

General Terms of Delivery of Martin Engineering Limited (co no. 01828212)

In the event these General Terms of Delivery are translated into a different language, this English version shall prevail in the event of any conflict between such translations.

1. **Applicability**

The following General Terms of Delivery shall apply to all goods and services to be delivered by Martin Engineering Limited (hereinafter referred to as "Martin Engineering") with regard to its customers. In particular these terms shall apply to the delivery of all goods to be supplied commitments resulting from sales contracts and contracts for work and Services.
 2. **Conclusion of Contract**
 - 2.1. Offers from Martin Engineering shall not be binding. A contract shall not come into existence between Martin Engineering and the customer unless and until Martin Engineering issues a written confirmation of order to the customer.
 3. **Contract Documents**
 - 3.1. The following documents shall be construed as forming the Contract between Martin Engineering and the customer:
 - 3.1.1. The written confirmation of order
 - 3.1.2. These General Terms of Delivery
 - 3.1.3. Any technical information referred to in or attached to the written confirmation of order
 - 3.2. The Parties acknowledge that they are not relying upon any statement or representation made by or on behalf of the other party, other than as set out in the Contract, at any time prior to the execution of the Contract and only in the event that any such statement or representation was made fraudulently will the parties have any right of action arising out of any statement or representation.
 4. **Providing the Goods and Services**
 - 4.1. Martin Engineering provides the goods and services as set out in the Contract.
 - 4.2. Martin Engineering shall design the goods and services, except those elements which the Contract states the customer is to design.
 - 4.3. The customer shall allow such access to its premises as may be reasonably necessary to allow Martin Engineering to provide the goods and services.
 - 4.4. The Customer may propose a change in the scope of the goods and services to be provided by Martin Engineering. Such changes shall be subject to the sole and exclusive approval of Martin Engineering. In the event Martin Engineering agrees to such proposed changes and but which will cause delay to the Delivery Date(s) and / or Delivery Period(s) or result in additional costs, Martin Engineering shall be entitled to an equivalent extension of time to the Delivery Date(s) and / or Delivery Period(s) and such additional costs shall be added to the Contract Price.
 5. **Communications and Notices**
 - 5.1. All communications and notices which the Contract requires shall be in writing and in the English language.
 - 5.2. If the Contract requires a notice to be served on Martin Engineering it shall be served at the address stipulated in the written confirmation of order.
 6. **Confidentiality and Intellectual Property**
 - 6.1. The intellectual property in all information, drawings, details, plans and other documents, such as estimates of cost, details about weight and measurements produced for the purposes of this Contract (in printed, electronic or whatever form) and the designs contained in them, together with any other document which can reasonably be recognised as contained business or trade secrets ("Documents") produced by Martin Engineering for the purposes of this Contract shall remain vested in Martin Engineering.
 - 6.2. In the event the customer is provided with any Documents for the purposes of this Contract, they hereby agree not to record, use or transfer the Documents to any third parties, unless it is with the prior written authority of Martin Engineering; the disclosure is to the customer's professional advisers; or as may be required by law; or to the extent it is necessary for the appropriate use of the delivered goods. The customer hereby guarantees that its employees and / or any third party to whom the Documents are provided, they shall be obliged to maintain the same level of confidentiality in the Documents as set out in this clause 6.2.
 7. **Delivery**
 - 7.1. The goods and / or services shall be delivered to the customer's premises as stated in the written confirmation of order.
 - 7.2. The date(s) for delivery of the goods and services ("Delivery Date(s)") and / or the period during which the goods and services will be delivered ("Delivery Period(s)") shall only be binding if they are explicitly specified as such in the confirmation of order and only upon the customer's compliance with any express pre-conditions to commencement as set out in the written confirmation of order. Such pre-conditions include but are not limited to: the provision of any necessary technical information, solicitation of permissions; and the receipt of any specified advance payments.
 - 7.3. Any binding Delivery Date(s) and / or Delivery Period(s) shall be deemed to be complied with on the passing of risk in the goods pursuant to clause 8 of these General Terms of Delivery.
 - 7.4. Martin Engineering shall be entitled to make partial delivery of the goods and services.
 - 7.5. If an event occurs which causes a delay to the Delivery Date(s) or Delivery Period(s) and for which neither Martin Engineering nor the customer is responsible, including but not limited to: force majeure, delays caused during delivery and transportation, official regulations or labour disputes, Martin Engineering shall notify the customer of any such delays and shall be entitled to an extension of time to the Delivery Date(s) and / or Delivery Period(s) equivalent to the period of delay. If a single delay event under this clause 7.5 delays the Delivery date(s) and / or Delivery Period(s) by three months, either party may give 1 month's written notice to terminate the Martin Engineering's employment under this contract.
