

Clyde Bergemann Materials Handling Ltd.

GENERAL TERMS & CONDITIONS OF SALE

Ref: CBMH TC01-1 002

1 PAYMENT

Unless otherwise stated by Clyde Bergemann Materials Handling Ltd. hereinafter referred to as 'CBMH Ltd.' in writing the terms of payment will be as follows: On delivery of the Goods or Services, hereinafter referred to as 'the Goods', invoices will be submitted and must be paid in full within 30 days from date of issue. Interest at the rate of 8% above the Bank Base Rate in force at the time will be payable on all overdue amounts.

2 PRICE VARIATION

The prices quoted in the proposal are fixed, and not subject to variation for orders placed and accepted within the stated validity of the proposal, unless otherwise stated in writing within the proposal. If no validity is stated within the proposal then the validity will be 14 days.

3 EXTRAS

The contract prices include only such Goods as specified in the CBMH Ltd. proposal. Any additional Goods will only be provided on receipt of a written instruction to do so from the Buyer, agreeing to vary the price accordingly.

4 DELIVERY

Delivery shall be deemed to have taken place:

- Where transit is arranged by CBMH Ltd. -when the Goods have been conveyed to the place for delivery named in the contract ready for unloading by the Buyer or his Agents.
- Where transit is not arranged by CBMH Ltd. -when the Goods have been loaded, Ex. Works for despatch to the Buyer or his Agents.
- In the event that the Goods are transported at a time and to a place agreed with the Buyer but no representative of the Buyer is present when the Goods are so transported, CBMH Ltd. shall have no liability in respect of loss or damage resulting there from.

5 TRANSFER OF PROPERTY

The property of the Goods will pass to the Buyer only upon payment of the full contract price. If nevertheless the Buyer sells or otherwise disposes of the Goods or Services before full payment has been made, he will hold the proceeds of sale on trust for CBMH Ltd. Notwithstanding the retention of ownership of the Goods and Services by CBMH Ltd. until full payment has been made, any loss, damage or deterioration from whatsoever cause after delivery thereof will be entirely at the risk of the Buyer in accordance with these conditions. The retention by CBMH Ltd. of the property in the Goods as aforesaid does not entitle the Buyer to return the same or to refuse or to delay payment on that account. In default of payment for the Goods in accordance with the contract, CBMH Ltd. shall be entitled, without prejudice to any other rights it may have, and on giving 48 hours notice, to retake possession of the Goods, and the Buyer will deliver the same to CBMH Ltd. or allow CBMH Ltd. access to the Buyer's premises for that purpose. If the Buyer becomes bankrupt or insolvent or (being a company) commences to be wound up or has a receiver appointed, the Buyer will automatically cease forthwith to be entitled to sell the Goods and CBMH Ltd. shall be entitled to repossess the same and for that purpose to enter the Buyer's premises to effect it's removal.

6 LOSS OR DAMAGE IN TRANSIT

When goods are lost or damaged in transit, and transport has been arranged by CBMH Ltd. either as part of the order, or as an additional charge to the order:

- The Buyer, in the case of damage to the Goods, shall give notice within three days after delivery that the same has been delivered damaged and, in the case of non-delivery, shall (if he has been advised of the despatch) give notice within ten days after the receipt of the advice that the Goods have not been delivered. Each such notice shall be given in writing to CBMH Ltd. , and also, if the Buyer has knowledge that the machinery or plant was entrusted for delivery to a carrier, to that carrier and:
- CBMH Ltd. 's liability shall be limited to the replacement or repair within a reasonable time of the part of the Goods damaged or not delivered provided always that CBMH Ltd. shall be under no liability whatsoever for any damage or non-delivery if the transit was not arranged by them or if, by reason of the failure of the Buyer to give notice of damage or non-delivery as in this condition provided CBMH Ltd. shall be prevented from recovering compensation for such loss or damage to any third party. Damage is deemed to have accrued after the transit has ended unless the contrary is proved by the Buyer.

7 TIME OF COMPLETION

(a) Any time or times quoted for delivery of the Goods will run from the date of order acceptance by CBMH Ltd. of a written order to proceed and of all necessary information and drawings to enable the work to be completed. Any such time for delivery is to be treated as an estimate only, not involving CBMH Ltd. in any liability or failure to deliver within such time unless the Buyer shall have suffered loss and the amount payable in respect thereof shall have been agreed in writing as liquidated damages, in which case CBMH Ltd. 's liability in respect of delay in delivery shall be limited to the amount so agreed to be paid. in all cases, whether a time for delivery has been quoted or not, the time delivery shall be extended by a reasonable period if delay in manufacture or delivery is caused by instructions from the Buyer or by industrial dispute or by any cause beyond CBMH Ltd. 's reasonable control.

