

# **MCE Limited**

## **General Conditions of Sale**

### **1. Applicability**

These General Conditions of Sale shall apply to all offers, sales agreements and deliveries made by MCE Limited, of MCE House, Triq l-Industrija, Hal Qormi, QRM 09, MALTA (hereinafter referred to as the Seller) with a second party (hereinafter referred to as the Buyer) unless both parties have agreed otherwise in writing.

### **2. Agreement**

All quotations of Seller shall be without engagement. A Sales Agreement is concluded only after Seller's written confirmation of acceptance of Buyer's Order. The Agreement, including Seller's General Conditions of Sale, shall not be modified by receipt or acknowledgement of receipt by Seller of any general or special purchase conditions of Buyer.

Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for the Agreement with respect to other deliveries.

### **3. Delivery**

**3.1** Unless expressly agreed otherwise, delivery shall be ex-Seller's warehouse. The Incoterms 1990 plus latest amendments shall apply, with due regard to the provisions of Article 6 of these conditions.

**3.2** For each delivery of an Order or part of an Order, Buyer shall, as condition of delivery, notify Seller in writing of the quantity and preferred date of collection or delivery, and in the latter case place of delivery. If Buyer does not timely or not adequately supply the above-mentioned

information, Seller shall not be liable for non-delivery or for any delay in delivery.

**3.3** Seller shall, to the best of his ability, observe the time and place of delivery agreed upon. However, delays shall not entitle Buyer to claim cancellation of the Agreement and/or indemnification.

An Agreement which does not or not accurately specify the delivery times, or in which other relevant specifications are missing, shall not become binding on the Seller until the missing delivery times and/or specifications have been communicated to Seller and have been agreed upon.

The delivery date quoted by Seller for goods not available ex-Seller's warehouse and are therefore subject to importation by Seller, is only indicative and although Seller shall do his utmost to meet such delivery date, Seller shall not be held responsible for any delays in receipt of importation of said goods, which would affect delivery by Seller to Buyer.

**3.4** Seller shall have the right to supply up to five per cent (5%) over or under the agreed quantities although every effort shall be made by Seller to meet Buyer's requirements especially when they are critical for a specific project. It is understood that Buyer shall have taken into consideration a quantity in excess of actual requirements to cover contingencies when placing his Order.

Any deviation from the Agreed Delivery as per above shall be adjusted in the price to be paid by Buyer.

### **4. Prices, Taxes and Levies**

All Prices quoted by Seller are to be understood as being in Malta Liri, Import Duties and Import Levies paid where applicable and inclusive of Value Added Tax (VAT) except when otherwise stated in Seller's Offer such as when Buyer is

exempted from the payment of any local taxes or when offer is made in a currency other than Maltese Lira.

When prices are quoted on a delivered to customer's indicated site, they are to be understood as to be inclusive of delivery charges.

Where goods quoted are wholly or substantially made up of material or parts which fluctuate according to international usage, such as the case of copper and aluminium on the London Metal Exchange, the prices quoted may be subject to change in accordance with international commercial usage.

Any deviations from the above conditions are to be specifically indicated at time of quotation and re-confirmed at time of acceptance of an Order.

## **5. Payment by Buyer**

**5.1** Each invoiced delivery shall, unless otherwise agreed by Seller, be paid promptly according to the Agreed Payment Terms. If Buyer has been approved Agreed Credit Terms, he shall abide explicitly by these terms, and if Buyer exceeds these terms without Seller's permission in writing, Seller shall have the right to withhold further deliveries even when an order/delivery would have been agreed to by the Parties.

If Buyer fails to take or accept delivery on the due date, he shall nevertheless make any payments conditional on delivery as if the goods had been delivered on due date.

**5.2** Payment by Cheque shall be accepted by Seller on condition that the Buyer has enough funds in his bank account to cover such payment. If the Cheque is not honoured by Buyer's Bank, the amount involved shall become immediately due with interest charges according to law and any receipt previously given to Buyer shall be automatically cancelled and without legal effect.

Seller shall decide what commercial or legal steps to take in such circumstances if it is indicated that such dishonoured payment had been intentionally effected by Buyer.

**5.3** If Buyer fails to pay or is excessively late in paying in time or in full, any costs incurred by Seller in or out of court, shall be for the account of Buyer.

If Buyer exceeds the agreed Credit Terms, Seller shall have the right to claim interest at the rate prevailing at time of transaction and such interest shall be calculated from Invoice date. Any subsequent payments made by Buyer shall firstly be used to set off the interest accrued and the balance shall be set off against the Invoices outstanding.

**5.4** If in the opinion of the Seller, Buyer's financial position is in question, Seller shall have the right to request from Buyer any securities and/or guarantees to ensure the fulfilment by Buyer's obligation under the Agreement.