 - 7.6. If termination of Martin Engineering's employment occurs pursuant to clause 7.5, Martin Engineering shall have no liability to the customer for any direct or indirect loss arising out of such termination including but not limited to loss of profit, loss of revenue, loss of contract, loss of goodwill, loss of investment, loss of opportunity or increased costs of finance or like items irrespective of whether based on contract, warranty, tort, strict liability or otherwise. The customer shall indemnify Martin Engineering against any losses, liabilities, damages or costs arising out of or in connection with such termination.
 - 7.7. If the customer causes a delay to the Delivery Date(s) and / or Delivery Period(s) as a result of: giving an instruction changing the scope of the goods and / or services to be delivered; giving an instruction to stop or not start any work; not allowing access to and use of the parts of their premises necessary for the goods and / or services; failing to provide something to Martin Engineering which he is obliged to under the Contract; unreasonably refuses to accept delivery of the goods and / or services when delivered to the customer's premises; impeding or preventing Martin Engineering from performing its obligations or is in default of any of its obligations (whether by act or omission); and which causes a delay to the delivery of the goods and / or services then Martin Engineering shall be entitled to an extension of time to the Delivery Date(s) and / or Delivery Period(s) equivalent to the period of delay.
 - 7.8. Further, to extent Martin Engineering suffers any loss and expense arising out of delays set out in clause 7.7, which it cannot recover under any other clause in this Contract, Martin Engineering, such loss and expense shall be added to the Contract Price.
 - 7.9. If there is a single period of delay which entitles Martin Engineering to an extension of time as set out in clause 7.7 (save for an instruction changing the scope of the goods and / or services to be delivered) which lasts in excess of a period of time equal to 50% of the Delivery Period, Martin may at its sole discretion, give 1 month's
 - 7.10. written notice of termination of its employment under the Contract. The customer shall indemnify Martin Engineering against any losses, liabilities, damages or costs arising out of or in connection with such termination. All other rights and obligations under the Contract shall survive such termination.
8. **Passing of Risk**
 - 8.1. Risk in the goods shall pass to the customer on the day when Martin Engineering notifies the customer that the goods are ready for delivery to the customer's premises.
 - 8.2. In the event the customer requests Martin Engineering to be responsible for the delivery of the goods to the customer's premises, the costs of doing so shall be calculated on the basis of the price list applicable on the date of the confirmation of order, excluding packaging costs and VAT and shall be added to the Contract Price.
 - 8.3. In the event the customer requests Martin Engineering to insure the goods between the date on which Martin Engineering notifies the customer the goods are ready for delivery and the actual date of delivery, for losses arising out of theft, breakages, damages caused during transportation, as well as other insurable risks, Martin Engineering shall take out such insurance. The cost of such insurance shall be notified to the customer and added to the Contract Price.
 - 8.4. The customer shall be obliged to accept delivery of any goods, unless there are clear and obvious defects in the goods and/or products which would prevent them from operating at the customer's premises. All goods listed in the written confirmation of order shall be deemed to be received by the customer unless the customer notifies Martin Engineering within 7 days. Any missing items shall be supplied by Martin Engineering within a reasonable period provided the customer provides satisfactory evidence that such items had not been received. Paragraph 14 of these General Terms of Delivery shall remain unaffected.
 9. **Contract Price and Terms of Payment**
 - 9.1. The Contract Price shall be as stated in the written confirmation of order and shall be exclusive of the cost of delivery unless otherwise stated in the written confirmation of order.
 - 9.2. The Contract Price shall be payable by the date which is 30 days after the last day of the calendar month in which the written confirmation of order is dated.
 - 9.3. If the customer fails to make a payment in accordance with the payment period as stated in the written confirmation of order, the customer shall also pay interest at a rate of 5% per annum above the official bank rate of the Bank of England current at the date the payment due under the Contract becomes overdue. Payment of such interest shall not be construed as a waiver of Martin Engineering's rights to the principal sum due it.
 - 9.4. Further, where the Contract Price is payable in stages, or instalments and the customer fails to pay the a stage payment by the final date for payment, Martin Engineering, may upon 7 days notice, suspend performance of its obligations under the Contract until such payment is made and Martin Engineering shall be entitled to an equivalent extension of time to the Delivery Date(s) or Delivery Period(s) in accordance with clause 7.7 and any associated costs of the suspension and subsequently recommencement of works shall be recoverable under clause 7.10.
