

1. Scope of Application

- 1.1. In these Terms and Conditions „the Company“ means STOBER DRIVES Limited, „the Products“ means the goods detailed overleaf, „the Buyer“ means the person detailed overleaf to whom the Products are to be supplied by the Company and „the Agreement“ means the agreement between the Company and the Buyer in respect of the Products.
- 1.2. All transactions are made on the terms and conditions printed below. No variations thereto are binding on the Company unless the Company makes or agrees to such variation in writing.
- 1.3. All quotations are made without obligation on the part of the Company and all orders received, whether as a result of quotation or otherwise, are subject to acceptance in writing by the Company.
- 1.4. The Company shall not be liable for any advice or recommendations given by or on behalf of the Company as to the storage application or use of the Products unless and to the extent confirmed in writing by the Company.

2. Items to be supplied by the Buyer

Where the Buyer undertakes to supply any drawings, designs, specifications, plans, parts or materials to the Company then, without prejudice to any other right or remedy available to the Company;

- 2.1. any delay in supplying the same shall entitle the Company to extend its time scale for delivery of the Products or, if appropriate, cancel the order in whole or in part; and
- 2.2. the Buyer shall indemnify the Company against all losses, damages, costs and expenses incurred by the Company if any of the items supplied are defective in any way.

3. Price of the Products

- 3.1. All prices are ex works and are exclusive of any applicable packing, freight, postage and value added tax, all of which the Buyer shall be additionally liable to pay to the Company. Transport insurance is arranged only at the request and cost of the Buyer. Half the invoiced price shall be reimbursed for packing returned prepaid and undamaged.
- 3.2. The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Products stated in its order acknowledgement to reflect any increase in the Company's costs which are due to any factor beyond its control.

4. Invoicing and Payment

- 4.1. The Company shall be entitled to invoice the Buyer for the price payable in respect of any Products at any time on or after the risk therein has passed to the Buyer. The Buyer shall pay such price (less any discount to which the Buyer is entitled, but without any other deduction) within thirty days of the date of the Company's invoice. The time of payment shall be of the essence.
- 4.2. If the Buyer fails to make any payment on the due date then, without prejudice to any other rights or remedy of the Company, the Company shall be entitled to:
 - 4.2.1. cancel the Agreement or suspend any further work or deliveries;
or
 - 4.2.2. charge the Buyer interest (both before and after judgement) on the amount unpaid, until payment in full is made, at the rate of four per cent per annum above Bayerische Hypo- und Vereinsbank AG base rate from time to time.

5. Insolvency of Buyer

Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Agreement, or suspend any further work or deliveries, without any liability to the Buyer, if:

- 5.1. the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 5.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 5.3. the Buyer ceases, or threatens to cease, to carry on business; or
- 5.4. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

6. Call-off Orders

Unless otherwise agreed, a call-off order is binding on the Company and the Buyer for twelve months from the date of the Company's order acknowledgement. If the number of Products ordered is not called off by the end of the twelve month period, the Company shall allow an extension of time of four weeks by prior notice. In the event of any extension beyond four weeks the Buyer will be liable to repay to the Company the differential discount appropriate to the number of Products delivered. Special motors, special parts, etc. already produced by the Company under the order will be invoiced and delivered to the Buyer on the basis of these Terms and Conditions. The call-off order is then deemed to be completed.

7. Delivery

- 7.1. Delivery of the Products shall be made by the Buyer collecting the Products at the Company's premises at any time after the Company has notified the Buyer that the Products are ready for collection, or if some other place for delivery is agreed by the Company, by the Company delivering the Products to that place. The Company reserves the right to make part deliveries.
- 7.2. The Company shall use all reasonable endeavours to deliver the Products within the time-scale stated in its order acknowledgement (duly extended if any circumstances justifying delay on the part of the Company apply) or as soon thereafter as is possible. If the Company shall fail to deliver the Products within six weeks of such time-scale, the Buyer shall be entitled, after consultation with the Company, to specify by notice to the Company such revised delivery time-scales as it shall, in its reasonable opinion, think fit making time of the essence.
- 7.3. Where the Products are to be delivered to a place other than the Company's premises, the Buyer shall at its own expense prior to delivery of the Products to that place, ensure that it is ready to receive the Products.
- 7.4. Where the Products are to be delivered in instalments, each delivery shall constitute a separate Agreement, and failure by the Company to deliver any one or more of the instalments in accordance with the Agreement, or any claim by the Buyer in respect of any one or more instalment, shall not entitle the Buyer to treat the Agreement as a whole as repudiated.

8. Return of Products

Subject to the provisions of clause 11 below, the return of non-standard Products supplied to special orders will not be accepted under any circumstances and the return of re-stockable Products will only be accepted by express prior arrangement with the Company. Authorised returns will be subject to a minimum re-work/re-stocking charge of 40% of the invoice value of the Product, with a minimum of £70. The Buyer will be responsible for all return costs.

