



Multiquip (UK) Ltd

Unit 2, Northpoint Industrial Estate, Globe Lane,

Dukinfield, Cheshire SK16 4UJ

Tel: 0161 339 2223 Fax: 0161 339 3226

Email: sales@multiquip.co.uk

Website: www.multiquip.co.uk

MULTIQUIP (UK) LIMITED

STANDARD CONDITIONS OF TRADING

1. GENERAL

- (a) In these conditions (Conditions) "Company" shall mean Multiquip (UK) Limited; "Buyer" shall mean any person, firm or company placing an Order with the above-mentioned Company; "U.K." shall mean the mainland of Scotland, Northern Ireland, England and Wales; "Goods" shall mean the goods (or any part of them) set out in the Order; "Services" shall mean the services, supplied by the Company to the Buyer as set out in the Service Specification (as defined in Condition 12 below); and Business Day shall mean a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
- (b) Except where expressly set out in these Conditions writing shall not include fax or email.
- (c) The Company's quotations do not constitute offers and shall only be valid for a period of 20 Business Days from its date of issue. Orders placed with the Company (each an Order) whether written or oral and confirmed in writing shall not be binding on the Company or deemed accepted by it unless and until an unqualified acknowledgement and acceptance or such Order is issued to the Buyer by the Company in writing (including by fax or email) at which point the contract for the supply of Goods and/or Services subject to these Conditions (Contract) shall come into existence.
- (d) Unless otherwise agreed in writing these Conditions shall be deemed incorporated into any Contract. By placing an Order, the Buyer is deemed to have accepted these Conditions. All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified. In the event of any conflict arising between these Conditions and any conditions which the Buyer might additionally seek to impose, these Conditions shall prevail. These Conditions override and replace any other conditions of the Company or any conditions implied by trade, custom, practice or course of dealing.
- (e) The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made by or on behalf of the Company which is not set out in the Contract. Any samples, drawings, descriptions or advertising issued by the Company and any illustrations, diagrams or descriptions of Services contained in the Company's sales literature are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods and shall not form part of the Contract.

2. GOODS

- (a) The Goods are described in the Company's sales literature (including but not limited to the Company's brochure, sales leaflets and website), as modified by any specification for Goods that is agreed in writing (including by fax or email) by the Buyer and the Company (Goods Specification).
- (b) The Company reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

3. PRICE

- (a) The price for Goods payable by the Buyer shall be the price set out in the Order, or if no price is specified the price contained in the Company's price lists at the date of despatch of the Goods to the Buyer.
- (b) The price for Services shall be the price set out in the Order. If during the provision of the Services it becomes apparent to the Company that further works are required the price for such shall be as agreed between the parties and as confirmed to the Buyer by the Company by fax or email.
- (c) All prices shall be exclusive of the costs of packaging, transport and insurance which shall be the responsibility of the Buyer unless detailed to the contrary in the Order. If the Buyer requires the Company to provide transport or insurance the price for such shall be as agreed by the parties and confirmed to the Buyer by the Company by fax or email.

4. QUALITY OF GOODS

- (a) The Company warrants that on delivery the Goods shall:
- conform in all material respects with their description and any applicable Goods Specification;
 - be free from material defects in design, material and workmanship;
 - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - be fit for any purpose held out by the Company.
- (b) Subject to Condition 4(c), if:
- the Buyer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with any warranty set out in Condition 4(a);
 - the Company is given a reasonable opportunity of examining such Goods; and
 - the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- (c) The Company shall not be liable for the Goods' failure to comply with the warranty in Condition 4(a) if:
- the Buyer makes any further use of such Goods after giving a notice in accordance with Condition 4(b);
 - the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - the Buyer alters or repairs such Goods without the written consent of the Company or a company in the Company's group of companies;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- (d) Except as provided in this Condition 4, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with any warranty set out in Condition 4(a).

5. LIABILITY FOR BUYER'S GOODS

All Goods received by the Company for repair or otherwise are held by the Company at the Buyer's risk as regards loss or damage howsoever arising.

6. TERMS OF PAYMENT

- (a) The Company shall invoice the Buyer upon completion of the Services or delivery of the Goods (as applicable).
- (b) The Buyer shall pay the invoice submitted by the Company in full without set-off, deduction or withholding (except as required by law) as set out in the Order and if not provided for in the Order within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by the Company. Time for payment shall be of the essence of the Contract.

7. VAT AND INTEREST

- (a) All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Which shall (where applicable) be payable by the Buyer in addition on receipt of a valid VAT invoice from the Company at the same time as payment is due for the supply of the Services and/or Goods.
- (b) Any payments or part thereof remaining unpaid after 30 days of the due date for payment shall carry interest thereon at the rate of 3% per annum above the base rate of The Royal Bank of Scotland Limited prevailing during the period such unpaid balance remains unpaid and shall be added to the said balance due from the Buyer to the Company and calculated on a daily basis. Such interest shall be payable before and after any judgment.

