

# BARWELL GLOBAL LIMITED

## TERMS & CONDITIONS OF QUOTATION/SALE

07/2011

### 1. DEFINITIONS AND INTERPRETATIONS

"The Company" means Barwell Global Limited or if different, the company named as seller on the reverse of this document.  
"The customer" means the person, firm or company specified as such on the reverse of this document.  
Headings are for purposes of identification only and shall not limit or otherwise affect the meaning of the conditions to which they relate.

### 2. QUOTATIONS AND ORDERS

- Where the reverse of this document consists of a quotation or tender the quotation or tender remains open for acceptance for a period of sixty days or such other period as agreed in writing after which it will be subject to confirmation by the Company and if confirmed will remain subject to the remainder of these terms and conditions.
- The terms and conditions contained herein as amended on the reverse supersede and cancel any/all previous terms and conditions given either verbally or in writing in respect of the sale of the goods or provision of services and charges specified in this contract.
- Terms and conditions referred to in a customer's order will not bind the Company in any way whatsoever unless they are specifically incorporated as part of these terms and conditions and attached hereto duly signed by a Company Director and for or on behalf of the customer.
- No agent employee or representative of the Company (other than a Director) has authority to vary these terms and conditions nor to make any representation as to the effect of these terms and conditions nor as to the subject matter of any contract generally.
- In the event of a conflict between the terms written on the reverse of this document as part of the quotation or tender and these terms and conditions the former shall prevail.

### 3. PRICE

- Unless otherwise agreed all prices are quoted in pounds sterling.
- In the event of an alternative currency being agreed between the Company and the customer the Company reserves the right to apply an exchange rate fluctuation charge appropriate to the rate of exchange ruling on the date of payment by the customer as opposed to the rate prevailing at the date of the Company's quotation and also a handling charge in respect of any expenses to which they are put in converting the alternative currency to pounds sterling.
- All prices quoted and accepted may be increased by the Company serving written notice of increase on the customer in any of the following circumstances:-
  - When the delivery date quoted is longer than six months from the date of the quotation the Company may increase the price to the extent that labour, material or other direct costs increase during the period between quotation and delivery provided that the contract price shall not be increased by more than 5%.
  - Whatever the period quoted for delivery, if any alteration to the specification, services to be rendered, delivery method, packing or insurance is made at the request of the customer to the extent that such alteration would have given rise to an increase in the quoted contract price had it been allowed for.
  - Whatever the period quoted for delivery to the extent that the costs to the Company for equipment and components not manufactured by the Company increase during such period.

### 4. PAYMENT TERMS

- For the provision of manufactured equipment, the Company will not regard its quotation or tender as having been accepted unless it receives with acceptance a deposit of 40% of the contract value or such other amount as is agreed by way of variation of this Condition.
- For the provision of spares and services and for the balance payable over and above any deposit received under Condition 4. i) above, unless otherwise agreed by the Company and incorporated on the reverse of this document, the Company's standard terms of payment are that payment is due to be in the hands of the Company or its bankers 30 days from the date of despatch of goods or the provision of service, irrespective of the date on which the goods were actually delivered to the customer or the date of the invoice(s) relating to the supply. If the despatch of goods is delayed because of default by the customer under Condition 5. iv) below, then payment will be due as if despatch had occurred on the date the Company would otherwise have made the goods available for despatch within the terms of the contract.
- Notwithstanding Condition 4.i) above invoices for the recharge of utilities or for any other expense either paid by the Company on the customer's behalf or for which the customer is wholly or partly responsible shall be payable immediately on receipt by the customer. Unless specifically and separately agreed in writing by the Company, this term shall not be varied or waived and any indication to the contrary on the reverse of this document shall be construed as an error.
- All terms of payment offered to the customer are subject to the Company receiving a favourable credit report from its own sources. If the credit report is unfavourable the Company reserves the right to change the terms of payment or cancel the order at any time before despatch of the goods to the customer if agreement cannot be reached.
- If the terms of payment provide for the opening of letter(s) of credit or the provision of security by way of bank guarantee(s), bill(s) of exchange or promissory note(s) then such documents must comply with the Company's standard wording for the relevant document(s) which will be supplied to the customer and unless otherwise provided in writing the letter(s) of credit, bank guarantee(s), bill(s) of exchange or promissory note(s) will be payable from the date of shipment of the goods or despatch of the services and all costs in connection with their issue and administration shall be borne by the customer.
- Except as provided for under Condition 4. v) above, all payments from customers outside the United Kingdom must be made by direct electronic transfer to arrive at the Company's bankers as detailed on the reverse of this document by the due date. The Company reserves the right to return any cheque or other payable order which is not payable at sight at the counters of a bank in the United Kingdom and in such an event payment will not be deemed to have been made by the customer until alternative arrangements have been made which enable the Company immediate access to the funds due.
- All other costs charges and/or commissions incurred when payment of the whole or part of the contract value is effected are to be borne by the customer.
- Unless otherwise agreed in writing by the Company the contract price for the goods and services provided and charges rendered shall be payable in the manner agreed without set off on or before the agreed due date(s). The Company reserves the right to charge interest on any balance outstanding beyond the payment date(s) at either the UK statutory interest rate for overdue debts or if greater 2% per annum above the Barclays Bank PLC base rate in force from time to time. Such interest is to be charged from day to day and compounded annually.

