

# **TERMS AND CONDITIONS OF SALE**

## **ML UK LTD & or ML UK (DREDGING) LTD**

### **Definitions**

In these Terms & Conditions the following words have the following meanings:

|                   |   |
|-------------------|---|
| <b>'Company'</b>  | ML UK Ltd & or ML UK (Dredging) Ltd.  |
| <b>'Customer'</b> | The company, firm or person who agrees to buy goods and/ or services from the Company.  |
| <b>'Contract'</b> | Any contract between the Company and Customer for the sale and purchase of goods and/ or services incorporating these Terms & Conditions.   |
| <b>'Goods'</b>    | Goods and/ or services which the Company is to supply in accordance with these Terms & Conditions.  |
| <b>'Price'</b>    | The purchase price of the Goods and/ or Services as stated in the Companies quotation or estimate, The Price may be given in a written quotation/ estimate or may be verbally agreed with the Customer. |
| <b>'Tender'</b>   | Form of enquiry for Goods and/ or Services.   |

### **1. Formation of the Contract**

- 1.1 These Terms & Conditions of Sale form the whole agreement between the Company and the Customer.
- 1.2 Special or Contract related Terms may be incorporated into the Terms & Conditions by mutual agreement between the Company and Customer.
- 1.3 The Customers order constitutes an offer to purchase the Goods from the Company on these Terms & Conditions, the Contract between the Company and the Customer is made by the Company's acceptance of the Customers offer.

### **2. Prices**

- 2.1 Quotations or estimates are valid for 30 days only unless stated otherwise.
- 2.2 Unless otherwise stated in the quotation/ estimate, VAT and or any other customs duty and or tax is not included within the Price.
- 2.3 VAT or other duty/ tax will be charged at the rate currently in force.
- 2.4 Unless otherwise stated in the quotation/ estimate the Prices do not include test certificates.
- 2.5 Unless otherwise stated in the quotation or estimate Prices do not include packaging.
- 2.6 The Company reserves the right to make an additional charge for the preparation of working drawings or alteration to working drawings caused by inaccurate information given by the Customer at Tender/ Enquiry stage.

### **3. Materials**

- 3.1 All orders accepted by the Company are subject to materials/ components being available to the Company from its suppliers, by accepting an order the Company does not give a warranty as to availability.
- 3.2 The Company reserves the right to vary the agreed material specification if, in its opinion, the finished product will be of equivalent or higher standard.
- 3.3 The Company reserves the right to charge in whole or part for Goods that are modified or sourced specifically for the Customer if the Contract is cancelled after the Company has placed their order and is unable to cancel their order with their supplier. Goods that have been modified specifically for the Customer will be charged for at cost incurred up to the point of cancellation.

### **4. Payment**

- 4.1 Except for Customers with a pre-agreed credit facility, the Goods and/ or services shall be paid for in full either before commencement of Contract or on completion of Contract but before delivery/ hand over.
- 4.2 The Company may, in its sole discretion, agree with a Customer a credit facility.
- 4.3 The Company will Invoice a Customer with a credit facility on completion of deliver/ works, the Invoice will be payable 30 days from date of Invoice.
- 4.4 The Company may in its absolute discretion withdraw or reduce a Customers credit facility at any time for any reason.
- 4.5 The Company may charge interest on an overdue account at the rate of 2% per month above the Standard Bank rate at the time, calculated on a daily basis from the due date.
- 4.6 The Customer may not withhold payment of any due Invoice or other payment due to the Company by reason of any set off or counterclaim for any reason whatever.
- 4.7 The Company shall have the right of set off for amounts owed to the Customer against amounts owed by the Customer.

### **5. Delivery**

- 5.1 Delivery of goods is as agreed with Customer in the contract.

### **6. Property and Risk**

- 6.1 Ownership of the Goods remains with the Company and will not pass to the Customer until the Company is paid in full.

6.2 Risk in the Goods passes to the Customer upon acceptance by the Customer.

### **7. Acceptance**

7.1 The Customer shall be deemed to have accepted the Goods upon delivery.

7.2 It shall be agreed that the Goods are in accordance with the Contract unless:

- Within 5 days after delivery and prior to their use or resale the Customer serves the Company with a written notice specifying the alleged defect.
- In the case of delivery by a third party carrier within 24 hours of delivery and prior to their use or resale the Customer gives the Company a verbal or written notice specifying the alleged defect.

### **8. Specification**

8.1 In addition or subject to any other warranty or condition previously agreed in writing, the Company warrants that subject to any conditions stated at Contract stage, that the Goods are of satisfactory quality and correspond within reasonable tolerance levels to that which the Customer ordered and that the Company described.

