

**MARTON GEOTECHNICAL SERVICES LTD****CONDITIONS OF BUSINESS****1. General Applicability**

Unless otherwise expressly agreed by the Company in writing, these Conditions shall apply to all contracts for the supply of goods, equipment and/or services entered into by the Company and no servant or agent shall have the power to alter or in any way vary these Conditions. Any attempt by any purchaser to vary these Conditions or to substitute alternative Conditions whether in writing or otherwise shall be of no effect.

**2. Acceptance of order**

All quotations given by the Company are made in good faith. Any order received by the Company whether pursuant to quotation or otherwise and whether verbal or in writing shall be deemed to be an offer to contract. No valid and binding contract shall be effected until the Company shall have despatched its written acceptance of the order to the purchaser.

**3. Quotations**

All quotations are made subject to the availability of materials. Quotations are submitted on the condition that if a purchaser makes an order pursuant to such quotation all necessary licences, permissions and consents required in relation to the execution of the contract work shall be obtained at the instigation and cost of the purchaser.

**4. Prices**

(1) All prices stated in any quotation or contract are based on rates, costs and conditions of labour, costs of materials, fuel and transport obtaining at the date of quotation or acceptance of order (whichever is the earlier). Unless otherwise specifically agreed in writing by the Company, prices may be subject to alteration at the date of despatch of the goods from the Company's works if there has been an alteration in such direct costs to the Company.

(2) Unless otherwise expressly stated, all prices quoted are exclusive of Value Added Tax and any other tax or duty relating to the performance of the contract and do not include transport or handling costs. All goods are sold 'ex-works' unless otherwise stated.

(3) If the Company agrees to deliver goods to the purchaser's order then: (a) unless otherwise agreed all costs of carriage and/or insurance and/or freight shall be for the account of the purchaser; (b) the Company reserves the right to make arrangements in respect of delivery but shall not be liable for any delay in delivery due to a cause beyond its control.

(4) Orders placed with the Company for goods will be subject to a minimum charge of £5.00 net value excluding V.A.T. and delivery charge.

**5. Suitability for purpose**

It shall be the purchaser's responsibility to assess the suitability of the goods for the purpose, for which they are to be used, and no guarantee or representation is given or to be implied as to the suitability of the goods for any particular purpose, even when the goods are manufactured to the purchaser's special instructions.

**6. Cancellation**

In the event of cancellation of the whole or any part of any order the purchaser shall pay such charges as the Company deems necessary to recover its costs and expenses incurred. Goods manufactured to order shall be paid for in full.

**7. Terms of payment**

(1) Unless otherwise stated, all prices are net and shall not be subject to any discount. Subject to purchaser's credit being approved by the Company. Net monthly accounts are due for payment not later than the last day of the month following the month of despatch. In all other cases payment must be received by the Company prior to despatch. (2) Where deliveries of goods are spread over a period, each consignment will be invoiced or despatched as a separate item and each month's invoices will be treated as a separate account and be payable accordingly. (3) If and so long as the purchaser is in arrears with any payments due hereunder or where there are genuine doubts as to the purchaser's ability to meet his financial commitment under a contract, the Company may without liability suspend further deliveries of goods and/or performance of work both on the same order and on any other order for the same purchaser until such time as payment is made or satisfactory security for payment has been provided without prejudice to any other rights which the Company may have. The Company also reserves the right to charge interest on overdue accounts at the rate of 5% over the Base Lending Rate of Barclays Bank plc from time to time in force.

**8. Delivery Dates**

(1) All delivery dates quoted or specified in the Contract are estimated only and unless otherwise agreed by the Company in writing, time shall not be of essence of the contract. Lead times shall be computed from the date of the Company's acceptance of order. (2) The Company shall not be liable in any circumstances for delay caused by the purchaser in giving detailed instructions on approval of drawings, diagrams or specifications or by variations requested by the purchaser or by delays on the part of third parties supplying goods and/or materials to the Company (whether or not nominated by the purchaser). (3) The Company will make every reasonable endeavour to supply goods at any times or dates agreed, which times or dates will be estimates only calculated on existing and material supply availability, but will not accept cancellation or be liable for any loss or claim alleged to have arisen from any delay howsoever caused.

