

ENERCON INDUSTRIES LIMITED
TERMS AND CONDITIONS OF SALE

1 Interpretation

1.1 In these Conditions these words have the following meanings:

- “Buyer” means the person who buys or agrees to buy the Goods from the Company;
“Conditions” means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company;
“Contract” means the contract between the Buyer and the Company for the supply of the Goods;
“Company” means Enercon Industries Limited (Reg. No. 02733053) and any of its subsidiary or associated companies within the meaning of the Companies Act 1985 or any amendment or re-enactment thereof;
“Goods” means the goods which the Company is to supply in accordance with these Conditions. Any reference to the Goods shall where appropriate include a reference to part of them and any packaging for the same;
“Specification” means the specification agreed between the Company and the Buyer setting out the way in which the Goods will be provided, and any similar expression, includes facsimile transmission and comparable means of communication but not electronic email;

“Writing”

1.2 Words importing the singular include where the context so admits the plural and vice versa. Words denoting the masculine include the feminine and neuter and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that manner. The clause headings in these Conditions are for the convenience of the parties only and do not affect their interpretation.

2 Basis of the Contract

- 2.1 These Conditions shall be deemed to be incorporated into every contract and shall notwithstanding any statement to the contrary in any of the Buyer’s communications, override any exclude any conflicting or inconsistent terms or conditions stipulated or incorporated or referred to by the Buyer whether in the order for the Goods or in negotiations.
2.2 No variation to these Conditions will be binding unless agreed in writing between the authorised representatives of the Buyer and the Company.
2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company will be subject to correction without any liability on the part of the Company.

3 Orders

- 3.1 Unless otherwise agreed no order submitted by the Buyer will be deemed to be accepted by the Company unless and until confirmed in writing by an authorised representative of the Company.
3.2 The Buyer will be responsible to the Company for ensuring the accuracy of the terms of any order (including any special requirements for packaging and insurance in the delivery of the Goods) submitted by the Buyer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
3.3 The description of and the Specification for the Goods shall be those set out in the Buyer’s order (if accepted by the Company).
3.4 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in Writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4 Time

- 4.1 Unless otherwise agreed the Goods shall be ready for despatch or collection by the Buyer on a date to be confirmed by the Company at the commencement of the Contract.
4.2 Changes in the Specification or additional work or revised instructions relating to any aspect of the Contract will entitle the Company to vary any estimates of price and/or time for completion of the Contract.

5 Delivery

- 5.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company’s premises at any time after the Company has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place. The Company cannot accept liability for any delay in delivery of the Goods (whether or not involving negligence by the Company, its servant or agents).
5.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date on giving reasonable prior notice to the Buyer.
5.3 If there is no one at the address given who is competent to accept delivery of the Goods, the Company shall at its own discretion notify the Buyer of an alternative delivery date or place to collect the Goods. The Company may charge an additional delivery charge.
5.4 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Company’s fault) then, without limiting any other right or remedy available to the Company, the Company may:
(a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance and transit) of storage; or
(b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price of the Contract.
5.5 The Company reserves the right to make delivery by instalments and to issue a separate invoice in respect of each instalment. Each delivery shall constitute a separate contract.
5.6 The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside the Company’s control. Non-exhaustive illustrations include act of God, war, riots, explosion, abnormal weather conditions, fire, flood, government action, strikes, lockouts, delay by suppliers, accidents and shortages of materials, labour or manufacturing facilities. If the Company is prevented from delivering in the above circumstances it shall notify the Customer of the fact as soon as reasonably practicable after the circumstances arise.

6 Price of the Goods

- [6.1 The price of the Goods will be the Company’s quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Company’s published price list current at the date of acceptance of the order. The price of the Goods are quoted on an ex works basis and subject to clause 6.2 below are valid for [30] days only or until earlier acceptance by the Buyer, after which time they may be altered by the Company without notice to the Buyer.
6.2 The Company reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods, which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.] or The price of the Goods is subject to alterations without previous notice and any order is accepted subject to being invoiced at the price ruling at the date of despatch of the Goods.
6.3 Unless otherwise stated prices shall be exclusive of value added tax which shall be payable by the Buyer in the manner and at the rate from time to time prescribed by law.
6.4 Any special packaging required by the Buyer and insurance and delivery costs for delivery to destinations other than the Buyer’s address shall be charged at cost.

