

# Terms of Purchase

## GENERAL CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES

Please read these terms and conditions carefully. If you do not agree with any part of the following terms and conditions then you must not use this service.

### 1 DEFINITIONS AND APPLICATION OF CONDITIONS

- 1.1 The term "Buyer" shall mean Emanuel Spence Maintenance Services Ltd (trading under the names of Emanuel Spence, Gassafe and Gas Safe Tees Valley) so named in the Order.
- 1.2 The term "Seller" shall mean the person, firm or company to whom the Order is addressed.
- 1.3 The word "Goods" shall mean all goods and/or services mentioned in the Order.
- 1.4 The word "Services" shall mean all services mentioned in the Order.
- 1.5 The term "Order" shall mean any purchase order addressed by the Buyer to the Seller incorporating these Conditions.
- 1.6 The term "Contract" shall mean the contract between Buyer and Seller consisting of the Order and any other documents (or parts thereof) specified in the Order and these conditions. Should there be any inconsistency between the documents comprising the Contract they shall have precedence in the Order above those listed in this sub clause.
- 1.7 No variation of or addition to these Conditions shall be valid unless specifically agreed in writing by a Director, Supply Chain Manager or other authorised delegate of the Buyer.
- 1.8 Subject to any variation under condition 1.7, these Conditions are the only Conditions upon which the Buyer is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 1.9 Each Order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 1.10 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

### 2. QUALITY AND INSPECTION

- 2.1 The goods to be provided shall:
  - 2.1.1 conform as to quantity, quality and description with the Order and any specification or standards stated or referred to in the Order;
  - 2.1.2 be of first-class quality, material and workmanship throughout;
  - 2.1.3 be equal in all respects to any samples, patterns, demonstration or specification provided or given by either party;
  - 2.1.4 be capable of any standard of performance specified in the Order;
  - 2.1.5 if the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that purpose; and
  - 2.1.6 comply with any statutory rule or regulation that may be in force relating to the goods.
- 2.2 Any Services to be provided shall:

2.2.1 be performed with reasonable care and shall be in accordance with generally recognised commercial practices and standards;

2.2.2 conform with any specification or standards stated or referred to in the Order;

2.3 The Buyer's rights under these Conditions are in addition to the statutory terms implied in favour of the Buyer by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other statute.

2.4 The Buyer reserves the right to reject the Goods (or in the case of Services require re-performance) if they do not comply with the provisions of Condition 2.1 and to return rejected Goods to the Seller at the Seller's expense. Where the Buyer notifies the Seller of any defective or damaged Goods or faulty workmanship the Seller shall instruct the Buyer within 14 days with regard to the disposal, storage or return of such goods or rectification or re-performance of Services as the case may be and if it fails to do so all such matters shall be in the Buyer's discretion. All costs and expenses of disposal, return, re-performance or rectification shall be borne by the Seller.

2.5 The Buyer's inspectors shall at all reasonable times have access to the premises of the Seller or its sub-contractors for the purpose of inspecting and testing the Goods during or after manufacture and/or performance and may reject or require the making good or re-performance of anything that does not conform with the Order. Such inspection does not relieve the Seller of any liability nor does it imply acceptance of the goods or services.

2.6 The Seller shall not without the prior consent in writing of the Buyer sub-contract or assign its obligations under an Order or any part thereof and shall furnish copies of all sub-contractors to the Buyer if so requested.

2.7 When requested by the Buyer, test certificates must be supplied with the relevant Goods at the time of delivery, or the Buyer shall have the right to reject the Goods.

2.8 Deliveries made in advance of the Buyer's requirements may be returned to the Seller at the Seller's expense or accepted at the Buyer's option. If the Buyer accepts them, the Buyer shall be entitled to defer payment until the month following the month in which delivery should have taken place.

2.9 All goods must be adequately protected against damage and deterioration in transit and delivered carriage paid in accordance with the Buyer's instructions (if given) and the packages of Goods must bear the description and the quantity of the contents and the Buyer's Order number.

2.10 The Seller agrees on request to supply the Buyer with any necessary declarations and documents stating the origin of the Goods.

### **3. INDEMNITY**

3.1 The Seller shall keep the Buyer indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

3.1.1 any failure by the Seller to comply with clauses 2.1 to 2.10;

3.1.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and

3.1.3 any claim made against the Buyer in respect of liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

3.1.4 Should the sub contractor undertake work for our customer direct whilst still a valid sub contractor without the buyers permission, the sub contractor will indemnify the buyer with loss of current and future profits for a period of two years. All payments to the sub contractor for any works outstanding for any job for the buyer will be held until this is paid.

