

are designed and have been tested and about any conditions to ensure that when put to that use they will be safe and without risks to health, the Customer shall use the goods accordingly and comply with the said conditions.

12. **PATENTS**

The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of any patent, registered design copyright, trademark or other industrial or intellectual property rights resulting from compliance with the Customer's instructions, whether express or implied.

13. **TERMINATION**

In addition to any other provisions for termination herein contained and without prejudice to any other remedies the Company may have hereunder, the Company may at its option terminate this or any other agreement or order between the Company and the Customer and may cancel or suspend future deliveries (if any) under this or any other agreement forthwith if any of the following events shall occur:-

- (i) If the Customer is in breach of any part of these Conditions or other provision of this or any other agreement or order.
- (ii) If the Customer, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up or convene a meeting to pass a resolution for voluntary winding up or shall enter into any liquidation whether compulsory or voluntary (other than for the purposes of voluntary reconstruction or amalgamation) or shall call a meeting of its creditors or shall enter into any composition or arrangement with its creditors or shall have a receiver or administrator of all or any of its undertakings or assets appointed or shall be deemed by virtue to Section 518 (1) of the Companies Act 1985 to be unable to pay its debts or shall cease to carry business.
- (iii) If the Customer being an individual shall die or being a firm/partnership shall be dissolved or in any case shall commit any act of bankruptcy or have a receiving order made against him/it or make or negotiate any composition or arrangement with or assignment for the benefit of his/its creditors. On termination howsoever or whenever occurring the Customer shall pay to the Company all costs expenses, including legal and other fees incurred and all arrears of charges or other payments arising in respect of the Products, under these Conditions or otherwise in addition to any other rights and remedies the Company may have against the Customer.

14. **WAIVER**

Failure or neglect by the Company to enforce at any time of these Conditions shall not be construed nor shall be deemed to be a waiver of the Company's rights hereunder nor in any way affect the validity of the whole or any part of these Conditions nor prejudice the Company's right to take subsequent action.

15. **HEADINGS**

The headings of these Conditions are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of any of these Conditions.

16. **SEVERABILITY**

In the event that any or any part of these Conditions shall be determined by Law to be invalid, unlawful or unenforceable to any extent such provision shall be severed from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

17. **CHOICE OF LAW**

The laws of England shall apply to these Conditions and the Customer agrees to submit to the exclusive jurisdiction of the English Courts in the event of any disputes.

18. **NOTICE**

Any notice given under these Conditions shall be given in writing by first class pre-paid post or by fax addressed to the other party's principal or registered office and shall be deemed to be served 48 hours after the date of posting or when received in the case of fax.

19. **DATA PROTECTION**

The company is notified with the Information Commission in accordance with the Data Protection Act 1998 ("the Act") and will only process personal data (as defined by that Act) in accordance with the Act.

- (i) The Company carries out credit reference checks in relation to each of the Customer's directors (or partners or individuals holding equivalent roles in the Customer, as applicable) and the Company reserves the right to refuse any order for Products on the basis of the result of such credit search.
- (ii) The Company will, from time to time, issue promotional material to the Customer and invite the Customer to attend product launches which the Company thinks will be of interest to the Customer. The Company will not issue such material or invitations if the Customer so requests, by contacting the Publicity Manager 01869 363636.

20. **THIRD PARTY RIGHTS**

Nothing in this agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999.



E. P. BARRUS LIMITED

Launton Road, Bicester, Oxfordshire, OX26 4UR
Telephone: 01869 363636 Fax: 01869 363660

TERMS AND CONDITIONS OF SALE ("The Conditions")

1. **PARTIES**

- (i) E. P. BARRUS LIMITED ("the Company")
- (ii) THE CUSTOMER which expression shall mean any buyer or potential buyer of the Company's products and also any person, firm, body or company at whose request and/or whose behalf the Company undertakes any business, or provides advice, information or services ("the Customer"). Where such Customer act or purports to act as agent he shall nevertheless be responsible to the Company in accordance with these Conditions for any liability arising in respect of such business information or services jointly and severally with his principal.