7 Property and Risk

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
(a) in the case of Goods to be delivered at the Company’s premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or
(b) in the case of Goods delivered otherwise than at the Company’s premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
7.2 Thereafter the Buyer shall be responsible for the satisfactory care and protection of the Goods and shall take out at its own expense adequate and comprehensive all risk cover on the Goods for their full replacement value (with a note of the Company’s interest as loss payee endorsed thereon) until the Company has received payment of the price in full, including all value added tax.
7.3 Until payment in full to the Company of all monies due from the Buyer in respect of the Goods and all other goods supplied to the Buyer under any other contract the Goods shall remain the property of the Company but the risks therein and all liability to third parties in respect thereof shall pass to the Customer on delivery.
7.4 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company’s fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company’s property and shall upon request promptly inform the Company of their location, but the Buyer may resell or use the Goods in the ordinary course of its business on condition that the Buyer for so long as he is a debtor of the Company shall hold and pursue claims for the proceeds of their sale equal to the price of the Goods for and on behalf of the Company. The Buyer shall fully pursue such claims and if necessary shall recover the sums due by legal process. The Buyer shall if so required by the Company allow the Company to conduct in the Buyer’s name legal proceedings in respect of the monies due on sale of the Goods. Any sums recovered by the Company as a result of such proceedings (including the sums accepted by the Company in settlement therefore whether or not equal to any sums claimed) shall be applied to the reimbursement of the monies due to the Company from the Buyer and then to the reasonable costs incurred by the Company in the course of such proceedings. Such monies shall not be mixed with other money or paid into the overdrawn bank account and shall at all material times be identified as the Company’s money. Any balance remaining shall be paid to the Buyer. The Company may at any time revoke the Buyer’s power of sale and use. The Buyer’s power of sale shall automatically cease if any of the events in Clause 12.1 shall occur, when the Buyer shall forthwith and without need for notice cease to use or otherwise dispose of the goods not then used, disposed of or sold.
7.5 Upon determination of the Buyer’s power of sale and use, the Buyer shall forthwith deliver to the Company on request any of the Goods in the Buyer’s possession or control which remain the property of the Company and the Company shall be entitled (without incurring any liability to the Buyer) to enter upon any premises where the Goods are situated in order to inspect the Buyer’s stocks, recover any Goods found there belonging to the Company and resell them.
7.6 If in breach of clause 7.4 above the Buyer sells the Goods prior to the payment date, then any proceeds of sale in respect thereof and all rights arising under or in respect of the said sale shall be held (in the case of the proceeds of sale in a separate account) by the Buyer as trustee for the Company.

