

# Kenard Engineering Ltd - Terms and Conditions of Sale

## 1 Definitions

- 1.1 'Deliverables' shall mean the goods or materials upon which the Services have been rendered;
- 1.2 'Conditions' shall mean the terms and conditions set out in this document as amended from time to time in accordance with clause 2.2;
- 1.3 'Contract' shall mean the contract between the Company and Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions;
- 1.4 'Order' shall mean the Customer's order for the Goods and/or Services as set out in the Customer's purchase order or alternative means of transaction;
- 1.5 'Company' shall mean Kenard Engineering Company Ltd;
- 1.6 'Customer' shall mean the person, firm, company or other corporation who purchases Goods and/or Services from the Company;
- 1.7 'Goods' shall mean all or any of the goods or materials which, from time to time, the Company contracts to supply; and
- 1.8 'Services' shall mean any or all of the services which, from time to time, the Company contracts to supply.

## 2 Basis of contract

- 2.1 These conditions shall apply to all contracts, whether written, oral or implied for the supply of Goods and/or Services by the Company to the Customer.
- 2.2 The Contract constitutes the entire agreement between the parties. Any conditions of purchase or other terms provided by the Customer shall be excluded. Any variation or alteration to these Conditions shall not be effective unless specifically made in writing and signed by the Company.
- 2.3 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.4 No binding contract shall be created by the placing of an Order unless and until the Company's written acknowledgement or acceptance (Order Acknowledgment) of the Order shall have been issued, at which point the Order shall be accepted and the Contract shall come into existence. For the avoidance of doubt, any Order Acknowledgement will be deemed to repeat these Conditions.

## 3. Quotations

- 3.1 Any quotation in whatever form provided by the Company is given subject to these Conditions and as an invitation to treat and does not constitute an offer to sell. The validity of such quotation shall expire 30 days after the date of issue unless some other period is specified or accepted.

## 4. Prices

- 4.1 The price for Goods and/or Services shall be the price set out in the Contract or Order or, if no price is quoted, the price set out in the Company's published price list as at the date of delivery. Subject to anything to the contrary contained in any quotation or the Order Acknowledgement issued by the Company; prices for the Goods or the Services are, unless otherwise stated, exclusive of value added tax and any other similar tax, carriage, handling, packaging and any insurance charges.
- 4.2 The Customer shall have no right to set off whether statutory or otherwise.
- 4.3 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the Company's reasonable control.
- 4.4 Any alterations in design, specification, quantity or timing for delivery of the goods ordered, if agreed by the Company at the request of the Customer, shall entitle the Company to adjust the Contract price.
- 4.5 Unless otherwise expressly stated in writing by the Company, all prices payable must be settled in pounds sterling, but if the Company agrees in the Order Acknowledgement to accept foreign currency and does not specify an exchange rate, the exchange rate will be that of the Bank of England at the close of business on the day preceding the date of the Order Acknowledgement.
- 4.6 All Goods are sold 'ex-works' unless otherwise stated. Where the Company agrees to deliver the Goods other than at the Company's premises, the Customer shall pay the Company's charges for packaging, transport and insurance.
- 4.7 Where the Goods are sold 'ex-works' or under alternative commercial terms, the definition and rules in INCOTERMS 2010 shall apply, except as expressly provided in the Contract.

## 5. Designs and drawings

- 5.1 Where the Company prepares designs or drawings at the request of the Customer, the Customer shall approve such designs and drawings in writing and until such approval has been received by the Company (such approval not being unreasonably withheld, conditioned or delayed), the Company shall be under no obligation to the Customer to supply the Goods and/or Services.
- 5.2 If the Goods or Deliverables are manufactured or any process is to be applied to the Goods by the Company in accordance with a specification or requirement submitted by the Customer and agreed by the Company (at its sole discretion), the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses suffered or incurred by the Company arising out of or in connection with any use made by the Company of such specification or requirement.

## 6. Quality of Goods

- 6.1 The Company warrants that on delivery, the Goods and Deliverables shall:
  - 6.1.1 Conform with their description; and
  - 6.1.2 be free from material defects in material and workmanship.
- 6.2 Subject to clause 6.3 and 14.1, if:
  - 6.2.1 The Customer gives notice in writing within 14 days of discovery that some or all of the Goods or Deliverables do not comply with the warranty set out in clause 6.1;
  - 6.2.2 The Company is given a reasonable opportunity of examining such Goods and Deliverables; and
  - 6.2.3 The Customer (if asked to do so by the Company) returns such Goods and Deliverables to the Company's place of business at the Customer's cost; the Company shall, at its option, repair or replace the defective Goods and Deliverables, or refund the price of the defective Goods or Services in full.
- 6.3 The Company shall not be liable for the Goods' or Deliverables' failure to comply with the warranty in clause 6.1 if:
  - 6.3.1 The Customer makes any further use of such Goods or Deliverables after giving notice in accordance with clause 6.2;
  - 6.3.2 The defect arises because the Customer failed to correctly store, install, commission or maintain the Goods or Deliverables in line with good trade practice;
  - 6.3.3 The defect arises as a result of the Company following any drawing, design or Goods or Deliverables specification or equipment supplied by the Customer;
  - 6.3.4 The Customer alters or repairs such Goods or Deliverables without the written consent of the Company;
  - 6.3.5 The defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions; or
  - 6.3.6 The Goods or Deliverables differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.4 Except as provided in this clause 6 and subject to clause 14.2: the Company shall have no liability to the Customer in respect of the Goods' or Deliverables' failure to comply with the warranty set out in clause 6.1. The terms of these Conditions shall apply to any repaired or replacement Goods or Deliverables supplied by the Company under clause 6.2.

