

ANKER ELEMENTAL LIMITED TERMS AND CONDITIONS OF SALE

1. BASIS OF CONTRACT

- (i) The customer order constitutes an offer by the customer to purchase goods and/or services from us in accordance with these conditions.
- (ii) The customer order shall only be deemed to be accepted when we issue written acceptance of the order at which point and on which date the contract shall come into existence.
- (iii) The contract constitutes the entire agreement between the parties. The customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in the contract.
- (iv) These conditions apply to the contract to the exclusion of any other terms that the customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- (v) Quotations are valid for acceptance for 28 days from the date on which they are made unless otherwise stated in the quotation and are subject to the following terms and conditions.

2. SUPPLY OF SERVICES

- (i) We shall use all reasonable endeavours to meet any performance dates communicated to you in writing but any such dates shall be estimates only and time shall not be of the essence for performance of the services.
- (ii) We shall have the right to make any changes to the services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the services, and we shall notify you in any such event.
- (iii) We warrant that the services will be provided using reasonable care and skill.

3. CUSTOMER'S OBLIGATIONS

- (i) The customer (you, the person or firm purchasing goods and/or services from us) shall:
 - (a) ensure that the terms of the order and any information provided to us are complete and accurate;
 - (b) co-operate with us in all matters relating to the services;
 - (c) provide us with such information and materials as we may reasonably require to supply the services, and ensure that such information is accurate in all material respects;
 - (d) prepare the customer's premises for the supply of the services;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the services are to start;
 - (f) keep and maintain all our materials, equipment, documents and other property at the customer's premises in safe custody at its own risk, maintain them in good condition until returned to us and not dispose of or use them other than in accordance with our written instructions or authorisation.
 - (g) to follow our recommendations and use any chemicals and/or equipment provided strictly in accordance with our advice and/or instructions.
 - (h) not divulge any details of the maintenance plan, equipment, chemical use and/or chemical formulations to any third party without our prior knowledge and written consent.
 - (i) inform us of any changes in the site design, materials of construction, operating conditions and use of the systems which may have a bearing on the health or welfare of the site occupiers.
- (ii) If the performance of any of our obligations under the contract is prevented or delayed by any act or omission by the customer or failure by the customer to perform any relevant obligation:
 - (a) we shall without limiting our other rights or remedies have the right to suspend performance of the services until the customer remedies the customer default, and to rely on the customer default to relieve us from the performance of any of our obligations to the extent the customer default prevents or delays our performance of any of our obligations; and
 - (b) we shall not be liable for any costs or losses sustained or incurred by the customer arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause.

4. PRICE

- (i) The price is based on the rates of labour, working hours and conditions, cost of materials, transport, insurance and overhead charges ruling at the date of our quotation, or if no quotation was given, at the date of our acceptance of the customer order.

- (i) Unless expressly agreed by us, the price does not include tax or other statutory impositions, and the customer shall bear the amount of tax chargeable by law, whatever the amount (if any) may have been stated by us to be chargeable.
- (ii) We reserve the right to make reasonable changes to our fees on providing you with 3 months' notice.

5. PAYMENT

- (i) Our payment terms are strictly 30 days nett. We reserve the right to charge interest at 5% above the base rate of the Bank of England from time to time per month on all monies overdue from whatever cause. We reserve the right to stop work without prejudice where payment terms are not met.
- (ii) Invoices will be raised after site work. Where works continue for more than one month then interim invoices will be raised monthly.
- (iii) Retention and defects liabilities monies are not applicable to our works, these and any other discounts may not be deducted without our express agreement in writing.
- (iv) We may deliver the goods by instalments, which shall be invoiced immediately upon each delivery and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- (v) Time for payment shall be of the essence.

6. ANNUAL CONTRACT SERVICE

- (i) Annual contract sums may be invoiced monthly or as otherwise agreed.