8. TEST OR INSPECTION OF GOODS

Where the Contract provides for test or inspection (before despatch and delivery) by or on behalf of the Buyer at the Company's premises the following conditions shall apply:

- In the event of inspection by the Buyer and/or their servants or agents any complaint in relation to the Goods must be notified to the Company in writing within 3 days of that inspection and in the absence of such notice the Buyer shall be conclusively deemed to have accepted the Goods as being in conformity with the Contract and shall not thereafter be entitled to reject the Goods.
- Examination of the Goods during construction by an external authority (where required) will be payable by the Buyer in addition to the ordinary price of the Goods.
- The Company reserves the right to charge the Buyer the cost of any samples (including any associated delivery costs) the Buyer may request from the Company.

9. DELIVERY AND TRANSPORT OF GOODS

- (a) In the U.K. the Company shall deliver Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location). Unless otherwise agreed in writing the Company reserves the right to charge the Buyer the cost of transportation of the Goods to the Delivery Location. In all cases the Buyer warrants that in cases where delivery is to be made by road transport sufficient and suitable access to the said destination including a road surface capable of withstanding the weight and size of the transport and loads involved is available. In the event of any additional costs or expense being incurred by the Company due to any breach of such warranty the Buyer shall reimburse the Company the full amount thereof on demand. The delivery of the Goods shall be completed on the Good's arrival at the Delivery Location.
- (b) Outside the U.K. the delivery terms shall be as specified in the Order. If no delivery terms are specified in the Order the delivery terms shall be FCA (as defined by Incoterms 2010) with the place of delivery being Unit 2 Northpoint Industrial Estate, Globe Lane, Dukinfield, Cheshire SK16 4UJ.
- (c) Whilst every effort is made to deliver the Goods on the dates or within the periods mentioned in the Contract such dates or periods shall be deemed to be approximate only and time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- (d) If the Buyer fails to accept or take delivery of the Goods within 5 Business Days of the delivery date notified to the Buyer by the Company (in the UK), then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:
- delivery of the Goods shall be deemed to have been completed at 9.00 am on the day on which the Company notified the Buyer that the Goods would be delivered; and
 - the Company shall store the Goods until the Buyer accepts or takes delivery of the Goods, and charge the Buyer for all related costs and expenses (including insurance).
- (e) If 15 Business Days after the Company notified the Buyer that the Goods were ready for delivery the Buyer has not accepted or taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after making adjustments for reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

10. TERMINATION AND DAMAGES

- (a) Without prejudice to its other rights or remedies the Company may terminate the Contract with immediate effect or suspend any future deliveries of Goods or the supply of Services to the Buyer by written notice to the Buyer in the event of:
- any distress, execution or other legal process being levied upon any of the Buyer's assets.
 - the Buyer entering into any arrangement or composition with its creditors, becoming insolvent, becoming bankrupt, ceasing or threatening to cease carrying on business, dying or losing capacity (being an individual) or (being a corporation) entering into liquidation, having a winding up petition presented against it, passing a resolution for winding up, being dissolved, appointing a receiver or administrator in respect of the whole or any part of its undertaking or assets or any event similar to those mentioned in this Condition 10(a)(i) occurring.
 - non-payment by the Buyer of any monies due from it to the Company on the due date for payment.
 - the Buyer committing a material breach of its obligations under the Contract and (if such breach is remediable) failing to remedy that breach within 7 days after receipt of notice in writing of the breach.
- (b) In the event of a termination of the contract for any reason the Company shall be entitled to recover immediately from the Buyer the following:-
- the value of any Goods or Services provided at the date of termination but not yet paid;
 - the value of any Services or Goods begun to be performed/manufactured but not completed at the date of termination including any work completed or Goods manufactured at the date of termination therewith; and
 - any other costs incurred by the Company in connection with the Contract which cannot be mitigated by the Company.
- (c) In the event of the Company terminating the Contract pursuant to Condition 10(a)(i)-10(a)(iv) the Buyer shall be liable to pay to the Company immediately on demand a sum representing any further profit which the Company would have made due to the Contract but for its termination such profit to be determined by the Company's auditors whose decision shall be conclusive and binding on the Buyer.
- (d) In the event of termination of the Contract the accrued rights and remedies of the parties as at termination shall not be affected and any Conditions which expressly or impliedly have effect after termination shall continue in full force and effect.

11. TITLE TO GOODS

(a) Title in the Goods shall only pass from the Company to the Buyer upon full payment being made by the Buyer to the Company for the Goods. In the event of delivery of the Goods by instalment, title to the Goods comprised in each instalment shall pass to the Buyer only upon payment being made to the Company for the full invoice value of that instalment. Whilst in accordance with this Condition 11, Goods delivered to the Buyer remain the property of the Company, the Buyer shall nevertheless accept all risk in the Goods immediately upon delivery of the Goods and pending payment of the full invoice value shall be liable to indemnify the Company in respect of all loss or damage of whatsoever nature affecting the Goods. Until title to the Goods has passed to the Buyer, the Buyer shall: (i) hold the Goods on a fiduciary basis as the Company's bailee; (ii) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property; (iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (iv) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery; and (v) notify the Company immediately if it becomes subject to any of the events listed in Conditions 10(a)(i)-10(a)(iv) but the Buyer may resell or use the Goods in the ordinary course of its business.

