

CONSTRUCTION AND MATERIAL HANDLING CO LTD [CMH]

GENERAL TERMS AND CONDITIONS

1. **MAKING THE CONTRACT**
- 1.1 We may withdraw any quotation at any time prior to the written acceptance of same by the customer. All quotations lapse automatically and as of right, without any judicial or extra-judicial formality having to be fulfilled by CMH, after 28 days from the date of the quotation, unless otherwise stated in writing by CMH.
- 1.2 If you wish to buy goods or services you should send us an order or return a signed copy of the quotation, as the case may be. Your order is an invitation to treat and is in any case subject to the present terms and conditions (except expressly stated otherwise in writing by CMH).
- 1.3 Offers for items to be ordered from suppliers are subject to confirmation by suppliers on receipt of the firm written order by the customer.
- 1.4 Offers for ex stock items are subject to any sales which may be effected between the time of the quotation and the time of firm order is made by the client. We shall be free to sell goods to other customers until and unless a firm order is made by the client.
- 1.5 Our acknowledgement of order (or our delivery note if we do not send an acknowledgement of order) is an offer to sell only the goods identified in your order at those prices on these terms. As it is based on your order, it will be treated as accepted and the contract made unless we receive your written cancellation within two working days from the date of our acknowledgement of order (or of our delivery note if we do not send an acknowledgement of order).
- 1.6 All goods sold by us/services rendered by us are sold /rendered on these terms and conditions; only our General Manager and in his absence, our Finance Manager, can change them and then only in writing. No other terms whether put forward by you or implied by statute shall apply.
2. **CANCELLATION**
- 2.1 Contracts can be varied or cancelled only with our prior written consent.
- 2.2 Before the equipment is delivered to you, if we agree to cancel or vary a contract after we have bought, ordered, or manufactured goods for you, we will be entitled to charge a cancellation fee, representing 30% of the amount of the order plus VAT.
- 2.3 If we are dependent on a supplier who fails to supply the goods ordered or a necessary component thereof or services, we will be entitled to terminate the contract automatically and as of right without having any judicial or extra-judicial formality to fulfil, and in such case no compensation of any sort shall be due by CMH.
3. **PRICE**
- 3.1 The price quoted is ex our stores, Riche Terre, unless otherwise expressly stated on our quotation.
- 3.2 If VAT does not appear on our quotation, VAT at the rate applicable at the time of the issue of our invoice shall be added to the price quoted.
- 3.3 If the rate of Valued Added Tax changes between the time of the quotation and the time of the invoice, the rate of VAT applicable on the date of the invoice shall be applied.
- 3.4 Our offer is made based on exchange rates at the time when our quotation is made and is subject to any fluctuation in rates existing on the date on which the sums payable to the manufacturer are transferred to this latter.
- 3.5 Items quoted for delivery other than ex stock are subject to any fluctuation in manufacturer's F.O.B price, freight, marine insurance, duty, landing crane fees, local transport charges and any other government taxes.
- 3.6 If we suffer a major increase in costs, we may increase the price. If so, we shall tell you as soon as possible.
4. **PAYMENT TERMS**
- 4.1 Unless otherwise stated in writing, payment should be made on a "Cash on Delivery" basis.
- 4.2 Invoices shall be sent by emails which may not affect their validity.
- 4.3 If payment by instalments or a credit period is agreed:
 - 4.3.1 non-payment of any instalment on the due date and /or non-payment on the end of the credit period (as the case may be) shall render the whole balance payable automatically and as of right without any judicial or extra-judicial formality having to be fulfilled;
 - 4.3.2 for equipment (and not parts) property of the equipment supplied will pass to the customer only upon complete payment of all sums due in principal, interest if any applicable and accessories.
- 4.4 We may, if not prohibited by law, charge interest on late payments at 5% above PLR per month. Such interest shall be payable automatically as of right, without any judicial or extra judicial formality having to be fulfilled.
