

Motortronics UK Ltd Terms of Business July 2019

1. DEFINITIONS

- 1.1. In this agreement, the following meanings shall apply:
 - 1.1.1. “We”, “us” “our” means Motortronics UK Limited (Formerly Fairford Electronics Limited), of Bristow House, Gillard Way, Lee Mill Industrial Estate, Ivybridge, PL21 9GG UK, with Company Number: 01559267;
 - 1.1.2. “You”, “Your” means the customer as detailed on an order;
 - 1.2. “Goods” means the goods supplied by us to you the customer, and includes all substitutions, replacements or renewals of such items and all related accessories, manuals and instructions provided for it.

2 ORDERS

- 2.1. By requesting and accepting a quotation or placing an order with us, you, the Customer, agree to be bound by our terms of business for our sale to you of those Goods.
- 2.2. You acknowledge that you have the authority and capacity to enter into a contract with us.
- 2.3. These are the only terms that apply unless we have expressly agreed in writing. No statements or representation made on our behalf (whether written or oral and whether or not you have relied on them) are valid unless authorised by one of our appointed employees or agents and is repeated in writing and attached to these terms.
- 2.4. Each order or acceptance of a quotation for Goods by you from us is an offer to buy Goods subject to these terms.
- 2.5. Orders are not accepted by us until we have issued a written acknowledgement or (if earlier) we have delivered the Goods to you.
- 2.6. It is your responsibility to ensure that the terms of your order and any applicable specification are complete and accurate, and we will not accept liability for any errors or omissions of inaccurate specifications.
- 2.7. Quotations are valid for the maximum period indicated and may be withdrawn or altered by us during that period at any time without notice.
- 2.8. Materials from stock are offered subject to availability at the time of an order.

3. DESCRIPTION

- 3.1. The quantity and description of the Goods are as set out in our quotation or acknowledgement of order.
- 3.2. All samples, drawings, descriptive matter, specifications weights, measures, performance capabilities, application suitability information, advertising and other data issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published are statements of opinion for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.3. You will rely on your own assessment as to fitness for the purpose of the Goods whether or not you have taken advantage of the facility for such inspection offered to you by us.
- 3.4. Where the Goods are designed, manufactured or sold bespoke to your specifications (rather than from our standard product line), by placing an order with us for the Goods, you confirm that you approve any drawings or specifications provided by us to you.
- 3.5. We reserve the right to improve the specification of the Goods at any time without prior notice.

4. PRICES

- 4.1. Unless otherwise agreed, the price quoted is our current price at that date. The price for the Goods (including packaging) is the price set out in our current price list (exclusive of any sales tax) published on the date of your order or as specified in any valid quotation given to you by us.
- 4.2. The price is exclusive of VAT, which will be charged at the applicable rate.
- 4.3. You are responsible for obtaining and the costs associated with obtaining export or import licenses, consents, and/or any other appropriate authority along with any duties or other related charges or costs. We will provide you with reasonable assistance (at your expense) to assist you in obtaining any necessary export licences from the United Kingdom.
- 4.4. Any additional costs not included in the price shall be invoiced to you at the same time as the price and are payable by you in accordance with clause 7.
- 4.5. Where the material cost of production of the Goods has increased in the interim between your order and dispatch, we reserve the right to increase the price, subject to your confirmation of the order.
- 4.6. You are responsible for any costs incurred by us with respect to any variation or amendment to the specification, design or materials used in relation to the design, manufacture or packaging of the Goods that has been authorised by you.
- 4.7. All quotations and orders are subject to relevant regulation or legislation shall be subject to variation. Any modification or addition to the Goods necessary as a result of applicable regulations will be charged at the revised price applicable at the time of despatch.

5. DELIVERY

- 5.1. Delivery of the Goods shall take place at the Delivery address specified on the Order. If no address is specified, Delivery will be at our place of business.
- 5.2. Delivery terms and costs will be detailed on the quotation or order acknowledgement.
- 5.3. When we have arranged delivery, Delivery is at our risk. Risk passes to you on Delivery. Where you arrange your own nominated carrier, risk in the Goods passes to you when the Goods are dispatched to your carrier.
- 5.4. In the event we incur any cost or expenses on your behalf, you will fully reimburse us for all properly incurred costs and expenses.
- 5.5. If no dates are so specified, Delivery shall be within a reasonable time. Time for Delivery is given as accurately as possible but is not guaranteed. You shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.
- 5.6. We will endeavour to comply with your reasonable requests for postponement of Delivery but shall be under no obligation to do so.
- 5.7. You will provide at the Delivery address and at your expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 5.8. As required by the Inco Terms specified on this order, you must clear any goods from customs within 7 days of notification or immediately inform us otherwise.
- 5.9. You are fully liable for any and all delivery charges, custom fees, duties, taxes, demurrage and storage charges as defined by the Inco Terms specified on this order.

