

Conditions of Sale

1. Definitions

Unless otherwise stipulated herein, the following terms will have the meanings hereby assigned to them:-

- The “Buyer”, “You” or “Your” is the company We receive a purchase order from (this may be the end user of the equipment or a separate commercial organisation acting on their behalf)
- “Conditional Acceptance” shall mean when the Equipment has completed commissioning and passed its on-site acceptance tests, according to the Sellers standard procedures, and only minor snags remain that do not prohibit commercial Use. Warranty commences at this point.
- “Contract” shall mean this Entire Agreement as defined in Clause 3.
- The “End User” shall mean the final recipient of the equipment
- The “Equipment” shall mean the goods and services defined as the Seller’s scope of supply in the Tender.
- “Final Acceptance” shall mean that the minor snags agreed at Conditional Acceptance have been completed by the Seller.
- “Parties” shall mean the Buyer and the Seller.
- “Seller”, “Our”, “Us” or “We” shall mean Froude Ltd, of the address above.
- The “Tender” shall mean the offer for the Equipment made by the Seller to the Buyer, comprising the price schedule, scope of supply definition, technical specifications and project programme, if applicable.

2. General

Unless otherwise agreed in writing these conditions will govern all contracts for the sale of Our Equipments or for the supply of goods or services. Any qualification of these conditions and any other conditions which the Buyer may seek to impose will not apply unless expressly accepted by the Seller in writing.

3. Entire Agreement

The scope of supply and services will be as Our Tender and the Entire Agreement contains the following documents in the order of precedence :-

1. These Conditions of Sale
2. The Seller’s Tender
3. The Seller’s deviation list to the Buyers specification (if applicable)
4. The Buyer’s Purchase Order
5. Buyer’s specification (if applicable)

This Entire Agreement supersedes all previous documents and correspondence.

4. Inspection and Tests

Only Our standard inspection and tests before despatch (if any) are included. Copies of these are available upon request. Should additional inspection or tests be requested, these, where practicable and subject to Our agreement, will be quoted separately and charged to You as an extra. If it is arranged that You or Your representative shall attend any inspection or tests, but You fail to attend them within seven days of Our advising You that We are ready for them, the tests may proceed in Your absence but shall be deemed to have been made as if in Your presence. In this case You will issue the Seller with a signed Factory Acceptance Certificate.

5. Packaging

Unless otherwise agreed in writing, any packaging supplied by Us will be to Our standard specification, which should be adequate for the normal incidence of competent handling, covered transport and short-term indoor storage in a temperate climate. If additional protection is required, suitable for sea-freight and/or tropical storage, then this will be charged at extra cost.

6. Delivery/Passing of Risk

Delivery is ex-works unless otherwise stated. All risk of accidental loss or damage to the Equipments passes to You either on delivery or, if through instructions or lack of instructions from You, delivery is not effected within 14 days after the date on which We send notification to You that the Equipments are in a deliverable state, then on the expiry of that period.

7. Storage

If, through instructions or lack of instructions from You, We are not able to effect delivery of the Equipments to You within 14 days after the date We send notification to You that they are in a deliverable state, We may arrange for their storage and insurance either at Our own works or elsewhere and You will pay to Us Our reasonable charges for so doing.

8. Loss or Damage Pre-Delivery or in Transit

- a You must notify Us as soon as possible after delivery and in any event within seven days of any shortages in or damage to Our Equipment
- b Where We have agreed to be responsible for carriage You must give Us such notice within such period as will enable Us to give the required notice of the shortage or damage to the carriers within any time scale prescribed by them. Generally this is three days.
- c Failure to notify Us as required above, or failure to preserve the relevant Equipments and their packaging, will entitle Us to disclaim any liability that We might otherwise have incurred, in the circumstances that is reasonable if before You open any package containing Our Equipments You observe damage to it or anything else which makes it likely that damage may have occurred to the contents. In such event, You must advise Us of the fact before opening the package, so that We can arrange for a joint inspection or otherwise take steps to verify the situation.