- 4.5 If you pay late, you must also, if not prohibited by law, reimburse to us (in full) all legal expenses incurred by us. These legal expenses include the Attorney's commission amounting 10% of all sums due plus VAT thereon, and such commission shall be due even if a simple of demand is sent by such Attorney.
- 4.6 You may not withhold payment because of any dispute or claim any set off.
- 4.7 We may apply any payment to any invoice and ignore contrary instructions given by you.
- 4.8 We may require a down-payment as a term of the contract.
- 4.9 Down-payment is not refundable.
- 4.10 We may (at any time) suspend delivery or decide not to attend to any emergency call related to any system/equipment failure unless (i) payment terms, if granted to you are strictly adhered by you and/or (ii) in case we consider at our sole discretion that payment of the sum/s due to us is uncertain, you give us security for payment (including any deposit requested).
- 4.11 We may automatically and as of right, without having any judicial or extra-judicial formality to fulfil, and without having any prior notice to give, change the limit on an approved credit account (if in our absolute discretion we grant you an approved credit account) at any time. If the new limit is exceeded, the excess must then be paid immediately.
5. **DELIVERY**
- 5.1 Delivery shall be ex stock unless otherwise stated.
- 5.2 Unless we insert a fixed delivery date in your quotation, we do not warrant any fixed delivery date. If we mention on the quotation an "expected" delivery date, this is for indicative purposes only without any obligation on our part, and we do not guarantee in any manner whatsoever that the equipment/part/service concerned will be delivered/rendered on the said delivery date.
- 5.3 You may not reduce the price or make a claim against us if the goods are delivered after any specified delivery date. If we do not deliver then, we shall use out best efforts to deliver within a reasonable time afterwards.
- 5.4 We have no control over escalating costs such as for example costs of manufacture and/or shortages or delays in supply of any equipment, including raw materials, any late deliveries for any reason whatsoever. We therefore reserve the right to amend our quotation to take into consideration the above. In that respect, and subject to the other terms of this quotation.
- 5.5 The price will be amended in the light of the price given to us by our Principals;
- 5.6 The price will be adjusted to cater for any excess imposed by our Principals after confirmation but up to the time of invoicing.
- 5.7 We may deliver in stages and invoice you separately for each stage.
- 5.8 Upon reception, whether in store or at a specified location, an acknowledgement of receipt shall be made using an electronic device and signature whose validity and binding effect shall not be denied.
- 5.9 If you ask us to delay delivery, we will do so if we can, but may charge you for storage.
- 5.10 You give us the right of access to all premises to deliver, inspect and remove the goods. That right may not be revoked until you have paid all that may owe us.
- 5.11 Where your goods are in our possession, or you have ordered goods from us; and it is your duty to collect the goods from us or notify us of a delivery destination, and/or pay us prior to delivery, we may, after giving you 7 days notice in writing that you have failed to do so, at our option.
 - 5.11.1 charge a reasonable weekly storage fee until you either collect the goods or notify us of a delivery destination; and/or
 - 5.11.2 treat you as having terminated the contract automatically and as of right, and in such case change the cancellation fee referred to in Clause 2.2 above.If we treat you as having terminated the contract automatically and as of right, then we have the right to dispose of the goods.
6. **RISK**
- 6.1 The goods delivered are at your risk from when and where you receive them. It is your responsibility to adequately inspect the goods in your custody delivered on site.
7. **INSPECTION AND SHORTAGES**
- 7.1 You must inspect the goods in our presence as soon as you receive them or when these are delivered to your site, whatever is the earlier.
- 7.2 We are not liable for shortages or defects that should have been on a careful inspection, and which are not reported to us in writing at the time of the said inspection.
- 7.3 Goods may not be returned without the prior written consent of CMH. You may only return goods to CMH due to non-compliance with the Goods specifications as agreed between the parties. Any return of Goods will be made and/or accepted at the sole discretion of CMH within 21 days of delivery provided that the goods are in their original packaging and non-damaged.
8. **WARRANTIES**
- 8.1 The manufacturer's warranty shall apply for new items delivered. All repairs during warranty period shall be done by us only as per manufacturer's recommendations.