6. DEFECTIVE DELIVERY AND DAMAGE IN TRANSIT

- 6.1. If you fail to accept Delivery (for what every reason) or if we have agreed to a postponement in writing, or if we are unable to deliver the Goods on time because you have not provided appropriate equipment, personnel, instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to you (including for loss or damage caused by our negligence);
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) we may store the Goods until delivery, whereupon you shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.2. Our liability is limited in accordance with clause 9 below.
- 6.3. We may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 6.4. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle you to repudiate or cancel any other Contract or instalment.
- 6.5. You shall have no right or claim for shortage or defects or mis-delivery unless
- (a) you have inspected the Goods immediately on delivery and send us a written complaint within ten working days of delivery specifying the shortage or defect;
 - (b) a written complaint is sent to the carrier within three days of delivery or such longer period as the carrier's conditions permit;
 - (c) we are given an opportunity to inspect the goods before you have used, resold, altered, incorporated or modified the Goods; and
 - (d) you return any damaged or defective Goods to us within 15 working days of Delivery.
- 6.6. If you do not make a complaint to us or the Carrier, the Goods shall be deemed to have been delivered in the correct quantity and free of defects apparent on inspection.

7. RISK AND TITLE

- 7.1. The Goods (in part of in full) are at your risk from the time of delivery, even if we have arranged delivery to another venue for you.
- 7.2. Ownership of the Goods shall not pass to you until we have received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are, or which become due to us from you on any account.
- 7.3. Until ownership of the Goods has passed to you, you shall:
- (a) hold the Goods on a fiduciary basis as our bailee;
 - (b) store the Goods (at no cost to us separately from all your other goods or any third party in such a way that they remain readily identifiable as our property; and
 - (c) maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction.
- 7.4. You consent to granting an irrevocable license to permit our servants or agents to enter your premises or where the Goods are stored and to inspect or repossess the Goods at any time up to when we have received final payment or if your right to procession has terminated.
- 7.5. You can only resell the Goods before you have good title on the understanding that if you resell the goods then you hold on trust for us the amount due to us in full and final settlement owed to us.
- 7.6. You may only mix the Goods with others or use them in the process of manufacture prior to the passing of title with our written consent (not to be unreasonably withheld) providing that you have given us suitable guarantees regarding discharge payment in full to us.

- 7.7. Your right to possession of the Goods terminates immediately if:
- (a) you breach this contract;
 - (b) if you are unable to pay your debts;
 - (c) if you cease to trade; or
 - (d) if you encumber or in any way charge any of the Goods.

8. TERMS OF PAYMENT

- 8.1. Unless otherwise agreed, payment in full and in pounds sterling (£) is due within 30 days of the date of our invoice. The time for payment is of the essence. Payment is not deemed to have taken place until we have cleared funds.
- 8.2. No disputes arising under the contract nor delays beyond our control shall interfere with your prompt payment.
- 8.3. In the event that you default payment, we are shall be entitled (without prejudice to any other right or remedy) to suspend all further deliveries without notice.
- 8.4. If you fail to pay us in full any amount due, you will be liable to pay interest to on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Plc in London, accruing on a daily basis until payment is made, whether before or after any judgment. We reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. MANUFACTURERS GUARANTEE

- 9.1. We warrant that the Goods:
- 9.1.1. are of a workmanlike quality;
 - 9.1.2. comply with the description on the Order; and
 - 9.1.3. are free from material defect at the time for delivery.
- 9.2. Providing that the Goods have been stored, specified, installed, operated and maintained according to our instructions and documentation, we guarantee our Goods for a period of one (1) year from the date of Delivery, unless specified otherwise. If the Goods are or become defective during this period, we will replace or repair the relevant Goods (at our discretion).
- 9.3. Where we are not the manufacture of the Goods, we will use reasonable endeavours to pass on the benefit of any such third-party warranty.
- 9.4. All warranties, conditions and other terms implied by statute or common law (save for Section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law excluded from the Contact.