### 5. DELIVERY

- The Company will make every effort to meet the estimated despatch date quoted on the reverse of this document but unless specifically stated on the reverse of this document time of despatch shall not be of the essence of this contract.
- Despatch dates are provisional only and will automatically be extended by an amount equivalent to any delay by the customer in accepting the Company's quotation or tender within the sixty day period referred to in Condition 2. above. Despatch dates may further be extended by the Company for any other reason beyond the Company's control including but not by way of limitation strikes lock-outs shortage of materials trade disputes and other unforeseen disruptive incidents beyond the Company's control.
- The Company shall not be liable for any losses costs damages or expenses (including consequential or indirect losses or damages) suffered or incurred by the customer as a result of failure to meet the quoted estimated despatch date or any revised despatch date.
- In cases where the Company is unable to despatch or deliver goods because of the default of the customer the Company upon giving to the customer seven days notice that the goods are ready for collection or despatch shall be entitled to store the goods at the customer's risk and expense either at the Company's premises or elsewhere.
- If due to default of the customer the goods have not been despatched one month after they were available for despatch or collection the Company may advise the customer that it intends to sell the goods after a further 2 months has elapsed. Upon each sale the proceeds will be applied against the amount owed by the customer who shall still be liable to pay any balance remaining of the contract price.

### 6. SPECIFICATION ETC.

- General  
While the Company makes every effort to ensure that the goods supplied (whether to the Company's design or the customer's design) correspond in every respect to the sample specification or description provided as the case may be, the Company shall not be responsible for minor variations from or of the specification or other design feature and no such minor variation shall entitle the customer to rescind the contract nor shall they be the subject of any claim against the Company by the customer nor shall they vary the terms and conditions of quotation/sale as otherwise agreed.
- Suitability  
Any mention in any brochure or advertisement of suitable applications or expected performance of any equipment or machinery either manufactured or marketed by the Company shall be indicative and for guidance only and shall not form part of any contract entered into by the Company. Specifically but not by way of limitation the Company does not warrant that any such equipment or machinery will comply with any stated or implied performance requirement of the customer unless such requirement has been brought to the attention of the Company by inclusion in or attachment to the customer's written order and the Company has agreed by acknowledgement of such an order that the requirement can be met. In the event that such a requirement is made known to the Company, the customer shall if required and at their own expense make available to the Company sufficient quantity of the material(s) to which they wish the performance to apply such that the Company may carry out reasonable tests to ascertain whether the required performance can be met. Any performance warranted by the Company as a result of such tests shall be valid only for materials so tested and shall not by implication or otherwise be extended to the use of any other material(s) or to the use of tested material(s) in a manner which significantly differs from the application for which the requirement was specified by the customer.

### 7. COPYRIGHT

- All drawings specifications illustrations and advertising material submitted to the customer are the property and copyright of the Company and may not be used or reproduced in whole or in part without its prior written consent. Items produced without the Company's consent will not be warranted and may invalidate the warranty of goods to which they are assembled or

otherwise used in connection therewith.

