

# ELSTEEL UK LTD

Specialists in the Design / Supply of Module Switchboards  
and Motor Control Centres to the Panel Building Industry

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## 1. DEFINITIONS

In these General Conditions the following expressions shall have the following meanings: “the Sellers” shall mean Elsteel UK Ltd. “The Purchasers” shall mean the person, firm or company to whom the Sellers are selling. “The Goods” shall mean the goods materials equipment or services (as applicable) being sold by the Sellers to the Purchasers. “Export orders” shall mean orders for delivery of Goods by the Sellers outside the United Kingdom.

## 2. GENERAL

(a) The Sellers do business upon and subject to these General Conditions of Sale which shall be deemed to be incorporated into all contracts between the Sellers and the Purchasers to the exclusion of any other terms and conditions of the Purchasers unless otherwise specifically accepted by the Sellers in writing.

(b) A quotation shall only constitute an invitation to treat. All orders subject to acceptance by the Sellers on an official form of Acknowledgement of Order signed on behalf of the Sellers. The Purchasers’ acceptance of delivery of the said Acknowledgement of Order shall be deemed to include acceptance of these General Conditions (as varied if a variation has been specifically accepted by the Sellers in writing).

### **3. PRICE AND PAYMENT**

(a) Unless a fixed price is specified in the Acknowledgement of Order or is otherwise specifically agreed in writing the price of the goods shall be per the Sellers price list current at the date of dispatch of the Goods. Where there is any such fixed price the Sellers shall be entitled to increase the same to take into account all or any of the following:

(i) any additional costs incurred by the Seller as a result of the Purchasers' instructions or lack of instructions or failure to comply with its obligations hereunder.

(ii) Any increase in the Sellers' costs.

(b) The Purchasers shall make payment within 30 days of receipt of the Sellers invoice save that:

(i) Purchasers without a credit account shall make payment in advance of delivery, the opening of a credit account being subject to receipt by the Sellers of satisfactory trade references; and

(ii) in the case of export orders payment shall be made by the Purchasers arranging at their cost an irrevocable letter of credit in favour of the Sellers confirmed by a First class London Bank to the Sellers satisfaction available for payment by the said bank on presentation of the shipping documents.

(c) Where Goods are to be delivered by instalments payment for each instalment shall be a condition of delivery of subsequent instalments.

(d) Time of payment shall be of the essence and if any amount shall not be paid on the due date then without prejudice to any other rights the sellers may have: -

(i) the Purchasers shall pay to the Seller on demand interest there on at an annual rate four percent above the Bank of England's base lending rate such interest to accrue from day to day and to run after as well as before any judgement; and

(ii) the Sellers shall be entitled to recover all expenses incurred by the Sellers in collecting or attempting to collect any amounts outstanding.

(e) All price are exclusive of V.A.T.

(f) The Sellers shall be entitled to bring an action for the price or part thereof whether or not the property in the Goods has passed.

#### **4. DELIVERY**

(a) Any delivery date specified by the Sellers is an estimate only and is not of the essence of the contract and the Sellers accept no responsibility for delay howsoever caused.

(b) All times or dates for delivery shall be calculated from the date of acceptance by the Sellers of the order from the Purchasers, or from the date of receipt by the Sellers from the Purchasers of all information, instructions and drawings as shall be necessary to enable the Sellers to carry out the order, whichever shall be the later.

(c) If the performance of any of the Sellers' obligations shall be prevented, hindered or interfered with by any cause or reason beyond the control of the Sellers then the Sellers shall have the option to suspend or cancel any obligation on their part then unperformed.