#### **4. DELIVERY**

4.1 Save as otherwise provided the Seller shall at his own risk and expense in all respects deliver the goods at the place or places in the manner and at the time or times specified in the Order, whereupon delivery shall be deemed to have been effected.

4.2 Any excess delivery of Goods beyond quantity ordered made without express written permission and such Goods shall remain at the Seller's risk may be refused and returned at the Seller's risk and expense.

4.3 The Buyer shall not be bound to pay for any Goods delivered earlier than the date specified for delivery without express written permission any such Goods shall remain at the Seller's risk may be refused and returned at Seller's risk and expense but without prejudice to Buyer's rights to require delivery of the Goods on the date specified for delivery.

4.4 Time shall be the essence so far as the date of delivery is concerned (including any new date for delivery designed by the Buyer pursuant to paragraph 4.6)

4.5 All payment made in advance of delivery shall be held in trust for the Buyer by the Seller until delivery.

4.6 The Buyer reserves the right at any time to suspend any delivery or deliveries under or during the execution of any work covered by this Order to such extent and for such period as in its absolute discretion the Buyer may consider expedient.

4.7 If the Seller does not deliver the goods ordered within the time stated the Buyer may treat such non-delivery as a breach of these Conditions. This will give the Buyer the right to reject the goods and treat the Contract as repudiated and recover damages from the Seller for any loss sustained by the Buyer by reason of such breach.

4.8 Where the Buyer agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

#### **5. PRICE AND PAYMENT**

5.1 The price stated in the Contract for the goods is a fixed price and shall not be varied for any reason unless expressly agreed in writing by the Buyer and the Seller.

5.2 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Buyer shall be exclusive of value added tax but inclusive of all other charges.

5.3 All invoices must bear the Buyer's Order Number. Unless otherwise agreed in writing, an invoice shall be payable at the end of the second month following the month in which delivery is effected (60 days)

5.4 The Buyer reserves the right to deduct from any monies due or becoming due to the Seller any monies due from the Seller to the Buyer on any account.

5.5 The Buyer has the right to modify the order and the specification at any time. If it does so, the Seller must inform the Buyer within ten working dates from receipt of such modifications as to any change in price as a consequence of such modification. The Seller shall only be entitled to a reasonable increase in price, or if the modification reduces the cost of supplying the goods, the Seller must give the Buyer a reasonable abatement for price. Unless Buyer is so informed of the Seller's claim for an increased price within the said ten working days, the Seller shall not be entitled to any increase in price.

5.6 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.

5.7 The Seller is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

5.8 The Seller must submit a statement at the end of each month or payment will be withheld.

## **6. TITLE AND RISK**

6.1 The property and risk in the goods purchased shall pass to the Buyer upon delivery and the Seller shall be responsible for transport and unloading costs and insurance of goods to their full value against all risks of damage or loss prior to completion of delivery.

6.2 The Buyer will not be responsible for any failure to give notice to carriers of loss, damage, mis-delivery, delay, detention in transit or non delivery unless it has been advised of the despatch of the goods in accordance with procedures agreed between the parties.

6.3 All returnable reels, pallets and containers must bear the Seller's full name and address and it shall be the responsible for collecting them within a reasonable period of delivery. Should they not be so labelled or should collection not so take place then the Buyer shall have no liability in respect of them.

## **7. DRAWINGS/DESIGNS/PATENTS**

7.1 All drawings supplied by the Buyer and all rights therein shall remain the property of the Buyer. Seller is licensed to use such drawings for the purpose only of fulfilling contracts with Buyer. Seller shall not disclose any such drawings or any data comprised therein to any third party, unless expressly required or permitted to do so by Buyer.

7.2 All drawings prepared by Seller in connection with Order or in connection with any enquiry by the Buyer prior to the relevant Order and all rights therein shall be at all times the property of the Buyer.

7.3 For the purpose of this paragraph 7, "drawings" shall be deemed to include plans, photographs, models, patterns, samples, specifications and technical information of every description whether written or oral or three dimensional.

7.4 The Buyer may at any time make changes to drawings, design or specifications to the Goods covered by the relevant Orders. The Seller shall not make any changes to the design or composition of any Goods ordered without written consent of the Buyer.

7.5 The Seller warrants that the goods do not infringe any patent design, trade mark or other intellectual property right and undertakes to indemnify the Buyer against all damages, loss, expense, injury or costs suffered or incurred by the Buyer in respect of any claim for infringement.

