

WELDING CAPACITY LIMITED

Unit 5R, Sileby Road Industrial Estate, Barrow-Upon-Soar,
Loughborough, Leicestershire, LE12 8LP.

Conditions Of Sale

1. GENERAL

Unless otherwise specifically agreed in writing these conditions shall be incorporated in every quotation, acceptance and contract for the sale or supply of goods (including services ancillary thereto) by Welding Capacity Ltd. (The Company). Any quotation given by the company shall constitute an invitation to any person to whom goods and ancillary services are supplied (the customer) to place an order only. All orders will be accepted and goods and services supplied by the company subject to and upon these conditions. The contract between the company and the Customer shall be constituted by and no binding obligation on the part of the company shall arise until the company's acceptance, whether upon the company's written acceptance of order or otherwise, of the Customer's order.

2) Any order or other communication of any kind from the Customer containing terms and conditions shall not be accepted by the company to the extent of such inconsistency and such inconsistent terms or conditions shall be deemed to be severable and shall be severed from the order or order communication without otherwise affecting the validity thereof and any subsequent acceptance on these conditions by the company shall not constitute a counter-offer.

3) No order which has been accepted by the company may be suspended or cancelled by the customer except with the written agreement of the company on terms that the customer shall indemnify the company in full against all loss (including loss or profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the company as a result of suspension or cancellation.

2. ENTIRE AGREEMENT

These conditions shall constitute the entire agreement between the parties in substitution for and to the exclusion of any prior agreement and shall only be capable of variation by written agreement signed by an authorised representative of the company. No servant or agent of the company has authority to make any representation in relation to the goods on the company's behalf.

3. PRICES

1) Prices quoted are those ruling during the validity of the quotation and are subject to increase at any time thereafter until delivery to reflect any increase in the cost to the company due to any factor beyond the control of the company (such as, without limitation. Any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other cost of manufacture), any change in

delivery, dates, quantities or specifications requested by the customer or any delay caused by:-

- i) any instructions by the customer, or
 - ii) any delay by the customer in delivering to the company any "Free Issue Materials" to be supplied by the customer, or
 - iii) any failure by the customer to give the company any adequate information or instructions.
- 2) Prices unless otherwise quoted and save as regards sales to overseas group companies are nett ex works, ICC Incoterms 1980 and where the company agrees, as the agent of the customer, to arrange delivery of the goods the customer's premises carriage, packing and insurance will be charged as extra.
- 3) If the total price of an order for delivery within the United Kingdom would otherwise be less than thirty pounds, a minimum charge of thirty pounds will be made, and for delivery outside the United Kingdom the minimum charge will be seventy five pounds.
- 4) Prices quoted are exclusive of any applicable VAT or other similar tax payable or to be accounted for by the company which will be charged in addition.

4. EXTRAS

Unless otherwise specifically agreed in writing the contract does not include the supply of:-

- i) Descriptive literature or instructions other than one copy in English of instructions for the operation and routine maintenance of the good in accordance with the Company's standard practice.
- ii) The services of an Engineer on site for the purpose of checking or commissioning the equipment.
- iii) Certified installation and connection drawings other than those included in (I) above or
- iv) Reproducible drawings
- v) Wooden packing cases

5. DELIVERY

- 1) If a delivery period is specified in the contract it shall commence on the date of the Company's acceptance as requested by condition 1 (1) or (if later) when the company receives such further information as it may require in order to proceed with the contract and the customer hereby agrees to supply such information promptly. Any date quoted for delivery shall be approximate only and the Company shall not be liable for any delay in delivery howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing.
- 2) Where goods are to be delivered in installments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more installments in accordance with these conditions or any claim by the Customer in respect of any one or more installments shall not entitle the Customers to treat the contract as a whole as repudiated.
- 3) If the customer fails to take delivery of the goods or to give delivery instructions within 14 days of being required to do so by the Company, then (without prejudice to any other right or remedy available to the Company) payment shall be due forthwith and

the Company shall be entitled (but not bound) to store the goods at any available place until actual delivery entirely at the Customer's Expense and risk.

6. PAYMENT

1) Payment shall be due unless otherwise stated on the order acknowledgment and invoice or otherwise agreed in writing in respect of:

a. UK Sales - by net cash within 30 days from the date of the invoice
b. Export Sales - by confirmed irrevocable Letter of Credit through a United Kingdom Bank acceptable to the Company.

2) If the Customer fails to make payment by the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

i) cancel the contract or suspend further deliveries to the customer.
ii) appropriate any payment made by the customer to such of the goods supplied under any contract between the Company and the Customer as the Company may think fit notwithstanding any purported appropriation by the Customer, and
iii) charge the Customer interest both before and after judgment on the amount unpaid, at the rate of 2 per cent annum above The Royal Bank of Scotland PLC's base rate from time to time until payment in full is made.

7. DESCRIPTION

The Company's drawings, descriptive matter weights, dimension and shipping specifications are approximate only unless specifically guaranteed, and in any event the Company shall be entitled to make minor modifications in detail to the contract description of the goods. The Company shall not be liable for failure to attain performance figures stated in the contract unless these have been guaranteed within a specific margin of tolerance. If any figure so guaranteed is not attained on test in the manner (if any) required by the contract, the Company shall be afforded a proper opportunity to rectify the failure, and if the company fails to do so the Customer may either reject or accept the relevant part of the goods save where an agreed reduction in the price is specified in the contract in which case there shall be no right of rejection and in any event the company shall not be liable for any loss or damage costs or expenses (including consequential loss) suffered or incurred by the customer directly or indirectly as a result of such failure to attain guaranteed performance figure.

