

TOTAL MOTION SYSTEMS LTD - STANDARD CONDITIONS OF SALE

1. **Terms and Conditions.** These Terms and Conditions form part of every quotation, offer, or Contract of Sale made by Total Motion Systems Ltd (hereinafter called the Company) and shall not be varied without express written agreement of the Company. "Company" herein includes Company's servants or agents.
2. **Terms of Payment.** Standard Terms of Payment, unless otherwise stated, are as follows:
 - (a) Strictly net within 30 days following the date of the invoice for approved accounts only
 - (b) For non approved accounts pro-forma payment or cash with order
 - (c) Failure by the Customer to pay in accordance with the terms of the Contract shall entitle the Company at its option to:
 - (i) withhold future deliveries until such payment has been made and further payments secured to its satisfaction
 - (ii) charge interest at 3% above National Westminster Bank plc base rate for each day the amount remains outstanding after the due date
 - (iii) payment by the due date shall be the essence of the contract
 - (d) In the event of debt recovery proceedings the Company has the right to recover all cost, including 3rd Party costs, from the Customer.
3. **Prices.** All orders are accepted at prices then ruling. The Company reserves the right to increase or decrease prices quoted should the sterling exchange rate vary more than plus/minus 2½% at the time of invoicing. This quotation/letter/offer/invoice is based on the exchange rate as overleaf. Prices will be increased or decreased according to any increase/decreases in import duty, exchange surcharges, freight charges or manufacturers prices. The Company reserves the right to amend prices to correct errors or omissions. Prices quoted are always on an "ex-works" basis and are exclusive of VAT. The Company will on each shipment make a charge to cover the packaging, transportation and insurance on the goods being supplied.
4. **Delivery Dates.** All delivery dates quoted are estimated, are not guaranteed, and do not form a term of this Contract. The Company undertakes to make every endeavor to adhere to the delivery schedule but will not accept cancellation of Contract for, or liability for any direct or indirect losses which may arise from, late delivery. Where an order calls for a number of items, the Company reserves the right to despatch all or any number of items as and when available, and Customer shall pay all invoices in respect of such deliveries in accordance with the terms of payment set out above.
5. **Delivery.** The Company shall not be liable to make good to the Customer any damage or loss arising directly or indirectly out of delay in delivery of the goods nor will the Company be liable for any consequential or special loss claimed by the Customer including without limitation delay retention, loss of profit, loss of production, loss of time charges or liability to any Third Parties.
6. **Damage or Loss In Transit.** No responsibility will be accepted by the Company for damage or loss of goods in transit. Any such damage should be notified to the Carrier and Company within 4 days of receipt, and the goods held for inspection to enable a claim to be made on the Carrier. If the goods are lost or not received by the Customer within 6 days of date of invoice the Carrier and Company should be immediately notified.
7. **Return of Goods.** No goods may be returned without the Company's written consent. Where goods are alleged to be defective or not in conformity with manufacturer's published specification, full details must be given and credit (or replacements) will not be issued until defects have been agreed by the manufacturer. In no circumstances will goods which have been used, altered, or soldered be considered for credit or replacement.
8. **Retention of Title.** Notwithstanding delivery and the passing of risk, the property in and title to the goods shall remain with the seller until the seller has received payment of the full price of a) all Goods and/or Services which are the subject of the contract and b) all other Goods and/or Services under any contract whatsoever. The Customer must hold the goods delivered hereunder as bailee for the Company until the Customer has:
 - (i) paid the Company in full for such goods, or
 - (ii) resold such goods, or articles containing such goods, whichever shall first occur.As bailee, the Customer:
 - (i) will store such goods, if unused, separately and so as to be identifiable as the property of the Company, and
 - (ii) will be entitled to use the goods and to incorporate them into machinery or other articles, but in such event or events the goods will remain the property of the Company and the Customer will on request and at Customer's expense separate the goods from any machinery or other articles in which they may be incorporated and redeliver them to the Company.If the Customer shall resell the goods, machinery or other articles incorporating such goods to a sub-buyer without having paid the Company as aforesaid, the Customer shall pay the proceeds of such resale, to the extent that the Customer has not so paid the Company, into a separate account in the Company's name in trust for the Company, and pending payment of such proceeds hold the right of enforcing such payment against the sub-buyer in trust for the Company. Save as expressly set out herein, the Company shall not be liable for any representation made by or on behalf of the Company and all conditions and warranties, express or implied, statutory or otherwise are excluded.
9. **Quotations.** Quotations where given are without commitment and no contract between the Company and the Customer shall arise unless and until the Company has accepted in writing the Customer's order.
10. **Acceptance of Quotation.** Acceptance of the Company's written quotation shall be taken also as acceptance of these Terms and Conditions of Sale subject to any variation there to agreed by the Company in writing.
