

MG ELECTRIC (COLCHESTER) LIMITED

CONDITIONS OF SALE from JUNE 1st 1995

1. Definitions

The "Seller" shall be a reference to MG Electric (Colchester) Ltd, the "Customer" shall be a reference to the purchaser of any products from the Seller, and the "Product" shall be a reference to any item supplied by the Seller to the Customer.

2. Application of Conditions

Unless otherwise agreed in writing by the Seller, all Products are supplied on the terms and conditions specified herein to the exclusion of any terms or conditions stipulated by the Customer and of any representations, conditions, warranties or communications not expressly incorporated herein.

3. Formation of Contract

(a) The delivery of the Products or part thereof, or the sending back by the Seller to the Customer of written acceptance (whichever shall be earlier) shall alone constitute the Company's acceptance of the Customer's order.

(b) An order must be accompanied by sufficient information to enable the Seller to proceed with the order forthwith and thereafter any modification must be agreed in writing. All telephoned orders or amendments to orders must be confirmed in writing by the Customer. When ordering Products the quotation reference if any must be stated and all communications relating to orders must specify the number and date of order, description of the Products and reference number.

4. Quotations

Subject to Condition 6 the Seller will endeavour to hold the terms of any quotation given by it for a period of 30 days or for such other period as is specified in writing, but without obligation or liability.

5. Orders

Telephone orders must be confirmed to the Seller in writing within 7 days.

6. Prices

All quoted prices are net ex-works unless otherwise stated and are subject to alteration without notice. The contract price shall be that ruling on the day the contract is formed under clause 3(a). All prices are exclusive of VAT, delivery and insurance which will be added at the then current rate. Should the Seller incur additional expense in supplying the Products which is not provided for in the Seller's quotation or price list, owing to any circumstances whatsoever outside the Seller's control, such additional expense shall be added to the invoice and paid for by the Customer accordingly.

7. Payment

(a) Payment must be made within 30 days of the date of invoice unless otherwise specifically agreed in writing. Each Product will be invoiced on despatch or, if earlier when delivery is made or tendered. No discount or allowance will be made unless specifically so stated by the Seller in writing.

(b) In the event of the Customer failing to effect full payment by the due date, the Seller shall be entitled to without prejudice to any other rights:

(i) to be paid interest on any outstanding balance (as well after or before any judgement) at an annual rate of 4% above the base lending rate from time to time in force by Royal Bank of Scotland, such interest accruing on a daily basis and

(ii) to suspend or discontinue further performance under the same or any other contracts. In such circumstances the Seller shall be under no liability in respect of or arising out of or in connection with such discontinuance and the Customer shall be liable to the Seller for any loss suffered by reason of or in connection with such failure by the Customer.

8. Passing of Property and Risk

Until payment in full has been received by the Seller for all Products whatsoever supplied by the Seller to the Customer:-

(a) Title to and property in the Products shall remain vested in the Seller.

(b) The Customer shall if the Seller so requires keep the Products separately stored or marked at the Customer's expense so as to be clearly identifiable as the Seller's property.

(c) The Seller reserves the right if any payment under this or any other contract is overdue in whole or part (without prejudice to any of its other rights) to recover or resell the Products and may enter upon the Customer's premises by its servants or agents for that purpose.

(d) Subject to (e) and (f) below the Customer shall be at liberty to sell the Products in the ordinary course of business on the basis that the relationship of the Buyer and Seller shall be fiduciary if the Products are sold and the Seller shall have the right to trace the proceeds thereof.

(e) The Seller may at any time revoke the Customer's sale by notice to the Customer if the Customer is in default for longer than 7 days in the payment of any sum whatsoever due to the Seller whether in respect of the Product or any other Products supplied or services rendered at any time by the Seller to the Customer or for any other reason whatsoever or if any bill of exchange, cheque or other negotiable instrument drawn or accepted by the Customer in favour of the Seller is dishonoured on presentation for payment, or if the Seller has bona fide doubts as to the solvency of the Customer.

(f) The Customer's power of sale shall automatically cease if a receiver is appointed over any of the assets or the undertaking of the Customer or a winding up order is made against the Customer or the Customer goes into voluntary liquidation otherwise than for the purpose of reconstruction or amalgamation or calls a meeting of, or makes any arrangement or composition with creditors or commits any act of bankruptcy.

(g) The Customer shall insure the goods for their full value and shall produce on request from the Seller the policy for inspection by the Seller.

(h) The risk of loss of or damage to the Products shall pass to the Customer upon delivery pursuant to condition 9.

9. Delivery

(a) Any date or period quoted or agreed by the Seller for despatch or delivery shall be deemed an estimate only, and the Seller shall not be liable for the consequences of any delay. Any such date or period quoted or agreed shall in any event only run from receipt by the Seller of a written order together with all information necessary to enable the Seller to complete the contract.

(b) The Customer shall at the Seller's option accept delivery by instalments.

(c) The place of delivery shall be that specified as the delivery address by the Customer. The costs of delivery and insurance to the place of delivery will be charged to the Customer in addition to the price in paragraph 6.

10. Returned Goods

(a) It is not the Seller's policy to accept the return of goods except where the Seller is in error in terms of the quantity or type of Products supplied or in accordance with warranty returns as laid down in paragraph 14(a). If the Seller agrees to accept returns resulting from Customer errors in ordering, the Seller will charge for administration and other costs incurred at the rate of 25% of the original invoiced value of the goods, with a minimum charge of £50. No returned goods will be accepted without prior approval, and attention is drawn to the following;

(a) Medical Products can only be returned in accordance with Health Service Guideline HSG (93) 26 (Decontamination of equipment prior to inspection, service or repair). Failure to follow this guideline will invalidate any possible warranty claim and result in the equipment being destroyed.