**9. Delivery**

(1) Save where stated to the contrary, delivery of goods shall be 'ex-works'. (2) Where the Company agrees to arrange for delivery elsewhere using a carrier or other third party for the purposes of delivery then unless the Company agrees otherwise in writing: (a) where goods are sold F.O.B. the Company's responsibility shall cease when the goods are placed on board ship to the need to give notice to the purchaser and the provisions of Section 32 of the Sale of Goods Act 1979 shall not apply; (b) in other cases, the Company's responsibility shall cease when the goods are put in charge of the carrier. (3) Where goods are delivered by the Company transport it is done so on the understanding that the delivery point is on hard roads and that the purchaser is responsible for off-loading and storage thereof. (4) The Company and its servants and all persons authorised by the Company shall at all times have full and free access to the land and premises of the purchaser by routes convenient to the Company and uninterrupted occupation thereof for the purpose of delivering the goods and carrying out any works related thereto with or without vehicles of all descriptions unless otherwise specifically agreed in writing. If in the event of access to the site being unsuitable or the purchaser's labour not being available to unload the goods, the goods will be returned to the Company's works and hauling and handling costs will be charged for. (5) The purchaser must provide his own labour for assisting with unloading the goods and must arrange to unload the goods and release the Company's vehicle expeditiously. A charge may be made for any excessive waiting time. Any loss damage or delay occasioned on or after unloading shall be the responsibility of the purchaser, even if the Company's driver provides assistance. (6) No claim for defective goods will be entertained unless written notice is given to the Company within 7 days of delivery, followed by a full claim in writing within 7 days thereafter. All goods in respect of which a claim is made must be preserved intact as delivered for inspection by the Company. The Company's liability in respect of such claims shall be limited to free replacement, or at the option of the Company, to refund of purchase price. No claim shall be entertained in respect of work done by the purchaser or for any loss damage or expense whatsoever arising directly or indirectly from such defects.

**10. Force Majeure**

The Company shall be under no liability if it is unable to carry out any provision of any contract (including delays in delivery) for any reason beyond its control including without prejudice to the generality of the foregoing Act of God, fire inclement or exceptional weather conditions, official or unofficial industrial action (whether at the Company's premises or elsewhere), hostilities, shortage of labour, materials, power or other supplies, governmental order of intervention

(whether or not having the force of law) or any other cause whatever beyond the Company's control or of an unexpected or exceptional nature.

**11. Warranty: Limit of Responsibility**

(1) The Company warrants in relation to goods of its own manufacture that it will (at its own discretion) either repair or replace, or refund the full purchase price for any goods which are found within a period of 12 months from the date of despatch of such goods from the Company's works ("the warranty period") to be defective or not in accordance with the contract or any express description or representation given or made on behalf of the Company in respect of such goods. (2) The Company warrants in relation to goods not of the Company's manufacture (including but not limited to parts and components supplied by others for goods manufactured by the Company) that it will so far as it is able to do so give the purchaser the benefit of any express guarantee or warranty by the manufacturer or supplier of such goods and of any other rights which the Company has against the manufacturer or supplier in respect thereof. (3) The purchaser's remedies in respect of any claim under the foregoing express warranty or against any manufacturer or supplier as aforesaid or any claim under any condition or warranty implied by law or any other claim in respect of the goods or any workmanship in relation thereto Whether or not involving negligence on the part of the Company shall in relation to goods of the Company's manufacture be limited to repair, replacement or refund of the purchase price as aforesaid and any condition or warrant implied by law shall cease to apply after the expiry of the warranty period and in all other cases be limited to the enforcement of the above mentioned liabilities of the manufacturer or supplier. (4) The Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. (5) In particular (without prejudice to paragraph (4) of this condition) the Company shall not be liable for any costs of dismantling or re-assembling any structure of equipment to remove any goods alleged to be defective or not in accordance with the contract or any description or representation as aforesaid or for any other removal costs or for any transport costs in relation to such goods. (6) The foregoing rights of the purchaser shall only be enforceable where it is shown that the goods have been abused or subjected to excessive use, have not been used, installed or stored otherwise than in accordance with the Company's or any Suppliers or manufacturers instructions or recommendations and have been properly tested in accordance with any such instructions or recommendations, have not been used or installed otherwise than in accordance with good engineering principles or recognised standards and have not been used in unsuitable environment or application. (7) A claim in relation to any goods in accordance with any of the foregoing provisions will not entitle a purchaser to cancel the contract or any part thereof or to refuse to take delivery of or pay for goods or any other goods (whether under the same or any other contract).

