

**CONDITIONS OF SALE**

The following standard conditions apply to every order accepted by Canning Conveyor Co Ltd (referred to in the conditions as 'the Company') for goods and services.

**1. Definitions**

- (a) "the Company" means Canning Conveyor Co. Limited;
- (b) "the Conditions" means the Conditions of Sale contained herein;
- (c) "the Buyer" means the firm, company or person whose order is accepted by the Company;
- (d) "Goods" means the equipment, parts or services which are the subject of the order;
- (e) "Quotation" means any written quotation or tender submitted by the Company;
- (f) "Order" means the written order placed by the Buyer on the Company for the provision of Goods as defined;
- (g) "Contract" means the contract made by the Company for the sale of the company's Goods to the Buyer;
- (h) "the Works" means the installation, erection or other services which the Company has agreed to provide.

**2. General**

These Conditions, supplied by the Company to the Buyer shall be incorporated into each contract made by the Company for the sale of the Company's Goods and the provision of the Works. The Company as aforesaid upon such terms as are agreed between the Company and the Buyer and upon the terms of the Conditions alone. No Conditions or terms of the Buyer shall apply to this contract. No variation of any of the Conditions shall be effective unless in writing and signed by a duly authorised representative of the Company.

**3. Quotations and Acceptance of Orders**

The Contract shall become binding only upon the confirmation of acceptance of any order by the Company in writing and accordingly all quotations or tenders made and price or product lists supplied by the Company shall be treated as invitations to treat only.

**4. Specifications**

If Goods are supplied and/or Works carried out in accordance with the Buyer's specifications ("the Specifications") the Buyer shall be solely responsible for the Specifications and ensuring that they are accurate.

**5. Accuracy**

All specifications, drawings, catalogues and particulars of weights and dimensions submitted with a tender are approximate only and not binding and the Company reserves the right to amend or alter such specifications or particulars of weights and dimensions upon acceptance of the Order.

**6. Carriage and Packaging**

- (a) Unless otherwise specified by the Company all prices quoted are ex-works and carriage is charged at cost.
- (b) Packaging for the Goods shall be at the discretion of the Company which shall have the right to pack the Goods in such manner and with such materials and in such quantities as it in its absolute discretion thinks fit unless detailed packaging instructions are received from the Buyer prior to agreeing a price for the Goods.

**7. Price**

- (a) All prices shall be as stated by the Company.
- (b) All prices shall be exclusive of Value Added Tax and other taxes from to time in force.
- (c) If the cost to the Company of fulfilling any of its obligations under the Contract are increased by the Buyer's acts or omissions, any change in applicable law or changes in one or more of the Company's production or associated delivery costs (including (but not limited to) increases in the cost of raw materials, freight, labour, power, energy or fuel; changes in the types or rates of tax contributions, duties, tariffs or levies; or foreign exchange fluctuations or currency regulations), then at any time before delivery of the Goods the Company shall be entitled to adjust the price to cover such additional costs by written notice to the Buyer.

**8. Payment**

- (a) Liability for payment for the Goods supplied shall arise on delivery and payment shall be due thirty days from the date of the invoice or as otherwise specifically agreed in writing by the Company. Where the Contract is to be or may be fulfilled in separate instalments or delivery's part payment for each delivery shall be made as if each instalment or delivery constituted a separate contract. Payment shall be due and the Company shall be entitled to sue for the price whether or not property in the Goods has passed by virtue of clause 18.
- (b) Sums unpaid after the due date shall bear interest until the day payment is received at the rate of 4% per annum above the base rate for the time being of National Westminster Bank plc accruing from day to day from the date of delivery until the date of payment in full.
- (c) If the recovery of sums outstanding from the Buyer is passed to a Debt Collection Agency the Buyer shall pay the Company's costs in instructing the said Debt Collection Agency and all ancillary legal costs.
- (d) Without prejudice to any other rights or remedies of the Company any default by the Buyer in making payment on the due date shall entitle the Company to suspend deliveries or work under the Contract or any other contract so long as the default continues and to treat the Contract as repudiated by the Buyer and determined if the Buyer has not within 14 days of receiving written notice from the Company paid all sums due to the Company.
- (e) Set-off is allowed.

