

TERMS & CONDITIONS OF SALE: PINNACLE RE-TEC LTD

1 Definitions

- 1.1 'Seller' shall mean Pinnacle RE-TEC Limited of Unit 30, Derwentside Business Centre, Consett Business Park, Consett, DH8 6BP, United Kingdom
1.2 'Buyer' shall mean the person, firm, company or other corporation named overleaf.
1.3 'Goods' shall mean all or any of the goods or materials, which from time to time the seller contracts to supply.
1.4 'Services' shall mean any or all of the services, which from time to time the seller contracts to supply.

2 Basis of contract

- 2.1 These conditions shall apply to all contracts, whether written, oral or implied for the supply of goods or services.
2.2 Any conditions of purchase or other terms provided by the buyer shall be of no effect whatsoever nor shall any variation or alteration to these conditions be of any effect unless specifically negotiated and made in writing and signed by or on behalf of the seller by a duly authorized signatory of the seller.
2.3 No binding contract shall be created by the placing of an order unless and until the seller's written acknowledgement of the order shall have been posted or delivered, which acknowledgement will be deemed to repeat these conditions or, alternatively in the event that no such acknowledgement is sent, at the time of acceptance of any order for the goods or services by the seller a binding contract will be created subject to these conditions.

3 Quotations

- Any quotation in whatever form provided by the seller is given subject to these conditions as an invitation to treat and does not constitute an offer to sell. The validity of such quotation shall expire 30 days after the date of issue.

4 Prices

- 4.1 Subject to anything to the contrary contained in any quotation issued by the seller, prices for the goods or the services are unless otherwise stated exclusive of value added tax and any other similar tax, carriage, handling, packaging and any insurance charges.
4.2 The buyer shall have no right to set off whether statutory or otherwise.
4.3 The seller reserves the right, by giving notice to the buyer at any time before delivery, to increase to price of the goods or services to reflect any increase in the cost of the seller which is due to any factor beyond the seller's control.
4.4 Unless otherwise expressly stated in writing by the seller, all prices payable must be settled in pounds sterling but if the seller agrees to accept foreign currency and does not specify an exchange rate the exchange rate will be that of The Bank Of England at the close of business on the day preceding the day on which the seller accepts the buyer's order.

5 Designs and drawings

- 5.1 Where the seller prepares designs or drawings at the request of the buyer the buyer shall approve such designs and drawings in writing and until such approval has been received by the seller, the seller shall be under no liability to the buyer and any time for delivery shall not be run.
5.2 If the goods are manufactured or any process is to be applied to the goods by the seller in accordance with a specification or requirement submitted by the buyer and agreed by the seller the buyer shall indemnify the seller in respect of any claim against the seller directly attributable to or caused by any such specification or requirement.

6 Patent Infringement

- The buyer warrants that any instructions, plans or designs furnished or given by it shall not be such as will cause the seller to infringe any letters patent, copyright, registered design, right of confidence or trade mark in execution of the buyer's order and agrees to indemnify the seller against all claims, costs or other expenses incurred by the seller thereof.

7 Variation and cancellation

- If, during the course of the Work, the seller receives any instruction or direction from the buyer which either then or later will, in the opinion of the seller, involve an addition to or deduction from the Price, the seller shall advise the buyer in writing to that effect and the amount of such omission or deduction shall be determined under the sub-clause below before the work is put in hand unless the seller shall be otherwise instructed in writing by the buyer. The amount of such addition or deduction shall be agreed between the seller and the buyer or, failing agreement, be determined by arbitration in accordance with Clause 15.

8 Terms of payment and default by buyer

- 8.1 The buyer shall pay the price to the seller within 30 (thirty) days of the date of the issue by the seller of its invoice unless stated otherwise in the Quotation.
8.2 If payment of any sum due to the seller is delayed, the seller shall be entitled to receive interest on the amount unpaid during the period of delay. Interest shall be payable at two percentage points above the then current average base lending rate of the major clearing banks.
8.3 If the buyer should make default in any payment when due or become subject to the bankruptcy laws, or, being a limited company, has a receiver appointed, or enters into liquidation, the seller may at its option terminate this contract without prejudice to the rights of either party hereunder.

9 Delivery and collection

- 9.1 Subject to the provision of paragraph 10 the seller may arrange delivery to the buyer's premises at the buyer's request. In all other circumstances collection or delivery of goods or goods upon which services have been rendered will be made at the seller's premises at any time after the seller has notified the buyer that the goods or goods upon which services have been rendered are ready for collection.
9.2 when delivery or collection takes place at the buyer's premises it will be the buyer's responsibility to ensure delivery or collection can take place at the time and place specified or otherwise agreed. The buyer shall indemnify the seller against any loss or expense incurred as a result of a breach of these obligations. Without prejudice to the foregoing, if the seller or its agents or employees agree to assist in the loading or unloading as the case may be then the seller will not be liable for any loss or damage howsoever arising through any act, omission or negligence of any of its agents or employees.
9.3 Although given in good faith delivery times for the supply of the goods or services by the seller in its quotation or otherwise are intended as estimates only and are not therefore to be treated as being of the essence of the contract or binding on the seller. The seller will not be liable to the buyer for any loss or damage (direct or indirect) occasioned by the seller's failure (whether as a result of negligence or otherwise) to deliver the goods upon which the services have been rendered by the date or within the time stated and in no case shall delay be a ground for rejecting the same.
9.4 The right to deliver the goods or the goods upon which the services have been rendered in part is expressly reserved by the seller and the condition shall apply to any such part or parts mutatis mutandis.
9.5 In the event that the buyer is responsible for collecting the goods or the goods upon which the services have been rendered and such collection does not occur within seven days of the buyer having been informed that such goods are ready for the collection the seller may charge the buyer for storage of any such goods until collection occurs in addition to the price for the goods or services