## **8. TOOLING**

8.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture of Goods ("Tooling") shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller and clearly identified as the property of the Buyer until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.

8.2 The Seller shall, during the currency of the relevant Order at Seller's expense, maintain all tooling (whether Seller's or Buyer's property) in first class condition and immediately replace any such items which are lost or destroyed or become worn out. Seller shall adequately insure all such items against loss or destruction and shall produce on demand by Buyer the policy of such insurance and the premium receipts. None of such items shall be moved from Seller's premises or disposed of by Seller without the prior written approval of Buyer.

8.3 No such tooling as is mentioned in this paragraph 8 shall be used in the production, manufacture or design of

any goods or materials other than those contracted for by or in pursuance of the relevant Order nor for larger quantities than those specified. All tooling, which is the property of the Buyer, shall be returned promptly to the Buyer's premises at the Seller's expense.

## **9. FREE ISSUE MATERIALS**

Where the Buyer for the purpose of the Contract issues materials free of charge to Seller such materials shall be and remain the property of Buyer; Seller shall maintain all such materials in good order and condition. Seller shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at Buyer's discretion. Waste of such materials arising from bad workmanship or negligence of Seller shall be made good at Seller's expense. The whole of these Conditions shall apply mutatis mutandis to orders for the carrying out of work or the rendering of services as well as to orders for supplies and in addition the following provisions of this paragraph shall apply whenever an Order requires Seller to repair or apply a process to goods or material of Buyer (hereinafter called "Buyer Property") which Buyer makes available for that purpose.

9.1 Buyer's property shall be returnable on demand.

9.2 Seller shall indemnify Buyer against loss of or damage to Buyer's property while it is in the possession, custody or control of Seller or its permitted sub-contractors. During such time, Seller shall adequately insure against such loss or damage and shall produce on demand by Buyer the policy of such insurance and the premium receipts.

9.3 Buyer's property shall not be removed from Seller's premises without Buyer's written authority (except for the purpose of fulfilling the relevant Order in accordance with its terms).

9.4 Seller shall keep separate account of all Buyer's property and will furnish statements on request giving detailed description and location thereof both before and after repair or processing as the case may be as well as any other information regarding Buyer's property asked for by Buyer. Buyer and persons authorised by Buyer shall be entitled at all reasonable times to check and inspect Buyer's property and Seller's records thereof and may enter Seller's land and buildings for those purposes.

9.5 Where materials are supplied by Buyer for processing Seller shall return such number or quantity of finished units as in accordance with the conversion rate specified in the relevant Order or shall account for failure to do to Buyer's satisfaction. Seller shall promptly pay Buyer on demand the full value of any of the Buyer's property, which is not returned or satisfactorily accounted for.

9.6 If Buyer shall provide Seller without charge material for the manufacture of the goods such material until incorporated in the goods shall remain the property of the Buyer, but all risks in such material shall pass to the Seller and the Seller shall indemnify Buyer against all loss or damage to such material while in its possession.

## **10. FORCE MAJEURE**

If before delivery of the Goods is completed, the Buyer's business is stopped, interrupted or restricted due to any act of God, war, strikes or lock outs whether in Buyer's works or in the works of the Buyer's other suppliers or the Buyer's sub-contractors, riot, civil commotion, epidemic unusually severe weather, fire, accident, Governmental Acts, shortage of material or labour or any delay of the supplier due to any of the aforementioned causes or events or any other cause whatsoever beyond the control of the Buyer then continuance of such stoppage, interruption or restriction and the time for delivery shall be correspondingly extended or delivery may be cancelled by the Buyer and upon such cancellation the Buyer shall pay the Seller such sum as may be equitable in respect of work performed prior to cancellation.

## **11. GENERAL CONDITIONS IN THE TENDER**

No terms or conditions submitted to by Seller when tendering shall form part of the Contract unless otherwise agreed in writing by Buyer.

## **12. SELLERS WORKING ON BUYER'S PREMISES or SITES**

Each day before starting working on the Buyer's premises the person in charge of the Seller's work people must report to the office of the person named as the Buyer's authorised representative in the Order. Seller's working on the Buyer's premises must take out appropriate liability and Third Party insurance covering their employees whilst on the Buyer's premises.

Seller's staff may be required to sign an undertaking not to disclose information relating to the Buyer's business and interest to any other party and to agree to the Buyer's safety and environmental rules.

## **13. TERMINATION**

Without prejudice to its other rights the Buyer may be giving notice to the Seller elect to determine the Contract forthwith on the happening of any one of the following events:

13.1 If the Seller shall commit a material breach of the Contract.

13.2 If the Seller shall commit any other breach of the Contract and shall not have remedied the same in one month of having been requested by the Buyer by notice in writing to do so.