**9. Delivery**

- (a) Delivery shall take place when the Goods are unloaded at or delivered to the Buyer's premises or other delivery location agreed between the Company and the Buyer except that if the Buyer collects or arranges collection of the Goods from the Company's premises, or nominates a carrier for the Goods delivery shall take place when the Goods are loaded on to the collection or carrier's vehicle.
- (b) The Company will use its best endeavours to complete delivery or the Works on or before any dates requested by the Buyer or estimated by the Company but will not be liable for any delay in delivery or completion of the Works.
- (c) The Buyer shall accept immediate delivery or arrange to collect the Goods or arrange suitable storage, failing which the Company may either:-
  - (i) effect delivery by whatever means it thinks most appropriate; or
  - (ii) arrange storage at the Buyer's risk and expense pending delivery; or
  - (iii) re-sell or otherwise dispose of the Goods without prejudice to any other rights the Company may have against the Buyer for breach of contract or otherwise.
- (d) Where the agreement provides for delivery by instalments each instalment shall constitute a separate contract and any failure or defect in any one or more instalments delivered shall not entitle the Buyer to repudiate the agreement nor to cancel any subsequent instalments.
- (e) The Buyer shall not be entitled to reject the goods by reason only of short delivery.
- (f) The quantity of the Goods delivered under the Contract shall be recorded by the Company upon despatch from the Company's factory or warehouse and the Company's record shall be accepted by the Buyer as conclusive evidence of the quantity delivered.
- (g) It is the Buyer's responsibility to notify the Company if the Goods have not been received by the Buyer within seven days of the date of receipt of the Company's invoice therefore. If no notification is made the Buyer shall be deemed to have received the Goods.

**10. Erection**

The Buyer shall ensure that the site will be free for access of materials, tools and tackle and presents no obstacle to the proper and continuous performance of the Works specified in the Order during ordinary weekday working hours and overtime as necessary. Furthermore, the Buyer shall provide proper foundations at normal ground level, goods access roads and handstanding and if requested by the Company arrange suitable accommodation for the Company's workmen within a reasonable distance of the site. In the event of the Buyer not fulfilling its obligations under this clause then the Company shall undertake all necessary work itself and the Company shall charge the Buyer for all such work undertaken.

**11. Guarding**

- (a) Contracts for installation in the United Kingdom: the basic guards included in the tender are those required by law to comply with the Health and Safety at Work Act 1974;
- (b) Supplementary guards: it shall be the sole responsibility of the Buyer to consult with the appropriate inspector in order to establish if any additional guards will be required in order to comply with statutory regulations. Any additional guards so required will be extra to the tender price. The Buyer may provide supplementary guards itself, in liaison with his local inspector but, if so, the Company must be informed in writing in advance;
- (c) Contracts for installation overseas: it shall be the sole responsibility of the Buyer to investigate whether any additional guards will be required. Any additional guards so required will be extra to the tender price.

**12. Examination and Claims**

- (a) The Buyer shall upon delivery examine the Goods and the Works and shall promptly (but in any event within seven working days of delivery) notify in writing the Company and the carrier, where relevant, of any apparent damage defect or shortage.
- (b) The Buyer shall comply with the carriers rules regulations and requirements so as, when appropriate, to enable the Seller to make a claim against the carrier in respect of any damage or loss in transit.
- (c) Claims in respect of damage defects or shortage not apparent on examination under (a) must be notified in writing to the Company within twenty-one days of the date of delivery or completion of the Works.
- (d) Notification under (a) and (c) above shall be first made by telephone then by notice in writing delivered by fax or by first class recorded delivery mail and addressed to:-  
Canning Conveyor Co. Limited, Sandy Lane Industrial Estate, Sandy Lane, Worksop, Nottinghamshire, S80 1TN  
Telephone Number: 01909 486166 Fax Number: 01909 500638  
in default of such notification the Company shall, subject to any claim which the Buyer may have under the Guarantee and Warranty referred to in clause 17, be deemed conclusively to have properly performed its obligations under the Contract.