10 Risk

- The liability for goods or the goods upon which the services have been rendered shall pass to the buyer: -
10.1 in the case of delivery at the seller's premises, at the time when the seller notifies the customer that the goods or the goods upon which the services have been rendered are available for collection; or
10.2 in the case of delivery otherwise than at the seller's premises at the time of delivery or, if the buyer wrongfully fails to take delivery of the goods or the goods upon which the services have been rendered, at the time when the seller has tendered their delivery.

11 Title to Goods

- The property in the goods shall remain in the seller and the buyer shall hold the goods as Fiduciary agent and bailee for the seller until such time as the price of all goods and/or services supplied at any time by the seller together with all other sums owing to the seller on any account whatsoever at the date of this contract have been paid in full.

12 Exclusion of Liability

- 12.1 The seller shall be under no liability in respect of any defect in the goods or services arising from any drawing, design or specifications supplied by the buyer.
12.2 [Except where the goods or services are sold to a person dealing as a consumer (within the meaning of the unfair contract terms act 1977)] all warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.
12.3 Any claim by the buyer which is based on any defect in the quality or condition of the goods or services or their failure to correspond with specification shall be notified to the seller within such time as the buyer reasonably require to examine the goods or the goods upon which services have been rendered which for the purpose of these conditions shall be no more than 14 days from the date of delivery. If no such notification is received, the buyer will not be entitled to reject the goods or services and must pay their price.
12.4 Where any valid claim in respect of any of the goods or services is notified to the seller in accordance with these conditions, the seller shall be entitled to repair or replace the goods (or the part in question) free of charge or, as it is sole discretion, refund to the buyer the price of the goods or services (or a proportionate part of the price) and the seller shall have no further liability to the buyer.
12.5 Except in respect of death or personal injury caused by the seller's negligence, the seller shall not be liable for any claim made against the buyer by any third party nor under the contract or otherwise for any consequential loss or damage.

13 Force Majeure

- Without prejudice to the generality of any of the foregoing conditions, the seller shall not be liable for any loss or damage caused by the non-performance or delay in the performance of any of its obligations hereunder if the same is occasioned by any cause whatsoever which is beyond the seller's control. Should any such event occur the seller may cancel or suspend this contract without incurring any liability for any loss or damage thereby occasioned.

14 Export

- 14.1 Subject to any special terms agreed in writing between the seller and the buyer, the provisions of this clause 14 shall apply notwithstanding any other provisions in these conditions.
14.2 Where the goods are supplied for export from the United Kingdom the buyer shall be responsible for: -
14.2.1 complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon;
14.2.2 by arranging for testing and inspection of the goods at the seller's premises before shipment. The seller shall have no liability for any claim in respect of any defect in the goods, which would be apparent on inspection and which claim is made after delivery.
14.3 Unless otherwise agreed in writing between the buyer and the seller the goods shall be delivered in accordance with shipping agreements determined by the seller and notified to the buyer.
14.4 Unless otherwise agreed in writing between the buyer and the seller payment of all amounts due to the seller shall be made either: -
14.4.1 by irrevocable letter of credit opened by the buyer in favor of the seller and confirmed by a bank notified to the seller and which the seller has confirmed is acceptable; or
14.4.2 if the seller has confirmed in writing on or before acceptance of the buyer's order that the foregoing requirements will be waived, by acceptance by the buyer and delivery to the seller of a bill of exchange drawn on the buyer payable thirty days after sight to the order of the seller or as otherwise specified in the bill of exchange.

15 General

- 15.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party as 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 notice.
15.2 No waiver by the seller of any breach of contract by the buyer shall be considered as waiver of any subsequent breach of the same or any other provision.
15.3 If any provision of these conditions is held by any competent authority to be invalid or unenforceable. In whole or in part the validity of the other provisions of these conditions are the remainder of the provision shall not be affected.
15.4 Any dispute arising under or in connection with these conditions or the sale of the goods or services shall be referred to arbitration by a single arbitrator appointed by agreement or (if not agreed within 14 days) by the president for the time being of the institute of mechanical engineers whose decision (including as to costs) shall be final and binding upon both parties.
15.5 The construction, validity and performance of the contract shall be governed by and interpreted in accordance with English law. The parties hereto agree to submit themselves to the non-exclusive jurisdiction of the English courts for the purposes of these terms and conditions.