(b) If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in Conditions 10(a)(i)-10(a)(iv) or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored, with such transport and personnel as are necessary, in order to recover them.

12. SUPPLY OF SERVICES

(a) The Company shall provide the Services to the Buyer in accordance with the description or specification for the Services provided in the Order as amended by any further description of the Services agreed in writing between the parties (Service Specification) in all material respects.

(b) The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

(c) The Company 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 the Company shall notify the Buyer in any such event.

(d) The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.

13. SET OFF

The Buyer shall not be entitled to withhold or set off payment of any amount due to the Company under the Contract for any reason whatsoever without the consent of the Company, including but not limited to any claim of the Buyer in respect of faulty or defective goods.

14. BUYERS OBLIGATIONS

The Buyer shall:

(a) ensure that the terms of the Order and any specifications submitted by the Buyer are complete and accurate;

(b) co-operate with the Company in all matters relating to the Services;

(c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;

(d) provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

(e) ensure that any machinery/equipment of the Buyer that the Company requires access to in order to provide the Services is available to be worked on, is easily accessible and is in a suitable location for the Company to work on the machinery/equipment (for the avoidance of doubt if applicable this includes ensuring the Company has access to the premises where such equipment is held); and

(f) keep and maintain all materials, equipment, documents and other property of the Company (Company Materials) at the Buyer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.

15. BUYER DEFAULT

(a) If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (Buyer Default):

(i) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;

(ii) the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations under the Contract; and

(iii) the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

16. WARRANTY/LIABILITY LIMITATION.

(a) The Company warrants that it has the right to sell the Goods and that the Goods are free from any charge or encumbrance unknown to the Buyer.

(b) Except as provided in these Conditions or otherwise agreed by a director of the Company in writing and except where death or personal injury has been caused by the Company's negligence, to the fullest extent permitted by law, no warranty, condition, representation, undertaking or obligation express or implied, imposed by statute, common law, custom, course of dealing or otherwise on the part of the Company shall apply in respect of the Goods or the supply of Services.

(c) Where Goods or any part thereof are supplied or manufactured other than by the Company, the Company's obligations to the Buyer shall not exceed those owed to the Company by the relevant supplier or manufacturer.

(d) Subject to Condition 16(f) the Company shall in no circumstances:

(i) be liable to the Buyer whether in contract, tort (including negligence) or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; or

(ii) be liable to the Buyer in respect of any other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for an amount exceeding the price of Goods or Services paid by the Buyer.

(e) Where the Contract involves the Company carrying out work of any kind at the Buyer's premises, the Buyer shall indemnify the Company against any injury or death, or loss or damage to the property of the Buyer or his contractors, employees or invitees, whilst carrying out that work, whether the same be due to the act or omission of the Company to its employees or otherwise.

(f) Nothing in this agreement shall limit the Company's liability: (i) where death or personal injury is caused by the Company's negligence or the negligence of its employees, agents or subcontractors, (ii) fraud or fraudulent misrepresentation or (iii) breach of terms implied by law.

(g) This Condition 16 shall survive termination of the Contract.

17. BUYER'S ACKNOWLEDGEMENT AND UNDERTAKING.

The Buyer acknowledges having been supplied by the Company with all necessary information concerning any possible damage to health or safety of the Buyer's employees at work emanating from or associated with the Goods and/or Services. The Buyer undertakes to ensure as regards the use to which the Goods are made at the Buyer's place of work that the provisions of the Health and Safety at Work Act 1974 and in particular the provisions of section 6 thereof shall be fully complied with. The Buyer agrees to indemnify and keep indemnified the Company in respect of any claim or costs which the Company may have to meet arising directly or indirectly out of the supply of the Goods and/or Services forming part of the Contract and due to the Buyer's failure to properly comply with the terms of this undertaking or the provision of the said Act or any other statutory provisions or modifications thereof.

18. INTELLECTUAL PROPERTY RIGHTS

(a) All intellectual property rights in or arising out of or in connection with the Goods and/or Services shall be owned by the Company.

(b) The Buyer acknowledges that, in respect of any third party intellectual property rights in the Goods and/or Services, the Buyer's use of any such intellectual property rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Buyer.

(c) All Company Materials are the exclusive property of the Company.

19. FORCE MAJEURE

(a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), 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) The Company shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents the Company from providing any of the Services and/or Goods for more than 8 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

20. GENERAL

(a) The Buyer may not assign, transfer, charge, or sub-contract the Contract or its rights or obligations under it.

(b) If any of these Conditions is held to be void or unenforceable such Condition (or part thereof) shall be deemed to be deleted and the remainder of the Conditions shall continue to be valid.

(c) A person who is not a party to the Contract shall not have any rights under or in connection with it.

(d) Except as set out in these Conditions, any variation, to the Contract shall only be binding when agreed in writing and signed by the Company.

(e) The Contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the courts of England and Wales shall have exclusive jurisdiction in connection therewith or in connection with any question arising hereunder.

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