**13. Tests**

All products are carefully inspected and, where practicable, submitted to test at the Company's Works before despatch. If the Buyer requires special tests to be made in his presence, then unless otherwise agreed such tests shall be carried out at the Company's Works and will be charged for extra.

**14. Site Storage**

Where a contract involves delivery of materials to site whereon the Company has agreed to carry out Works the Buyer undertakes to provide safe and suitable storage for all such materials until such time as the Company requires them for assembly or erection as aforesaid, and the Company shall not be liable for any loss, damage or defect arising out of such storage, not for any delay or expense resulting therefrom.

**15. Liability of Purchaser**

All contracts including assembly or erection at place of delivery are accepted on the basis that any labour supplied by the Buyer is fully covered by the Buyer's insurance in respect of Employer's Liability. The Buyer shall be deemed to warrant that safe working conditions shall be provided at the site where the Company's Employees are to carry out Works of any nature connected with the contract. Unless otherwise specified all the necessary unskilled labour required by the Company in connection with the assembly and/or erection of equipment at the point of delivery shall be provided by the Buyer at its own expense, and the Buyer shall also provide free of charge all necessary lifting appliances to enable the Company to carry out the work expeditiously.

**16. Purchaser's Materials**

Materials or components supplied by the Buyer without charge for use on or in connection with any equipment to be manufactured by the Company will be stored at the Buyer's risk who shall insure such items accordingly and the Company may require the Buyer to produce on demand the premium receipts. The Company will accept no liability whatsoever for damage to, or for the suitability or performance of any such items, or for any consequential damage or loss arising from their use.

**17. Guarantee and Warranty**

- (a) The Goods and the Works are subject to guarantee ("the Guarantee"), if any, submitted by the Company which has been agreed as appropriate and fair.
- (b) Save as referred to in (a) above and (c) below the Company warrants only ("the Warranty") that the Goods are reasonably free from defects in design (other than a design submitted or specified by the Buyer) in material or workmanship and that the Works are carried out using a reasonable degree of skill for twelve months from the date of delivery or completion of the Works as the case may be ("the Warranty Period") provided that the Buyer has given the Company written notice and satisfactory proof of any defect promptly upon discovery of such defect but in no case later than seven days after expiry of the Warranty Period.
- (c) Where second-hand goods are used, the Company will endeavour to supply a sound article but the Company will give no warranty as to its condition or suitability or capability for any particular use

or purpose and the Buyer shall be deemed to be satisfied by inspection or otherwise as to the condition of the Goods prior to ordering the same.

(d) With second-hand conveyor belting only the Company undertakes to make good any defects reported within 21 days of the date of delivery or (at the option of the Company) to accept the return of the defective goods to replace the same as soon as is reasonably practicable, or to credit the Buyer with the value thereof against future orders from that Buyer, provided that this clause shall be of no effect whatsoever if the Buyer shall have used the same, or damaged the same during the said period of 21 days.

(e) The Company's obligations to the Buyer under the Warranty shall not apply:-

(i) to damage caused by the Buyer's or any third party's act, default or misuse of the Goods or by failure to follow any instructions supplied with the Goods;

(ii) if the Goods have been stored, handled or applied in such a way that damage is likely to occur;

(iii) if the Goods are altered, modified or repaired in any place other than the Company's factory or by persons not expressly nominated or approved in writing by the Company;

(iv) if the Buyer shall not have paid for all Goods supplied whether under the Contract or under any other contract between the Company and the Buyer.

(f) Subject to (c) and (d) above the Company shall at its sole option repair the Goods or Works or replace the Goods or refund the purchase price for the Goods or Works found to be defective in design materials or workmanship.

(g) Save for liability for death or personal injury arising from the Company's negligence and for liability arising under the Consumer Protection Act 1987 (which if proved is not excluded) the Company's obligation to repair refund or replace as aforesaid shall constitute the full extent of the Company's liability in respect of any loss or damage sustained by the Buyer whether caused by any breach of the Contract or by misrepresentation or by the negligence of the Company its employees or agents or arising from any other cause whatsoever and the Company shall not be liable for any consequential, economic, direct or indirect loss suffered by the Buyer arising therefrom.