- 7.7 The Buyer shall at the request of the Company assign to the Company all rights which the Buyer may have against any subsequent purchaser for repayment for the Goods whether in the original state in which they were received from the Company or so adapted or for such composite goods and other rights and claims against such a purchaser in connection therewith.
- 7.8 Nothing in this Clause shall give the Buyer the right to return the Goods without the Company's prior consent.
- 7.9 The Buyer shall not pledge or in any way charge by way of security for indebtedness any of the Goods which remain the property of the Company.
- 8. Payment**
- 8.1 Payment for the Goods falls due on the date for payment stated overleaf or on the Company's acknowledgement of order form and if none is so stated payment shall be due on delivery and the Company shall be entitled to payment notwithstanding that property in the Goods has not passed to the Buyer.
- 8.2 If the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or the Company has tendered delivery of the Goods.
- 8.3 Without prejudice to any other right of the Company (including the right at its option to cancel the Contract or cancel or suspend despatch) all overdue payments shall carry interest (as well after as before judgement) at 2% per annum above the base rate from time to time of Barclays Bank Plc from the due date until payment, on the amount or amounts for the time being outstanding (a part of a month being treated as a full month for the purpose of calculating interest) from the due date for payment until payment in full is received whether before or after judgment has been entered.
- 8.4 Unless otherwise agreed in Writing by the Company all payments are to be made in pounds sterling. No settlement discount is allowed. Payment shall be made by the Buyer on the due date without any set-off reduction or deferment on account of any dispute or counterclaim whatsoever.
- 8.5 The Company shall at any time be entitled to appropriate any payment by the Buyer in respect of any Goods supplied by the Company in settlement of such invoices or accounts as the Company may in its absolute discretion think fit, notwithstanding any purported appropriation to the contrary by the Customer.
- 9. Warranty in respect of the Goods**
- 9.1 Subject to the following provisions, the Company warrants that the Goods will be free from material manufacturing defects or errors of workmanship for a period of [12] months from the date of delivery.
- 9.2 The above warranty is given by the Company subject to the following conditions:
- (a) the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, accident, negligence, abnormal working conditions, use otherwise than as recommended by the Company, failure to follow the Company's instructions, or any alteration or repair carried out without the Company's approval;
- (b) the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- (c) the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 9.3 The Goods shall be deemed to have been accepted unless a written claim is received:
- (a) by both the Company and the carrier within seven days of delivery in respect of damage, delay or partial loss in transit;
- (b) by both the Company and the carrier within 28 days of despatch in respect of non-delivery;
- (c) by the Company within 28 days of delivery in respect of any other matter;
- and as a condition hereof the Buyer shall retain the Goods and enable reasonable access to those Goods for inspection by the Company, or at the Company's request the material or parts alleged to be defective must be returned to the Company.
- 9.4 If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 9.5 In the event that a valid claim in respect of any of the Goods is notified to the Company in accordance with these Terms the Company may, at its sole discretion, i) either at the Company's expense and within a reasonable time rectify the defect or ii) refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability.
- 9.6 The Company will not consider any claim for compensation, indemnity or refund until liability (if any) has been established or agreed with the Company and, where applicable, any relevant insurance company and under no circumstances shall the invoiced costs of the Goods be deducted or set off by the Buyer until the Company has passed a corresponding credit note.
- 9.7 The obligations of the Company under clause 9.5 above shall be discharged between the hours of [9.00am to 5.30pm Monday to Friday] (Bank and other public holidays excepted).
- 9.8 Any Goods or component parts of the Goods replaced by the Company pursuant to clause 9.5 above ("replaced goods") shall upon replacement become the property of the Company and the Buyer warrants that its title to such replaced goods shall be free and unencumbered or that it shall have all necessary consents and authorities to part with possession of the replaced goods.
- 10. Limitation of Liability**
- 10.1 The Buyer shall carefully examine the Goods as soon as reasonably practicable after delivery and shall notify the Company in writing of any non-delivery, short delivery, damaged Goods in transit or any defect reasonably discoverable on careful examination. This notification must be received by the Company within 5 days commencing with the date of delivery to the Buyer. If no such notice is received by the Company, it shall be discharged from all liability in respect of such defects.
- 10.2 Except in respect of death or personal injury caused by the Company's negligence Clauses 10.1 and 10.2 shall constitute the Company's entire liability to the Buyer in contract or tort and the following are therefore excluded:
- 10.2.1 all other conditions, warranties or terms whether expressed or implied by statute or common law and whether or not involving negligence on the part of the company, its servants or agents;
- 10.2.2 any duty of care;
- 10.2.3 in particular the Company shall not be liable for any consequential or indirect loss by the Buyer. Non-exhaustive illustrations of direct loss would be loss of profits, loss of contracts, loss of goodwill, damage to the Buyer's property or the property of any third party or personal injury to any third party other than caused by the Company's negligence;
- 10.2.4 the Buyer accepts that it is its responsibility to insure against these risks;
- 10.2 The terms of this Condition are in lieu of all conditions, warranties or other terms as to description, fitness for purpose, condition, merchantability, satisfactory quality, quantity or otherwise in respect of the Goods or packing, whether expressed in the Contract or implied by Common Law custom or statute and notwithstanding that such purpose or condition may be, may become or may have been known to the Company. This clause 10 applies to the extent permitted by the Unfair Contract Terms Act 1977. The statutory rights of a consumer are not affected.
- 11. Indemnity**
- The Buyer will indemnify the Company in full on demand from and against all losses, costs, claims, damages, expenses and liabilities awarded against or incurred by the Company in connection with or agreed to be paid by the Company in settlement of any claim:
- (a) arising from any failure by the Buyer to comply with any instructions, procedures, precautions, guidelines or other measure specified verbally or in writing by the Company relating to the use of the Goods by it or from the Buyer's failure to use best endeavours to procure that any person who subsequently uses the Goods is made aware of the same and of the importance of complying with them;
- (b) arising because of any breach by the Buyer of any of its obligations under the Contract.
- 12. Insolvency of Buyer**
- 12.1 This clause 12 applies if:
- (a) The Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the Buyer's property or assets; or
- (c) the Buyer ceases, or threatens to cease, to carry on business; or
- (d) the Buyer reasonably believes that any of the events mentioned above is about to occur.
- 12.2 If this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract and any other contracts or orders placed by the Buyer; suspend any further deliveries due to the Buyer without any liability to the Buyer. If the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 13. Force Majeure**
- 13.1 Neither party shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an event of Force majeure)
- 13.2 Each of the parties agrees to give notice forthwith to the other upon becoming aware of an event of Force majeure such notice to contain details of the circumstances giving rise to the event of Force majeure.
- 13.3 If a default due to an event of Force majeure shall continue for more than 12 weeks then the party not in default shall be entitled to terminate the Contract. Neither party shall have any liability to the other in respect of the termination of the Contract as a result of an event of Force majeure.
- 14. General**
- 14.1 Any notice required or permitted to be given by either party to the other under these Conditions will be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 14.2 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.3 In the event that any or any part of the terms contained in this Contract shall be determined invalid or unenforceable to any extent such terms or such offending part shall be severed from the remaining terms which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 14.4 Any dispute arising under or in connection with the Contract or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators.
- 14.5 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts.