

MICHELL BEARINGS LIMITED : CONDITIONS OF SALE MARCH 2020

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these conditions the following expressions shall have the following meanings:
"Company" – means Michell Bearings Limited, Waldridge Way, Simonside East Industrial Park, South Shields, NE34 9PZ;

"Contract" – means an agreement between the Company and the Customer upon these terms & conditions;

"Customer" – means a party that enters into these terms & conditions as a result of acceptance of a Tender or issuance of a Customer's Purchase Order;

"Customer's Purchase Order" means a purchase order issued by a Customer offering to purchase Goods from the Company, whether or not issued in response to a Tender;

"Goods" means the products either detailed as an appendix to these terms and conditions or detailed in the covering letter and correspondence to which these terms and conditions are implied by reference;

"Order Acknowledgement" – means expressed written acceptance by the Company of a Customer's Purchase Order;

"Point of Delivery" – shall have the meaning as stated in the Tender and/or Order Acknowledgement;

"Proper use" - means compliance with the operating and maintenance manuals and documentation supplied for the goods and any operating duties expressly received from the Customer. When no manuals are supplied, operation and maintenance shall be in accordance with industry best practice;

"Technical Information" – means samples, drawings, descriptive matter, particulars of weights, dimensions and materials, specifications, performance predictions and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or websites relating to the Goods or the processes or methods to manufacture the Goods;

"Tender" – A valid offer to sell Goods made in writing by the Company to a Customer, which is capable of acceptance.

- 1.2 Clause headings are for convenience only and shall not govern the interpretation of these terms and conditions or any Contract.
- 1.3 The masculine includes the feminine and vice versa and words importing the neuter include the masculine and the feminine.
- 1.4 The singular includes the plural and vice versa.
- 1.5 The schedules, annexes, and recitals (if any) to these terms and conditions shall form an integral part of these terms and conditions and any Contract, and shall have effect as if set out in full in the body of these terms and conditions and any reference to these terms and conditions includes the schedules, annexes, and recitals (if any).
- 1.6 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended extended or re-enacted and includes any subordinate legislation.
- 1.7 In these terms and conditions any reference to these terms and conditions or to any Contract or to any other document is a reference to such document as amended at any time (but without prejudice to any prohibition on amending such document). Any reference to an "amendment" includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation and "amend" and "amended" will be construed accordingly.
- 1.8 Any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

2. GENERAL

- 2.1 Subject to any variation specified in any Tender or agreed under clause 2.2, the Contract shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any Customer Purchase Order, confirmation of order, specification or other document).
- 2.2 These terms and conditions apply to all the Company's sales and the acceptance by the Customer of any Tender and/or the placing of any Customer Purchase Order includes the acceptance of these terms and conditions, except so far as the same may have been specifically varied by the Tender or expressly agreed to in writing and signed by an authorised representative of the Company, whether in the Order Acknowledgement or otherwise. Any other purported variation to these terms and conditions shall have no effect. No terms or conditions endorsed on, delivered with or contained in the Customer Purchase Order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract. No representative or agent or advisor of the Company has any authority to vary or add to these terms and conditions except with the Company's official confirmation in writing.
- 2.3 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this clause shall exclude or limit the Company's liability for fraudulent misrepresentation.

3. ACCEPTANCE

- 3.1 Unless previously withdrawn, based upon the reserved right of the Company to do so, the Tender is an offer open for unconditional acceptance for the period stated or, if no period is stated, for the period of 30 days from the date thereof.
- 3.2 The Customer may accept any Tender either by giving notice in writing of such acceptance of the Tender within the period of 30 days or such other period referred to at clause 3.1 above, or through the Customer's conduct constituting deemed acceptance.
- 3.3 Each Customer Purchase Order shall be deemed to be an offer by the Customer to buy Goods subject to these terms and conditions. The Customer shall not be entitled to cancel or suspend any Customer Purchase Order once issued without the consent of the Company.
- 3.4 A Customer Purchase Order shall be deemed to be accepted by the Company when a corresponding Order Acknowledgement is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.
- 3.5 The Customer shall be responsible for ensuring that the terms of its Customer Purchase Order and any applicable specification are complete and accurate, and the Company shall not be liable to the Customer for any losses arising from any errors or omissions in the Customer Purchase Order or any applicable specification.
- 3.6 Any Goods accepted by the Customer (incoherents as specified in clause 12.1) shall be under these terms and conditions (save as specifically varied in accordance with clause 2.2 above). No other terms or conditions of the Customer shall apply.
- 3.7 In the event that anything in clause 2 or this clause 3 or any other clause of these terms and conditions is ineffective to exclude the application of any terms of the Customer from applying to any Contract formed between the Company and any Customer, then in the event of any conflict between these terms and conditions and the terms of the Customer, these terms and conditions shall take precedence and prevail.

4. TIME PERIODS

- 4.1 Time periods stated in any Contract including in relation to despatch, delivery or completion will, unless the context otherwise permits, commence from the later of:
- (a) receipt by the Company of acceptance of a Tender in accordance with clause 3.2;
 - (b) the issue by the Company of an Order Acknowledgement accepting a Customer Purchase Order, pursuant to Clause 2; and
 - (c) receipt by the Company of all necessary information to enable the work under the Contract to be started.
- Such time periods and any dates specified are to be treated as estimates only and shall not be of the essence of the Contract. If no dates are so specified, delivery shall be within a reasonable time.
- 4.2 Subject to the other provisions of these terms and conditions, No delay in commencement or completion of the Contract shall entitle the Customer either to determine or rescind the Contract unless such delay exceeds 180 days or to refuse to perform any of his obligations under the Contract and the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar losses), costs, damages, charges or expenses whatsoever arising directly or indirectly from such delay.
- Date and time periods for payment stated in the Contract shall be of the essence.

5. DRAWINGS AND SPECIFICATIONS

- 5.1 The quantity and description of the Goods shall be as set out in the Tender or the Order Acknowledgement.
- 5.2 All Technical Information submitted is approximate only, and the descriptions and illustrations contained in the Company's catalogues, price list and other advertisements are issued or published for the sole purpose of presenting a general idea of the Goods described therein. Aforesaid descriptions and illustrations do not form part of the Contract and should not be relied

upon as material to the Contract and none of those documents shall form part of the Contract. The Customer acknowledges and agrees that this is not a sale by sample. If the nature of the Customer Purchase Order requires it and if reasonably required by the Customer, a set of certified outlined drawings will be supplied free of charge.

- 5.3 The copyright in all Technical Information, software and other documents provided by the Company shall remain vested in the Company, regardless of marking. The Customer shall not without the prior written consent of the Company disclose to others or use any information received other than for the purposes of installation, operation or maintenance of the Goods.

6. TESTING

- 6.1 If special tests or tests in the presence of the Customer or the Customer's representative are required, these will be charged as extra cost.

7. PERFORMANCE

- 7.1 The Company shall not be liable for the Goods failing to fulfil the quoted performance in any Technical Information unless performance has been specifically guaranteed in writing by the Company as an express special condition of the Contract. In the event of the Goods failing to comply with the terms of any guarantee provided under this clause only, the Customer shall afford the Company a full opportunity of remedying the failure (including allowing a reasonable time period to do so and permitting such access to the Customers premises, employees, records and information as may be reasonably required) and in the event of the Company failing to do so, the Company's liability shall be limited to accepting the return of the Goods and refunding any cash paid by the Customer in respect of such Goods.

8. LIMITS OF CONTRACT

- 8.1 The Company may give advice and guidance to prospective users of its Goods, however given that the Company has no control over the operating conditions under which its Goods are used in respect of the quality, temperature, viscosity, composition and cleanliness of the lubricant, accuracy of alignment, care in fitting, and any other factors having an effect on performance, the Company gives no warranty or representation in respect of the operation of the Goods and will not accept any liability whatsoever in the event that any Goods prove unsuitable for a Customer's application, as a result of the aforementioned factors.
- 8.2 The Contract includes only such Goods as are specified in the Tender and/or Purchase Order. In the event of anything supplied by the Customer being defective, the Customer shall be responsible to the Company for all work and cost occasioned by such defect. Whilst the Customer's property is on the Company's premises it shall remain the property of and shall be at the risk of the Customer. In the event of Goods being used in conditions not originally specified by the Customer, which affect the performance of the Goods and which necessitate modifications to meet the conditions, the Customer shall be responsible to the Company for all work and cost involved.