(h) The cost to the Company of and incidental to the return by the Buyer to the Company of any of the Goods delivered hereunder or investigating a claim made by the Buyer under this Clause shall, except to the extent that the Company has accepted responsibility hereunder, be the responsibility of the Buyer who shall indemnify the Company against any such costs including, but without limitation to the generality of the foregoing, costs of transport and testing or any other cost or loss to the Company arising therefrom.

(i) Notwithstanding sub-clause (e) above the Buyer shall, except where he is a person who suffers personal injury or death or loss or damage to property such as to give rise to a claim under the Consumer Protection Act 1987, indemnify the Company against all loss, damage, liability, legal fees and costs arising from any such claim made against the Company under the Consumer Protection Act 1987.

(j) For the avoidance of doubt the provisions of sub-clauses (c), (d), (e), (f), (g) and (h) shall not affect or detract from or exclude any statutory legal right which the Buyer may have where the Buyer is a consumer as defined in Section 12 of the Unfair Contract Terms Act 1977

#### **8. Property and Risk**

(a) Risk shall pass to the Buyer on delivery and the Goods should be insured accordingly.

(b) (i) Property (both legal and beneficial) in the Goods shall remain in the Company until all sums owing to the Company whether under the Contract or any other contract made at any time between the Company and the Buyer ("the Indebtedness") shall have been paid in full. Until such time the Buyer shall hold the goods as bailee for the Company.

(ii) The Buyer until otherwise notified by the Company or on the happening of any of the events specified in (iv) ("the Events") may in the ordinary course of business sell the Goods and pass property in them ("the Resale") subject to the stipulations ("the Stipulations") imposed in (iii)

(iii) The Stipulations are that until the Indebtedness has been fully discharged:-

(A) The Goods shall not be converted into another product or admixed with other goods or make another product ("the New Product") nor will the Buyer sell the New Product and pass property in it ("the Sale") but if the Buyer in breach of the above provision does convert or admix the Goods property in the New Product shall at the earliest moment that such vesting is possible vest and remain in the Company whether or not property in the Goods is at that moment extinguished.

(B) The Resale or the Sale shall be for the account of the Company and, unless the Company by written notice requires the payment to it of the proceeds of the Resale or the Sale ("the Proceeds") to the extent of the Indebtedness, in which case the Buyer shall forthwith on receipt of such notice or as soon thereafter as it shall receive the Proceeds make such payment, the Buyer shall retain the Proceeds in a separate bank account to the order of the Company and not mix them with any other monies;

(C) In the event of a breach by the Buyer of its obligations under (B) the Company shall have the right to trace the Proceeds into any other monies with which they may have been mixed and the Buyer shall indemnify the Company on a full indemnity basis against loss, damage, costs or expenses incurred in such tracing;

(D) until the Resale or the Sale the Company shall have the right to repossess the Goods at any time and for this purpose shall have the right to enter on any premises or land in the ownership or possession of the Buyer and remove the Goods and/or the New Product and the Buyer shall indemnify the Company on a full indemnity basis against all loss, damage, costs, or expenses so arising including loss, damage, costs or expenses in respect of third party claims;

(E) The Goods until their Resale or Sale shall be stored separately and shall be clearly marked as the Company's property.

(iv) The Events are:-

(A) the giving of any notice to the Buyer that a receiver, manager, administrative receiver, administrator, supervisor or nominee is to be or has been appointed over any of the property or assets of the Buyer or that a petition to wind up the Buyer is to be or has been presented or than an application for an administration order is to be or has been made or of any notice of a resolution to wind up the Buyer (save for the purposes of a bona fide reconstruction or amalgamation);

(B) a decision by the Buyer that the Buyer intends to make any arrangement with its creditors generally;

(C) where the Buyer becomes insolvent or appears to be unable to pay a debt or appears to have no real prospect of being able to pay a debt pursuant to Sections 123 or 268 of the Insolvency Act 1986;

(D) any distress or execution is levied or threatened to be levied on any property or assets of the Buyer;

(E) the inability of the Buyer to pay its debts as they fall due.