10. LIABILITY

- 10.1. Our total liability in contract, tort (including breach of statutory duty and negligence), misrepresentation, restitution or otherwise is limited to the Price for the Goods.
- 10.2. In the event that we are liable for Goods which are proved to our satisfaction to be faulty (fair wear and tear or damage due to misuse excepted), our liability is limited (at our option) to replacement of the Goods or repayment to you all sums paid in respect of Goods supplied PROVIDED that such fault be notified in writing within ten days from the date of delivery to you. Any such replacements shall include free delivery to your premises.
- 10.3. We are not liable to you or any third party for pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise in each case whether direct, indirect or consequential loss, costs, damages or expenses with respect to the supply (in part or whole) of Goods or failure to supply the Goods, or how so ever arising in connection with or arising out of this contract.
- 10.4. Nothing in these conditions excludes or limits our liability for death or personal injury caused by our negligence.

11. TESTING AND INSPECTION

- 11.1. If you require testing and inspection of the Goods, this shall be at our premises and at your cost. Any testing and inspection shall be final and conclusive.
- 11.2. We are not obliged to produce test and performance certificates or safety critical certificates unless agreed in writing.

12. EXTERNAL EVENTS

- 12.1. We reserve the right to delay or reduce delivery or cancel this Contract and will be not be liable for any delays loss or damage caused wholly or in part by circumstances outside our control including, but not limited to Acts of God war, terrorism, protests, riot, civil commotion, fire, flood, epidemic, lock outs or strikes, or by any act done or not done pursuant to a trade dispute, whether such dispute involved our servants or not.
- 12.2. We shall be granted all necessary time on other indulgences necessary in the event of fire, breakdown of machinery or other circumstances beyond its reasonable control and shall not be liable for any delays loss or damage caused thereby.
- 12.3. If performance by us under this contract is delayed under this clause 11 for more than 3 calendar months, so long as you have given us at least 3 months notice in writing, you may terminate or cancel this contact in whole or in part. You shall be liable to us for all costs and materials incurred by us in fulfilment of your order up to the date of termination.

13. CANCELLATION AND TERMINATION

- 13.1. Cancellation will only be accepted by us in writing and on condition that all costs and expenses incurred by us up to the time of cancellation, and all loss of profits and other loss or damage resulting to us because of the cancellation will be reimbursed to us by you forthwith.
- 13.2. If we accept Goods for return, you are liable for 20% of the price for the Goods returned as a restocking fee, which is a genuine pre estimation of administration and operational costs.
- 13.3. In the event that the Order is cancelled (for any reason), you will be liable for all stock (whether finished or unfinished) that we hold for you (or that we are committed to hold for you) for the Order.
- 13.4. We may suspend or cancel any Order or part of an Order if delivery is by instalments, by immediate written notice if:
 - 13.4.1. you have breached any obligation under this contract and have not satisfactorily remedied that breach within 28 days of the breach;
 - 13.4.2. you fail to pay us any money when due (under the Order or otherwise); or
 - 13.4.3. you become insolvent.

14. EXPORT

- 14.1. You will not export, directly or indirectly, any Goods or technical data acquired from us in breach of any applicable laws or regulations (Export Control Laws), including United Kingdom export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 14.2. You undertake that you are
 - (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - (b) if requested, to provide us with any reasonable assistance, at our reasonable cost to enable us to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

15. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 15.1. All copyright and design rights (whether registered or unregistered) in designs, photographs, drawings, or other documents shall remain vested with us, and you have no rights to alter, obscure, remove or tamper in any way in whole or part with our trademarks or logos (whether registered or unregistered).
- 15.2. We do not grant you any rights to use our trademarks or logos (whether registered or unregistered) without our prior written permission.
- 15.3. Any items that we provide to you (other than the goods) themselves (such as drawings or samples) shall remain our property, and you shall return them to us on demand.
- 15.4. You are not entitled to make unauthorised copies of any of our Goods or materials, nor decompile, reverse engineer or otherwise replicate our Goods.
- 15.5. You shall keep confidential all commercially sensitive information provided by us (or our agents and representatives) to you in the course of our dealings with you, whether in connection with the Goods or our business, and you shall use any such information only for the purposes of your use of the Goods.

16. GENERAL

- 16.1. This contract is personal to you and you may not assign the benefit or burden to any third party, without our prior written approval.
- 16.2. Any Failure or delay on our behalf to enforce any remedy available to us is not to be construed as a waiver or any of our rights under this contract.
- 16.3. Each right or remedy available to us under this contract is without prejudice to any other right or remedy available.
- 16.4. If any provision of this Contract is found by a competent Court, tribunal or administrative body to be wholly or partially illegal, void, invalid, voidable, unreasonable or unenforceable, that provision shall be severed from the remaining provisions of the Contract.
- 16.5. This contract is governed by English law and is subject to the exclusive jurisdiction of the Courts of England and Wales.