2. **TERMS**

Except as otherwise specifically agreed in writing by the Company, any order accepted by the Company whether or not it is based on or results from any quotation given by the Company, is deemed only to incorporate these terms and conditions which shall override and exclude all other terms, provisions, conditions and warranties representations whether oral or written express or implied (other than any condition or warranty implied by English Law the exclusion or restriction of which is prohibited void or unenforceable thereunder), even if included in or referred to in any document of the Customer. Any terms or conditions stipulated by a Customer which are in rejection of, in addition to, or inconsistent with these Conditions and any others agreed to in writing by the Company shall be deemed to be a counter-offer to the Company and shall not be binding upon the Company save as agreed in writing by it. If the Company rejects or does not accept such counter-offer, then such rejection or non-acceptance shall be deemed to be a renewed offer to proceed on these Conditions and any others so agreed by the Company and accordingly performance by the Company shall in such event be deemed to be so governed.

3. **PRICE**

Unless otherwise agreed in writing by the Company, the Company reserves the right to vary the price quoted for products supplied by the Company ('the Products') in accordance with the Company's prices for Products ruling on the day of despatch. Unless otherwise stated all prices are exclusive of Value Added Tax or any other tax applicable to the supply of any products from time to time.

4. **SPECIFICATION AND LIABILITY**

- (i) In placing an order for Products the Customer acknowledges that all information regarding weights, measures, powers, capacities performance and other data relating to products contained in catalogues, price lists, advertisements and other promotional material produced by the Company are approximate only and they are intended to present to the Customer a general guide, the accuracy of which the Customer must test for himself. The Customer acknowledges that to the best of the Company's knowledge and belief the information contained in the said catalogue and other like material is true and accurate as at the date of the printing of the catalogues but that no representation of whatsoever nature has been made to the Customer by the Company or its agents and that the Customer relied upon his own judgement as to the nature and quality of the Products and their suitability for the Customer's purpose.
- (ii) On making a claim that any products are defective, the Customer shall return them or the relevant parts thereof to the Company for inspection at the Customer's risks within the time limit stipulated by any applicable guarantee or warranty or where there are none, no later than twelve months from the date of original purchase. If the Company is reasonably satisfied after such inspection that the Products are defective by reason of faulty materials or workmanship, it will at its discretion either repair the Products or supply equivalent Products to those agreed to be defective, or will pay the reasonable costs incurred by the Customer in repairing any defects in the products. If the Products or part of them are found to be defective the carriage cost of the Customer shall be reimbursed by the Company, provided that such carriage was of comparable nature to the carriage originally arranged by the Company and was otherwise reasonably incurred by the Customer. If after such inspection the Company is not satisfied that the Products are defective, the Customer shall pay a reasonable charge for such inspection. The Company shall in no circumstances incur liability under any of the specific guarantees or warranties given on any Products unless the relevant guarantee or warranty registration card is sent duly completed to the Company within the time limit stipulated or referred to in such guarantees or warranty. For the avoidance of doubt the Customer accepts as reasonable that the Company shall be under no liability whatsoever if the total price payable for the Products has not been paid in full by the Customer and that the total liability of the Company for any Products for which the Customer has paid in full which are defective shall be limited to the cost of the replacement or repair or any defective Product or part thereof and the other necessary and incidental costs relating thereto as specified in this sub-clause and for no other loss or damage whatsoever consequential or otherwise relating to any defects in the Products and that in fixing this limit the Company has had regard to the resources available to it including insurance cover, to meet any liability.