**12. Loss or Damage in Transit**

The risk in the goods passes to the purchaser when the goods are despatched from the Company's works and the Company accepts no responsibility for any damage, shortage or loss in transit. Claims for any damage, shortage or loss in transit should be made on the carrier, and any condition imposed by the carrier in relation to claims for damage, shortage or loss in transit should be complied with. Claims for damage, shortage or loss in transit where the Company's own transport has been used must be made in writing within 48 hours of goods being received by the purchaser.

**13. Title to Goods**

(1) The goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the purchaser shall have paid the Company the agreed price together with the full price of any other goods the subject of any other contract with the Company. Until all outstanding payments have been made, the purchaser acknowledges that he is in possession of the goods solely as a fiduciary for the Company. (2) The Company may for the purpose of recovery of its goods enter upon any premises where they are stored or kept or where they are reasonably thought to be stored or kept and may repossess the same and sever the goods from anything they are attached to without being responsible for any damage caused. Until such time as the purchaser becomes the owner of the goods, he will store them on his premises separately from his own goods or those of any person, and in a manner which makes them readily identifiable as the goods of the Company. Such repossession shall be without prejudice to the obligations of the purchaser to purchase the goods. (3) The purchaser is licensed by the Company to agree to sell on the goods, subject to the express condition that the entire proceeds thereof are held in trust for the Company and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's monies. (4) If goods the property of the Company are admixed with goods the property of the intending purchaser or are processed with or incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Company. If goods the property of the Company are admixed with goods the property of any person other than the intending purchaser, or are processed with or incorporated therein, the produce thereof shall become or be deemed to be owned in common with that other person.

**14. Risk**

(1) The goods shall be at the risk of the purchaser from the first delivery of the goods to the purchaser or to any agent, employee or representative of the purchaser notwithstanding any subsequent return or retaking or possession by the Company. (2) Whilst the goods are in the possession of the purchaser before the property in the goods has passed to the purchaser, the purchaser shall at his own expense keep the goods in the same condition as that in which they were delivered and make good any damage or deterioration. (3) Section 32(3) of the Sale of Goods Act 1979 shall not apply to any agreement to which this Clause is incorporated.

**15. Defaults**

If the purchaser shall default in or commit any breach of any of its obligations to the Company, or if any distress or execution shall be levied upon the purchaser or if the purchaser shall enter into any negotiations, arrangements or composition with its creditors, or commit any act of bankruptcy, or if any petition in bankruptcy shall be presented against it, or if the purchaser is a corporate body, any resolution is proposed or presented to wind up the purchaser, or if a receiver of the purchaser's assets or undertakings or any part thereof shall be appointed, the Company shall be entitled to determine forthwith any agreement then subsisting without prejudice to any other claim or right the purchaser may make or exercise.

**16. Patents**

The purchaser 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 or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the purchaser's instructions whether expressed or implied.

**17. Non Standard and Special Orders**

Where a purchaser orders goods or materials of a type, size or quality not produced by the Company in the ordinary course of its business, the Company will use all reasonable endeavours to execute the order. If it subsequently proves impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the incomplete balance thereof, in which event the purchaser will only be liable to pay for such part of the contract as has been performed. The purchaser will be responsible for costs of materials and labour incurred by cancellations, or design changes, once the order has been accepted.

**18. Return of Goods**

Goods designated as standard stock by the Company will at the Company's discretion be accepted for return to stock subject to being in appropriate condition and to a minimum handling charge of 27% provided always that such goods were originally purchased from the Company and that prior notice of intention to return is given. In such cases the purchaser shall be obliged to provide full details of supply date and associated documentation. In all cases the Company reserves the right to refuse to re-purchase goods.

**19.**

**Applicable Law** All contracts to which these Conditions shall apply shall in all respects be governed by and construed in accordance with the Laws of England and the purchaser hereby agrees to submit to the non-exclusive jurisdiction of the English Courts.