

## 1. DEFINITIONS

“Seller” means Ore Sizer (UK) Ltd

“Purchaser” means the person whose order for Goods is accepted by Seller

“Conditions” means the terms and conditions set out in this document and (unless the context otherwise requires) include any special terms and conditions agreed in writing between Purchaser and Seller.

“Goods” means the goods and/or services to be purchased by Purchaser.

“Incoterms” means the international rules for the interpretation of trade terms for the international Chamber of Commerce as in force at the date of the contract and reference to “Ex Works”, “FCA” and other Incoterms shall be interpreted according to those terms.

“Services” means the services that are to be provided by the Seller to the Purchaser pursuant to the Contract

“Contract” means the contract for sale of the Goods and/or Services incorporating these Conditions and arising from the seller’s acceptance of the Purchaser’s order in accordance with Condition 31 of these Conditions.

“Stocked Items” mean the Goods that are manufactured to a standard design and which the Seller normally holds as a stocked item at his premises.

## 2. THE TERMS OF THE CONTRACT

2.1 Acceptance of the Goods by Purchaser indicates unqualified acceptance of the Conditions herein.

2.2 No representative, agent or employee of the Seller has any authority to vary or alter these Conditions except with the Seller’s official confirmation in writing. In entering into the Contract the Purchaser acknowledges that they do not rely on any such representations that are not so confirmed.

2.3 The Conditions herein shall not be affected by any previous dealings between Purchaser and Seller and these Conditions are the only conditions upon which the Seller transacts business and shall be incorporated into the Contract to the exclusion of all other terms and conditions including, without limitation, those of the Purchaser. Each particular Contract shall be regarded as a separate and new Contract having no relation to other contract between Purchaser and Seller.

## 3. SCOPE OF THE AGREEMENT

3.1 A contract shall not come into existence between Purchaser and Seller until Purchaser’s order is accepted by:

3.1.1 Seller’s written acceptance or

3.1.2 delivery of the Goods and Seller’s invoice

3.2 Orders for Goods which have been made by Purchaser will be charged in full unless written notice of cancellation is received within forty two (42) days before the agreed delivery date. If manufacture of the Goods or components has commenced at the date of the notice, Purchaser will still be bound to accept the Goods and pay for them in full. Orders for stocked items may be cancelled by written notice at any time before the Goods are allocated to Purchaser, but if a cancellation notice is received after the Goods have been allocated to the Contract, Purchaser will be liable to pay any expenses incurred by Seller.

## 4. QUOTATIONS AND PRICING

4.1 For the supply of all equipment the quoted price will be the agreed and accepted price for the supply of all goods and equipment as detailed in the current price list available upon request.

4.2 All quotations will clearly display the price agreed for all goods and equipment. This quoted price will be the agreed price and must be paid in full as per the terms of payment detailed on the same quotation.

4.3 In the event of a special agreed or discounted price this will clearly be shown on the quotation. This quoted price will be the agreed price and must be paid in full as per the terms of payment detailed on the same quotation.

4.4 In the event of a special price or discount for multiple goods or equipment this will clearly be shown on the quotation. This quoted price will be the agreed price and must be paid in full as per the terms of payment detailed on the same quotation.

4.5 With reference to any quotation for special prices or discount for the supply of multiple goods or equipment. In the event that without prior written agreement by the Seller the Purchaser, having already accepted goods on this quotation, cancels or refuses to receive delivery of the total goods or equipment as agreed in the quotation, then the full retail price as at the date of the original quotation shall apply to such goods or equipment already supplied and this must be paid by the Purchaser within seven (7) days of receipt of the Seller's invoice.

### 5. WARRANTY

5.1 Seller warrants the Goods will conform to Contract and will be of satisfactory quality and that the Goods will be free from defects in materials or workmanship. The Seller also warrants that Services provided under the Contract will be carried out with reasonable care and skill, this being the only warranty given in relation to Services.

5.2 This Warranty is in lieu of all other warranties, conditions or other terms, express or implied which shall be excluded to the fullest extent permitted by law and constitutes the only warranty of Seller with respect of the Goods and shall comply with the relevant Health and Safety legislation.