13.3 If any distress or execution levied upon or against any of the chattels or property of the Seller is not satisfied within 21 days after the date of such levy or enforcement.

13.4 If the Seller is granted a moratorium by or enters into a composition of debts with its creditors.

13.5 The Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Seller or for the granting of an administrative order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller.

13.6 The Seller ceases or threatens to cease to carry on its business.

13.7 The financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

## **14. STATUTORY REQUIREMENTS**

The Seller warrants that the Goods comply in all respects with the requirements applicable thereto of any statute or regulations which shall be in force at the date of delivery.

## **15. PROPER LAW**

The Contract shall be governed by English law unless otherwise specifically agreed in writing with the Buyer, and subject to the non-exclusive jurisdiction of the English courts.

## **16. NOTICES & JOB SHEETS**

16.1 All notices or communications by one party to the other concerning any matter or things relating to the Contract may be given by prepaid first class post or fax addressed to the last known address of the party whom the notice or communication is to be given. Any postal notice or communication so sent shall be deemed to be properly and effectively given three days after the same shall have been properly posted according to the postal rules of the country of the sender.

16.2 Sub Contractors must submit a copy of the Companies job sheet with a customer signature , times on site and a list of materials used. Or if permitted a copy of their own job sheet or payment will be withheld.

16.3 Invoices must be submitted with 14 days following delivery of goods or services.

## **17. RETENTION OF TITLE**

In consideration of stage payments and in the event of liquidators or receivers being appointed the Tooling (at whatever stage of completion is the property of the Buyer and the Buyer can take possession of the said Tooling without interference, subject to payment by the Buyer up to the stage of completion.

## **18. REMEDIES**

18.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

18.1.1 to rescind the Order;

18.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

18.1.3 at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

18.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Seller;

18.1.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and

18.1.6 to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

## **19. HEALTH AND SAFETY**

19.1 It shall be the absolute duty of the Seller to provide only goods and services which, whether as to their performance, use, storage or in any other way, any such that they will not, directly or indirectly, cause the Buyer to be in breach of the law, including without limitation the Health and Safety at Work Etc Act 1974, or the terms of the Buyer's employees' contracts of employment or any other duty, statutory or otherwise, in relation to the health and safety of those employees or any other persons lawfully on the Buyer's premises.

19.2 In the event of the goods being in breach of Condition 19.1 above, it shall be the sole duty of the Seller to take all such measures as are reasonable, whether or not requested by the Buyer to abate or altogether remove, the effects of the offending goods. Without prejudice to the generality of this requirement, the Seller shall also, at

the Seller's sole expense, remove the goods from the Buyer's premises and make such amendments, adjustments or modifications as are required, for reinstatement or, as the case may be, re-performance.

## **20. ENVIRONMENTAL POLICY**

The Buyer has policies in place to procure compliance with the requirements of the Environmental Protection Act 1990, the Environment Act 1995 and other legislation relevant to the business of the Buyer and with environmental standards set by governmental and other organisations. The Seller undertakes to comply with such policies as are notified to it by the Buyer from time to time.

## **21. CONFIDENTIALITY**

An Order and its subject matter shall be treated as confidential between the Seller and the Buyer and shall not be disclosed by the Seller (or any permitted sub-contractor or assignee or supplier) to any third party or used by the Seller (or any permitted sub-contractor or assignee) for advertisement, display or publication without the Buyer's prior consent in writing.

## **22. INVENTIONS AND IMPROVEMENTS**

When an Order includes manufacture to the Buyer's designs the Seller agrees to inform the Buyer of any invention or improvement in design or method of manufacturing arising out of the performance of the Order by or on behalf of the Seller and any such invention or improvement and any patent or registered design rights in respect thereof and copyright in any drawings, documents or specifications relating thereto shall be the property of the Buyer. The Seller will give the Buyer at the Buyer's expense all necessary assistance to enable the Buyer to obtain patent, registered design and similar rights throughout the world.

## **23. GENERAL**

23.1 Nothing in these Conditions shall prejudice any Condition or Warranty express or implied or other right or remedy to which the Buyer may be entitled in relation to the Goods by virtue of any statute or custom or any general law or local law or regulation.

23.2 Where the items ordered fall within the scope of a Suppliers ISO9000 – 1994 or ISO9000 – 2000 Scope of Registration it is a condition of purchase that the requirements of the International Standard(s) be applied to the items supplied.

23.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

23.4 Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

23.5 Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

23.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.