- Unless otherwise provided by the contract the customer shall acquire no rights to any design process documents improvement or invention developed by the Company in the course of fulfilling the contract.

### 8. WARRANTY

- Any express or implied warranty or condition whether statutory or otherwise as to goods or services supplied by the Company is hereby excluded to the extent permitted by law. In lieu thereof the Company undertakes that if any goods supplied or manufactured by it or any member of the Barwell Group of Companies are shown to the Company within the limits hereinafter mentioned to be defective in material or workmanship the Company will at its option either replace free of charge (save for the charges mentioned in paragraph ii) (d) of this Condition 8.) such defective goods, or refund to the customer the price of such goods upon the terms hereinafter set out. The time limits referred to are in the case of spare parts and other components twelve months from the date of despatch and in the case of any other goods twelve months from the date of installation or fifteen months from the date of despatch whichever is the shorter period. All replacement parts supplied under warranty will commence a new warranty period for that part only. The warranty period for parts not replaced is unaffected. The time limit for such replacement parts is twelve months from the date of despatch or such time limit as provided by the proprietor (if applicable) whichever is the shorter.
- The terms of warranty are as follows:-
  - The Company will not accept any liability (other than liability for death or personal injury arising out of or in connection with a contract for the supply of goods which is not a contract falling within the description contained in Section 26 of the Unfair Contract Terms Act 1977 or any statutory modification or re-enactment thereof) either in contract or tort for any loss either of a direct or consequential nature suffered as result of any act or omission on the part of the Company or its servants, agents or representatives or any fault in any of the goods it supplies.
  - The Company's liability is limited to the repair or replacement of defective parts where in the Company's judgement such defects have arisen without misuse but are solely as a result of faulty design materials or workmanship and provided that special commissioning arrangements which may be specified by the Company or the Company's agents and all maintenance instructions have been observed.
  - Warranty shall be invalidated if without the Company's written permission:-
    - The goods have been modified amended combined with goods not supplied by the Company or had non-Company approved components fitted or used in connection therewith;
    - Work which has not been approved by the Company has been carried out on the goods.
  - Defects judged by the Company or the Company's agents to be within the terms of this warranty will be repaired or replaced under the following conditions:-
    - On receipt carriage paid of the defective part or parts by the Company at the Company's works or by the Company's representative within the time limit specified in paragraph (a) of this Condition 8.
    - In the customer's own works provided that the customer agrees to meet the resultant travelling expenses.
  - Goods initially supplied free of charge under this warranty Condition 8. will unless agreed otherwise by the Company in writing beforehand become chargeable at the Company's normal prices and subject to the Company's payment terms if within 30 days of despatch of the replacement part(s) the Company shall not have received the defective part(s) from the customer.
  - The Company reserves the right to decide on the method of dealing with a claim under this warranty Condition.

### 9. MEANS OF DELIVERY

The means of delivery of the goods shall be at the discretion of the Company except where specifically otherwise agreed in writing on the reverse of this document. If the Company agrees to arrange carriage/freight and/or insurance of goods in transit to the destination indicated by the customer then the Company shall act as the customer's agent and shall be indemnified by the customer against any costs and expenses involved and provided that the Company has acted reasonably in selecting the carrier and/or making the insurance arrangements the Company shall not be liable to the customer for any loss or damage arising out of or in connection with the carriage of the goods.

### 10. RISK AND TITLE

- Goods will be at the customer's risk from the time of delivery by the Company to the customer or to a carrier/shipper for onward carriage/shipment to the customer whichever first occurs.
- Notwithstanding delivery of the goods or passage of risk in the goods property and title of the goods will remain in the Company and will not pass to the customer until the purchase price of the goods plus any other charges which are the subject of the contract between the customer and the Company payable by the customer under these conditions shall have been received by the Company in full. Until receipt in full of the purchase price and other charges the customer shall:-
  - Without the previous consent in writing of the Company not sell mortgage or otherwise part with possession of the goods;
  - Keep the goods separate from all other property of the customer;
  - Ensure that notices stating that the goods are the property of the Company remain affixed to the goods until title thereto passes under the terms hereof; and
  - Keep the goods in good repair and condition and insured to the full value against all commercial risks with a reputable insurance company.
- If whether with the Company's permission or not a sale of the goods occurs before the full contract value has been paid the customer will account to the Company for the proceeds of sale and meanwhile will hold the proceeds of sale upon trust for the Company until the Company has received the purchase price of the goods plus any other charges payable by the customer under these Conditions.