8. FREE ISSUE MATERIALS

1) Any materials supplied to the Company by the Customer for incorporation in any goods to be supplied by the Company under the contract shall remain the property of the customers sole risk at all times. The Company accepts no responsibility for any loss to such materials whether in transit or at the Company's premises.

2) Any surplus materials supplied will be made available for collection by the Customer as soon as all sums due to the Company under the contract for the supply of the goods have been paid.

9. INSPECTION

There shall be no special tests except as specifically provided in the contract. Customer witnesses inspection can be arranged for a minimum charge of fifty pounds will be made. If the customer fails after seven days notice to attend or be represented at any such tests they may be conducted by the company in its absence and it will be bound by the results.

10. HEALTH AND SAFETY

The purchaser shall be solely responsible for and shall keep Welding Capacity indemnified against any loss, liability or expense arising directly or indirectly from the use of the goods other than in accordance with Welding Capacity's control.

The Electricity at Work Act 1989

1. All installations and maintenance should be carried out within the provision of the above Act and by persons so qualified as defined in the Act.
2. Information and advice on the suitability of products can be obtained from Welding Capacity Ltd. on specific request.

11. GUARANTEE

- a. Welding Capacity hereby warrants that all goods supplied are free from defects in material and workmanship BUT Welding Capacity's liability under this warranty shall be limited to making good without charge by repair or (at the discretion of Welding Capacity) replacement any defects of material or workmanship in goods which are returned to Welding Capacity's premises carriage paid immediately by the purchaser becomes aware of the defects (and in any event within twelve calendar months after the date of delivery).
- b. The warranty contained in paragraph (a) of this condition is given in lieu of and shall be deemed to exclude all other warranties and conditions whether arising by common law statute or otherwise other than relating to title to the goods. In particular but without limitation of the foregoing Welding Capacity shall not be liable for the failure of any of the goods supplied to be fit for any particular purpose for which they are required.
- c. Welding Capacity shall not be liable for any loss, injury or damage of any nature whatsoever whether direct or consequential arising out of or in connection with any goods supplied.
- d. The purchaser shall not rely upon any representation concerning any goods supplied unless the same shall have been made by Welding Capacity in writing.
- e. The complete or partial invalidity or enforceability of any provision hereof shall in no way affect the validity or enforceability of such provision for any other purpose of the remaining provisions hereof.

12. TITLE TO GOODS AND RISK

1) Until all payments due from the customer to the company have been received in full the customer shall hold all goods supplied by the company in a fiduciary capacity as bailee for the company and

i) Legal and beneficial title to such goods shall remain with the company and the customer shall store such goods in such a way that they are clearly identifiable as the property of the company and can be identified against the unpaid invoices of the company and

ii) The company reserves the right to dispose of such goods and may retake possession thereof at any time and for that purpose may be its servants or agents enter upon any or premises occupied by the customers; and without prejudice to the foregoing sub-clauses the customer shall be entitled to sell such goods in the normal course of business provided that any moneys received in payment for such goods shall be held separately on behalf of the company in a separate bank account opened for such purpose and the company shall have a fiduciary duty to account to the customer for such moneys to the extent of its indebtedness.

2) Notwithstanding the foregoing, risk in all goods supplied by the company will pass to the customer on delivery as defined in clause 5 above.

13. INSOLVENCY AND DEFAULT

If the customer shall commit any breach of the contract or at any time appear to be unable to pay his debts or to have no reasonable prospect of being able to pay his debts or if an application is made to the court for an interim order in relation to the customer or a proposal is made for a voluntary arrangement in relation to him or a petition is presented for a bankruptcy order to be made against the customer or if the customer (being a limited company) shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction only) or have a receiver or administrative receiver appointed for all or any part of its undertaking or assets or a proposal is made in accordance with section 1 of the insolvency Act 1986 for a voluntary arrangement or a petition is presented to the court for an administration order to be made in relation to the customer then the company may without notice and without any liability to the customer and the price of any goods delivered to the customer and not paid for shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. ASSIGNMENTS

This agreement or any rights hereunder of the purchaser may not be assigned on whole or in part without the prior written consent of Welding Capacity Ltd.

15. PROPER LAW

The contract shall be governed by and constructed in accordance with English Law and the uniform Law on international Sales Act 1967 shall not apply to any sales hereunder.

16. SPECIFICATIONS, DESCRIPTIONS AND DRAWINGS

- a) All specification, descriptions and drawings of goods are approximate only being intended to serve merely as a guide and accordingly Welding Capacity shall not be liable for their accuracy.
- b) All drawings prepared by Welding Capacity shall remain the property of Welding Capacity and shall be returned to it by the purchaser on demand. All such drawings shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of Welding Capacity.

17. EXCLUSIONS

Except as specifically provided in these conditions and except insofar as any exclusion or limitation of the company's liability hereunder is prohibited void or unenforceable by law the company shall be under no liability in respect of the quality, condition or description of the goods or their fitness for any particular purpose or for delay in the manufacture or delivery of the goods or loss, damage, injury or death howsoever caused to the customer or any other person, and any term, condition or representation to the contrary whether express or implied by statute, common Law or otherwise is hereby expressly excluded. Any liability under these conditions shall be expressly conditional upon the terms of payment and all other obligations of the customer to the company under the contract being strictly observed by the customer and save as hereinbefore provided shall be limited solely to the net contract price of the goods paid to the company.

18. ARBITRATION

Any dispute arising under or in connection with these conditions or the sale of any goods supplied under a contract incorporating the same shall be referred to arbitrator appointed by agreement or (in default) nominated on the application of either the company or the customer by the President for the time being of the Institution of Electrical or Mechanical Engineers PROVIDED THAT this clause shall have no application to any dispute concerning intellectual property rights of any kind.