- (iii) Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (iv) The liability of the Company pursuant to sub-clause (ii) above shall not extend to cover Products which are of perishable nature or are generally known to have a limited life and shall not cover any Products which have been inadequately maintained, installed or modified or subject to improper use by the Customer otherwise than strictly in accordance with any written operating instructions provided by the Company or which have been modified or repaired by anyone other than the Company or its authorised agent.
- (v) Subject to sub-clause (ii) above except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable for any loss of anticipated profits, damage to the Customer's reputation or goodwill, loss of expected future business, loss, damage, compensation, costs, expenses or any other liability howsoever caused, whether direct or indirect, consequential or otherwise, and whether suffered by the Customer or by any third party and any other remedy which would otherwise be available in law to such parties is hereby excluded except to the extent that such exclusion is prohibited by any rule of law.
- (vi) A claim in relation to any Products in accordance with these Conditions shall not entitle the Customer to cancel any order, or part thereof, or to refuse to take delivery of, or withhold payment for those Products, or any other products (whether under the same or any other order).

5. MODIFICATIONS

The Company reserves the right to make modifications or improvements in the construction or specification of the Products without notification to the Customer.

6. PAYMENT

- (i) Prices quoted are net unless stated on the invoice to the contrary. Accounts are due for payment by the 21st day of the month following the date of invoice ('the due date') and any balance unpaid after the due date shall carry interest at 8% per annum above the base rate of Barclays Bank Plc. from time to time from the due date.
- (ii) Failure by the Customer to comply with any provision hereof or to make payment in accordance with these conditions, or under any other agreement between the Customer and the Company shall entitle the Company at its option to suspend any, or all further supplies to the Customer, or without prejudice to any other rights it may have under this or any other agreement to terminate this agreement.
- (iii) The Company reserves the right before making any delivery to require payment in cash or security for payment and if the Customer fails to comply with such requirement, the Company may terminate the agreement.
- (iv) The Company shall be entitled to appropriate any payment made by the Customer to any outstanding account whatsoever of the Customer with the Company as the Company may think fit (notwithstanding any purported appropriation by the Customer).
- (v) The Company reserves the right to levy an administration charge of £40 each time a payment is returned by the customers bankers.
- (vi) All prices are exclusive of Value Added Tax and this will be charged at the applicable rate and recoverable as part of the price by the Company.

7. DELIVERY

- (i) Delivery may, at the option of the Company, be made at the Company's premises or by the Company's representatives or by any carrier instructed by the Company. Any dates given for the delivery are estimated approximate dates only and unless otherwise expressly agreed in writing by the Company, time is not of the essence for delivery. The Company will not be liable for the consequences of any delay in delivery or failure to deliver if the duration of the delay is not substantial or if the delay or failure is due to Act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere), hostilities, shortage of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors governmental order or intervention (whether or not having the force of law) or any other cause whatsoever beyond the Company's control or of any unexpected or exceptional delay.
- (ii) No delay for whatsoever reason shall entitle the Customer to reject any delivery or any further installment or part of any order or other contract or order from the Customer to the Company or to repudiate any such order or contract.
- (iii) Notwithstanding that title to the Products may not have passed, the risk in the Products shall pass to the Customer upon delivery. If the customer fails to take delivery of the Products or fails to give the Company adequate delivery instructions at the time stated for delivery the risk in the Products shall pass at the time when the Company has tendered delivery.
- (iv) (a) Where the Company undertakes to make delivery to the Customer or its premises the Customer shall be obliged within three days of delivery of the Product to report in writing to the Company any loss or damage occurring to the Products. To the extent that any loss or damage is apparent at the date of delivery the Customer is also obliged to give details of the loss or damage on any carrier's delivery sheet.
(b) In the event of non-delivery of products the Customer shall notify the Company in writing within fourteen days from the date of the relevant invoice.
(c) If the Customer fails to adhere to its obligations in (a) or (b) above the Company shall not be responsible for any partial or total loss or damage or non-delivery of the Products.

- (v) In the event of short delivery the Company's liability shall be limited to making up the delivery or allowing credit in respect thereof.