- 8.2 If customer modifies/repairs any components of the item delivered without prior written approval from us, the warranty shall be void and shall not apply.
9. **FORCE MAJEURE**
- 9.1 We are not liable for delays caused by matters outside our reasonable control, such as (and non limitatively) – act of God – war – riots and civil disturbances – fire or explosions – trade dispute – strikes – Mauritian or foreign government action or regulations – delay by suppliers – accidents – shortage of materials, labour or manufacturing facilities – transport problems. Force majeure shall not include any events which renders import, supply and/or delivery not commercially attractive for us.
10. **USE**
- 10.1 Installation and operating manuals are available for all our products.
- 10.2 You must ensure that (after the goods have been delivered to you) every person who handles them for or has possession of them has full instructions for their safe use, handling and installation.
- 10.3 You are only entitled to make use of new equipment ordered after it has been duly commissioned.
11. **LIMITATION OF LIABILITY**
- 11.1 Our eventual liability if any in case of sale of equipment/parts sold is strictly limited to a maximum of the actual sale price to the customer of the equipment or parts sold. If the equipment is sent to us for repairs, our eventual liability if any is strictly limited to a maximum of the value of the repairs. Our eventual liability if any shall also be subject to the manufacturer's warranty policy. We shall not in any circumstance whatsoever be responsible for other damages including non limitatively loss of profit, loss of revenue, loss of use and/or consequential damages.
- 11.2 Notwithstanding Clause 11.1 above, any liability on our part in case of repairs, installation and/or servicing shall never exceed Rs 500,000.
- 11.3 In case of servicing, repairs or installation, the warranty period shall be the one mentioned in the recto of this document. If no warranty period is specifically mentioned in the recto of this document, the warranty shall be of 6 months or 1000 hours, (whichever occurs first) as from the date of the delivery of the equipment.
12. **BREACH**
- 12.1 We shall be entitled to consider that you have terminated the contract as of right if you-
 - 12.1.1 do not make a payment when due; or
 - 12.1.2 fail to accept delivery or give delivery instructions
 - 12.1.3 fail to comply with the present terms and conditions or with any other contractual provision between you and us.
- 12.2 If the contract is terminated for any reason, you shall reimburse us on demand all sums due by you to us and pay us all damages suffered by us.
13. **INSTALLATION/DESIGN**
- 13.1 If you ask us to install your equipment/design your work environment in view of fitting the necessary accessories to the main equipment, we will provide you with an estimate of the likely costs of such installation design in advance. This estimate will be treated as a rough guide to the installation/design costs.
- 13.2 We will endeavour to notify you if we realise that the estimate for installation/design work will be exceeded. You will then have the option whether to instruct us to either continue the installation/design work or to conduct no further work until you make a further payment to us.
- 13.3 If the estimate for installation/design work is exceeded, we are entitled to charge you as per the initial estimate given and do no further work until you make a further payment to us.
 - 13.3.1 The estimate for all installation/design work shall be treated as separate contract from the purchase of the equipment.
14. **GENERAL**
- 14.1 Written notices may be sent by hand delivery, or registered post with advice of delivery to the address on the quotation. If sent by hand delivery, they shall be treated as having been received on the actual date of delivery. If sent by fax they shall be treated as received on the first working day after transmission. If they are sent by registered post with advice of delivery, they shall be treated as received on the date of receipt of the notice.
- 14.2 Mauritian Law shall apply to those terms and conditions. Mauritian Courts shall have jurisdiction to determine any matter relating to those terms and conditions and to any equipment sold/service effected by us. Nothing shall however prevent CMH from entering one or more cases before any other Jurisdiction.
- 14.3 If any provision of these terms is held by any complement authority to be invalid or foreseeable in whole or in part of the validity of the other provisions of these terms and the remainder of the provision in question shall not be affected.
- 14.4 Our rights under these terms are cumulative.
- 14.5 You acknowledge that your business information not limited to name, address and telephone number , client ID shall be stored in our database and may be made available to third part including auditors, governmental bodies.