(b) For the avoidance of doubt 'order acceptance' and 'order confirmation' shall be considered the same thing for the purposes of CBMH Ltd. Contracts.

8 GUARANTEE AND EXCLUSION OF LIABILITY

- Subject as hereinafter provided, in the case of goods manufactured by CBMH Ltd. , CBMH Ltd. will accept liability for a period of 12 months from the date of delivery to make good any defects developing under proper use of the goods due to faulty materials bad workmanship provided that:
 - The Buyer has followed CBMH Ltd. 's instructions as to cleaning, lubrication and operation.
 - In the case of defects which would have been apparent to the Buyer on reasonable examination of the goods on delivery, the Buyer notifies CBMH Ltd. of the defects in writing within five working days of the date of delivery.
 - In the case of any other defects, the Buyer notifies CBMH Ltd. of the defects in writing within five working days of the date when the defect becomes apparent.
 - Unless otherwise agreed, the defective goods are promptly returned carriage paid. Repaired or new parts will be transported free ex-works, and will carry a six month guarantee period PROVIDED THAT engineers services and expenses, where needed, will be charged for at CBMH Ltd. 's standard rates.
- Subject as hereinafter provided, in the case of goods not manufactured by CBMH Ltd., CBMH Ltd. will use it's best endeavours to secure for the benefit of the Buyer any warranty, assurance or guarantee that may be given by the manufacturer of the goods.
- CBMH Ltd. shall in no circumstances be liable for damage by fair wear and tear (i.e. consumable and wearing parts) or for damage due to negligent or improper handling of the goods by the Buyer, his employees or his agents, or for in cases in which damage is due to any cause beyond CBMH Ltd. 's control or for in cases in which repairs or alterations have been carried out by the Buyer without CBMH Ltd. 's prior knowledge and control.
- CBMH Ltd. shall not be liable for consequential loss or damage and shall have no other or further liability in respect of the goods or any defects therein and all conditions and warranties whether express or implied by law as to the quality of the goods or their fitness for a particular purpose or as to the design, workmanship and manufacture thereof and the materials used therein or as to the validity of patents or licences or otherwise in any way are expressly excluded except to the extent that this paragraph may be held not to satisfy any requirement of reasonableness imposed by the Unfair Contract Terms Act 1977 or any statutory modification or re-enactment thereof, CBMH Ltd. shall not be responsible for any injury, damage or loss caused directly or indirectly by the goods whether as a result of their operation or use otherwise and whether as a result of any defect therein or otherwise, and the Buyer shall indemnify CBMH Ltd. against any claim arising from any such injury, damage or loss.
- CBMH Ltd. shall have no liability for any information or advice given in connection with the supply of the goods.
- Except to the extent that this paragraph may be held not to satisfy any requirement of reasonableness imposed by, or other provisions of the Unfair Contract Terms Act 1977 or any statutory modification or re-enactment thereof, CBMH Ltd. shall not be responsible for any injury, damage or loss caused directly or indirectly by the goods whether as a result of their operation or use or otherwise and whether as a result of any defect therein or otherwise, and the Buyer shall indemnify CBMH Ltd. against any claim arising from any such injury, damage or loss.

9 SPECIFICATIONS

Illustrations, drawings and the like accompanying a quotation or tender or contained in CBMH Ltd. 's catalogues, price lists or advertisements must be regarded as approximate representations only and are not binding in detail. Weight, measurements, powers, capacities and other particulars are stated in good faith as approximately correct by deviations there from shall not be made the basis of any claim against CBMH Ltd. except where specifically agreed to the contrary in writing. Errors and omissions are subject to correction. In no case do we accept responsibility for the condition of any existing machinery plant or fittings which may be set to work in conjunction with the machinery or plant to be supplied by CBMH Ltd.

10 DELAY

If by virtue of instructions given by the Buyer or by reason of any delay or failure on the part of the Buyer to give any necessary instructions or by reason of any cause beyond our control we are delayed in manufacturing or prevented from delivery any Goods at the time quoted for delivery or, if no time is quoted within a reasonable time, there should be added to the contract price all additional expenses incurred by CBMH Ltd. in storing, protecting, insuring, transporting and handling the same. Should any instructions, delay or failure as aforesaid result in CBMH Ltd. being unable to deliver completed machinery or plant, the placing of such machinery or plant into storage shall be deemed to be delivery thereof for the purposes of Clause 4 (Delivery) hereof

11 BANKRUPTCY

If the Buyer becomes bankrupt or insolvent or (being a company) commences to be wound up or has a receiver appointed, CBMH Ltd. shall be at liberty by notice in writing to cancel the contract without prejudice to any right or remedy which shall have accrued or shall accrue thereafter to CBMH Ltd.