(v) On receipt of notification from the Company under (ii) or on the happening of any of the Events, the Buyer's right of Resale shall cease and the Buyer shall immediately deliver the Goods property in which is then reserved to or vested in the Company to such address as the Company shall specify in default of which, or in the alternative, the Company shall have the right to enter on any premises or land in the ownership or possession of the Buyer and remove the Goods and the Buyer shall indemnify the Company on a full indemnity basis against all loss, damage, costs or expenses in respect of third party claims.

#### **19. Breach by or Insolvency by the Buyer**

If the Buyer shall not comply with any of its obligations to the Company or upon the occurrence of any of the Events referred to in Clause 18 (b) (iv), the Company shall have the right forthwith to terminate the Contract but without affecting any other claim, right or remedy of the Company against the Buyer.

#### **20. Cancellation, Suspension and Termination**

(a) If the Buyer shall purport to cancel the whole or any part of the Contract the Company may by notice in writing to the Buyer elect to treat the Contract as repudiated and the Buyer shall thereupon be liable to pay to the Company by way of liquidated damages a sum equal to all the expenses incurred by the Company in connection with the Contract including an appropriate amount in respect of administrative overheads, costs and losses of profit. The Company's reasonable estimate of the expenses incurred shall be final and binding on the parties.

(b) If for any cause whatsoever beyond its control the Company is unable to make any delivery on the applicable delivery date or perform any of its obligations under the Contract the Company may by notice in writing to the Buyer terminate the Contract or suspend the Contract without liability for any loss or damage thereby incurred by the Buyer.

#### **21. Export Sales**

(a) In respect of sales of the Goods outside the United Kingdom ("Export Sales") the provisions of these Conditions shall apply unless inconsistent with the terms of this clause.

(b) Unless otherwise specifically agreed between the Company and the Buyer all Export Sales shall be made C.I.F. to the Buyer's premises and the Company's prices as set out in its Price List shall be increased to cover the Company's costs in making such deliveries.

(c) Unless otherwise agreed in writing payment shall be made by irrevocable letter of credit, which has been confirmed by a UK Bank, on presentation of the bills of lading.

(d) The Buyer warrants that if an Import Licence or permit is required for the importation of the Goods into the country of destination then such Import Licence or permit has been obtained or will be obtained prior to shipment.

#### **22. Samples**

Any samples submitted by the Company including any samples submitted for approval by the Buyer may be charged for if not returned in good condition within 28 days from the date of despatch carriage paid.

#### **23. Patents Registered Designs Trade Marks Trade Names and Copyright**

The Buyer shall indemnify the Company against all damage loss costs claims and expenses arising out of any infringement of any letters patent registered design trade mark trade name or copyright or any claim for such infringement or any claim for passing-off arising out of work carried out in accordance with the Buyer's specification.

#### **24. Force Majeure**

(a) In so far as the performance of the Contract by the Company may be affected by any strike, any lack of available shipping or transport or materials, any restriction regulation or decree by any local or municipal authority or government department or by any cause beyond the Company's reasonable control (which shall be construed without reference to the preceding causes) the Company may elect at its absolute discretion either:-

(i) to terminate the Contract; or

(ii) to proceed to perform or continue performance under the Contract within a reasonable time after the termination of such events or circumstances.

(b) In the event that the Company makes an election under clause 15 (a) the Buyer shall accept the Goods or such part of them as are delivered to it notwithstanding any delay.

#### **25. Severance**

Should any one or more of these Conditions be found to be or become invalid illegal or unenforceable in any respect under any law the enforceability and validity of the remaining Conditions shall not in any way be affected or impaired thereby.

#### **26. Sub-Contract**

The Company shall be free to sub-contract in whole or in part any element of this Contract and to assign any benefit arising hereunder without restriction.

#### **27. Consequential Loss and Arbitration**

The Company accepts no liability for any consequential loss, damage or expenses of any kind. If at any time any question, dispute or difference whatsoever shall arise between the Buyer and the Company upon, in relation to, or in connection with the Contract, either of them may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration of a person in England to be mutually agreed upon or, failing agreement of some person in England, appointed by the President at the time of the Institute of Mechanical Engineers, neither side to be personally represented.

#### **28. Proper Law**

The Contract is and shall be deemed to have been made in England and shall in all respects be governed by English Law and shall be subject to the non-exclusive jurisdiction of the English Courts.