



CONDITIONS OF SALES AND TENDER

1. General

These conditions, being the **Blue Seal Engineering Cc** Standard Conditions of Sale and Tender govern all tenders made by us and contracts and sub-contracts entered into by us and any conditions stipulated by the customer which are in conflict with these conditions are expressly excluded. All items supplied will be subject to the corresponding OEM's terms and conditions, available on request.

2. Validity

Unless withdrawn prior to acceptance, tenders are open for acceptance during the period of 30 days except if stated otherwise therein, or when no period is stated, within thirty days only after the date of tender.

3. Acceptance

The acceptance of any tender must be accompanied by sufficient information in writing to enable us to proceed with the execution of the order forthwith, failing which we shall be entitled to amend the tender prices to cover any increases in cost to us incurred as a result of such delay. Any samples submitted must be returned to our works, carriage paid, within one month from date of receipt, or paid for.

4. Packing

Unless otherwise specified, our prices include packing in accordance with our standard practice.

5. Limits of contract

Our tender includes only such goods, accessories and work as are specified therein.

6. Inspection and tests

If tests other than those specified in our tender or tests in the presence of your representative are required, these will be charged for. In the event of any delay on your part in attending such tests after three days' notice that we are ready, the test will proceed in your absence and shall be deemed to have been made in your presence

7. Performance

Any performance figures given by us are based upon OEM manufacturer specifications. We accept no liability for damages for failure to attain such figures unless we have specifically guaranteed performance figures subject to the recognized tolerances applicable to such figures in an agreed sum as liquidated damages, in which case our liability shall be limited to the amount so agreed. Before you become entitled to raise any claim whatever or to reject the goods you will afford us reasonable time and opportunity to rectify the performance of the goods and we shall be entitled, at our option, to replace the goods or the defective parts thereof at the initial place of delivery. You assume responsibility that goods stipulated by you are sufficient and suitable for your purpose save in so far as your stipulations are in accordance with our advice.

8. Delivery and Insurance

Delivery will be made at the place specified in our tender and excludes offloading unless otherwise stated. We shall have the right to affect part deliveries. Each delivery or part delivery of an order shall be deemed to be sold under a separate contract. Neither failure on our part to make any delivery or part delivery in accordance with these conditions nor any claim by you in respect of such delivery or part delivery shall entitle you to reject the balance of the order. Risk in the goods shall pass on delivery but ownership in any goods delivered remains vested in us until entire purchase price shall have been paid. All such goods, whether affixed to immovable property or to other goods, shall be deemed to remain movable property and severable without injury to such immovable property or other goods. If you fail to give us forwarding instructions within seven days after notification that the goods are ready for dispatch or fail to take delivery after you have given us forwarding instructions, we shall be entitled to arrange storage either at our own works or elsewhere on your behalf and at your risk and all charges for storage or any insurance which we might effect shall be for your account. Should you fail to take delivery within a reasonable time of our having by notice in writing required you to do so, we shall be entitled to terminate the contract and recover from you any loss suffered by reason of such failure.

9. Liability for delay

Any times quoted for delivery is dependent upon our receiving all necessary information and drawings to enable us to commence work and to proceed therewith without interruption. All delivery times are estimates only. In all cases, whether a time for delivery is quoted or not, the time for delivery shall be extended by a reasonable period if delay in delivery is caused by instructions, or lack of instructions, from you or by industrial dispute or by reason of force majeure or by any cause whatsoever beyond our reasonable control. A contract shall not be cancelled on the ground of our delay unless we shall first have received reasonable notice of your intention to insist on adherence to contractual delivery dates.

10. Variations

In the event of variation or suspension of work by your instructions or lack of instructions, we shall be entitled to increase the contract price by a sum of money sufficient to cover the extra expenses incurred or sustained by us as a direct or indirect consequence of such variation or suspension.

11. Terms of payment

Unless otherwise stated in this tender or otherwise agreed, terms of payment shall be by way of either:

- (a) 30 days NETT payments, on Statement. Paid on or before the 30th of each month. Notwithstanding the foregoing or any further agreements which may be reached as contemplated above, we shall be entitled to call for security or for payment in advance if we at any time have reasonable grounds for so doing. If you fail to make payment in accordance with our Conditions or fail to comply with any provisions of these Conditions, we reserve the right to cancel any undelivered portion of the goods; you remain responsible for the completed and partly completed work up to the date of such cancellation. Payments shall not be set off against or withheld on account of any counterclaims, unless such counterclaims have been admitted by us in writing. Any liability of ours under these Conditions is subject to your adhering to our terms of payment and all your other obligations to us. Without prejudice to our right to payment as herein before provided, you shall pay interest on any sum due to us at the rate of 5 % per month from due date of such payment until payment is actually made.
- (b) EFT/Cash in advance (on acceptance of quotation). In some instances, at our discretion, we may require payment up front for orders placed. Payment by EFT (electronic payment) is preferred; however, the payment will need to be verified as reflecting in our bank account before any goods shall be released. Where cash payments are made, we may charge a cash handling fee to cover any bank charges. If goods are not immediately collected after notification that the goods are ready for collection, storage costs may be charged. In such circumstances, we shall allow 30 days for the goods to be collected after which the goods will be forfeited to Blue Seal Engineering cc to defray costs.

