

Please read this document carefully as all goods sold by Abwood Machine Tools will be supplied subject to these terms and conditions of business.

**1. Definitions**

1.1 In these terms and conditions, the following definitions shall apply:

"Company" means Abwood Machine Tools (a division of Atlanta Trust Ltd) Company no 1290993 whose registered office is at: 615-623 Princes Road, Dartford, Kent DA2 6HH.

"Purchaser" means the person, firm or company placing an order for Goods.

"Goods" means the goods described in the Confirmed Order.

"Confirmed Order" means an order for the Goods as confirmed by the Company under clause 3.4

"Due Date" means the date referred to in Clause 6.1

1.2 Any reference in these terms and conditions to any provision of a statute shall be construed as a reference to that provision as amended, Re-enacted or extended at the relevant time.

**2. Contract**

2.1 These terms and conditions apply to all contracts for the sale of Goods by the Company to the Purchaser. No variation will be effective unless agreed in writing by a director of the Company.

2.2 The Company's employees or Agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. Any advice or recommendation given by the Company or its employees or agents to the Purchaser which is not confirmed in writing is followed or acted upon entirely at the Purchaser's own risk.

2.3 The descriptions and illustrations contained in the Company's catalogues, price lists, specifications and other advertisement matter are intended merely as an indication of the type of goods described therein and none of them shall form part of any contract with the Purchaser.

**3. Order and Acceptance**

3.1 The Company will provide the Purchaser with a written quotation for the Goods. Any order made by the Purchaser against such a quotation constitutes an offer by the Purchaser to buy the Goods.

3.2 The Purchaser shall be responsible to the Company for the accuracy of any information contained in its order.

3.3 Any Goods from stock are subject to availability at the time an order is submitted by the Purchaser.

3.4 No order submitted by the Purchaser shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company.

3.5 The quantity and description of the Goods shall be as specified in, or referred to, in the Confirmed Order.

3.6 No Confirmed Order may be cancelled by the Purchaser except with the agreement in writing of the Company and on the terms that the Purchaser shall indemnify the Company in full against all costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

3.7 A separate contract shall arise in respect of each Confirmed Order

**4. Price of the Goods**

4.1 The price of the Goods shall be the price set out in or referred to in the Confirmed Order ( or, in the case of any error or omission, as subsequently notified by the Company to the Purchaser) provided that the Company may increase the price for any reason under Clause 6.2

4.2 The price is exclusive of Value Added Tax ( where applicable )

4.3 The price is exclusive of delivery charges. If the Purchaser requires delivery of the goods the Company reserves the right to add to the price the cost of any packaging, carriage and/or insurance.

4.4 The price is exclusive of any duties, imposts and levies. The price for any imported parts incorporated in the Goods may be subject to fluctuation and the Purchaser agrees that any Confirmed Order is based on the current rate of import duty and rate of exchange at the time of the Confirmed Order unless otherwise specified.

4.5 Unless otherwise agreed in writing, payment shall be made in pounds sterling, and if the price for the Goods is quoted in a currency other than pounds sterling, payment shall be calculated at the rate of exchange at the time of the Confirmed Order.

**5. Delivery**

5.1 The Company will use reasonable endeavours to deliver on any date indicated in the Confirmed Order for the delivery of Goods but delivery dates should be regarded as approximate only and delivery time shall not be the essence of the contract.

5.2 Delivery shall take place when the Company notifies the Purchaser that the Goods are ready for collection from the Company's premises unless the Purchaser has required the Company to make delivery at the Purchaser's premises or the Purchaser's Customer's premises in which case delivery shall take place when the goods are delivered to such premises and offloaded from the transporting vehicle.

**6. Terms of Payment**

6.1 Payment for the Goods shall be made by the Purchaser to the Company immediately upon delivery of the Goods or, if otherwise agreed between the Company and the Purchaser, within 30 days after the end of the month of despatch by the Company of an invoice.

