



## **TERMS AND CONDITIONS**

### **1 GENERAL**

All goods are sold by J.H. Milnes Ltd (the "Company") to the purchaser of the goods (the "Customer") upon the following terms and conditions.

- (a) No representative or agent has any authority to vary these conditions without the confirmation in writing of a Director of the Company.
- (b) Subject to any variation in accordance with clause 1(a), these Conditions (together with matters referred to on the face of the Company's quotation and/or order confirmation) embody the entire understanding of the parties and override any prior promises, undertakings or representations.
- (c) Any omission or error in any sales literature, order form, advice note, quotation, price list, order acknowledgement, despatch note, invoice or other document issued by the Company may be corrected by the Company without liability.
- (d) The description of the goods to be supplied to the Customer shall be as set out in the relevant quotation/order confirmation and as further detailed in the relevant Operators Manual

### **2 BASIS OF SUPPLY**

- (a) The Company shall supply the goods to the Customer in accordance with these Conditions.
- (b) The Company shall only be bound by an order when [written] confirmation of the order has been given to the Customer by the Customer.

### **3 PRICE**

- (a) The charges for the goods are stated on the Company's quotation or order acknowledgement (as appropriate). All prices are in £ sterling, are exclusive of VAT and delivery charges, all of which will be notified to the Customer prior to any order being placed and added to or charged on invoices at the appropriate rates and shall be payable by the Customer.
- (b) Any tender or quotation issued by the company is deemed withdrawn unless an order is placed by the purchaser within 60 days from the date of the tender or quotation unless agreed in writing between the purchaser and ourselves.

### **4 DELIVERIES**

- (a) Unless otherwise indicated in the Company's quotation or order confirmation or otherwise agreed by the parties in writing, delivery shall take place at the Company's premises as noted on the relevant order confirmation. [Where goods are delivered by a carrier, no claim for damage or shortages will be considered unless the Company is notified in writing within [three] days of delivery.]
- (b) Any dates quoted for delivery of the goods are approximate only and accordingly time for delivery shall not be of the essence.
- (c) Risk of damage to or loss of the goods shall pass to the Customer at the time of delivery or, if the Customer wrongfully fails to take delivery of the goods, when the Company has tendered delivery of the goods.

### **5 ILLUSTRATIONS, DIMENSIONS ETC**

Photographs and other illustrations represent generally the goods offered but are not binding in detail. All weights, measurements and technical details given are stated as correctly as possible, but any slight deviation shall not vitiate the contract or form grounds for any claim against us.

### **6 WARRANTY**

- (a) Unless a set warranty is agreed; the seller warrants that the goods will be at the time of delivery correspond to the description given by the seller. Except where the buyer is dealing as a consumer (as defined in the unfair contract terms 1977 section 12) all other warranties, conditions or terms relating to

J. H. MILNES LIMITED TERMS AND CONDITIONS

fitness for purpose, merchantability or condition of the goods and whether implied by statute or common law or otherwise are excluded, save in respect of those terms which introduced amendments to the sale of goods act 1979 requiring goods supplied to be of satisfactory quality.

7 LIABILITY

- (a) The Company shall accept liability to the Customer for any loss of or damage to any property or injury to or death of person caused by any negligent act or omission or wilful misconduct of the Company, its employees, agents or sub-contractors.
- (b) Notwithstanding anything else contained in these Conditions the Company shall not be liable to the Customer for:
- (i) any losses which are not foreseeable by both parties when the Contract is formed arising in connection with the supply of goods or their use by the Customer;
  - (ii) any losses which are not caused by any breach by the Company;
  - (iii) business or trade losses, consequential losses (including, without limitation, loss of business and loss of goodwill); and
  - (iv) loss of profits.
- (c) If a number of Defaults give rise to substantially the same loss then they shall be regarded as the same Default for the purpose of calculating the Company's maximum liability pursuant to clause 7(c).
- (d) Nothing in this clause 7 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

8 PAYMENT:

- (a) Payment terms are nett monthly (by the 25<sup>th</sup> of the month) on spares and services accounts, Payment for machinery should be paid upfront before the machine is sent to the customer
- (b) The Company may suspend performance of any contractual obligation to the purchaser so long as any account of the purchaser is overdue and any extra cost thereby incurred by the company shall be reimbursed by the purchaser. Interest at 2% above the Bank of England minimum lending rate can be charged on all overdue accounts.
- (c) Notwithstanding delivery and the passing of risk in the goods, or any other provision of the Contract, the property in the goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the goods.
- (d) Until such time as the property in the goods passes to the Customer, the Customer shall hold the goods as the Company's fiduciary agent and bailee, and shall keep the goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer may resell the goods in the ordinary course of its business.
- (e) Until such time as the property in the goods passes to the Customer (and provided the goods are still in existence and have not been resold), the Company may at any time require the Customer to deliver up the goods to the Company and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the goods are stored and repossess the goods.
- (f) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without limiting any other right or remedy of the Company) forthwith become due and payable.

9 TRANSPORT, CARRIAGE AND PACKING:

- Home: Transport, carriage and packing can be charged on deliveries at the Company's discretion.
- Export: Goods are supplied ex works,

10 CANCELLATION

Cancellation by the purchaser of an order shall only take place with the Company's written agreement whereupon the Customer will be liable to indemnify the Company against any losses which the Company may incur in relation to such order.

11 DELAY OR FAILURE TO PERFORM

The Company shall not be liable to the Customer if it is prevented or delayed in the performing of any of its obligations to the Customer if this is due to any cause beyond the Company's reasonable control including

J. H. MILNES LIMITED TERMS AND CONDITIONS

(without limitation): an act of God, explosion, flood, fire or accident; war or civil disturbance; strike, industrial action or stoppages of work; any form of government intervention; a third party act or omission; failure by you to give us a correct delivery address or notify us of any change of address.

**12 NOTICES**

Notices or other documents to be given under these Conditions shall be in writing and delivered by hand or sent by registered post or facsimile to the party concerned at, in the case of the Company, the Company's quotation or order confirmation and, in the case of the Customer, the address noted in any order form or order acknowledgement or such other address as one party may from time to time designate by written notice to the other. Any such notice or other document shall be deemed to have been received by the addressee if delivered, upon delivery; if posted, on the second working day following the date of posting; and if sent by facsimile, when the communication is transmitted to the recipient's fax number provided that a copy of the communication is sent by registered post or delivered by hand as soon as practicable thereafter.

**13 THE CUSTOMER'S STATUTORY RIGHTS**

- (a) For the purposes of these Conditions, a "Consumer" shall mean any person acting outside the course of his or her business or trade.
- (b) If the Customer is a Consumer, there are certain terms implied into the Customer's Contract which the Company cannot exclude or limit. For example, under the Sale of Goods Act 1979 (as amended) the Company must ensure that the goods are of satisfactory quality. Nothing in this Contract affects these statutory rights.

**14 MISCELLANEOUS**

- (a) No waiver by the Company of any breach of these Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. Any waiver must be in writing to be effective.
- (b) 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 and the remainder of the provision in question shall not be affected thereby.
- (c) The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from the Contract so that no third party may claim any rights under this contract.
- (d) The Contract is governed by the laws of England and the English courts shall have exclusive jurisdiction to resolve any disputes arising as a result of or in connection with it.

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SIGNED BY

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PRINT NAME

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DATE