7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- (i) Nothing in these conditions shall limit or exclude our liability for:
 - (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentations; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- (ii) Subject to clause 7(i):
 - (a) we shall not be liable to customers, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or about the contract; and
 - (b) our total liability to the customer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed £2 million.
- (iii) Except as set out in these conditions, all warranties, conditions and other terms implied by statute or common law are, fully permitted by law, excluded from the Contract.
- (iv) This clause 7 shall survive termination of the contract.
- (v) We accept no responsibility for damage to, or fouling of, installations which may occur after completing work on that installation, or sub-section of that installation, other than that which can be proven to be due to negligence on our part.
- (vi) Any defect must be brought to our attention within 48 hours of handover of completed work or sub-section of work for it to be considered for rectification.
- (vii) If we are given a reasonable opportunity of examining purportedly defective goods, we may, at our option, repair or replace the defective goods, or refund the price of the defective goods in full.
- (viii) We shall not be liable for purportedly defective goods if:
 - (a) the customer makes any further use of such goods after giving us notice of the problem;
 - (b) the defect arises because the customer failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods;
 - (c) the defect arises because of us following any drawing, design or specification supplied by the customer;
 - (d) the customer alters or repairs such goods without our written consent; or
 - (e) the defect arises because of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- (ix) The terms of these conditions shall apply to any repaired or replacement goods supplied by us.

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8. INCLUSIONS AND HOURS OF WORK

- (i) We have included for all labour, supervision, transport, material, tools and equipment including ladders and steps necessary to complete the works described. Scaffold is excluded unless specifically included in the quotation.
- (ii) We have included for normal daytime, weekday working unless otherwise specified in the quotation.

9. DELIVERY OF GOODS

- (i) We shall deliver the goods to the location set out in the order or such other location as the parties may agree.
- (ii) Delivery of the goods shall be completed on the goods' arrival at the delivery location.
- (iii) Any dates quoted for delivery of the goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the goods that is caused by a force majeure event or the customer's failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.
- (iv) If we fail to deliver the goods, our liability shall be limited to the costs and expenses incurred by the customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the goods. We shall have no liability for any failure to deliver the goods to the extent that such failure is caused by a force majeure event the customer's failure to provide us with adequate delivery instructions for the goods or any relevant instruction related to the supply of the goods.
- (v) If the customer fails to accept or take delivery of the goods, then except where such failure or delay is caused by a force majeure event or by the supplier's failure to comply with its obligations under the contract in respect of the goods:
 - (a) delivery of the goods shall be deemed to have been completed at 9.00 am on the day on which the goods arrived at the customer's premises; and
 - (b) we may store the goods until the customer takes the goods and charge the customer for all related costs and expenses (including insurance).
- (vii) If 7 days after we notified the customer that the goods were ready for delivery the customer has not accepted or taken delivery of them, we may resell or otherwise dispose of part or all the goods.

10. CUSTOMER PLANT

- (i) Unless previously advised differently, our methods and quotations assume that plant and equipment worked on is in serviceable condition and capable of undergoing the contracted works. For example, it is assumed that AHU duct and equipment access panels can be satisfactorily removed; that valves can be isolated and shut off fully.
- (ii) Cleaning of air and water systems does not include repair such as treatment of corrosion, repair of damaged insulation material (internal or external) or scrubbing down of hard deposits such as concrete, cement, paint and scale unless specified in the quotation.
- (iii) All system control devices, including air regulation dampers, valves, etc., will be restored to their mechanical and control settings 'as found'. We accept no further responsibility for system balance and operation.

11. ACCESS TO WORKS

- (i) We will require unimpeded access to, and control of, the plant and equipment worked on.
- (ii) Unless otherwise specified, the quotation assumes continuous working. Extra costs may be charged if work is phased to cover site set-up, travel and extra supervision.
- (iii) Any delays caused by factors outside our control may be charged at standard day work rates.

12. SITE FACILITIES

- (i) Normal power, water, storage, welfare, vehicle parking and, where required, site office, facilities will be made available to us free of charge for the duration of our work.
- (ii) We will at times require to locate a silenced diesel compressor within 90 metres of all working areas.

13. HEALTH AND SAFETY

- (i) We have allowed for full compliance with the Health and Safety at Work Act, with the exception that the customer is responsible for ensuring that the site is safe.
- (ii) We reserve the right to stop work and may submit a revised method statement and price without prejudice to the value of work already carried out if hazardous or toxic materials, as defined by current HSE guidance (e.g. asbestos), are found which have not previously been advised in writing to us. Any additional costs incurred by us thus will be the responsibility of the customer.