8.2 Any specification, drawing or sketch produced by the Company for use in the manufacture or supply of Goods shall be verified by the Customer before manufacture or supply of Goods commences. If the Customer authorises manufacture or supply of Goods without verifying Company produced specification, drawings or sketches clause 8.3 shall apply.

8.3 The Company shall not be responsible for the accuracy or suitability of any drawing, Sketch, design or specification supplied by the Customer to the Company in relation to the manufacture or supply of Goods, notwithstanding that the Company may have inspected, commented or relied upon the same in the manufacture or supply of the Goods.

### **9. Defects**

9.1 Subject to clause 10 below, provided that the Customer has complied to clause 7 above, if the Goods or any part thereof are defective in quality or state or otherwise not in accordance with the Contract, then if the Customer and Company do not agree that the Customer shall accept the Goods at a revised price or that the Goods should be made good at the Company's expense the Company will accept the return of the Goods by the Customer and at the Customers option:

- Repay or credit the Customer the price of the Goods or
- Replace the Goods as soon as reasonably practicable in all other respects in accordance with the Contract.

### **10. Company Liability**

10.1 The Customer shall have no right of rejection of the Goods and the Company shall have no liability for negligence or breach of Contract except as provided in clause 9, which clause is in substitution for any other legal remedy of the Customer.

10.2 Nothing in these Terms and Conditions of Sale excludes or limits the liability of the Company for:

- Death or personnel injury caused by the Company's negligence or
- Under section 2 (3) of the Consumer Protection Act 1987 or
- For any matter which it would be illegal for the Company to exclude or attempt to exclude its liability or
- For fraud or fraudulent misrepresentation.

10.3 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price.

10.4 The Company shall not be liable to the Customer for loss of profit, loss of business or loss of goodwill in each case whether direct, indirect or consequential or any claims for consequential compensation whatsoever (however caused by the Company's negligence) which arise out of or in connection with the Contract.

### **11. Force Majeure**

The Company reserves the right to defer the date of delivery or to cancel the Contract or to reduce the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in carrying out its business due to circumstances beyond the reasonable control of the Company, including without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's work force), restraints or delays affecting carriers, the inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 28 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

### **12. Insolvency**

12.1 If the Customer 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 being in force for the relief of insolvent debtors or (being a corporate body), 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, has a receiver and/ or manager, administrator or administrative appointed of its undertaking or any part thereof or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined by defined in paragraph 14 of schedule B1 to the Insolvency act 1986) or a resolution passed,

or a petition presented to any court for the winding-up of the Customer or the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

- 12.2 Suffers or allows any execution, whether legal or equitable, to be levied on his/ its property or obtained against him/ it, or fails to observe or perform any of his/ its obligations under the Contract or any other Contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade or
- 12.3 Encumbers or in any way charges any of the Goods the provision of clause 12.4 shall apply.
- 12.4 In the event of any of circumstances under clauses 12.1, 12.2 & 12.3 arising then
- The Company may terminate the Contract or suspend further work/ supplies under the Contract.
  - If the Goods have been delivered but not paid for, the price shall become due immediately regardless of any previous agreement to the contrary.
  - The Customers right to possession of the Goods shall terminate immediately.

### **13. Assignment**

- 13.1 The Contract shall not be assigned by the Customer to any third party without prior consent of the Company.
- 13.2 The Company may assign any benefit or sub-contract performance of the Contract.

### **14. Intellectual Property**

The Customer indemnifies the Company against all actions, proceedings, claims, costs and expenses which may be brought against or incurred by the Company by reason of its supplying the Goods or applying any process or service in relation to goods of the Customer in accordance with any such drawings, specifications or other information whether or not it alleged in such actions, proceedings and claims that any patent, mark, design copyright or other intellectual property or other exclusive right of any third party has been infringed.

### **15. Data Protection**

- 15.1 The Customer consents to the Company processing any personal data the Company may from time to time receive in the course of dealings with the Customer in relation to any partner, officer, servant, agent or referee of the Customer.
- 15.2 The Customer in giving such consent warrants to the Company that it has the authority of the individual to whom the personal data relates.
- 15.3 The Company may make periodic searches at credit reference agencies and fraud prevention agencies to manage the Customers account, to take the decisions regarding credit facilities. A record may be kept of this search and the Customer agrees to the Company sharing this information.

### **16. General**

- 16.1 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.
- 16.2 Failure or delay by the Company 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.
- 16.3 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.4 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 party to it.
- 16.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English courts.