

General terms of supply

Interpretation

In these Conditions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Buyer: Is the person who accepts GEMA's quotation or whose order is accepted by GEMA.

Conditions: Are these conditions of sale and (unless the context otherwise requires) includes any special terms on the face of GEMA's quotation or acceptance of the Buyer's order.

Contract: Is the contract for the purchase and sale of the Goods and/or supply of services.

Goods: Are the goods which GEMA is to supply.

1. Description of supply

Subject to GEMA's quotation, all Goods are sold and services supplied subject to these Conditions to the exclusion of any other terms and conditions. No order submitted by the Buyer shall be deemed to be accepted by GEMA unless and until confirmed in writing by GEMA. The Buyer is responsible for ensuring the accuracy of the terms of any order and for giving GEMA any necessary information within a sufficient time to enable GEMA to perform the Contract. No variation to these Conditions shall be binding unless agreed in writing by a General Manager of GEMA.

GEMA's employees or agents are not authorised to make any representations unless confirmed by GEMA in writing. The Buyer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or the right to rescind the Contract for any such representations which are not so confirmed (unless such representations were fraudulently made).

Any advice or recommendation given by GEMA or its employees or agents to the Buyer or its employees or agents which is not confirmed in writing by GEMA is followed or acted upon entirely at the Buyer's own risk and GEMA shall not be liable for any such advice or recommendation which is not so confirmed.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by GEMA shall be subject to correction without any liability on the part of GEMA.

Any specifications or drawings supplied remain GEMA's sole property and are subject to recall at any time before GEMA's quotation is accepted. Any drawings supplied are not to be used for construction purposes. Where GEMA's quotation includes a drawing reference, copy of any approved prints or equipment data sheets, these must be signed by the Buyer and must accompany the equipment purchase order.

Before signing the prints the Buyer shall check equipment size, location of building, and all interferences as shown on the drawings, data sheets etc and clearances and note clearly and comprehensively any changes or interferences on the prints.

If Goods are to be made or any process is to be applied in accordance with a specification, drawing or design submitted by the Buyer, the Buyer shall indemnify GEMA against all loss, damages, costs and expenses awarded against or incurred by GEMA in connection with or paid or agreed to be paid by GEMA in settlement of any claim for infringement of any third party rights which results from GEMA's use of such material.

If any claim is made against the Buyer that the Goods supplied or their proper use infringe the intellectual property rights of any other person, GEMA shall indemnify the Buyer against all damages, costs and expenses awarded against the Buyer in connection with the claim provided that:

- GEMA is given full control of any proceedings or negotiations in connection with any such claim;
- the Buyer shall pay to GEMA all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- without prejudice to any duty of the Buyer at common law, GEMA may require the Buyer to take such steps as GEMA may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which GEMA is liable to indemnify the Buyer under this condition.
- The quantity and description of and any specification for the Goods or services shall be those set out in GEMA's quotation (if accepted by the Buyer) or GEMA's acceptance of the Buyer's order.

An order once accepted by GEMA may only be cancelled with its written agreement and the Buyer shall indemnify GEMA in full against all loss (including loss of profit), costs (including labour and materials) and damages incurred by GEMA.

2. Payment and Price

Payment shall be made in accordance with GEMA's quotation.

GEMA may recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed. The time of payment shall be of the essence of the Contract.

GEMA may charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above the base rate from time to time of The Royal Bank of Scotland until payment in full is made.

If the Buyer fails to make any payment when due or breaches any provision of the Contract; or GEMA reasonably apprehends that the solvency of the Buyer may be in jeopardy GEMA may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

The price shall be GEMA's quoted price (or if a quoted price is no longer valid), the price stated in GEMA's acknowledgement of order. Prices are ex works. Any applicable value added tax or other taxes or duties are payable by the Buyer in addition.

GEMA may, by giving notice to the Buyer at any time before delivery, increase the price to reflect any increase in the cost to GEMA which is due to any factor beyond the control of GEMA.