 10. **Retention of Title**
 - 10.1. Title (including full legal and beneficial title and interest) in all goods supplied (including any repaired, corrected, or replaced goods in accordance with clause 13) by Martin Engineering and shall not pass to the customer until Martin Engineering has received payment in full (in cash or cleared funds) the Contract Price and all such other sums due and owing to Martin Engineering.
 - 10.2. The customer acknowledges and agrees to hold all goods supplied by Martin Engineering on a fiduciary basis as bailee for Martin Engineering until such time as title passes in accordance with clause 10.1.
 - 10.3. Until title passes to the customer in accordance with clause 10.1, the customer shall:
 - 10.3.1. Store the goods supplied by Martin Engineering (at its cost) separately from all other goods (including the customer's goods and or third party goods) so that they remain readily identifiable as Martin Engineering's property and to make a note in its accounting records that such goods remain the property of Martin Engineering;
 - 10.3.2. Not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the goods supplied by Martin Engineering;
 - 10.3.3. Keep the goods supplied by Martin Engineering in a satisfactory condition and in accordance with instructions from Martin Engineering from time to time;
 - 10.3.4. Give such information relating to the goods supplied by Martin Engineering to Martin Engineering as it may require from time to time;
 - 10.3.5. Not be entitled to pledge and/or charge and/or encumber in any way whatsoever by way of security or otherwise for any indebtedness any of the goods supplied by Martin Engineering;
 - 10.3.6. From the date risk passes to the customer take out and maintain an all risks insurance policy (in the joint names of the customer and Martin Engineering) in respect of all goods supplied by Martin Engineering for their full price; and
 - 10.3.7. notify Martin Engineering immediately if it becomes subject to any of the events listed in clause 15.1;
 - 10.4. If the customer fails to provide satisfactory evidence (when reasonably requested by Martin Engineering) that the insurance required by clause 10.3.6 is in place, Martin Engineering shall be authorised by the customer (but is not obliged) to take out and maintain such similar insurance. If Martin Engineering take out such insurance, the customer shall be liable to indemnify Martin Engineering for such costs of the insurance and these shall be added to the Contract Price.
 - 10.5. If Martin Engineering delivers goods into countries in which the retention of title provided hereunder does not have the same effect of security as it has under English law, the customer shall undertake everything necessary in order to provide Martin Engineering with corresponding security interests. The customer shall cooperate with regard to all steps which are required for the effectiveness and the enforceability of such security interests, such as registrations and publications.
 11. **Proceeds of Sale**
 - 11.1. Provided that none of the events specified in clause 15.1 inclusive allowing Martin Engineering to terminate this Contract have occurred, the customer may resell the Martin Engineering goods before title has passed to it provided that:
 - 11.1.1. it shall be effected in the ordinary course of the customer's business;
 - 11.1.2. it shall be a sale of Martin Engineering's property on the customer's own behalf where the customer deals as principal and for the avoidance of doubt the customer shall not bind Martin Engineering to any liability to any third party by contract or otherwise;
 - 11.1.3. the customer will hold on trust for Martin Engineering such part of the proceeds as is equal to the amounts owed by the customer to Martin Engineering at the time of the receipt of the proceeds of resale by the customer ("Trust Proceeds") and the customer shall keep the Trust Proceeds separate from any moneys or property of the customer and third parties;
 - 11.1.4. if Martin Engineering's goods are supplied on credit, the customer is not free to use the Trust Proceeds as it sees fit and the customer will hold the Trust Proceeds on trust (and separate from any moneys or property of the customer and third parties) until the end of the period of credit, at which time Martin Engineering is entitled to call for them; and

- 11.1.5. Martin Engineering may at any time revoke the customer's power of sale by written notice to the customer and upon determination of the customer's power of sale, the customer shall place the goods and the Trust Proceeds at the disposal of Martin Engineering.
- 12. Recovery of Goods**
- 12.1. Martin Engineering shall be entitled to recover the amounts due notwithstanding that title to Martin Engineering's goods have not passed to the customer.
- 12.2. Martin Engineering's goods which are in the customer's possession shall at all times be subject to the direction and control of Martin Engineering and the customer shall immediately return any of Martin Engineering's goods (save for the goods in which title has passed to the Company in accordance with clause 10.1) on demand by Martin Engineering.