9. Price and Payment

- a The price quoted does not include UK value added tax or any import duties or taxes in the country of the Buyer or End-User. You are responsible for the payment of these duties and taxes if applicable.
- b Unless otherwise specified in the proposal, payment terms will be 50% of contract value due with order, and 50% of contract value due prior to despatch. We reserve the right to require payment immediately on completion of the services or on delivery of the Equipments or on sending notification that the Equipments are in a deliverable state if You have previously failed to make any payment owing to Us on the due date. Should a Force Majeure event prevent the Buyer from attending any agreed Factory Acceptance Tests, then the Buyer will sign the Factory Acceptance Test Certificate upon presentation by the Seller, by electronic means, of copies of satisfactory factory test results (made according to the Seller’s standards).
- c If You do not pay the whole or any part of the price on the required day then You shall pay to Us interest on the amount outstanding from the required day until the actual date of payment at the rate of 5% over the Bank of England Minimum Lending Rate from time to time in force. Additionally, the Seller will be entitled to withhold site-service support and to safely disable the Equipment until payment is made.
- d So long as any payment due from You to Us is outstanding for more than 30 days, whether under the same or any other contract or transaction, We shall have a lien on any Equipments in Our possession and We shall be entitled to retain them or any of them and/or suspend work on any contract (including site support or warranty support).
- e The Seller may invoice and ship for sections of the Equipment if the Scope of Supply Consists of two or more discrete operating units.
- f An irrevocable Letter of Credit (ILOC) will be issued by the Buyer’s bank in favour of the Seller, unless otherwise agreed in writing. The Buyer must arrange the issue of the ILOC to the Seller at least two months before the scheduled ex-works shipment. If the Buyer is late in doing so, the Seller may suspend its obligations under the Contract and will be entitled to interest on late payments caused by the suspension at the rate of 5% over the Bank of England Minimum Lending Rate from time to time in force.

10. Installation, Commissioning and Acceptance

- a When any installation or Commissioning services provided for in the contract are limited to supervision, We will supply the necessary competent personnel for supervision purposes only. You will supply all other necessary skilled and unskilled labour and all equipment and tools for the installation of Our Equipments.

- b When the contract provides for actual installation and/ or commissioning by Us, We will supply the necessary supervisory personnel, skilled and unskilled labour and hand tools for the installation of the Equipment according to the details of the installation services specified in Our quotation.
- c In either case, unless otherwise specifically stated in Our quotation, You will be responsible for:-
 - i) all necessary preparation of the site, including all work to buildings, foundations, supporting structures and fixing points.
 - ii) the proper unloading and safekeeping of the Equipment, and tools/ rigging if applicable, from the time of delivery.
 - iii) the provision of scaffolding, lifting equipment and any other equipment (excluding hand tools) and all services required to install or operate the Equipments.
 - iv) any work whether preparatory to installation or in the installation itself not specifically included in Our quotation, and giving Us access to and possession of the site at such time and in such state as may enable Us to complete the installation within any agreed time limit
 - v) The provision of a site office for Our supervisors with desk and lockable storage. A broadband internet connection must be provided for the exclusive Use of Our supervisors, free of charge. Failure to do so will entitle the Seller to a contract variation for the extra costs involved in supervising the site.
- d On-site acceptance tests will follow the Sellers standards, unless agreed in writing by Us. The Buyer will allow the Seller to demonstrate conformance to these acceptance tests at the Buyer's cost and promptly after the commissioning phase. Once these tests are passed then Conditional Acceptance is achieved, and the Buyer will sign the Conditional Acceptance Certificate. After Conditional Acceptance the Seller must complete any minor snags identified on the Conditional Acceptance Certificate within 90 days. Once the minor snags are completed Final Acceptance is achieved, and the Buyer will sign the Final Acceptance Certificate.
- e After commissioning, the Buyer will sign the Conditional and Final Acceptance Certificates if commercial Use of the Equipment is commenced. In such circumstances the Equipment is deemed to have reached Conditional and Final Acceptance, and the defects warranty will commence.

11. Extra Costs

You will pay to Us any extra costs that We incur as a result of Contract-variations, delay to delivery or commissioning, cancellation or suspension of work arising from any act or omission of Yours or any other contractor employed by You, or by any other circumstance for which We are not responsible. These extra costs will include all direct losses, claims, damages and liabilities We incur as a result of such acts or omissions.

12. Retention of Title

- a Title to the Goods shall remain vested in Froude Ltd and shall not pass to The Buyer until the purchase price for the Goods has been paid in full and received by Froude. Until title to the goods passes:
 - i) Froude Ltd shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Goods;
 - ii) Froude Ltd and its agents and employees shall be entitled at any time and without the need to give notice enter upon any property upon which the Goods or any part are stored, or upon which Froude reasonably believes them to be kept;
 - iii) The buyer shall store or mark the Goods in a manner reasonably satisfactory to Froude indicating that the title to the Goods remains vested in Froude and;
 - iv) The Buyer shall insure the Goods to their full replacement value, and arrange for Froude to be noted on the policy of insurance as the loss payee.
- b Irrespective of whether title to the Goods remains vested in Froude risk in the Goods shall pass to The Buyer upon delivery.