6.2 If the Company is unable to effect delivery or despatch of the Goods by reason of the Purchaser failing to take delivery of the Goods or by reason of the Purchaser's instructions or lack of instructions the Company shall be entitled to notify the Purchaser that the Goods are ready for delivery or despatch and to add to its invoice reasonable additional carriage and insurance and/or storage costs resulting from the delay in delivery or despatch of the Goods.

6.3 Time for Payment shall be of the essence.

6.4 If the Purchaser fails to make any payment on the Due Date then, without prejudice to any other right or remedy available to the Company, and without incurring any liability for any loss or damage caused to the Purchaser, the Company shall be entitled to:

- a) Cancel any Confirmed Order and/or suspend any further deliveries of goods to the Purchaser
- b) Appropriate any payment made by the Purchaser to such of the Goods ( or goods supplied under any other contract between the Company and the Purchaser) as the Company may think fit: and
- c) Charge the Purchaser interest (both before and after Judgment) on the amount unpaid at the rate of as 6% per annum above the base rate of the HSBC Bank PLC from time to time or the Statutory rate applicable under the Late Payments of Commercial Debts (Interest) Act 1998 (whichever is the greater), in either case such interest to accrue on a daily basis from the Due Date until the date of actual payment.

## **7. Risk & Property**

- 7.1 The risk of damage to or loss of the Goods shall pass to the Purchaser at the time of delivery or, if the Purchaser fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these terms and conditions the property in the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds:
- Payment in full of the price of the Goods, and
  - Payment in full for all other goods agreed to be sold by the Company to the Purchaser for which payment is then due or accruing due.
- 7.3 Until such time as the property in the Goods passes to the Purchaser:
- The Purchaser shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods properly stored and insured for the Company's benefit and identified as the Company's property; and
  - The Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and if the Purchaser fails to do so then the Company its employees and/or agents may forthwith enter upon any premises of the Purchaser or any third party where so the Goods are stored and repossess the Goods; and
  - The Purchaser shall afford the Company inspection of any documents relating to such Goods for the purpose of tracing them
- 7.4 The Purchaser shall not be entitled to pledge or purport, to pledge or in any way charge or purport to charge by way of security for any indebtedness any of the Goods which remain the property of the Company

## **8. Acceptance of Goods**

The Purchaser shall be responsible for inspecting the Goods:

- Where they are collected by the Purchaser (or its agent), from the Companies premises, at the time of collection; or
- Where they are delivered to the Purchaser's premises, within 3 working days of delivery and shall at the relevant time notify the Company of the Purchaser's consideration that the Goods to be in any way damaged, or unsatisfactory or otherwise not in conformity with the contract. In the absence of such notification the Purchaser shall be deemed to have accepted the Goods.

## **9. Warranty**

- 9.1 Subject to the conditions of this clause and in clause 10 the Company warrants that the Goods will at their time of acceptance under clause 8, remain free from defects in material and workmanship for the period of 12 months.
- 9.2 The above warranty is given by the Company subject to the following conditions:
- The Company shall be under no liability in respect of any defect arising from wilful damage, negligence, failure to follow the Company's instructions, misuse, alteration to the Goods (including by the removal of any Guard or Cover) or repair of the Goods in each case by the Purchaser, its employees or agents;
  - That it does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Purchaser shall only be entitled to the benefit of any warranty or guarantee given by the relevant manufacturer.
  - The Company shall be under no liability if full payment for any of the Goods has not been made by the Due Date
- 9.3 Subject as expressly provided in these terms and conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties and conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Where Goods are sold to a consumer the statutory rights of the consumer are not affected by these terms and conditions.
- 9.4 Without prejudice to clause 9.2 (b) any claim made by the Purchaser which is based on any defect in quality or condition of the Goods shall be notified to the Company in writing 14 days from the date on which the defect or failure became apparent. Where such a claim is notified to the Company, the Company shall be given the opportunity of remedying the defect or failure and supplying (where necessary) replacement parts and completion of such remedial work shall constitute fulfilment of the Company's obligations under the contract. Remedial work and replacement parts will be provided free of charge, provide the Purchaser at its own cost returns to the Company the relevant Goods.
- 9.5 Without prejudice to clause 9.4 the Company at its sole discretion shall be entitled to refund the Purchaser the price of the Goods and shall have no further liability to the Purchaser under the contract.
- 9.6 Except in respect of death or personal injury caused by negligence of the Company the total liability of the Company to the Purchaser under this contract shall not exceed the price of the Goods.
- 9.7 Except in respect of death and personal injury caused by the negligence of the Company, the Company shall not be liable to the Purchaser by reason of any representation (unless fraudulent), warranty, condition or other term of the contract for any loss or damage (whether for loss of profit or goodwill), claims for consequential compensation which arise out of or in connection with the supply of Goods
- 9.8 The Company shall not be liable to the Purchaser or deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- Act of God, explosion, flood, tempest, fire or accident
  - War or threat of war, sabotage, insurrection, civil disturbance
  - Acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the parts of any governmental, parliamentary or local authority
  - Import or export embargoes
  - Strikes, lockouts, or any other industrial actions or trade disputes (whether involving employees of the Company or a Third Party)
  - Difficulty in obtaining the labour, fuel, parts or Goods from their manufacturer