- 12.3. Martin Engineering may recover and dispose of any of Martin Engineering's goods in which Martin Engineering has retained property hereunder. The customer grants Martin Engineering, its agents and employees an irrevocable licence at any time to enter any premises where Martin Engineering's goods are or may be stored in order to inspect them, or, where the customer's right to possession has terminated, to recover them.
- 12.4. If, before title to Martin Engineering's goods passes to the customer, any of the events listed in clause 15.1 occurs, thereby ending the customer's right to possession of Martin Engineering's goods, and allowing Martin Engineering to terminate this Contract in accordance with clause 15, without prejudice to Martin Engineering's other rights and remedies:
- 12.4.1. The customer must immediately notify Martin Engineering of the event listed in clause 15.1 that has occurred;
- 12.4.2. The customer's right to resell or use Martin Engineering's goods in the ordinary course of its business shall cease immediately;
- 12.4.3. Martin Engineering may at any time require the customer to (or procure that any third party in possession of Martin Engineering's goods) deliver up all of Martin Engineering's goods in its possession that has not been sold and/or Martin Engineering or persons authorised by Martin Engineering are hereby authorised to enter any premises where such Martin Engineering's goods are or may be or where Martin Engineering reasonably believes it may be and such entry may be effected by any means, which, for the avoidance of doubt, shall mean that Martin Engineering or its agents are authorised to inflict damage to the customer's property for the purpose of recovering Martin Engineering's goods to which Martin Engineering has retained property and Martin Engineering shall not be liable for such damage in any way whatsoever.
- 12.5. On termination of this Contract, howsoever caused, Martin Engineering's (but not the customer's) rights contained in clauses 10 to 12 shall remain in effect
- 13. Defects Correction**
- 13.1. Martin Engineering shall within a reasonable period of time repair, correct or replace any goods delivered to the customer's premises which have been notified as defective and / or faulty free of charge provided:
- 13.1.1. Such defect and or fault occurs within 6 months of the date of delivery of the goods to the customer's premises;
- 13.1.2. The customer notifies Martin Engineering no later than 7 days after becoming aware or should have become aware of such defect and / or fault and in any event no later than 7 days after the expiry of the 6 month period referred to in clause 13.1.1; and
- 13.1.3. Martin Engineering is responsible for such defect or fault.
- 13.2. If the defective and / or faulty goods are to be repaired, corrected, or replaced at Martin Engineering's premises, the cost of returning any defective and / or faulty goods shall be borne by the customer.
- 13.3. If the defective and / or faulty goods are to be repaired, corrected, or replaced on the customer's premises, the customer shall allow Martin Engineering all access necessary to the customer's premises in order to effect such repair, correction, or replacement.
- 13.4. Martin Engineering shall not be responsible for any defect and / or fault with the goods which arise out of:
- 13.4.1. the customer's improper use of the goods including but not limited to: incorrect mounting or putting into operation of the goods by the customer or by third parties, usual wear and tear, incorrect or negligent treatment or any failure to comply with the requirements of any operating and maintenance manual, unsuitable equipment or replacement material, poor construction work or unsuitable building site or chemical, electrochemical or electrical impacts, damage caused by the customer, whether accidental or otherwise and incorrect storage of the goods;
- 13.4.2. Any other circumstance for which Martin Engineering is not responsible.
- 13.5. In the event a defect and / or fault with the goods arises out of circumstances described in clause 13.4, Martin Engineering may repair, correct or replace the defective and / or faulty goods, but the costs of doing so shall be borne by the customer.
- 14. Liability**
- 14.1. Martin Engineering shall not be liable to the customer for any loss of production, or equipment or facility down-time, loss of reputation, loss of profit, loss of revenue, loss of contract, loss of goodwill, loss of investment, loss of opportunity or increased costs of finance or like items of loss and damage or any other direct or indirect or consequential loss or damage irrespective of whether based on contract, warranty, tort (including negligence), strict liability or otherwise.
- 14.2. Further and in any event, notwithstanding any other term of the Contract, the total liability of Martin Engineering to the customer under or in connection with the Contract whether in tort (including negligence) or otherwise shall be limited to of £1,000,000 (one million pounds) ("the Cap") in the aggregate, provided the parties agree the Cap shall not apply in respect of:
- 14.2.1. any liability arising in the event of personal injury to or death of any person to the extent caused by defective design, material or workmanship, or negligence; and / or
- 14.2.2. any fraudulent conduct, statement or misrepresentation by Martin Engineering; and
- 14.3. Martin Engineering shall not be liable for any such damages which are caused and / or contributed to by the customer.
- 14.4. If the customer acts as a reseller of the goods or processes the goods to new products the customer indemnifies Martin Engineering from all Claims of third Parties with regard to product liability unless these are not based on grossly negligent or intentional conduct of Martin Engineering.
- 15. Termination**
- 15.1. For the purposes of the Contract, Insolvency Event means:
- 15.1.1. suspending, or threatening to suspend, payment of its debts or being unable to pay its debts as they fall due or admitting inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or (being a natural person) 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; or
- 15.1.2. if the value of its assets is less than the amount of its liabilities as defined in section 123(2) of the Insolvency Act 1986; or
- 15.1.3. commencing negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or making a proposal for or entering into any voluntary arrangement, composition of debts or a scheme of arrangement to be approved in accordance with the Companies Act 1986 or the Insolvency Act 1986 as the case may be (other than for the sole purpose of a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
- 15.1.4. having a petition filed, a notice given, a resolution passed, or an order made, for or on connection with its winding up (other than the passing of a resolution for voluntary winding-up with a declaration of solvency under section 89 of the Insolvency Act 1986); or
- 15.1.5. if it files a notice of intention to appoint an administrator, a notice of appointment of an administrator or an application to court for the appointment of an administrator or it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986; or
- 15.1.6. being an individual, is the subject of a bankruptcy petition or order; or
- 15.1.7. having a floating charge holder over its assets becoming entitled to appoint or on the appointment of an administrative receiver or having possessions taken, by or on behalf of the holders of any debentures secured by a floating charge or of any property comprised in or subject to the floating charge; or
- 15.1.8. having a person becoming entitled to appoint a receiver or manager of its property or a receiver or manager being appointed over its property; or
- 15.1.9. having a creditor or encumbrancer of it attaching or taking possession of, or a distress, execution, expropriation sequestration or other analogous legal process 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 fourteen (14) days; or
- 15.1.10. being subject to any analogous arrangement, event or proceedings in any other jurisdiction to those set out in clauses 15.1.1 to 15.1.9 above; or
- 15.1.11. (additionally in the case of a partnership) having any partner the subject of an individual arrangement or any other event or proceeding referred to in clauses 15.1.1 to 15.1.10 above; or
- 15.1.12. suspending or ceasing, or threatening to suspend or cease, to carry on all or a substantial part of its business;
- 15.2. Any reference to any legislation or statute in this clause 15 shall also be a reference to such legislation or statute as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification and including corresponding legislation or statute in any other relevant part of the United Kingdom.
- 15.3. If an Insolvency Event occurs in relation to the customer, Martin Engineering may terminate its employment under the Contract forthwith by written notice to the customer.
- 15.4. If the delivery of the goods and services are suspended pursuant to clause 9.4 for more than 21 days, Martin Engineering may give written notice of default to the customer and in the event the customer fails to rectify such default within 7 days of such notice, Martin Engineering may serve a further written notice terminating their employment under the Contract forthwith.
- 15.5. If Martin Engineering's employment under the contract is terminated in accordance with clauses 7.9, 15.3 or 15.4, Martin Engineering shall be entitled to enforce its rights pursuant to clauses 10 to 12 of the Contract, together with any other rights of recourse it may have in respect of monies owed to it.
- 15.6. If an Insolvency Event occurs in relation to Martin Engineering, the customer may terminate Martin Engineering's employment under the Contract forthwith by written notice to Martin Engineering.
- 16. Subcontracting**
- 16.1. Martin Engineering may sub-contract all or any of its obligations to provide the goods and services as required by the Contract, however, notwithstanding any such subcontracting, Martin Engineering shall remain liable for the performance of the Contract.
- 17. General**
- 17.1. This Contract shall be governed and construed in accordance with the laws of England and Wales and the English Courts shall have jurisdiction with regard to any dispute or difference arising between the parties under, out of or in connection with this Contract.
- 17.2. There shall be no variation or waiver of any rights and obligations contained in these General Terms of Delivery and Contract unless expressly agreed and signed by the parties in writing.
- 17.3. If any clause, sub-clause or part of this Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable, then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other clause, sub-clause or part of the Contract and thus not affect any other provisions of the Contract which will remain in full force and effect.
- 17.4. The customer shall not assign his rights or benefits under this Contract without the prior written approval of Martin Engineering.
- 17.5. Place of performance for all deliveries shall be the place of delivery.