(d) If any account of the Purchasers is overdue for payment or if the Purchasers default in any obligation or if any distress or execution is levied upon the Purchasers or if the Purchasers enter into any negotiations or arrangement or composition with or for the benefit of the Purchasers' creditors or becomes bankrupt or if any petition in bankruptcy is presented against the Purchasers or (being a company) the Purchasers shall be wound up or if any resolution, proposal or petition is presented to wind up the Purchasers or if a receiver of the Purchasers' assets or undertaking or any part thereof shall be appointed or if the Purchasers shall be deemed to be unable to pay its debts or if an administration order shall be made against the Purchasers or if the Purchasers shall threaten to cease to trade or in the Sellers absolute opinion serious doubts arise as to the purchasers solvency the Sellers are entitled without prejudice to their other rights to suspend the performance of any of their obligations to the Purchasers or (whether or not notice of suspension has been given) to cancel such performance and treat the contract as discharged and the Purchasers shall promptly pay to the Sellers all costs incurred in respect of Goods in the course of manufacture or ready for dispatch.

(e) The Seller agrees to deliver its products upon such terms and to such places and at such costs as may be agreed between the Seller and the Buyer to the best of its abilities. The Purchasers shall off-load the Goods promptly on their arrival at site and shall provide and bear the costs of clear access to and at the point of delivery together with the means of off loading.

(f) In the case of export orders the Purchasers shall be responsible for the cost of delivery F.O.B. Port of Shipment U.K and for the delivery of the Goods to the said Port unless other terms are in this respect specified in the said Acknowledgement of Order in which case such terms shall govern the Sellers' responsibility for delivery.

(g) If the Purchasers shall fail to take delivery of any Goods the Sellers may at their option but without prejudice to any other rights or remedies they may have to sell the Goods for the account of the Purchasers and the Purchasers shall be liable for all costs and expenses incurred by the Sellers and the difference between the proceeds of sale and the price of the Goods hereunder.

(h) The Sellers are entitled to make delivery by instalments.

## **5. ACCEPTANCE**

The purchaser shall inspect all goods immediately upon delivery and shall within 3 days from delivery notify the Sellers of any matter or thing by reason of which they may allege that the goods are not in accordance with the contract. If the Purchasers shall fail to give such notice within such period it shall conclusively be deemed that the goods are as to quantity number, weight volume and in all respects in accordance with the contract and that the Purchasers have accepted them and the Purchasers shall have no right to reject the Goods but shall be bound to pay for the same accordingly.

## **6. PURCHASERS' OBLIGATIONS**

(a) The Purchasers shall obtain all necessary permits and certificates from any governmental Authority or statutory undertaker and shall provide safe conditions and necessary facilities to enable the sellers to comply with all statutory requirements and regulations.

(b) The Purchasers shall ensure that the patterns, drawings, particulars, specifications and instructions supplied by them are accurate and suitable and do not infringe any patent, registered design, trade mark, copyright or other industrial property rights.

(c) The Purchasers hereby indemnify the Sellers against all claims, liabilities and proceedings resulting from any breach of the Purchasers' obligations set out in this clause.

## **7. RETENTION OF TITLE AND RISK**

(a) Goods supplied by the Sellers shall be at the Purchasers risk immediately on delivery to the Purchasers or into custody on the Purchasers behalf (whichever is the sooner) and the Purchasers should therefore insure accordingly provided that in the case of export orders the Goods shall be at the Purchasers' risk when they pass the ships rail (unless terms other than F.O.B or C.I.F are specified in the said Acknowledgement of Order in which case such terms shall govern the position) and the Sellers shall not be under any obligations to give a notice to the Purchasers under the Sale of Goods Act 1979 Section 32 (3)

(b) The Goods shall remain the sole and absolute property of the Sellers as legal and equitable owners until the Purchasers have paid the Sellers in full for all of the Goods and all other goods the subject of any other contract with the Sellers. Until such full payment the Purchasers shall keep the Goods for the Sellers in the capacity of bailee and shall keep the Goods identifiable and separate from all other goods in its possession and shall deal with the Goods as directed by the Sellers. If the Purchasers make default in payment or if for any other reason the Sellers treat this contract as discharged the Sellers may repossess the Goods and the Purchasers hereby irrevocably licence the Sellers to enter into the Purchasers premises for the purpose of such repossession the Sellers shall be entitled where the Goods have been fixed or attached to any other product to detach the Goods in order to cont..

recover possession of them. Such delivery or retaking of possession shall be without prejudice to the obligation of the Purchasers to purchase the Goods.