3. Delivery

The method of delivery shall be in accordance with GEMA's quotation and unless otherwise stated in GEMA's quotation at the Buyer's expense and risk. Whenever the Goods received prove to be damaged or a discrepancy is detected compared to the quantity indicated in the transport documents, the Buyer shall record the corresponding exceptions on such documents and shall simultaneously and immediately communicate them in writing to the carrier and to GEMA. All the notifications given more than the 24 hours from delivery shall be ineffective. The Buyer must obtain any import or export licences required.

Any dates given for delivery of the Goods or provision of services are approximate only and GEMA shall not be liable for any delay howsoever caused. Time for delivery or performance shall not be of the essence.

The Goods may be delivered in instalments. Each delivery shall constitute a separate contract and failure by GEMA to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

If the Buyer fails to take delivery of the Goods or fails to give GEMA adequate delivery instructions within 14 days of their availability GEMA may:

- store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage; or
- sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer for the excess over sums owing by the Buyer or charge the Buyer for any shortfall

The Buyer shall, at its own risk, unload the Goods and store them close to the point of erection, provide safe and convenient storage room for tools and materials, provide adequate work room for GEMA personnel, give proper care to and provide insurance against loss by fire and theft for all materials and equipment prior to, during and after installation.

Where GEMA arranges forwarding of the Goods, the Buyer shall notify GEMA and the carrier in writing within 48 hours of delivery of any damage to the Goods or shortage in delivery.

The Buyer shall inspect the Goods on receipt and notify GEMA of any defects within 7 days of delivery failing which the Buyer shall be deemed to have accepted them. After acceptance the Buyer shall not be entitled to reject Goods. The Buyer shall not be entitled to reject the Goods for any defect or failure which is so slight that it would be unreasonable to reject them.

4. Variations

GEMA reserves the right to make any changes in the specification of the Goods (including materials and components) which are required to conform with any applicable law or, which do not materially affect their quality or performance.

5. Installation and test

Unless otherwise stipulated in writing, the installation, the assembly, the start-up and the testing of the Goods are excluded. Where the Contract envisages that staff supplied by GEMA should participate in the said activities, the Contract shall indicate the duration envisaged for their execution. In the event that the actual duration of the works exceeds the contemplated one, the Buyer shall pay, for each additional day and for each of the technicians supplied, the standard tariffs of GEMA.

However, even in the event that it has supplied staff for the execution or supervision of the works, GEMA shall to the extent permitted by law incur no liability for damages, accidents, injuries and their like.

The Buyer shall obtain all necessary licences, permits and permissions.

The Buyer shall clear the site for installation and make it ready for the reception of the Goods. The Buyer shall keep the site free from water, debris and obstructions, and make required alterations to buildings and other equipment if required for the proper clearance and support of the Goods.

The Buyer shall ensure that GEMA shall not be delayed by the operations of others (including the Buyer) or the Buyer's failure to provide the conditions and facilities required. If such delays cause extra visits by GEMA, these will be charged in addition.

The Buyer shall provide the necessary foundations required, carry out cutting away and making good, and grouting in foundation bolts etc, and will provide a level concrete floor for the plant of adequate strength. The Buyer shall be entirely responsible for the exact siting of the Goods to meet the Buyer's requirements.

All gas, water, electrical and compressed air services (including interconnecting wiring) shall be provided by the Buyer. All building work such as cutting holes etc for stacks are to be undertaken by the Buyer.

If GEMA undertakes any of the work detailed in the previous paragraphs to complete installation, such work shall be charged in addition and GEMA shall not be responsible for any consequential damage.

The Buyer shall follow GEMA's instructions on operation and maintenance. GEMA accepts no responsibility for unsatisfactory results due to use of coating materials not recommended in writing by GEMA or whose composition or quality when supplied is different from that tested by GEMA when giving its recommendation.