12 FORCE MAJEURE

Notwithstanding the provisions of any other term of this contract neither party shall be regarded by the other as in breach thereof to the extent that such party is prevented from or hindered in fulfilling his or its obligations hereunder by any circumstances outside his or its reasonable control (including strikes or lockouts whether in the United Kingdom or abroad) provided that such party shall have given written notice to the other party of such circumstances within a reasonable time after learning of them. If any circumstances the subject of any such notice shall either alone or in aggregate with the circumstances the subject of any other notice continue for a period exceeding three calendar months prevent or hinder the performance of this contract by either party, then the other party may by written notice to the other terminate this with regard to any unperformed portion thereof

13 PACKING

Unless otherwise specified in our quotation, all packing cases skids drums and other packing materials will be charged for at extra cost.

14 INSPECTION AND TESTING

If tests of the machinery or plant the subject of the contract other than those specified in CBMH Ltd. 's tender or tests in the presence of the Buyer or his representative are required, these will be charged for as extras under Clause 3. In the event of any delay on the part of the Buyer in attending such tests after 7 days notice that CBMH Ltd. is ready, the tests will proceed in the Buyer' s absence and shall be deemed to have been made in the Buyer's presence.

15 PERFORMANCE

CBMH Ltd. will accept no liability for failure to attain any performance figures quoted by CBMH Ltd. unless CBMH Ltd. have specifically guaranteed them subject to conditions and tolerances specified or agreed by CBMH Ltd. [n case of such failure CBMH Ltd. will be allowed a reasonable time within which to comply with the terms of the guarantee. If CBMH Ltd. fails within such reasonable time to achieve such performance figures subject to the tolerances, the Buyer may cancel this contract by notice in writing to CBMH Ltd.; in this event CBMH Ltd. shall have no liability whatsoever to the Buyer save for payment of the liquidated damages agreed in the contract and for the return of any payment made by the Buyer for the goods the subject of the said performance figures. The Buyer assumes responsibility that machinery or plant stipulated by him is sufficient and suitable for this purpose, save insofar as his stipulations are in accordance with our advice.

16 CANCELLATION

No contract may be cancelled without the prior written consent of CBMH Ltd. Where such consent is given it is an express condition thereof that CBMH Ltd. shall be reimbursed by Buyer within 60 days for all materials, labour costs and liabilities incurred by it for the purpose of that contract prior to cancellation together with any loss of profit and overheads and recovery costs occasioned by such cancellation.

17 PATENTS

CBMH Ltd. will indemnify the Buyer against any claim for infringement of Letters Patent Registered Design Trade Mark or Copyright (published at the date of the contract) by the use of any article or materials supplied by CBMH Ltd. to him and against all costs and damages which he may incur in any action for such infringement or for which he may become liable in such action. Provided always that this indemnity shall not apply to any infringement which is due to CBMH Ltd. having followed a design or instruction furnished or given by the Buyer or to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to CBMH Ltd. , or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by CBMH Ltd.; and provided also that this indemnity is conditional on the Buyer giving to CBMH Ltd. the earliest possible notice in writing of any claim being made or action threatened or brought against him and on his permitting us at CBMH Ltd. 's own expense to conduct any litigation that may ensue all negotiations for a settlement of the claim. The Buyer on his part warrants that any design or instruction furnished or given by him shall not be such as he will cause CBMH Ltd. to infringe any Letters Patent Registered Design Trade Mark or Copyright in the execution of the contract.

18 LAW

This contract shall in all respects be treated and construed as a English Contract and in conformity with English Law.

19 VALUE ADDED TAX

The price quoted do not include an allowance for the extent to which the machinery or plant provided by CBMH Ltd. under the contract are, or may be subject to Value Added Tax and accordingly to the extent that the machinery or plant supplied in the performance of the contract are chargeable with Value Added Tax the contract price shall be increased by the gross amount of Value Added tax chargeable thereon.

20 SUBSTITUTION

In the event of a shortage of raw materials or component parts specified in the contract for use in the production of goods, CBMH Ltd. shall be entitled to substitute such other materials as it shall consider reasonable fit for such purpose.