

## TERMS AND CONDITIONS OF SALE

### 1. Acceptance of Orders

All orders accepted by the Seller are subject to these Terms and Conditions of Sale and any variation thereof shall have no effect unless the seller makes or agrees to such variation in writing.

### 2. Delivery

- a) Unless otherwise stated carriage and packing are charged extra. A standard carriage and packing charge at the current rate prevailing is applied. Special deliveries are available to the buyer at extra cost.
- b) The seller shall take all reasonable steps to deliver the specified goods within the specified period for delivery (which shall not be of the essence of the contract) but accepts no responsibility for failure to do so and the buyer shall not refuse delivery on the grounds of delay howsoever caused.
- c) The seller reserves the right to deliver in more than one shipment.
- d) Notwithstanding the provisions of conditions 4 hereunder, the goods shall be at the buyer's risk from the time of delivery to him or to any carriers or agent acting on his behalf.

### 3. Payment

- a) Accounts are payable on demand and if payment has not been made to the seller within 30 days of the invoice date, interest shall be paid to the seller at an annual rate of 4% above HSBC plc base rate then applying on the amount outstanding until such amount has been paid..
- b) The seller reserves the right to suspend deliveries where payment is not made in accordance with this agreement or any variation thereof.

### 4. Title of Goods and Buyer's Risk

- a) Risk shall pass to the buyer upon delivery of the goods whence the buyer will be responsible for insuring the goods unless otherwise agreed in writing.
- b) The ownership of all goods shall remain with the seller, until payment in full for all goods has been received by the seller in accordance with the terms of this contract.
- c) If payment is overdue in whole or in part, the seller may (without prejudice to any of its other rights) recover the goods or any of them and resell them and are hereby authorised by the buyer to enter upon the buyer's premises by its servants or agents for that purpose.
- d) Payment shall be due immediately upon the commencement of any act or proceeding in which the buyer's solvency is involved.
- e) Until payment in full for all the goods delivered to the buyer has been received by the seller the buyer shall hold the goods as bailee for the seller and the buyer shall store the goods in such a way that they are clearly the property of the seller and further the buyer shall not without the express consent of the seller in writing be entitled to sell the goods on and/or incorporate them in any other article and/or make use of them in any other way.
- f) Pending the passing of the title to the buyer under clause 4(b), and subject to the terms hereof the buyer is licensed as seller to agree to sell on the seller's goods, subject to the express condition that such an agreement to sell shall take place as agents, save that the buyer shall not hold himself out of such and bailees for the seller whether the buyer sells on his own account or not and that the entire proceeds thereof are held in trust for the seller and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the seller's monies. If the buyer has not received the proceeds of any such sale, he will be called upon so to do by the seller, within seven days thereof assign to the seller all rights against the person or persons to whom the buyer has supplied the seller's goods or any part of them.

### 5. Guarantee

- a) The seller's liability for parts not manufactured by the seller shall be limited to such guarantee (if any) as the manufacturers may have given to the seller.
- b) Provided the buyer performs all his obligations under the provisions of these conditions the seller will repair or replace (at the seller's discretion) free of charge, any part or parts which are shown to the seller's satisfaction to be defective due to faulty material or workmanship provided such part or parts shall be delivered to the seller's works in England carriage paid by the buyer within 12 months (or such extended warranty periods as apply to BH,BHS,BHW,BHB and Cone Drive products) of the date of dispatch thereof from the seller's works. The 12 calendar months standard warranty is based upon 8 hours per day operation with a duty factor equal to the application and not less than 1.0 and represents the maximum warranty period. If the goods have been regularly used for more than 8 hours per day the warranty period will be decreased proportionally.
- c) Any claim under these warranties must be made in writing to Brown Europe within 30 days of the discovery thereof. Brown Europe's obligation under these warranties shall be limited to the repair or replacement at the company's option, of the product or any part thereof when the company has determined the product is not as warranted any product or parts repaired or replaced pursuant to this warranty will be warranted for the remainder of the original warranty period.
- d) Save as aforesaid:
  - (i) the goods are sold without specific warranty as to quality or performance ability;
  - (ii) the seller is not liable for loss or damage (other than injury) whether or not the goods are of merchantable or any other quality or are fit for any particular purpose or are otherwise in conformity with the contract or any representation made in respect of them.

**6. Limitation of Liability of the Seller**

- a) The seller shall not be responsible for discrepancies, errors or omissions in its quotations, analysis, drawings, data specifications or information prepared by the seller utilising or incorporating all or any plans, data or information supplied by the buyer.
- b) The seller shall not be liable for any loss or damage whatsoever (including consequential loss or damage) in any way suffered by the buyer or any other person, firm or company whatsoever by reason of the fact that the seller may have inspected, advised or approved plans, data or information supplied by or on behalf of the buyer whether or not prior to the date of the seller's quotation and the buyer shall at all times indemnify and keep indemnified the seller against all losses, claims, damages, charges, expenses and injury (including death) suffered by any person or loss of or damage to property belonging to any person, firm or company which the seller, its sub-contractors or their respective employees may be liable or deemed to be liable whether or not caused by the negligence, wilful misconduct or breach of warranty of the seller, its sub-contractors or employees.

**7. Pricing and Quotations**

All quotations are made without obligation on the part of the seller and all orders received, whether as a result of quotation or otherwise, are subject to acceptance by the seller. The seller reserves the right without notice to alter the price of goods due to circumstances beyond the seller's control and to correct errors and omissions. Unless specifically negotiated and confirmed in writing the seller may at any time in its discretion amend without notice the price for all or any part of the goods that are to be supplied under the contract to the current price for such goods at the time when the same delivered. Where agreed call offs are not adhered to by the buyer, the seller reserves the right to amend the price structure in accordance with the quantities delivered.

**8. Returned Goods**

The return of goods, which are non-stock, i.e. special order, will under no circumstances be accepted. The return of items that can be re-stocked will be accepted only by express prior arrangement with the seller. Where goods are authorised for return a handling charge of at least 40% of the invoice value (excluding carriage and packing) will be levied with a minimum charge of £60; all costs of returned goods shall be borne by the buyer. Any unauthorised returns received by the seller will be sent back to the buyer carriage forward.

**9. Commissioning**

Site visits for service and/or commissioning are not included within the contract and unless specifically negotiated are not options available to the buyer,. However, where such visits are deemed essential they will be charged at the prevailing rate.

**10. Law**

- a) All quotations and contracts in England shall be governed by the Laws of England and any dispute shall be submitted to the jurisdiction of the English Courts.
- b) All quotations and contracts in Scotland shall be governed by the Laws of Scotland and any dispute shall be submitted to the jurisdiction of the Scottish Courts.
- c) If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall remain in full force and effect. The parties hereby agree to attempt (upon the request of the Seller) to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

**11. Product Usage**

In any application where breakage, excessive wear or any other malfunction of a drive train component could result in personal injury, or property damage, a fail safe device capable of stopping and holding the load in the event of such occurrence must be incorporated after the drive train.

**12. CE Marking**

Notice is hereby issued of compliance with the Supply of Machinery (Safety) Regulations (S1 992/3073) in respect of the goods detailed overleaf. These goods must not be put into service until the machinery into which they are to be incorporated has been declared in conformity with the provision of the Directive – Safety of Machinery 89/392/EEC and Amended to 91/368/EEC, 93/44/EEC and 93/68/EEC.