5.3 With the exception of that noted below, if within twelve (12) months from date of initial commissioning, but not more than eighteen (18) months from date of shipment by Seller of any of the goods Purchaser discovers that an item of the Goods was not as warranted above and, within 28 days, notified the Seller in writing thereof; Seller shall remedy such non-conformance by, at Seller's option, adjustment or repair or replacement of the item and any affected part of the Goods. Purchaser shall assume all responsibility and expense for removal, re-installation and freight in connection with the foregoing remedies. These obligations and conditions shall extend to replacement parts furnished by Seller hereunder. Seller shall have the right of disposal of parts for which it provides replacements.

Any Goods that are not of Seller's design are not warranted by Seller, and shall be covered only by the express warranty, if any, of the manufacturer thereof. The use of spurious parts will invalidate any warranty that has been given with the Ore Sizer crusher.

This states Seller's total liability relating to the Goods, whether in contract, tort or otherwise, and whether arising out of warranties, representations, instructions, installations or defects from any cause. Seller and its supplier shall have no obligation as to any of the Goods which have been improperly stored or handled or which have not been operated or maintained according to the instructions in the manual of the Seller or its supplier. Process Plant operating, warranties do not apply unless specifically stated within the form of an individual contract.

### 6. PURCHASER DATA

Timely performance by Seller is contingent upon Purchaser's supplying to Seller, when needed all required technical information, including drawing approval, and all required commercial documentation. Purchaser shall pay any extra cost reasonably incurred by Seller due to alteration of the work caused by reason of inaccurate technical information or commercial documentation supplied to Seller.

### 7. PRICES

Contract prices are strictly nett unless otherwise stated. Contract prices are subject to Seller's escalation terms, if any, stated in Seller's quotation. All prices given in the Seller's quotation expire thirty calendar days from the date of quotation, unless withdrawn sooner or otherwise stated. All prices are to be paid in U.K. currency, unless otherwise stated.

### 8. PAYMENT

8.1 Seller's invoices must be paid within the time specified in the Contract as evidenced by the Seller's written acceptance or in the absence of an acknowledgement the Seller's standard terms of 30 days from date of invoice will apply.

8.2 Time for payment shall be of the essence of the Contract and Seller reserves the right to charge interest on overdue payments, at the rate of 5% above the base rate of HSBC plc such interest shall accrue on a daily basis. Payment unless otherwise agreed in writing shall be in pounds sterling.

### 9. RETENTION OF TITLE

9.1 Seller will retain the full legal, beneficial and equitable title of the Goods, until such time as the agreed price of the Goods has been paid in full and cleared funds to Seller by Purchaser

9.2 Notwithstanding that risk in the Goods has already passed (in accordance with paragraph 10.2 below) title in the Goods shall remain with the Seller and shall not pass to Purchaser until the amount due for the Goods and all other money payable by the Purchaser to the Seller on any other amount or under the Contract or any other Contract received by the Seller has been paid in full.

9.3 Purchaser shall be a bailee of the Goods for Seller until title has passed to Purchaser and;

9.3.1 shall store and insure the Goods upon its premises separately from its own goods or those of any other person.

9.3.2 shall clearly mark the Goods so that they are clearly identifiable as the Goods of Seller.

9.4 Purchaser's right to possession of the Goods will cease at the earliest of the following dates:

the expiration of any period of credit in respect of any Goods supplied under this Contract or any other contract between the Seller and the Purchaser.

if being an individual he commits an act of bankruptcy or makes a proposal to his creditors for a composition or does anything which would entitle a petition for a bankruptcy order to be made.

if being a company it does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding up or apply for an administration order.

if Purchaser does or fails to do anything that may in any way imperil the title of Seller to the Goods.

9.5 The Seller its agents and sub-agents will have the right if paragraph 8.4 applies:

9.5.1 to repossess the Goods.

9.5.2 to dismantle the Goods without being liable for any damage caused by so doing.

9.5.3 to use or sell all or any of the Goods.

9.5.4 to terminate without any liability to the Purchaser the Purchaser's right to use sell or otherwise deal with the Goods.