9. WARRANTY

- 9.1 Subject to the Customer having paid for the Goods, and subject also to notice in writing of any defect or failure being given to the Company (and, if damaged in transit, to the carrier) on discovery, the Company shall, in the case of Goods manufactured by the Company, exchange or repair any defect or failure which, under Proper use, appears therein and arises solely from faulty materials or workmanship of the Company. This warranty period is valid for a period of 6 calendar months from the date the Customer is notified that the Goods are ready for despatch. For the warranty period, this shall be the sole remedy. At the termination of the warranty period, all liability on the Company's part shall cease.
- 9.2 The Company's liability for Goods not manufactured by the Company shall be limited to such guarantee (if any) as shall have been given to the Company.
- 9.3 The Company shall not be liable for a breach of the warranty in clause 9.1 if:
- (a) the Customer makes any further use of such Goods after giving such notice;
 - (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - (c) the Company alters or repairs such Goods without the written consent of the Company.

10. GENERAL LIABILITY

- 10.1 Without prejudice to the provisions of clauses 7 and 8:
- (a) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
 - (b) The Customer shall be responsible for the capacity and performance of the Goods, as ordered, being sufficient and suitable for his purpose.
 - (c) Subject to clauses 10.1(a), 10.1(b) and clause 10.2, the Company shall be under no liability to the Customer whether in contract, tort or otherwise for any loss of profit, loss of business, depletion of goodwill or other economic loss in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) by reason of anything arising out of or in connection with the Contract or done or omitted in connection with the Goods or by reason of any defect in or failure of the Goods.
- 10.2 Nothing in this Contract limits or excludes the liability of the Company:
- (a) for death or personal injury resulting from negligence, or
 - (b) for any damage or liability incurred by Customer as a result of fraud or fraudulent misrepresentation by the Company; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 10.3 Subject to clauses 10.1 and 10.2, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.

11. DAMAGE IN TRANSIT AND NON DELIVERY

- 11.1 When the price includes delivery:
- (a) The Company shall replace or (at its discretion) repair free of charge Goods damaged in transit within a period of time to be reasonably agreed between the Company and Customer, provided that the carriers and the Company are given written notification of such damage within 3 days of delivery, and provided that the Customer returns such Goods at his own expense to the Company's works of origin within 1 month after delivery.
 - (b) The Company shall replace free of charge Goods which are not delivered within a period of time to be reasonably agreed between the Company and Customer, provided that the carriers and the Company are given written notification of such non delivery within 7 days after the date of despatch appearing on the Company's advice note (such advice note having been sent to the Customer not later than 2 days after the date of despatch).
- 11.2 Save as provided in this clause, the Company shall not be liable for any damage to the Goods in transit or for non-delivery.

12. PROPERTY IN THE GOODS AND PASSING OF RISK

- 12.1 Unless otherwise specified the property, title and ownership in the Goods shall pass to the Customer upon complete payment in cash or cleared funds of the Contract price and on payment of all other sums which are or which become due to the Company from the Customer on any account. Risk shall pass to the Customer on delivery (incoherents as specified- where none are specified EXW shall apply) or such other point as may be specified.
- 12.2 If delivery of the goods takes place before property, title and ownership in the Goods has passed to the Customer, the Customer shall until property, title and ownership in the Goods has passed to it:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 12.3 The Customer may not resell the Goods before ownership has passed to it without the prior written consent of the Company.
- 12.4 Any right of the Customer to any possession of the Goods prior to the transfer of property, title and ownership of the Goods to it shall terminate immediately if:
- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether in formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed to its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the

Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - (c) the Customer encumbers or in any way charges any of the Goods.
- 12.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 12.6 The Customer grants the Company, its agents and employees an irrevocable licence at any time until ownership of the Goods has passed to the Customer, to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 12.7 on termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 12 shall remain in effect.

13. TERMS OF PAYMENT

- 13.1 Unless otherwise specified, the Customer shall pay to the Company the whole of the Contract price in full (including but not limited to any applicable taxes or duties) by the last day of the month following that in which delivery is made. If payment of the whole or any part of the Contract price is not made within 30 days after the date due, interest upon the amount outstanding shall be chargeable to the Customer at the rate of 4% above the base lending rate of the Royal Bank of Scotland Plc.
- 13.2 All payments payable to the Company under the Contract shall become due immediately on any termination of the Contract despite any other provision.
- 13.3 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

14. STORAGE

- 14.1 If the Customer shall be unable or unwilling to accept delivery of the Goods within 7 days after notification that the same are ready for delivery, the Company shall be entitled (but not bound) to place the same in storage and to arrange for the insurance of the same at the Customer's risk and expense. Notwithstanding the above, the Terms of Payment specified in clause 13 shall apply.