12. Our warranty

All new goods supplied will be subject to OEM warranty terms and conditions available on request.

13. Patents

We will indemnify you against any claim of infringement of Letters Patent, Registered Design, Trade Mark or Copyright (published at the date of the Contract) by the use or sale of any article or material supplied by us to you and against all costs and damages which you may incur in any action for such infringement or for which you may become liable in any such action; provided that:

- (a) This indemnity shall not apply to any infringement which is due to our having followed a design or instruction furnished or given by you or to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to us, or to any infringement which is due to use of such article or material in association or combination with any other article or material not supplied by us.
- (b) This indemnity is conditional upon your giving 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 conduct any litigation which may ensue and all negotiations for a settlement of the claim.
- (c) You on your part, warrant 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, Trademark or Copyright in the execution of your order.

14. Arbitration

If at any time any dispute whatsoever shall arise in relation to or in connection with the contract, either of us may give to the other notice in writing of the existence of such dispute and the same shall be referred to the arbitration of a single arbitrator appointed by

Blue Seal Engineering cc.

15. General Price variation

Any price quoted which is a list price is subject to adjustment and the list price to apply shall be that in force on the date of delivery. Unless otherwise stated in our tender, the amount of all duties, taxes or other charges applicable to the manufacture and sale of goods shall be borne by the customer. Our prices are based on the cost of materials, transport and labour ruling at the date of our tender and, unless otherwise stated, if between that date and the date of delivery, variations occur in these costs, then the price quoted shall be amended to provide for these variations. Without prejudice to our right to claim increased costs actually incurred by us, such prices shall be adjusted in accordance with the Contract Price Adjustment. Where no formula is applicable or in the event of any doubt or dispute regarding the application of a formula a certificate by our auditors acting as experts and not as arbitrators shall be conclusive and binding.

16. Consequential damages

Under no circumstances whatsoever shall we, at any time, be liable for any claims for consequential loss or damage that may be sustained by you or for any claims made by any other person whatsoever, in connection with any contracts made by us or the use of goods sold by us and whether due to delay, defects, negligence or otherwise.

17. Shortages in delivery

No claim for shortages in delivery or damages in transit can be entertained unless made within seven days after delivery or, in the event of non-delivery, within ten days of invoicing.

18. Damage in transit

When the price quoted includes delivery, we will repair or replace free of charge goods damaged in transit to the point of delivery only if we receive written notification of such damage within seven days of delivery but not otherwise.

19. Plans, Jigs, etc.

The ownership of all plans, diagrams, jigs, tools, templates and patterns shall remain vested in us and no copies of any of our plans and diagrams shall be made without our prior written consent.

20. Stock

Quotations for goods stated to be for delivery from stock are subject to our not having sold or committed ourselves to third parties in respect of such stock at the date of acceptance of our quotation and thereafter.

21. Force Majeure

The Seller will not be liable for any loss, damage or delay arising out of its failure to perform hereunder due to causes beyond its reasonable control, including without limitation, acts of God or the Customer, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, delays in transportation or transportation embargoes. In the event of such delay, the Seller's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the delay.

22. Transportation and importation charges

Rates for Freight, Insurance, Railage, Customs Duty and other statutory obligations have been calculated at applicable current rates and any changes in such statutory costs will be for your account.

23. Liquidated damages

Liquidated and ascertained damages are expressly excluded.

24. Amendments

No amendment or variation of the contract or these conditions will be of any force or effect unless recorded in writing by us and approved by one of our authorized officials.

25. Jurisdiction of the Magistrate's Court

The customer hereby agrees and consents that we shall be entitled to our option to institute any legal proceedings which might arise out of or in connection with this contract in any Magistrate's Court in the Republic of South Africa having jurisdiction in respect of the customer's person, notwithstanding that the claim or the value of the matter in dispute might exceed the jurisdiction of such Magistrate's Court.

26. Legal construction

Even should one or more of these conditions be invalid, such remaining conditions as are applicable shall remain in force. Unless otherwise agreed in writing, the contract shall in all respects be construed and operate as a South African contract and in conformity with South African law. No relaxation or indulgence granted by **Blue Seal Engineering cc** to the customer shall be deemed to be a waiver of any of the rights of the creditor in terms of this agreement and such relaxation of indulgence shall not be deemed to be a novation of any of the terms and conditions of this agreement.

27. Liaison

Any queries of commercial, technical/operational, quality or other nature can be directed to our offices for the attention of the Sales Manager.