### **3. 8.GUARANTEE AND LIABILITY**

(a) The Sellers accept liability for any death or personal injury caused by negligence of the Sellers or the Sellers' employees acting in the course of their employment and the provisions of sub-clauses (d) and (e) hereof shall not apply to any such liability.

(b) Goods sold by the Sellers are guaranteed against defective materials or faulty workmanship but only to the extent that any Goods or any part thereof returned to the Sellers and upon examination by the Sellers found to have been defective at the time of dispatch will be repaired or replaced by the Sellers at their option free of charge provided that and as a condition of such guarantee the Purchasers:-

(i) have complied with their obligations hereunder and in particular have made payment in full for the Goods.

(ii) Have not carried out any repair, alteration, process operation or treatment to the Goods without the Sellers' written consent.

(iii) Notify the Sellers in writing of such defect or fault within a period of 12 months from the date of delivery.

(c) To the extent that the Sellers undertake responsibility for the delivery of the Goods their liability for damage to the Goods in transit or for non delivery of the Goods arising from any act, neglect or default of the Sellers or the Sellers' employee or independent contractors or howsoever arising or caused shall be extinguished unless the Purchasers:-

(i) notify the Sellers and the Sellers' carrier ("the Carrier") in writing forthwith:

(ii) give immediate notice to the Police Authority in respect of damage caused by malicious persons or thieves if insured by the Seller's insurance policy as arranged by the Carrier ("the Policy")

(iii) within 30 days after such damage (7 days in the case of damage caused by riot, civil commotion, strikers, locked out workers or persons taking part in labour disturbances or malicious persons if insured by the policy) or such further time as the Sellers and the Carrier may in writing allow at the expense of the Purchasers deliver to the Sellers and Carrier:-

(1) full information in writing of the claim:

(2) details of any insurance relating to the claim;

(3) all such proof, information explanation and other evidence (including the production of articles alleged to be damaged) as may be reasonably required; and

(4) if demanded a statutory declaration of the truth of the claim and of any matter connected with it. The Sellers liability under this paragraph

(c) shall be further subject to the conditions and limitations contained in the Policy (details of which are available on request) to which the Purchasers agree to be bound.

(d) Subject to the foregoing provisions of this clause the Sellers shall have no liability to the Purchasers for any death or personal injury or loss of or damage to the Goods (including loss or damage in transit or non delivery) or other property or any other loss, damage, delay or liability whatsoever (or any other amount calculated by reference to profits, income, production or accruals or by reference to accruals of any amount on a time basis) arising from any act, neglect or default of the Sellers or the Sellers' employees or independent contractors or howsoever arising or caused.

(e) All liabilities of the Sellers to the Purchasers determined by a court of law as, not having been excluded hereunder shall be limited in total to the total price of the Goods as shown on the Sellers' invoice.

(f) The Purchasers shall indemnify the Sellers against any death, injury, damage or loss which may be caused to the Sellers or the Sellers' employees or independent contractors or their respective property where the same arises from any act, neglect or default of the Purchasers or the Purchasers employees or independent contractors or howsoever arising or caused.

(g) The Purchasers shall be responsible for the Goods being suitable in every way for the purpose for which they intend to use them and no warranty condition or representation is given by the Sellers as to the fitness of the Goods give representation for any particular purpose.

(h) The Purchasers should insure against any risk not accepted by the Sellers hereunder and particularly ensure that such policy covers any additional value in excess of that referred to in sub-clause (e) hereof.