The Goods shall be deemed to have been accepted at the earlier of:

- When installation has been completed and the Goods have passed or are deemed to have passed all tests provided for in GEMA's proposal; or
- One calendar month after the Goods shall have been put into use.

The time of acceptance shall not be delayed because of additions, minor omissions or defects which do not materially affect the use of the Goods or if the Buyer is preventing GEMA from completing the Contract.

6. Warranty

GEMA warrants that it holds unencumbered title to the Goods and will perform services with reasonable skill and care.

GEMA warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for 12 months from date of the set-up, in any event at most 3 months after the notification of ready goods or the delivery of the Goods, even if they have not been commissioned due to any cause. The duration of the warranty period shall be calculated based on operativeness over 1 daily shift. The warranty period shall be halved in the event of operativeness over 2 or 3 daily shifts.

This warranty does not apply to any defect:

- arising from any drawing, design or specification supplied by the Buyer;
- arising from fair wear and tear, improper use, storage or installation or maintenance, failure to follow GEMA's instructions (whether oral or in writing), or alteration or repair of the Goods without GEMA's approval or use of non-original spare parts;
- the failure to achieve certain application results, save where specific application tests have been conducted in a GEMA or GEMA approved laboratory;
- which is not immediately notified in writing to GEMA;
- if any sum owing by the Buyer to GEMA has not been paid;
- in items not manufactured by GEMA, when the Buyer shall only be entitled to the benefit of any such warranty as is given to GEMA by the manufacturer.

GEMA shall replace or repair free of charge the Goods (or the part in question) returned to GEMA's factory carriage paid which do not meet the warranty described above or, at GEMA's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but GEMA shall have no further liability to the Buyer. The warranty on replacements or repairs shall be to the end of the original warranty period. Repairs and replacements will be delivered free within the UK and to the nearest port or airport c.i.f. outside the UK.

Subject as expressly provided in these Conditions, all warranties, conditions, representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

7. Safety

The Buyer shall ensure that staff employed in connection with the installation, use, maintenance and cleaning of the Goods are duly qualified and know and observe the rules and regulations on workplace safety, accident prevention and protection of the environment. Prior to commencing any activity, the staff must have read and understood all the files in the use and maintenance manual, particularly the file headed "Safety norms". No operation shall accordingly be undertaken on the Goods prior to having read and understood the technical documentation provided by GEMA. In the event of loss of the aforesaid documentation, or of failure to receive it together with the Goods, the Buyer shall immediately request a copy from GEMA.

8. Utilisation of issued documents and intellectual property

The addresses of GEMA's documents, such as use and maintenance manuals, technical cards, construction drawings and lay-outs, are permitted to utilize the same solely for internal purposes within a corporate scope or in compliance with statutory duties. As a result, no document shall be utilized for any other purposes or divulged to third parties without GEMA's prior written consent. GEMA is the owner of all the rights in the documentation provided. GEMA shall not be liable to third parties who might utilize such documents.

The Buyer hereby authorizes GEMA to insert the name of the Buyer, for reference purposes, in presentations or other promotional material.

9. Liability

The following provisions set out GEMA's entire liability whether arising in contract, tort (including negligence), misrepresentation (other than fraudulent misrepresentation) or otherwise howsoever arising.

AND THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING PROVISIONS OF THIS CONDITION

To the extent the law does not permit such liability to be excluded:

- GEMA's liability to the Buyer for death or injury resulting from its negligence shall not be limited;
- GEMA accepts liability to the Buyer for damage to the tangible property of the Buyer resulting from the negligence of GEMA not exceeding £1,000,000 for any one incident or series of incidents arising from a common cause;
- Save as otherwise expressly provided, GEMA's entire liability shall be limited to damages of an amount equal to the price due under the Contract.