(b) Where goods are supplied for evaluation purposes the following conditions apply. A non-returnable payment of 25% of the price of the goods and the carriage cost is to be paid prior to the despatch of the goods. The balance of the price will be invoiced to the Customer and provided the goods are returned to the Seller clean and in perfect condition, carriage and insurance paid, within a period of 90 days from the date of invoice, credit will be given for the invoice value. On this basis of supply for evaluation, it is not acceptable for medical equipment to be used in real life situations.

11. Damage or discrepancies on delivery

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Where the price includes delivery the Seller will at its option repair, replace free of charge or credit goods lost or damaged in transit provided that the Customer notifies the Seller in writing of such loss or damage within 7 days of delivery. Any Products in respect of which no such notification is given to the Seller shall be deemed in all respects in accordance with the contract and the Customer shall be bound to accept and pay for the same accordingly.

12. Specifications

The Products supplied will correspond within the limits normally accepted within the industry with the Seller's specification, save that the Seller shall be entitled to vary the specifications or provide substitutes where such variation or substitution shall not materially affect the characteristics of the Products and where such varied or substituted Products are of a quality equal or superior to those originally specified.

13. Patents or Registered Designs

The Customer shall indemnify the Seller against all costs, claims, demands and damages to which the Seller may be liable as a result of work done in accordance with the Customer's specification or instructions which infringes Patents or Registered Designs.

14. Liability and Warranty

(a) The Seller will where practical repair or replace any Products which are accepted by it as having been defective by reason of faulty workmanship or production or the use of defective materials or failure to attain any expressly guaranteed performance figures, provided the Customer notifies the Seller in writing of the defect within a period of 12 months of receipt of such Products by him or his agent and returns the defective Product to the Seller carriage paid. The Seller may at the Customer's request and expense visit the Customer's site in order to ascertain the cause of any fault with the Product.

(b) Defects in either quality or quantity of any consignment of the Products shall not be a ground for cancellation of the remainder of any order for the Products, subject to the Seller's performance of his obligations under (a) above.

(c) The Seller accepts responsibility for all technical advice given by its officers or servants and for which charge is made. Technical advice made available to Customers without charge is given with all reasonable care but without liability on the part of the Seller. In the absence of any special written arrangements to the contrary it is the Customer's responsibility to ensure that the nature, capacity and performance of the Products ordered by him are sufficient and suitable for his purpose.

(d) The Seller's liability in respect of defective Products shall be limited in terms of sub-clause (a) hereof and any statutory or other warranty, condition, description or representation, express or implied, as to the description, quality, merchantability or fitness of the Products for any purpose is hereby expressly excluded. The Seller shall in no circumstances be liable for damages of any kind whether direct or consequential (including but not limited to loss of profit, expenditure incurred or delay in the execution of any works being carried out by or for the Customer) or otherwise howsoever arising out of or in connection with the Products or work done in connection therewith, except that nothing herein shall limit the Seller's liability pursuant to the EEC directive on Product liability (85/374/EEC) or for death or personal injury arising out of its negligence where such liability arises in respect of the supply of Products under a non International Supply Contract (as defined in the Unfair Contract Terms Act 1977, as may be amended).

15. Exhibition units

The Seller may consent with a Customer to supply products for display with the Customer's equipment in the Customer's own premises or in premises owned by a third party. These products shall be supplied carriage and insurance paid by the Seller and shall remain the property of the Seller at all times. At any time during the display process the Seller reserves the right to remove, exchange or update the equipment to prevent it becoming obsolete and unsaleable. It is the Customer's responsibility to clean and maintain equipment supplied. If the Customer informs the Seller that the goods can be sold the goods will be invoiced to the Customer at the current price inclusive of delivery and insurance as if the goods had been despatched from the Seller's premises. The standard conditions of sale will then apply.

16. Force Majeure

The Seller shall not be liable in respect of any claim for loss, delay or non-delivery arising by reason of riot, civil commotion, war, whether declared or not, accident, shortened hours of labour, strikes, lock-outs, mechanical breakdown of facilities, failures by third parties to supply it with materials or goods, storm, flood, fire or any other circumstances whether of the kind hereinbefore mentioned or not, beyond the reasonable control of the Seller. The Seller shall not, however, be relieved from supplying the Products nor the Customer from accepting them when the above causes interfering with delivery shall have ceased.

17. Waiver and Assignment

(a) The rights of either party shall not be prejudiced or restricted by an indulgence or forbearance extended to the other party, and no waiver of rights in respect of any breach by the other party shall operate as a waiver in respect of any other breach.

(b) The Customer shall not transfer his rights or any part thereof against the Seller to any third party without the Seller's prior written consent.

18. Termination

If the Customer shall commit a breach of any term of a contract for the supply of Products or if any distress or execution shall be levied upon the property or assets, or if he shall make or offer to make any arrangement or composition with his creditors or he shall commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the Customer is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of such company's undertaking, property or assets or any part thereof shall be appointed or if the Customer suffers or takes any similar or analogous step in consequence of debt, the Seller shall have the right forthwith to determine any contract for the supply of the Products then subsisting and upon written notice of such determination being posted to the Customer's last known address any such subsisting contracts shall be deemed to have been determined without prejudice to any claim or right the Seller may otherwise make or exercise. The Customer shall compensate the Seller for any loss suffered by the Seller arising out of or in connection with such a determination of contract. In addition, the Customer rights to possession of any Products, the title to which has not yet passed, shall cease and the Seller shall be entitled to repossess the Products in accordance with Clause 8(c) hereof.

19. Variation

No purported variation or waiver of these terms and conditions shall be of any effect unless in writing and signed by a director of the Seller.

20. Law

These instructions shall be construed and shall take effect in all respects in accordance with English Law and shall not affect your statutory rights.