(i) The Sellers' prices are based on the assumption that their liabilities are as set out in this clause and accordingly the guarantee given in sub-clause (b) hereof is not assignable and together with the other liabilities accepted hereunder is given in lieu of and to the express exclusion of all other guarantees, conditions, warranties, representations and descriptions whether express or implied in any manner save where and to the extent that the law prohibits the exclusion or restriction of such liability.

(j) Subject to sub-clause (k) hereof where the Purchasers "deal as a consumer" in relation to the Sellers as defined by the Unfair Contract Terms Act 1977 (or any statutory modification or re-enactment thereof) sub-clauses (c) to (i) hereof shall not apply.

(k) Sub-clauses (a) (b) (c) (i) and (j) hereof shall not apply to Contracts with Purchasers situated outside the U.K or with Purchasers in respect of whom the Unfair Contract Terms Act 1977 (or any statutory modifications or re-enactment thereof) does not apply.

## **9. CREDIT**

Any credit shall be subject to the Sellers being satisfied as to the Purchasers' credit references and without prejudice to the generality of the foregoing the Sellers may (in their absolute discretion) having informed the Purchasers that the goods are ready for dispatch refrain from delivering the Goods until such time as the Purchasers' tender the purchase money to the Sellers together with any outstanding amounts which may be due to the Sellers on any account whatsoever.

## **10. SPECIFICATIONS**

The Sellers reserve the right to supply Goods, which may not correspond exactly with the designs, sizes, weights, dimensions, specifications, illustrations or other particulars given.

## **11. CERTIFICATES**

Unless otherwise specified in the Seller's Acknowledgement of Order no Certificate of Conformity will be supplied.

## **12. WAIVER**

Failure by the Sellers at any time to enforce any of the provisions of these General Conditions shall not be construed as waiver by the Sellers of such provisions or in any way affect the validity of these General Conditions.

### **13. ASSIGNABILITY AND SUB-CONTRACTING**

(a) This contract may not be assigned or transferred by the Purchasers without the prior written consent of the Sellers.

(b) The Sellers may sub-contract any of their obligations under the contract.

### **14. NOTICE**

Any notice required to be served hereunder may be served in writing to the registered office or principal place of business of the party to be served.

### **15. HEADINGS**

Headings are for ease of reference only and do not form a part of these General Conditions, nor shall they govern the interpretation thereof.

### **16. LAW AND MONEY OF ACCOUNT**

(a) The money of account shall be sterling or euro.

(b) These general conditions and any contracts to which they apply shall be governed by English law and shall be deemed to have been made in England.

(c) Subject to clause 16 (d) hereof, the parties hereby submit to the exclusive jurisdiction of the High Court of Justice in England in relation to any proceedings arising out of or in connection herewith.

(d) The parties agree that clause 16 (c) is intended to be for the sole benefit of the Sellers who hereby reserve the right to bring proceedings in any other court which may have jurisdiction in the matter.

## **17. FORCE MAJEURE**

Without prejudice to the rights of the Sellers to cancel or suspend any obligation hereunder pursuant to any clause in these General Conditions the Sellers shall have no liability to the Purchasers if any of its obligations to the Purchasers are hindered, delayed or prevented whether directly or indirectly by reason of the Purchasers failing to furnish the necessary instructions or information or by war or other hostilities, civil commotion, Act of God, government action or legislation, interruption of transport, strike, lockout or other forms of industrial action, accident or stoppages to works, shortage of labour, materials, equipment, fuel or power, breakdown of machinery or any other cause whatsoever beyond the reasonable control of the Sellers or their subcontractors whether or not such case exists at the date of the order.

## **18. WEBSITE**

### **Data Protection Policy**

ELSTEEL UK LTD is committed to protecting your privacy and security.

We will only use the information we collect about you, with your consent, to tell you about our services. We will never wilfully disclose personal information about you to any third party without first receiving your permission or unless we are under a legal obligation to do.

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