13. Liability

a For Injury and Death

We will indemnify You for death or personal injury to the Buyers personnel and/ or sub-contractors caused by the Sellers negligence.

b For Damage to Property and Equipment

We will indemnify You against damage to Your or other people's property resulting from Our negligence or that of Our servants or agents in the execution of the contract or as a result of Our breach of the contract.

c For Delay In Delivery

- i) The date for delivery of the Equipment or completion of the contract quoted or otherwise agreed is, save as mentioned below, only Our current best estimate of the likely date for such delivery or completion. Time is therefore not of the essence and We shall not be liable for any loss or damage of any kind whatsoever resulting from any delay in such delivery or completion.
- ii) Any time for delivery and/or completion of the contract shall be extended by reasonable periods if delivery and/or completion of the contract is hindered or delayed by any reason not entirely within Our control (including but not limited to Force Majeure events, industrial disputes, whether at Our plant or not and shortages of materials or component parts caused otherwise than by Our fault).

d Limitation of Liabilities

- i) We will not be liable whether by way of indemnity or for breach of contract or in tort (including but not limited to negligence) for loss of contracts, loss of use, loss of profits, or for any other economic loss.
- ii) Except with regard to Our liability referred to in condition 13A, no action or arbitration proceedings whether in contract, tort or otherwise arising in connection with or as a direct or indirect result of the contract may be brought by either party more than three years after the party concerned became aware or reasonably should have become aware of the facts constituting a cause of action.
- iii) Except for injury or death, Our total cumulative limitation of liability for any breach of Contract, negligence, damage, delay or failure to perform shall be the equal to the Contract value.
- iv) These conditions define the whole of Our liabilities and all conditions and warranties implied by statute, common law or trade Usage are hereby excluded to the fullest extent permitted by law.

14. Warranty

Except as otherwise provided herein, Seller warrants that the Equipment is free from defects in material and workmanship under normal use for 12 months from the date of first commercial use of the Equipment or 15 months after the date on which We notify You that the Equipment is ready for delivery (if the Equipment has not yet been delivered), whichever first occurs. If You notify Us in writing within the warranty period of any claimed defect in the Equipment, and after appropriate tests and inspection by Us, such Equipment is found not to be in conformity with this warranty, We shall at our sole option and expense, and as Your sole remedy, either repair or replace the defective Equipment. Buyer shall not return the Equipment to Seller, however, without Seller's prior written authorization. Any repairs made by Buyer or any other person or entity without Seller's prior written authorization will render this warranty void.

Seller makes no warranty:

- a. concerning the compliance of the Equipment with any local, state, or federal laws or regulations, including without limitation electrical, building, or other codes or requirements. Buyer agrees to accept full responsibility for complying with such laws, regulations, codes, and requirements.
- b. against any defect or damage incurred in transit.
- c. concerning (and does not assume in this or any other document) any obligation or liability in connection with patent or copyright infringement suits brought against Buyer with respect to the Equipment, which were designed by Buyer.
- d. as to the durability and quality of, or other matter relating to, any materials used in conjunction with the Equipment.

Other than as set forth in this Section, Seller makes no warranty, express or implied, with regard to the Equipment.

SELLER'S WARRANTY HEREUNDER IS LIMITED TO REPAIRING OR REPLACING (AT SELLER'S SOLE OPTION) ANY EQUIPMENT THAT IS PROVED TO BE DEFECTIVE, AND SELLER SHALL IN NO EVENT HAVE ANY LIABILITY FOR ANY OTHER DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. SELLER'S WARRANTY FOR THE EQUIPMENT IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Storage of a Go Power or Froude system must be in accordance with our recommended storage and inspection procedures.

15. Safety

The price quoted only includes for the provision of guarding or other safety equipment to the extent specifically stated in Our quotation. If any further guarding or other safety equipment is required under any statutory enactment or regulation for the time being in force, then if it is agreed that We shall provide the same You will pay Us Our reasonable charges for so doing, or if it is not so agreed You shall undertake with Us to take such specified steps in connection with the safety of the Equipment sufficient to ensure, so far as is reasonably practicable, that the Equipment will be safe when Used properly. In either case the Equipment should not be Used until all necessary guarding or other safety equipment has been provided.

16. Ownership of Designs

We will be the sole owners of all inventions and designs and the copyright in all documents and drawings, made or produced by Us in preparing a quotation for You or in the course of work on the Contract.

