

VJ ENGINEERING Limited

Part 1 - CONTRACT for SUPPLY of MACHINERY

The customer's attention is drawn in particular to the provisions of clause 9

1. Interpretation

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person, firm or company who purchases the Goods from the Supplier.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's written acceptance of the Supplier's quotation.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: **VJ Engineering Limited** of Unit 1 Hadrians Way Rugby Warwickshire CV21 1ST (registered in England and Wales with company number 04585614).

1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) a reference to **writing** or **written** includes emails.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.5 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3. Goods

3.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.1 shall survive termination of the Contract.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.7 If after ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods charge the Customer for any shortfall below the price of the Goods.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. **Quality**

5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform with the Specification; and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. **Title and risk**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1; and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Supplier may have:

- (a) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

7.2 The Supplier may, by giving notice to the Customer at any time 20 before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Goods:

- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.5 The Customer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. Termination

8.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. Limitation of liability

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;

- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £250,000.

10. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Contract by giving 14 days written notice to the affected party.

11. General

11.1 Assignment and other dealings

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Entire agreement

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

11.3 Variation

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.4 Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.6 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.6(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.7 Third party rights

No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

11.8 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.9 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

----- end of Part 1 -----

VJ ENGINEERING LIMITED

Part II - TERMS AND CONDITIONS OF SERVICE OR REPAIR

1. In these Terms and Conditions the following definitions shall apply:
 - (a) **“The Company”** means VJ Engineering Limited.
 - (b) **“The Customer”** means the person, firm or company for whom the Company agrees to carry out work by way of service and/or repair.
 - (c) **“The Operative”** means the representative appointed by the Company.
2. The Company reserves the right to refuse or decline work at its own discretion. Where the Company agrees to carry out work for the Customer, that work shall be undertaken by such designated Operative of Company as the Company appoints at its absolute discretion.
3. The Company will only proceed to carry out any work upon acceptance by the Customer of the quote supplied by the Company for the work. Such acceptance by the Customer will constitute a binding contract between the Company and the Customer (“the Contract”).
4. The total charge to the Customer shall consist of the amount of time spent by the Operative in carrying out the work together with the cost of any materials supplied by the Company (including all reasonable time spent in obtaining unstocked materials) charged in accordance with the Company’s current hourly rates.
5. All charges are subject to VAT at the prevailing rate.
6. The Company shall not be under any obligation to provide a quote to the Customer and shall only be bound (subject as hereinafter) by a quote given in writing to the Customer and signed by a duly authorised representative of the Company. The Company shall not be bound by a quote given verbally or in which a manifest error or errors has or have occurred.
7. Where the date and/or time for works to be carried out is agreed by the Company with the Customer, then the Company shall use its best endeavours to ensure that the Operative shall attend on the date(s) and at the time(s) agreed. However, the Company accepts no liability in respect of the non-attendance or late attendance on site of the Operative or for the late or non-delivery of materials.
8. If the Customer cancels its instructions prior to any work being carried out or materials supplied then the Customer shall be liable for any related expenditure together with the profit that would have been made by the Company had the work been carried out and/or the cost of any materials contracted to be supplied.
9. If it shall appear to the Company at any time after the Customer’s order is placed that any additional work or part(s) is or may be required the Company will make every reasonable effort to contact the Customer for instructions and will not proceed with any such additional work or with supply or installation of any such additional part(s) without the express permission (either verbally or in writing) of the Customer except in the following circumstances:
 - (a) Where the provision of the additional work or part(s) is incidental to the carrying out of the Customer’s existing order and seems reasonably necessary to the Company.
 - (b) Where the Company considers the additional work or the provision of part(s) to be necessary to put the machine into proper working order and the additional cost to be small compared to the cost of carrying out the Customer’s existing order.
 - (c) Where the Customer has expressly or implicitly authorised (either verbally or in writing) such work, or the provision of part(s) as may be reasonably necessary to put the machine into a specified condition or has otherwise left the extent or nature of the work to the Company’s discretion.
 - (d) Any variation agreed between the Company and the Customer in the work to be carried out by the Company shall be deemed to be an amendment to the contract and shall not constitute a new contract.
10. The Company’s obligations during a routine service are limited to carrying out the works specified in the manufacturer’s service list or other service schedule and in carrying out works specified by the Customer the Company’s obligation is limited to carrying out the Customer’s specification. Neither during a routine service nor in carrying out work or supplying any part(s) specified by the Customer does the Company undertake to check generally the roadworthiness or safety of the machine or its compliance with any legal requirement. The Customer is liable for the accuracy of its specifications.

11. The Company will take reasonable care to ensure that all work on customer vehicles in Company's possession is carried out by employees or (where applicable) by contractors with reasonable care and skill.
12. Except where liability for consequential loss is included in liability arising in circumstances set out in Section 2 (1) of the Unfair Contract Terms Act 1977 the Company shall not in any circumstances be liable for special, indirect or consequential loss, or loss of profit arising from a failure to take care as set out in Clause 11 or from any breach of contract or from any negligence, alleged or otherwise.
13. Invoices are due for payment within 30 days of delivery to the Customer. Any part of an invoice which remains unpaid shall carry interest, at the rate of 4% over the base rate of Barclays Bank plc prevailing at the time, until payment in full is received by the Company.
14. These Terms and Conditions may not be released, discharged, supplemented, interpreted, varied or modified in any manner except by an instrument in writing signed by a duly authorised representative of the Company and by the Customer. Further, these Terms and Conditions shall prevail over any Terms and Conditions of the Customer or contained or set out or referred to in any documentation sent by the Customer to the Company and by entering into a contact with the Company the Customer agrees irrevocably to waive the application of any such terms and conditions.
15. Title to any goods or materials supplied by the Company to the Customer shall not pass to the Customer but shall be retained by the Company until payment in full for such goods has been made by the Customer to the Company in all circumstances.
16. Until title in the goods has passed to the Customer:
 - (i) the Company shall have absolute authority to repossess, sell or otherwise deal with or dispose of all any or part of such goods in which title remains vested in the Company
 - (ii) for the purpose specified in (i) above, the Company or any of its agents or authorised representatives shall be entitled at any time and without notice to enter any premises in which goods or any part thereof is installed, stored or kept, or is reasonably believed so to be.
 - (iii) the Company shall be entitled to obtain a court injunction to prevent the Customer from selling, transferred or otherwise disposing of such goods.

Notwithstanding the foregoing, the risk in such goods shall pass on delivery of same to the Customer, and until such time as title in such goods has passed to the Customer, the Customer shall insure the goods to their replacement value with a reputable insurer and the Customer shall forthwith upon request provide the Company with a certificate or other evidence of such insurance.
17. The Company shall not be liable for any delay or for the consequences of any delay in the performance of any of its obligations if such delay is due to any cause whatsoever beyond its reasonable control, and the Company shall be entitled to a reasonable extension of the time for performing all and any such obligations that it is obliged to perform.
18. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
19. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and Conditions or their subject matter or formation of any contract thereunder.

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