## 7. Patent Infringement

- 7.1 The Customer warrants that any instructions, plans or designs furnished or given by it shall not cause the Company to infringe any patent, copyright, registered design, right of confidence or trade mark (Intellectual Property) in providing the Goods and/or Services and agrees to indemnify the Company against all liabilities, costs, expenses, damages and losses suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property rights arising out of or in connection with the use of the Intellectual Property.

## 8. Supply of Services

- 8.1 The Company shall provide the Services to the Customer in accordance with the specification for the Services as specified in the relevant Order or Order Acknowledgement.
- 8.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the relevant quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 8.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

## 9. Variation and cancellation

- 9.1 The Company shall be under no obligation whatsoever to accept any variation or cancellation of an Order once an Order has been initially placed. However, if the Company (at its sole discretion) agrees to accept any such variation or cancellation it may levy such charges as it (in absolute discretion) sees fit on the Customer and the Customer shall be required to pay such charges in addition to the price for the Goods and/or Services. The company would expect all such cancellations to be agreed between both parties and formally recorded/signed by both parties.

## 10. Payment and Default by Customer

- 10.1 The Company reserves the right at any time at its discretion to demand security for payment before commencing and/or continuing with the contract or delivering Goods or Deliverables and the Company shall give such requested security to the Company.
  - 10.1.1 Unless otherwise expressly stipulated accounts are due for payment not later than the end of the month following the month of delivery or collection by the Customer. Should there be a delay in the Customer arranging for the collection then the payment becomes due from notification from the Company to the Customer that the Goods are ready for collection by the Customer.
- 10.2 Subject to clauses 10.3 and 10.4 and unless otherwise agreed in writing by the Company, the Customer shall pay the Company in full for the Goods and/or Services. In the event that the Customer fails to make payment by the due date or otherwise commits a breach of these Conditions (Customer Default), the Company may in its absolute discretion and without prejudice to any other rights which it may have:
  - 10.2.1 Suspend performance of its obligations under the Contract until the Customer remedies the Customer Default and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
  - 10.2.2 Require payment in advance for any future deliveries or Orders; and
  - 10.2.3 in the case of non-payment on or before the due date or on demand (as mentioned in paragraph 10.5 below) charge interest on the amount due on a day to day basis at the rate of eight percent per annum compounded daily from the time of delivery or date of invoice which is the earlier until the date of actual payment, whether before or after judgment.
- 10.3 The Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 10.
- 10.4 The Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 10.5 Without prejudice to any other rights the Company may have by virtue of paragraph 10.2.3 the Company may demand immediate payment of all sums whether or not due in the event that:
  - 10.5.1 The Customer makes a 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
  - 10.5.2 An encumbrancer takes possession of, or a receiver is appointed over, any of the properties or assets of the Customer; or
  - 10.5.3 The Customer ceases, or threatens to cease, to carry on business; or
  - 10.5.4 The Company reasonably apprehends that any of the events mentioned above in this clause 10.5 is about to occur in relation to the Customer and notifies the Customer accordingly.

## 11. Delivery and collection

- 11.1 Subject to the provisions of clause 12, the Company may arrange delivery to the Customer's premises as detailed in the Order at the Customer's request and cost. In all other circumstance, the Goods or Deliverables will be made available for collection by the Customer at the Company's premises at any time after the Company has notified the Customer that the Goods or Deliverables are ready for collection.
- 11.2 When delivery takes place at the Customer's premises it will be the Customer's responsibility to ensure delivery can take place at the time and place specified in the Order or otherwise agreed. The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses suffered or incurred by the Company arising out of or in connection with any breach by the Customer of this clause 11.2. Without prejudice to the foregoing, if the Company or its agents or employees agree to assist in the loading or unloading of the Goods or Deliverables as the case may be then the Company will not be liable for any loss or damage howsoever arising through any act, omission or negligence of any of its agents or employees.
- 11.3 Although given in good faith delivery times for the delivery or supply of the Goods or Services by the Company in its quotation and/or Order Acknowledgement are intended as estimates only and are not treated as being of the essence of the contract or binding on the Company. The Company will not be liable to the Customer for any loss or damage direct or indirect occasioned by the Company's failure (whether as a result of negligence or otherwise) to deliver the Goods or Deliverables by the date or within the time stated, and in no case shall delay be a ground for rejecting the same.
- 11.4 The right to deliver the Goods or the Deliverables in part is expressly reserved by the Company and the condition shall apply to any such part or parts mutatis mutandis.
- 11.5 In the event that the Customer is responsible for collecting the Goods or Deliverables and such collection does not occur within seven days of the Customer having been informed that such Goods or Deliverables are ready for the collection, the Company may charge the Customer for storage of any such Goods or Deliverables until collection occurs in addition to the price for the Goods and/or Services.