17. Location of Use

The Equipment supplied by Us shall not be used in any country other than that for which We were aware they were originally ordered, without Our consent in writing.

18. Patents

We will indemnify You against all claims and actions against You for infringement of any letters patent, registered design, trade mark or copyright arising from the Use of the Equipment, provided always that this indemnity shall not apply to any infringement which is due to:

- a Our having followed a design or instruction furnished or given by You, or
- b the use of such Equipment in a manner or for a purpose or in a country not specified or disclosed to Us in writing prior to the contract being made, or
- c any infringement which is due to the use of such Equipment in association or combination with any other article not supplied by Us and provided also that this indemnity is conditional on Your giving to Us the earliest possible notice in writing of any claim being made or action threatened or brought against You and on Your permitting Us at Our own expense to have the sole conduct of all correspondence, negotiations and litigation that may ensue. You on Your part represent and warrant to Us that any design or instruction furnished or given by You shall not be such as will cause Us to infringe any letters patent, registered design trade mark or copyright in the execution of Your order. You must provide all assistance to the Seller, at Your cost, to help defend such claims.

19. Severance

If at any time any one or more of the provisions of these conditions become or are held invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

20. Law

The Entire Agreement shall be governed by the Laws of England and Wales and the courts of England and Wales will have exclusive jurisdiction over any dispute arising out of the Contract.

21. Dispute Resolution

- a For Buyers resident within the United Kingdom or Eire the Parties shall submit to non-binding mediation using a recognised UK mediator. Should that dispute resolution method fail, then the parties shall submit themselves to binding Arbitration as described in Clause 21B.
- b All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Arbitration shall take place in London, in English, and all costs shall be borne by the losing party.

This clause shall only apply and take effect where You are resident in a country outside the United Kingdom of England, Scotland, Wales and Northern Ireland or Eire, unless the mediation under Clause 21A has failed.

22. Suspension of Contract

- a The Seller has right to suspend the Contract if the Buyer is in Breach of the Contract. The Buyer will be responsible for any direct costs the Seller incurs as a result of such suspension, including interest on delayed payments at the Bank of England base rate plus 5%. Should payments under Clause 9 not be received within 160 days of the due date, then the Contract shall terminate and the provisions of Clause 23 shall apply.
- b The Buyer has the right to suspend the Contract at any time, for any reason, by providing notice to the Seller in writing. In such cases the Seller will cease engineering, production and purchasing activity and will store materials to prevent their deterioration. The Seller will be entitled to interest payments on payments delayed by such suspension at the Bank of England base rate plus 5%. The Buyer may give notice to the Seller to recommence work at any time after suspension, in which case any costs incurred by the Seller due to the suspension shall constitute an agreed variation to the Contract.

Should the suspension continue for more than four months then the Contract shall terminate and the provisions of Clause 23 will apply.

23. Termination of Contract

- a The Buyer may terminate this Contract only if the Seller commits a major breach of the Contract, and does not remedy within 90 days after receipt of written notice from the Buyer. Upon termination the Seller shall immediately cease all purchasing, engineering, assembly or site activities under the Contract.
- b The Seller may also terminate the Contract if the Buyer enters in protective administration or becomes insolvent.
- c Upon Termination of the Contract, including termination under the provisions of this Clause and Clause 22, the Seller will be entitled to reasonable termination costs which will be identified by the Seller within 60 days of termination notice, and which shall include direct material cost for material and labour with applicable overhead and profit. Such costs may include commitments entered into by the Seller in connection with this Contract and which cannot be avoided, included storage costs. These termination costs will be invoiced to the Buyer within 60 days of the Termination and are payable within 30 days of the invoice issue date.

Late payment of this invoice will incur interest at the Bank of England base rate plus 5%. The Seller has the right to retain all Contract materials until full payment is received.

24. Force Majeure

The Seller shall be excused for failure and delays in performance caused by war between any Parties country and any other country, civil war, riots or insurrections in the Parties country, any laws, proclamations, ordinances, or regulations of the Government of any Party's country or of any political subdivision of such country, or strikes, lockouts, floods, fires, explosions, natural disasters (including Volcanic Ash clouds), pandemics, or other catastrophes beyond the reasonable control and without the fault of such party. No Party shall be excused for a failure or delay in making any payment of money to be made hereunder. This provision shall not, however, release the Parties from using reasonable efforts to remove or avoid all such causes, and the Parties shall continue performance hereunder with the utmost dispatch whenever such causes are removed. The Parties shall give prompt notice thereof to the other party if a Force Majeure event becomes known that may affect performance of the Contract.