11. **Sub-Contracting.** The Company shall be entitled to sub-contract all or any of its obligations hereunder.
12. **Testing and Inspection.** Where the Customer requires the Company to commission a component or equipment at the Customer's premises this will constitute a separate Contract between the Customer and the Company.
13. **Installation.** When the Company undertakes the installation of the equipment or materials supplied at the Customers premises the Company shall not be responsible for any consequential loss or damage occurring as a result thereof nor the third party Claims in connection therewith.
14. **Representations, Conditions and Warranties.** Save as expressly set out herein, the Company shall not be liable for any representation made by or on behalf of the Company and all conditions and warranties, express or implied, statutory or otherwise are excluded.
15. **Warranty and Liability of Company.**
 - (a) The Company guarantees the goods for a period of twelve months and shall make every reasonable effort to have repaired or replaced free of charge any goods which are, or become, defective through any fault in design, materials or workmanship in the manufacture thereof, provided that such defect occurs within the warranty period and provided that the Customer notifies the Company of any such defect immediately it occurs. Save as aforesaid under no circumstances will the Company be liable, in contract or otherwise for any loss, damage expense, or injury whatsoever, consequential or otherwise, arising out of or in connection with the supply or installation, use or failure of, defect in, the goods sold thereunder.
 - (b) Defective goods should be returned to the Company at the Customer's expense.
 - (c) Such repair or replacement will be the absolute limit of the Company's liability and the Company will not be liable in any circumstances whatsoever for the loss or damage of any kind suffered by the Customer or any Third Party unless the same shall relate to personal injury or death and only then if the same arise out of the Company's negligence. Save as aforesaid the Company shall be under no liability whatsoever in regard to the goods supplied to the Customer.
 - (d) The Company does not warrant or guarantee that the goods will be fit for the Customer's specific purpose unless exact details of such have been notified to the Company prior to the Company's acceptance of the Customer's order.
 - (e) The defective goods are returned to the Company accompanied by a Field Failure Report or a letter stating fully the reasons why the goods are believed by the Customer to be defective, transportation charges being prepaid by the Customer.
 - (f) Examination by the Company of such goods shall disclose to its satisfaction that such defects exist and have not been caused by misuse, neglect, improper installation, improper repair, alteration or accident.
 - (g) The Customer shall pay to the Company the cost (as certified by the Company) of any examination of such goods as a result of which the Company does not admit liability.
 - (h) Where a site visit is requested in respect of equipment supplied by the Company a charge will be levied should the defects prove to be outside the guarantee issued herein.
16. **Cancellation of Variation.**
 - (a) Cancellation of an order of part of an order can only be made by mutual consent, but where the Company agrees that an order may be cancelled the Company nevertheless reserves the right to levy charges on the Customer for any loss the Company has suffered as a result of that cancellation.
 - (b) In the event of the Customer altering the requirements of the Contract after instructions have been received by the Company the Company reserves the right to amend the delivery time and to charge for any consequent losses or costs incurred as a result of the alteration.
17. **The Company's Right to Terminate.** If the Customer shall make default in or commits breach of the Contract of any other of his obligations to the Company or if any distress or execution shall be levied upon the Customer's property or assets or if the Customer's property or assets or if the Customer shall make or offer to make arrangement or composition with his creditors or commit any act of Bankruptcy shall be presented or made against him or (if the Customer's Limited Company) any resolution or petition to wind up business (other than for the purpose of re-construction or amalgamation) shall be passed or presented or if a Receiver of such Customer is undertaking property or assets or any part thereof shall be appointed the Company shall have the right forthwith to determine any Contract then subsisting and upon written notice of such determination being posted to the Customer's registered office or last known address any subsisting Contract shall be deemed to have been determined without prejudice to any Claim or right the Company may otherwise make or exercise.
18. **Indemnity.** The Customer shall indemnify the Company against all actions, claims or demands by third parties whether in tort or otherwise howsoever arising directly or indirectly in connection with the use functioning or state of the goods (or in connection with the performance of services).
19. **Force Majeure.** The Company will not be liable for any failure or delay in delivery due to causes beyond its control including (but without prejudice to the generality of the foregoing) inability to obtain materials, war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, accidents, plant breakdowns, interference by labour or strike or lockouts of employees. Acts of God or any restriction regulation order Act omission or operation by any local or municipal authority public corporation or Government department. If by reason of any such circumstances the Company is unable to supply the total demand for a product the Company may allocate its available supply among all its Customers (including the Customer) and itself in what it adjudges to be an equitable basis.
20. **Law and Interpretation.** This Contract shall be governed by English law and the Customer shall submit to the non-exclusive jurisdiction of the English Courts. If any of these Conditions or any part thereof is rendered void or unenforceable by any legislation to which it is subject or by any rule of law it shall be void or unenforceable to that extent and to no further.