Save in respect of liability to the Buyer for death or injury resulting from GEMA's negligence to the extent the law does not permit such liability to be excluded, GEMA shall not be liable for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special indirect or consequential loss (including loss or damage suffered by the Buyer as a result of a claim by a third party) even if such loss was reasonably foreseeable or GEMA had been advised of the possibility of the Buyer incurring the same.

GEMA shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of GEMA's obligations, if the delay or failure was due to any cause beyond GEMA's reasonable control including (without limitation) flood, fire, accident, transportation delays, strikes, war or threat of war, sabotage, civil disturbance or governmental action, disruption of supplies or services.

Save as otherwise expressly provided, the Buyer shall indemnify GEMA against any cost, claim, expense, loss or liability made by any person in connection with the Goods or their use.

10. Risk and Property

Risk in the Goods shall pass to the Buyer when GEMA notifies the Buyer that the Goods are available for collection or when the Goods leave GEMA's premises, whichever is the earlier.

Notwithstanding any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until GEMA has received in cash or cleared funds payment in full of all sums due under the Contract and all other contracts between the Buyer and GEMA (whether or not the sums due under those contracts are immediately due and payable). Until then the Buyer shall:

- hold the Goods as GEMA's fiduciary agent and bailee, and shall keep them separate from all other goods and properly stored, protected and insured and identified as GEMA's property but may resell or use the Goods in the ordinary course of its business;
- (provided the Goods are still in existence and have not been resold), deliver up the Goods to GEMA on demand
- and, if the Buyer fails to do so immediately, GEMA may enter any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

11. Compatibility of Goods with other products

The Buyer shall follow GEMA's instructions on operation and maintenance. GEMA accepts no responsibility for unsatisfactory results due to use of materials not recommended in writing by GEMA or whose composition or quality when supplied is different from that tested by GEMA when giving its recommendation.

It is known that there are on the market powder paints containing elements that might be incompatible with other powder products. This means that to spray in sequence two or more mutually incompatible types of powder will give rise to situations which, though not a safety danger, may compromise the final result of the painting (pollutions, superficial defectiveness, etc).

It is the user's task to take that into account, use the equipment and booths in an optimal fashion, and attend to the required maintenance so as to always obtain the topmost painting quality. GEMA shall incur no liability for problems caused by failure to observe the foregoing matters.

12. Trade compliance sanctions and/or anti-boycott laws

Gema reserves the right to temporarily suspend or terminate the contract if its execution would violate any Trade Compliance sanctions or Anti-Boycott laws issued by the United States, by the EU, by Switzerland or by any other country. Gema will not be liable to pay any penalty or damages that derive from the suspension or termination of the contract. In case of termination of the contract Gema will return the advanced payments that have been received, after deducting the expenses that have already been sustained

13. General

GEMA may assign its rights and obligations. The Buyer may not assign its rights and obligations.

Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may have been notified by the party giving the notice.

Any notice is deemed to have been received:

- if delivered personally, at the time of delivery; or
- if sent by commercial courier, at the time of signature of the courier's delivery receipt; or
- in the case of pre-paid first class post or recorded delivery, 9.00 am on the second Business Day after posting; or
- in the case of airmail, 9.00 am on the fifth Business Day after posting.

No delay or failure by GEMA in enforcing or partially enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by GEMA shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by GEMA shall be effective unless in writing.

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

These Conditions constitute the entire agreement between GEMA and the Buyer concerning the supply of the Goods and replace and supersede any prior arrangement, understanding, warranty or representation (other than any fraudulent misrepresentation).

GEMA's rights are cumulative and in addition to any rights available to it at common law.

The Contract shall be governed by the laws of England and Wales and, subject to clause, 16.9 the parties submit to the exclusive jurisdiction of the courts of England and Wales. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to the Contract.

Nothing in these Conditions shall limit the right of GEMA to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

No term of this contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

These Conditions are drafted in the English language. If these Conditions are translated into any other language, the English language text shall prevail.

Any notice given under or in connection with the Contract shall be in the English language. All other documents provided under or in connection with the Contract shall be in the English language