### 11. IMPORT REQUIREMENTS

- The customer shall be responsible for obtaining any import licence certificate of origin or other documentation for the importation of the goods or services and shall be liable for any duty tax imposts or outlays of whatsoever nature levied by the Authorities in the United Kingdom or abroad for or in connection with the goods or services either when the goods or services are initially delivered or supplied to the customer or when the goods or any part of them are returned to the customer by the Company after repair alteration or servicing and for payments fines expenses costs charges losses or damages incurred or sustained by the Company in connection therewith.
- If the customer fails to obtain any necessary import licence or other documentation in due time or fails to provide any of the documents referred to in Condition 4) within the time limit stipulated by the contract the Company shall have the right either to postpone delivery or to cancel the contract in whole or part without being under liability to the customer but the customer shall be liable for any loss (including loss of profit) or expense suffered or incurred by the Company as a result of such failure including the payment of interest on the full contract value remaining outstanding from the available date of shipment until the actual date of shipment or payment (whichever is sooner) at the contract rate specified in Condition 4. hereof.

### 12. ACCEPTANCE AND CLAIMS

- The customer shall inspect the goods immediately on arrival at the customer's works and shall be deemed to have accepted the goods as being in accordance with the contract unless within 28 days of arrival the customer shall notify the Company of any alleged defects in the goods.
- Any claims by the customer against the Company shall be notified in writing to the Company:-
  - in case of damage to or shortages in delivery of goods within 14 days of the date of delivery to a customer in Great Britain or Northern Ireland and within 28 days of the date of delivery to a customer outside Great Britain or Northern Ireland.
  - in the case of delay in delivery or non delivery within 14 days of the date of invoice where the customer is in Great Britain or Northern Ireland and within 28 days of the date when the goods should have been delivered where the customer is outside Great Britain or Northern Ireland.

If the customer fails to notify claims within the time stipulated such claims shall be deemed to have been waived and to have been barred.

### 13. CANCELLATION

- If payment for goods subject to this contract is not made on the due dates the Company may in its absolute discretion by service of notice upon the customer at the customer's address given in this contract elect to cancel the contract if payment together with penalties is not made within seven days from the date of such notice and the Company shall thereupon be entitled to request the customer at the customer's expense to deliver up the goods to the Company and if the customer fails to do so forthwith to enter upon the premises of the customer or any third party where the goods are stored and repossess the goods at the customer's expense.
- The Company may cancel the order under Condition 4. iv) and also in the event that any security documents required do not comply with Condition 4.v).
- The customer shall have no right to cancel the order unless done so with the written consent of the Company. In the event of the Company giving to the customer written consent to cancel the order or if the Company cancels the order pursuant to Condition 13.ii) above the customer shall forthwith become liable in damages to the Company for 10% of the contract price or the contract value as at the date of cancellation whichever is the higher.
- Sub-clause iii) will also apply to all goods services and charges delivered/provided to the customer notwithstanding the Company has repossessed goods pursuant to sub-clause i) of this Condition.

### 14. FORCE MAJEURE

The Company shall not be liable to the customer for any breach of the terms of any contract between the Company and the customer incorporating these terms and conditions which is due to any cause arising from or attributable to acts events non-happenings omissions or acts of God beyond the reasonable control of the Company (including but not limited to strikes lock-outs shortage of labour civil commotion riots or threat of or preparation for war and inability to obtain suitable raw materials equipment tools power components or transportation).

### 15. LAW

All matters relating to the formation performance and discharge of any contract incorporating these terms and conditions shall be governed by English law and shall be determined only by proceedings conducted within the jurisdiction of England and Wales.