

Terms and Conditions of Sale

- Definitions:**
- The Company:** Essex X-Ray and Medical Equipment Limited whose registered office is at Unit 18 Flitch Industrial Estate, Chelmsford Road, Gt. Dunmow, Essex CM6 1XJ
- The Contract:** Any agreement in writing entered into by the Company resulting from the acceptance by the Customer of the Company's written quotation.
- The Goods:** Materials, products or services supplied by the Company to the Customer.
- The Customer:** Any individual, partnership, company, corporation, authority, government agency, ministry or other corporate entity who enters into the Contract with the Company.

- 1 **General** These Terms and Conditions shall apply to the Contract or any other agreement entered into by the Company for the Goods. Variations of and additions to these Terms and Conditions shall only be valid when authorised by the Company CEO.
- 2 **Scope** The Contract is limited to the Goods offered by the Company's quotation together with variations and additions agreed in writing by the Company.
- 3 **Acceptance** Acceptance of the Company's quotation shall be complete with full and final information to enable the Company to provide the Goods. Failure by the Customer to provide such information shall allow the Company to amend the price and the time of delivery.
- 4 **Performance** Any performance figures given by the Company are based upon experience and as such we expect to obtain, or have obtained, on test. Such figures shall not be held to be a guarantee of performance.
- 5 **Payment** Terms of payment are strictly Nett 30 days from date of invoice unless otherwise agreed in writing by the Company. In the event that payment is not made by the due date the Company shall be entitled to charge interest on any overdue amount at the rate of 2% per month or such other rate as may be notified by the Company from time to time for each month or part month during which such overdue amounts remain unpaid.
- 6 **Ownership and Risk**
 - (i) Risk of damage to the Goods shall pass to the Customer on delivery.
 - (ii) Title to the Goods shall not pass to the Customer until the Company has received payment in full of all amounts due under the Contract. The Goods shall remain the property of the Company and the Customer shall hold them in a fiduciary capacity as the Company's Bailee free from any charge, lien or other encumbrance until title passes to the Customer. Until title passes from the Company the Customer shall keep the goods and any property into which they have been incorporated fully insured with a reputable insurer and if possible shall store or keep the Goods in such a manner that they are clearly identified as the Company's property. The Company shall be entitled to recover possession of the Goods in whole or in part at any time and for any reason including the severance of the Goods from other property and shall be entitled without restriction to enter lawfully any of the Customer's premises or such other premises in which the Goods are held for that purpose. The Customer shall pay all costs and expenses incurred by the Company in exercising this right.
 - (iii) Notwithstanding that title may not have passed to the Customer, the Company shall be entitled to maintain an action for the price of the Goods and the Customer acknowledges that nothing in sub clause (ii) above confers any right to return or reject the Goods or refuse defer or delay payment for them.
 - (iv) Where the Contract requires the Company to manufacture the Goods using material supplied by the Customer to the Company free of charge and such material is appropriated by the Company in performance of the Contract then such material shall cease to be the property of the Customer and title to the Goods created using such material shall vest in the Company. Title to the Goods shall be retained by the Company in accordance with 6 (ii) above and title shall not be lost by the Company relinquishing possession of the Goods to the Customer.
- 7 **Delivery and Lien**
 - (i) Any references in the Company's quotation to mode and place of delivery shall have meaning according to INCOTERMS 2010.
 - (ii) The Company will use reasonable commercial endeavours to deliver the Goods within any time estimates given. Time for delivery is not the essence of the Contract and delay shall not entitle the Customer to repudiate the Contract nor shall the Company be liable for any loss or damage resulting from the Company failing to adhere to time estimates or dates of delivery given.
 - (iii) The Company shall be entitled to deliver the Goods in a single consignment or multiple part consignments. Without prejudice to sub-clause (ii) above, non-delivery of any instalment or delay in delivery shall not affect the balance of the Contract nor entitle the Customer to terminate the same. However, the Company shall be entitled to levy additional charges where the Customer fails or refuses for any reason to take delivery and shall be entitled to determine the Contract forthwith if the Customer then fails to take delivery within 14 days of a written request requiring him to do so.
 - (iv) The Company shall upon notice to the Customer be entitled to withhold delivery or suspend performance of the Contract in whole or in part if at the time of the notice the Customer has exceeded any credit limit extended or failed to pay any overdue invoice whether related to the Contract or not. If within 14 days the Customer fails to reduce its indebtedness to the level requested by the Company or fails to settle any overdue invoice the Company shall without further notice to the Customer be entitled to determine the Contract forthwith. In the event of determination of the contract the Company shall be entitled to payment by the Customer of all costs, expenses and profits envisaged by the Contract and shall be entitled to claim compensation from the Customer for any losses both direct and consequential resulting from such determination.
 - (v) The Company shall without prejudice to any other remedy available to it and in addition to any other conditions contained herein have, in respect of all unpaid debts and other sums due from the Customer under the contract, a general lien on any property whatsoever in its possession whether related to the contract or not which are or are intended to become the property of the Customer and pursuant to that lien or any other right the Company shall be entitled to sell such property upon terms the Company thinks fit and keep the proceeds of the sale in diminution of the sum due to the Company and all costs and expenses incurred in relation to the sale of such property.