## **10. Acknowledgments by the Purchaser**

Without prejudice to clause 9.2 (a) the Purchaser acknowledges by placing an order for the Goods:

- That if the Goods are incorrectly installed the Goods may cause serious danger to persons and property and that the Purchaser accepts responsibility for the proper installation of the Goods; and
- The Purchaser must use the Goods in a safe manner and comply with all health and safety laws and regulations when instructing its employees or agents in the use of the Goods; and
- That it has read these terms and conditions and that it considers these terms and conditions are reasonable

## **11. Indemnity**

- 11.1 Certain component parts incorporated into the Goods may have intellectual property rights belonging to their original manufacturer and may not be reproduced, altered or used in any way without the written permission of the manufacturer
- 11.2 The Purchaser will indemnify the Company and keep it indemnified against all damages, penalties, costs and expenses for which the Company becomes liable as a result of third party claims or demands made against the Company as a result of the failure of the Purchaser to comply with any of its obligations under this contract.

## **12. Notices**

Any notice under the contract shall be properly given in writing and sent by first class post or facsimile transmission or by electronic mail to the address of the intended recipient as stated in the contract or to such address as the Company and the Purchaser from time to time communicate to each other as their respective addresses for service and shall be deemed served, in the case of postal notice, on the expiry of 24 hours from time of posting or, if by facsimile transmission or electronic mail, at the time of transmission provided that a facsimile or electronic mail confirmatory receipt is obtained by the sender.

**13. General**

- 13.1 If any provision of these terms and 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 terms and conditions and the remainder of the provision in question shall not be affected thereby.
- 13.2 These terms and conditions and any contract incorporating them shall be governed by and construed in accordance with English Law and all disputes hereunder shall be submitted to the non-exclusive jurisdiction of the English Courts.

**14. Non-transferable**

- 14.1 The Purchaser's rights and obligations under this contract shall not be transferred or assigned directly or indirectly either in part or whole to any third party without the prior consent of the Company.
- 14.2 Unless otherwise agreed between the Company and the Purchaser a person who is not party to this contract has no right under the Contracts (Rights of third Parties Act 1999) to enforce any terms of this contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**15. Termination**

Without prejudice to clause 6.4 the Company shall be entitled to cancel this contract with the Purchaser in the following circumstances:

- a) If a petition is presented for the winding up, administration or bankruptcy of the Purchaser, if the Purchaser has a receiver appointed in respect of its assets or any other insolvency proceedings are commenced against it;
- b) If any distress or execution is levied upon the Purchaser, its property or assets;
- c) If the Purchaser ceases, or threatens to cease to carry on business;
- d) If the Company reasonably apprehends that any of the events mentioned in clauses (a)-(c) above are about to occur in relation to the Purchaser and notifies the Purchaser accordingly;

In which case without incurring any liability for any loss or damage caused to the Purchaser and without prejudice to the Company's rights to payment under clauses 3, 6 and 11.2.