8. PROPERTY IN THE PRODUCTS

- (i) The risk in the Products passes to the Customer as in clause 7 hereof.
- (ii) Title in all Products supplied or sold under these Conditions shall be retained by the Company until all sums due on any account whatsoever from the Customer to the Company have been received by the Company either in cash or cleared funds. Until such payment the Customer shall keep the Products separate from those of the customer and third parties and properly stored, protected and identified as the property of the Company and as bailee on behalf of and in a fiduciary capacity for the Company. If any indebtedness on any running account between the Company and the Customer is from time to time reduced to nil this reduction shall not be deemed to have passed title to any Products still in the possession of the Customer at the time of any subsequent default in payment by the Customer.
- (iii) Pending the sale of the Products and the payment of the purchase price and the other monies pursuant to clause 8, (ii) above the Customer shall keep the Products insured in the amount of the price at which the Products were supplied to the Customer against all insurable risks.
- (iv) If the Products are destroyed by an insurable risk prior to the Customer making payment in full for the Products or any of them, the Customer shall receive and hold the proceeds of any insurance monies relating to such Products as trustee for the Company.
- (v) On the disposal of the Products by the Customer prior to the payment in full of the purchase price (which the Customer shall be entitled to do in the ordinary course of its business as the fiduciary agent of the Company) the Customer shall be liable to account to the Company for that part of the proceeds of sale thereof ("the Company's part of the proceeds") which is equivalent to the price at which the same were invoiced by the Company to the Customer. The Customer shall, as fiduciary agent for the Company, pay the Company's part of the proceeds into a separate bank account clearly denoted as an account containing monies deposited for the benefit of the Company by the Customer acting in a fiduciary capacity and shall ensure that such account is never overdrawn. Any such sub-sale by the Customer shall as between the Customer and the Company be effected by the Customer as agent for the Company but as between the Customer and the sub-purchaser shall be effected by the Customer as principal. Upon request by the Company the Customer shall supply the Company with details of any sub-sale and shall assign to the Company any claim or right of action it may have against a sub-purchaser.
- (vi) If Products the property of the Company are admixed with products the property of the Customer or are processed with or incorporated therein the product thereof shall become and shall be deemed to be the sole and exclusive property of the Company until all sums due on any account whatsoever from the Customer to the Company have been received by the Company either in cash or cleared funds, and shall be kept separate from the Products belonging to the Customer and third parties and the Company shall be notified of the location thereof.
- (vii) Until such time as the title in the Products passes to the Customer (and provided the Products have not been resold) the Company shall be entitled in addition to any and all other rights available to it at any time to require the Customer to deliver up the Products to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Products are stored or are thought to be stored and repossess the Products and, if the Customer has failed to make payment by the due date, also to sue the Customer for non-payment.
- (viii) For a saleable product which is authorised to be returned to the Company as no longer required, or returned for any other reason not due to the condition of the Product (including collection by the Company, or its agents for non-payment), the Company shall be entitled to recover a handling charge of up to 33% of the invoiced selling price of the units in question, and up to 50% of the invoiced selling price of the spares in question.
- (ix) In the event of the Company and/or the Company's Agents recovering possession of any of the Products in the circumstances referred to in sub-paragraph (vii & viii) above the Company shall be entitled to resell the Products.
- (x) The Customer shall not be entitled to assign pledge or charge by way of security for any indebtedness any of the Products or any invoice for the Products which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

9. RIGHT TO WITHDRAW PRODUCT

The Company reserves the right to withdraw the sale or distribution of any products without prior notification to or liability to the Customer.

10. REPAIRS AND TESTS OTHER THAN THOSE AT THE COMPANY'S OWN WORKS

Save where the Company has otherwise incurred liability hereunder all tests and all work or repairs carried out by the Company or its servants or its agents shall be at the sole cost and risk of the Customer.

11. HEALTH AND SAFETY AT WORK ACT

The attention of the Customer is drawn to Section 6 of the Health and Safety at Work Act 1974. Notwithstanding anything herein contained where the Company provides the Customer with information about the use for which goods