## **6. Retention of Title**

As long as the Buyer has not paid the full purchase price, ownership in the goods shall remain with Seller but at the risk of the Buyer.

## **7. Default by Buyer**

**7.1** If Buyer does not pay, or not timely or not properly make any due payments, or is otherwise in breach of his obligations, or if the Buyer is confronted with a winding-up petition, winding-up, liquidation or dissolution of his business or becomes bankrupt, Buyer is thereby in default and Seller shall have the right to terminate all or part of this Agreement, or to suspend its performance in whole or in part.

**7.2** Termination or suspension shall be effected by registered letter, without the requirement of any further notice or

judicial action, and without Seller being liable for damages. Where Buyer is in default, any benefit of time will no longer apply, and all payments will immediately become due.

**7.3** Where Seller terminates the Agreement, Seller may recover from the Buyer any balance of price still due together with any damages and interest. Seller may also at his option demand the immediate return of such goods that are delivered but not fully paid for. If in such a case Buyer does not return the goods, Seller shall be entitled to take possession of such goods without further notice or judicial intervention. Where the goods are returned or re-possessed, Seller may resell the goods, without prejudice to other rights of the Seller, including the right to recover from Buyer any resulting difference between the price obtained for the resold goods and the balance due to the Seller.

## **8. Warranty**

Since Seller deals in goods not manufactured by Seller, Seller's Warranty is limited to that, if any, given by the manufacturers of the said goods.

## **9. Complaints and Liability**

**9.1** The goods shall be deemed to have been accepted by Buyer, and Buyer shall be deemed to waive any claims, unless Seller is notified in writing of a claim within seven days from the date of delivery. Buyer shall inspect all goods delivered forthwith.

**9.2** With respect to claims relating to the use or resale of the delivered goods or any other claim whatsoever relating to this Agreement, Buyer's rights and Seller's liabilities shall be limited to replacement of such goods or reimbursement of the selling price.

Without Seller's permission, Buyer shall not have the right to return goods that, in Buyer's opinion, display defects. Seller's

liability shall never exceed the value of the goods involved at time of sale.

**9.3** Seller shall not be liable for any damage, whatever its nature, directly or indirectly arising from the use or misuse, sale or resale and distribution of any of its goods sold, and Buyer shall indemnify, protect and hold Seller harmless against any claim in this respect.

Seller's liability, if any, shall lie directly with Buyer, and Seller has no contractual or other obligation with Buyer's clients.

## **10. Force Majeure**

In these Conditions of Sale, '*force majeure*' shall mean all circumstances reasonably beyond the control of Seller and affecting Seller's ability to acquire, sell or deliver the goods in the manner meant in this Agreement. This shall include (but not limited to) circumstances such as compliance with any order, request or measure of any Governmental, port, local or other competent authority or any person purporting to represent any of these, wars, hostilities, public disorders, sabotage, strikes, lockouts, labour or employment difficulties, fires, acts of God, accidents, breakdowns or other causes in Malta or in the Exporter's territory or in any country or port through which the goods are being shipped or transported.

Seller shall not be liable to Buyer for any loss or damage arising from non-compliance, or from failure to comply in time or in full, with any obligation caused by '*force majeure*'. Seller shall not be obliged to remove any such cause or to replace or provide any alternative to the affected source of supply of the said goods if that would involve additional expense or a departure from his normal practices.

## **11. Set-off**

Seller reserves the right to set-off any sums receivable from Buyer, which in this

respect includes all companies or firms forming part of the same group of companies of buyer, against any sums which may become payable by Seller to Buyer.

## **12. Applicable Law**

This Agreement shall be interpreted and shall be subject to Maltese Law.

## **13. Arbitration**

Any disputes, controversies or claims arising from the interpretation or the implementation of this Agreement or breach, termination or invalidity thereof, will be settled by arbitration in accordance with the rules of the Malta Arbitration Centre as at present in force.

The Parties shall agree on the choice of an arbitrator, failing which, the Seller and Buyer shall each nominate an arbitrator. A third arbitrator, who will also act as Chairman, shall be nominated jointly by the Seller and the Buyer. If the Parties fail to agree on such nomination, the third arbitrator shall be nominated by the Malta Arbitration Centre upon request by any one of the Parties.

The arbitration award shall have the force of a contract between the Parties.

## **14. Place and Language of Arbitration**

The place of arbitration shall be Malta and the language shall be the English Language unless both Parties agree to use the Maltese Language.

## **15. Separability**

These terms and conditions shall be deemed separable, and if any part thereof is held to be invalid or inapplicable for any reason, the remaining part or parts shall not be deemed invalid or inapplicable but shall remain in full force and effect.

## **15. Assignment**

Neither Party shall assign this Agreement without the written consent of the other Party.

## **16. Authentic Version**

This Agreement has been prepared in the English language and is the only authentic version.

MCE Limited  
Revised 16<sup>th</sup> July 2002