- (iii) We do not warrant to uncover and report hazardous substances during surveys unless sufficient information has been given by the customer such that such an exclusion would be unreasonable.

14. TITLE AND RISK

- (i) The risk in the goods (which, for this clause only shall include all materials, reports, videotapes and drawings delivered by us to customers) shall pass to the customer on completion of delivery.
- (ii) Title to the goods shall not pass to the customer until we have received payment in full (in cash or cleared funds) for the goods.
- (iii) Until title to the goods has passed to the customer, the customer shall:
 - (a) hold the goods on a fiduciary basis as our bailee;
 - (b) store the goods separately from all other goods held by the customer so that they remain readily identifiable as our property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the goods;
 - (d) maintain the goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
 - (e) give us such information relating to the goods as we may require from time to time.
- (iv) If before title to the goods passes to the customer the customer becomes subject to any of the events listed in clause 15, or reasonably believe that any such event is about to happen and notifies the customer accordingly, then, provided the goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require the customer to deliver up the goods and, if the customer fails to do so promptly, enter any premises of the customer or of any third party where the goods are stored in order to recover them.

15. TERMINATION

- (i) Without limiting our other rights or remedies, we may terminate the contract with immediate effect by giving written notice to the customer if:
 - (a) the customer commits a material breach of the contract and (if such a breach is remediable) fails to remedy that breach within 28 days of the customer being notified in writing of the breach;
 - (b) the customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters any compromise or arrangement with its creditors;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or about the winding up of the customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the customer with one or more other companies or the solvent reconstruction of the customer;
 - (e) the customer (being an individual) is the subject of a bankruptcy petition or order;
 - (f) a creditor or encumbrancer of the customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the customer (being a company);
 - (h) a floating charge holder over the assets of the customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the customer or a receiver is appointed over the assets of the customer;
- (j) the customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (k) the customer does not comply with our written recommendations where such recommendations are based on Government legislation or guidelines issued by the Health and Safety Executive, Water Authorities or other appropriate bodies.

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- (ii) Without limiting its other rights or remedies, we may terminate the contract with immediate effect by giving written notice to the customer if the customer fails to pay any amount due under this contract on the due date for payment.
- (iii) Without limiting its other rights or remedies, we shall have the right to suspend provision of the services under the contract or any other contract between the customer and us if the customer becomes subject to any of the events listed in clause 15.1 (a) to (j)), or we reasonably believe that the customer is about to become subject to any of them, or if the customer fails to pay any amount due under this contract on the due date for payment.
- (iv) Without limiting its other rights or remedies each party may terminate the contract by giving the other party 3 months' written notice.
- (v) On termination of the contract for any reason the customer shall immediately pay to us all our outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by the customer immediately on receipt.

16. GENERAL

- (i) Force majeure:
 - (a) For the purposes of this contract, force majeure event means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
 - (b) We shall not be liable to the customer because of any delay or failure to perform our obligations under this contract because of a force majeure event.
 - (c) If the force majeure event prevents us from providing any of the services for more than 24 weeks, we shall, without limiting our other rights or remedies, have the right to terminate this contract immediately by giving written notice to the customer.
- (ii) Assignment and subcontracting:
 - (a) The supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the contract and may subcontract or delegate in any manner any or all its obligations under the contract to any third party or agent.
 - (b) The customer shall not, without the prior written consent of the supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the contract.
- (iii) Waiver:

A waiver of any right under the contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (iv) Severance:

If a court or any other competent authority finds that any provision of the contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the contract shall not be affected.
- (v) No partnership:

Nothing in the contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- (vi) Third parties:

A person who is not a party to the contract shall not have any rights under or about it.
- (vii) Variation:

Any variation, including the introduction of any additional terms and conditions, to the contract, shall only be binding when agreed in writing and signed by us.
- (viii) Governing law and jurisdiction:

This contract, and any dispute or claim arising out of or about it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.