUGH BREACH AND OTHERWISE.**

In the event of the Buyer defaulting in or committing any breach of the obligations of the Seller hereunder, or becoming bankrupt or going into liquidation or having a receiving order or administration order made against it, suspending payment of debts or making any arrangement with creditors the Seller is entitled forthwith by notice in writing to determine any contract present or future for delivery of Goods without prejudice to its rights under clause 10 hereof or any other condition hereof or to any other rights or remedies of the Seller.

**18. JURISDICTION.**

All contracts to which these conditions apply shall be interpreted exclusively according to the law of England.

**ERRORS AND OMISSIONS EXCEPTED**