15. PATENTS

- 15.1 In the event of any claim being made against the Customer in respect of infringement of third party patents, registered designs or similar intellectual property rights relating to Goods to the Company's own design supplied to the Customer hereunder, the Customer shall notify the Company immediately and the Company shall be at liberty with the assistance of the Customer, if required, but at the expense of the Company, to conduct all negotiations in the name of the Customer for the settlement of the same or any litigation which may arise therefrom. Subject to such notification and provided that no such Goods or any part thereof, shall have been used for any purpose other than that for which they were supplied by the Company, the Company shall indemnify the Customer in respect of any sum which the Customer may pay with the consent of the Company to any such claimant, however the indemnity shall not extend so far as to entitle the Customer to recover from the Company any sum exceeding the total Contract price.
- 15.2 Where Goods made at the request of the Customer and supplied by the Company other than to the Company's own design, the Company shall not be responsible for any claims for any infringement of patents, registered designs or similar intellectual property rights in respect thereof and the Customer shall indemnify the Company against any such claims.
- 15.3 In the case of Goods not manufactured by the Company, the Customer will be entitled only to such indemnity in respect of infringement of patents, registered designs or similar intellectual property rights as the Company may receive from the manufacturer and the Company shall not be called upon to bear any liability or expense greater than the amount recovered from such manufacturer.

16. FORCE MAJEURE

- 16.1 The Company shall not be liable to the Customer by reason of its failure to perform any part of this Contract resulting from circumstances beyond its reasonable control including but not limited to: (a) any strike, lockout, work-to-rule or trade dispute relating to the Company or any other person or company which is the direct cause, (b) fire, flood, storm tempest, explosion or destruction of/ affecting our premises or those of any of our suppliers, or sub-contractors, (c) war, blockade, revolution, insurrection, mobilisation, civil commotion, sabotage, (d) prolonged power failure, (e) epidemic or pandemic.

17. ARBITRATION

- 17.1 If at any time dispute shall arise between the Customer and the Company in relation to the Contract then either party may give to the other notice in writing of the existence of the dispute specifying its nature and the point at issue, and the same shall be referred to a single arbitrator to be appointed by the parties or, failing agreement within 90 days of the service of the said notice in writing, to some person appointed by the president for the time being of the Institute of Mechanical Engineers. The seat of arbitration will be London, UK. Arbitration hearings shall take place in London, England or such other place as the Company and the Customer may agree in writing. The language of such arbitration will be English. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any subsisting statutory modification or re-enactment thereof.

18. TERMINATION

- 18.1 Without prejudice to any other remedy:
- (a) The Company reserves the right to terminate or suspend the Contract in the event of any of the said Customer's commitments to the Company not being met or if the Company is of the opinion that the Customer is not in a position to meet such commitments;
 - (b) should the Customer have any reason to suspend or cancel the Contract then the Company reserves the right to make a charge or deduct from monies already received from the Customer all costs which the Company, its suppliers, or sub-contractors have incurred directly or indirectly as a result of suspension or cancellation of the Contract and such other reasonable costs incurred including compensation for loss of profits.

19. ENTIRE UNDERSTANDING

- 19.1 These terms and conditions and the Contract represent the entire Agreement between the Company and Customer relating to the Goods and shall supersede all prior representations, agreements, statements and understandings made prior to the date of the Contract whether oral or in writing other than those representations, agreements, statements and understandings which have been expressly incorporated in the Contract provided that this clause shall not exclude the liability of either party for fraudulent misrepresentation.
- 19.2 It is agreed between the Company and the Customer that these conditions of sale are fully understood by both of them and the price of the Goods sold hereunder and the other terms and conditions set out herein are arrived at in consideration of the Company's express guarantees and the benefits and remedies of the Customer for a breach thereof, as provided for in these conditions, to the exclusion of or limitation of other remedies.

20. ASSIGNMENT

- 20.1 Neither party shall be entitled to assign the Contract or any part of it without the prior written consent of the other party.

21. WAIVER

- 21.1 No failure on the part of either party at any time or from time to time to enforce or to require the adherence and performance of any of the terms and conditions of this Contract shall constitute a waiver of such terms or conditions and/or affect or impair such terms or conditions in any way or the right of either party at any time to avail itself of such remedies as it may have for each and every breach of such terms and conditions.

22. SEVERABILITY

- 22.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

23. RIGHTS OF THIRD PARTIES

- 23.1 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

24. LEGAL CONSTRUCTION

- 24.1 The Contract shall in all respects be construed and operate as an English contract and shall be governed by English law and the Company and the Customer submit to the exclusive jurisdiction of the English courts.