9. Passing of Risk

- 9.1. Risk of damage to or loss of the Products shall pass to the Buyer;

- 9.1.1. in the case of Products to be collected by or on behalf of the Buyer from the Company's premises, at the time when the Company notifies the Buyer that the Products are available for collection; or
- 9.1.2. in the case of Products to be delivered at some place other than at the Company's premises, at the time of delivery to that place, or if the Buyer wrongfully fails to take delivery of the Products, at the time when the Company has tendered delivery of the Products at that place.

- 9.2. If, after risk has passed to the Buyer, the Products are lost or damaged in whole or in part through any cause for which the Company is not responsible, then the Company shall be entitled to charge for the restoration or repair or replacement of any such Products so lost or damaged in addition to the price.

10. Retention of Title

- 10.1. Notwithstanding delivery and the passing of the risk in the Products, or any other provision of the Agreement, the property in the Products shall not pass to the Buyer until the Company has received, in cash or cleared funds, payment in full of the price of the Products, and the price of all other equipment and services supplied by the Company to the Buyer for which payment is then due.
- 10.2. Until such time as the property in the Products passes to the Buyer, the Buyer shall hold the Products as the Company's fiduciary agent and bailee, and shall keep the Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Buyer shall be entitled to use the Products in the ordinary course of its business.
- 10.3. Until such time as the property in the Products passes to the Buyer (and provided the Products are still in existence), the Company shall be entitled at any time to require the Buyer to deliver up the Products to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Products are stored and repossess the Products.

11. Limitation of Liability

The Buyer's attention is, in particular, drawn to the provisions of this clause 11.

- 11.1. To the extent permitted by law, the following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees agents and subcontractors) to the Buyer in respect of any Event of Default, meaning:
 - 11.1.1. any breach of its contractual obligations arising under this Agreement; and
 - 11.1.2. any representation statement or tortious act or omission including negligence arising under or in connection with this Agreementand are to the exclusion of all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the sale and supply of the Products.
- 11.2. The Company's liability to the Buyer for:
 - 11.2.1. death or injury resulting from its own or that of its employees' agents' or subcontractors' negligence; or
 - 11.2.2. all damage suffered by the Buyer as a result of the implied statutory undertakings as to title, quiet possession and freedom from encumbranceshall not be limited.
- 11.3. The Company warrants that the Products will correspond with their specification set out in its order acknowledgement at the time of delivery and will be free from defects in material and workmanship for a period of six months (in normal operation) or three months (for day and night operation) but extended to thirty six months and eighteen months respectively in the case of Products in the "MGS Range" catalogue and to twenty four months and twelve months respectively for Products in the "ServoFit" Planetary Gear" catalogue.
- 11.4. The entire liability of the Company under the above warranty shall be to remedy the Products concerned free of charge by:
 - 11.4.1. carrying out such repairs modifications or alterations to such Products; and/or
 - 11.4.2. replacing such Products or such component partsas it shall in its absolute discretion think fit.
- 11.5. Subject to clause 11.2 above, the Company shall be under no liability in respect of any Event of Default including any claim under the above warranty
 - 11.5.1. in respect of any defect in any drawing, design, specification, plans, parts or materials supplied by the Buyer;
 - 11.5.2. in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Products without the Company's approval;
 - 11.5.3. in respect of, and to the extent that liability arises from, parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and is assignable to the Buyer;
 - 11.5.4. unless the Buyer shall have served written notice of the alleged breach upon the Company within seven days of the date upon which it became aware, or ought reasonably to have become aware, of the same;
 - 11.5.5. unless the Buyer has secured the evidence giving rise to the alleged breach and given the Company the opportunity to inspect such evidence; or
 - 11.5.6. if the total price has not been paid by the due date for payment.
- 11.6. Subject to clauses 11.2 and 11.4 above, the Company shall not be liable to the Buyer in respect of any Event of Default:
 - 11.6.1. for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Buyer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Buyer incurring the same; or
 - 11.6.2. for damages in excess of the invoiced price.

12. Force Majeure

The Company shall not be liable to the Buyer, or be deemed to be in breach of its obligations, by reason on any delay in performing, or failure to perform, any of the Company's obligations in relation to the products, if the delay or failure was due to any cause beyond the Company's reasonable control.

13. Title and Copyright

All rights in respect of quotations, drawings, cost proposals and other documents provided by the Company remain its property. Such documents must be returned on request without copies being retained in any form. Third parties must not be given access to any such documents or their contents.

14. CE Marking

Notice is hereby issued of compliance with the Supply of Machinery (Safety) Regulations (S1 992/3073) in respect of the Products. These Products must not be put into service until the machinery into which they are to be incorporated has been declared in conformity with the provision of EC Directive 89/392/EEC and amendments 91/368/EEC, 93/44/EEC and 93/68/EEC.

15. Applicable Law

The laws of England shall govern the Agreement and any dispute shall be submitted to the jurisdiction of the English Courts.