- 8 **Free Issue Materials** The Company does not accept any liability or responsibility for any loss, damage or deterioration to any materials issued to it free of charge in connection with the Contract.
- 9 **Defects** If within twelve months of delivery of the Goods or any part or parts thereof a defect shall become apparent and providing written notice of such defect has been given by the customer to the Company immediately the defect has been discovered within the said twelve months then the Company shall rectify at its expense such defect by replacement or repair providing the Goods or defective part or parts thereof are returned carriage paid to the Company's works. The Company's liability shall be limited to the rectification of the defect as previously stated and no liability shall be accepted by the Company for any expenditure loss or damage either direct or consequential incurred by the Customer or any other party as a result of such defect. The Company will not accept any liability in respect of defects if repair or attempted repair of the Goods or any part or parts thereof found to be defective has been carried out without the Company's prior written approval or if the Goods have been modified after delivery. Any repair or replacement of the Goods or any part or parts thereof shall be carried out within such times as the Company may reasonably put such repair or replacement into effect. Nothing in this clause shall limit or exclude the liability of the Company in a manner or to an extent not permitted by law.
- 10 **Damage or Loss in Transit** Claims for damage in transit shall only be considered if the Company and the carriers receive written notice of such damage within three days of delivery.
Claims for loss or non-delivery shall only be considered if the Company and the carriers receive written notice of such loss or non-delivery within ten days of despatch from the Company's works.
- 11 **Cancellation** The Customer shall not be entitled to cancel the Contract without the written consent of the Company. In the event of cancellation and in addition to any other rights and remedies contained within these Terms and Conditions of Sale or conferred by law the Company shall be entitled to claim compensation from the Customer for any design, materials, manufacture, administration or other work and loss of profits resulting from the cancellation of the Contract.
- 12 **Termination**
- (i) In addition to the provisions for termination or cancellation contained within these Terms and Conditions of Sale, should the Customer be in default or commit a breach of the Contract or any of its provisions or any other obligations it has to the Company or If any distress or execution shall be levied upon the Customers property or assets or if the Customer shall make or offer to make any arrangement or composition with its creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against it or if the Customer is a limited company and any resolution or petition to wind up such company's business other than for the purposes 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, the Company shall have the right to determine the Contract forthwith upon written notice to the Customer.
 - (ii) Upon any lawful determination of the Contract the Company shall be entitled to recover from the Customer all sums then due and outstanding to the company under the Contract and all and any losses suffered by the Company as a result of the determination. Such sums due and outstanding and losses suffered shall be recoverable immediately upon determination of the Contract notwithstanding that any period of credit extended by the Company to the Customer may not have expired.
- 13 **Intellectual Property**
- (i) Any patent, registered design, copyright registered trademarks, logos or any other intellectual property rights attached to all goods, component parts, drawings, designs, plans, computer programmes and other software pertaining to Goods which are actually invented or designed by the Company shall remain the property of the Company and the Customer shall not be entitled to copy or reproduce or procure the copying or reproduction of the same without the Company's written consent.
 - (ii) In the event the Customer provides drawings, designs or real property to the Company for the purpose of producing the Goods then the Customer shall hold harmless the Company against any claims from third parties for infringement of patent or any other intellectual property rights enjoyed by such third parties or their agents or affiliates and the Company shall not be joined in any action resulting from the use of such drawings, designs or real property.
- 14 **Assignment** Unless by prior specific agreement in writing by the Company the Customer shall not assign the benefit or burden of the Contract or any part or parts thereof.
- 15 **Force Majeure** In the event the normal course of the Contract is frustrated, prevented, interrupted, hindered, delayed or rendered unduly expensive by any cause whatever beyond its control the Company shall give prompt notice thereof to the Customer and shall have the right to cancel or vary the Contract or to defer its performance of as long as such cause shall exist.
- 16 **Arbitration** Any dispute arising relating to the Contract which cannot be resolved between the Customer and the Company shall be referred to and decided by arbitration in England under the terms of The Arbitration Act 1996 before a single arbitrator appointed by the President for the time being of The Institute of Mechanical Engineers.
- 17 **Law** English Law shall govern the construction, validity and performance of the Contract.