## 12. Risk

The liability for the Deliverables shall pass to the Customer:

- 12.1 In the case of collection at the Company's premises: at the time when the Company notifies the Customer that the Goods or Deliverables are available for collection; or
- 12.2 In the case of delivery at the chosen location: at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods or Deliverables, at the time when the Company has tendered delivery.

## 13. Title to Goods

- 13.1 Title to the Goods or Deliverables shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
- 13.1.1 The Goods;
- 13.1.2 Any other goods that the Company has supplied to the Customer; and
- 13.1.3 The Services.
- 13.2 Until title to the Goods or Deliverables has passed to the Customer, the Company shall:
- 13.2.1 Hold the Goods and Deliverables on a fiduciary basis as the Company's bailee;
- 13.2.2 Store the Goods and Deliverables separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 13.2.3 Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and Deliverables;
- 13.2.4 Maintain the Goods and Deliverables in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery; and
- 13.2.5 Notify the Company immediately if it becomes subject to any of the events listed in clauses 15.2 and 15.3.
- 13.3 If before title to the Goods or Deliverables passes to the Customer the Customer becomes subject to events listed in clauses 15.2 and/or 15.3, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods or Deliverables have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Company may at any time require the Customer to deliver up the Goods or Deliverables and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods or Deliverables are stored in order to recover them.

## 14. Exclusion of Liability

- 14.1 The Company shall be under no liability in respect of any defect in the Goods or Services arising from any drawing, design, specifications or raw materials (whether free issue or otherwise) supplied by the Customer to the Company and except where the Goods or Services are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other term implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.
- 14.2 Nothing in these Conditions shall limit or exclude the Company's liability for death, personal injury, fraud or any other liability which it would be illegal or unlawful for the Company to limit or exclude liability for.
- 14.3 Subject to clause 14.3; the Company shall not be liable for any claim made against the Customer by any third party nor to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
- 14.3.1 Loss of profit;
- 14.3.2 Loss of business;
- 14.3.3 Loss of business opportunity; or
- 14.3.4 Special, indirect or consequential damage.
- 14.4 Subject to clauses, 6.2, 14.2 and 14.3: the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence) breach of statutory duty, or otherwise, shall in no circumstances exceed the sums received by the Company from the Customer pursuant to the Contract.

## 15. Termination

without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 15.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing of the breach;
- 15.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
- 15.3 The other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.

## 16. Force Majeure

- 16.1 Without prejudice to the generality of any of the foregoing conditions, the Company shall not be liable for any loss or damage caused by the non-performance or delay in the performance of any of its obligations hereunder if the same is occasioned by any cause whatsoever which is beyond the Company's reasonable control. Should any such event occur the Company may cancel or suspend this Contract without incurring any liability for any loss or damage thereby occasioned.

## 17. Export

- 17.1 Subject to any special terms agreed in writing between the Company and the Customer, the provisions of this clause 17 shall apply notwithstanding any other provisions in these Conditions.
- 17.2 Where the Goods are supplied for export from the United Kingdom the Customer shall be responsible for:
- 17.2.1 Complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon;
- 17.2.2 By arranging for testing and inspection of the Goods at the Company's premises before shipment, Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which claim is made after delivery.
- 17.3 Unless otherwise agreed in writing between the Customer and the Company the Goods shall be delivered in accordance with shipping agreements determined by the Company and notified to the Customer.
- 17.4 Unless otherwise agreed in writing between the Customer and the Company payment of all amounts due to the Company shall be made either:
- 17.4.1 By irrevocable of credit opened by the Customer in favor of the Company and confirmed by a bank notified to the Company and which the Company has confirmed is acceptable; or
- 17.4.2 if the Company has confirmed in writing on or before acceptance of the Customer's order that the foregoing requirements will be waived, by acceptance by the Customer and delivery to the Company of a bill of exchange drawn on the Customer payable thirty days after sight to the order of the Company or as otherwise specified in the bill of exchange.

## 18. General

- 18.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 18.2 No waiver by the Company of any breach of contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable, in whole or in part, the validity of the other provisions of these Conditions or the remainder of the provision shall not be affected.
- 18.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 18.5 These Conditions, the quotation and Order Acknowledgement supplied by the Company shall constitute the whole agreement between the parties and supersede all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between the parties relating to their subject matter.
- 18.6 The construction, validity and performance of the contract shall be governed by and interpreted in accordance with English law. The parties hereto agree to submit themselves to the non-exclusive jurisdiction of the English courts for the purposes of these Conditions.