9.5.5 to enter any premises of the Purchaser or any premises where the Purchaser has stored Seller's Goods or Seller believes the Goods to be stored for the aforesaid purposes.

### **DELIVERY**

10.1 Seller shall deliver the Goods to the place (if any) requested by Purchaser, if no such request is made, the Purchaser's works. Where delivery is to be made otherwise than at Purchaser's works, Seller shall convey the Goods to the point requested by the Purchaser who shall be responsible for unloading the Goods. Where delivery is to be made at Seller's works, Seller shall if required load the Goods on Purchaser's vehicle. Seller may deliver the Goods by instalments.

10.2 Risk in the Goods passes when they are delivered to Purchaser whether by being made available at Seller's premises or otherwise as agreed. If a delay in delivery is caused by Purchaser, risk will pass to Purchaser upon the originally agreed delivery date.

10.3 Where any duty or obligation of the Seller or the Contract is dependent on installation, erection or commissioning of the Goods the following provisions will apply.

10.3.1 When Installation, erection and commissioning are provided as part of the Services they shall be deemed completed when they have been completed in accordance with the Purchaser's order, or if the Seller be ready and willing to install, erect and commission the equipment, but is prevented from doing so as a result of the default of the Purchaser.

10.3.2 Erection will be deemed completed when the Goods are available for starting up.

10.4 Any test materials, labour, fuel, power etc. required in testing the Goods during commissioning or subsequently will be at the cost of the Purchaser.

### **11. CARRIAGE AND PACKING**

Upon Goods for purchase within the United Kingdom - unless otherwise stated, prices quoted are unpacked, "ex. works" and carriage is charged extra.

Upon Goods for purchase outside the United Kingdom - unless otherwise stated, prices quoted as F.C.A. at a United Kingdom named terminal by the Seller include packaging in accordance with the Contract

**12. DAMAGE IN TRANSIT**

Where the price quoted includes the cost of delivery by Seller, Seller will be responsible for loss or damage to the Goods in accordance with the respective INCOTERMS

**13. FOUNDATIONS AND ERECTION**

13.1 The Seller accepts no responsibility for sites or foundations or (except when supplied by the Seller) for any frameworks or support for machinery or for compliance with statutory regulations or local by-laws or the fulfilment of any special requirements binding on the Purchaser. The Purchaser is responsible for the proper adaptation of the Seller's designs to the purchaser's own circumstances.

13.2 Prices quoted for erection (other than contracts quoted on a lump sum basis) are based on the Seller's normal working hours and overtime charged extra. Unless specifically otherwise stated in the seller's offer, preparation of a proper site with suitable foundations and thereto, off-loading, storing and protecting materials supplied, the provision of all necessary lifting tackle, fuel, water, oil waste and other stores, and sufficient rough labour and assistance to enable the Seller to proceed with and complete the erection undertaken, and so start and set to work the machinery, are the responsibility of the Purchaser and not the Seller.

13.3 If erection is prevented or impeded by any fault or omission of the Purchaser including failure to advise the Seller of special local conditions the Purchaser shall pay such extra charges as the Seller shall reasonably require.

13.4 Where the Seller provides any labour at the Purchaser's work the Purchaser shall indemnify the Seller against the consequences of any defect or unsuitability of any tackle.

13.5 The Seller may supply its workmen with time sheets to be submitted weekly to the Purchaser who shall check and sign the same and all time sheets signed as correct by or on behalf of the Purchaser shall be conclusive of the correctness of their contents.

**14. DELAYS**

14.1 If Seller suffers delay in performance due to any cause beyond its control, including but not limited to act of God, war, act or failure to act of Government, act or omission of Purchaser, priorities or allocations, fire flood, strike or labour trouble, sabotage, or delay in obtaining from others suitable services, materials, components, equipment of transportation, the time of performance shall be extended by a period of time equal to the period of the delay and its consequences. Seller will give to Purchaser notice in writing of the cause of any delay within a reasonable time after the Seller becomes aware of any such delay.

14.2 Any item of the Goods on which manufacture or shipment is delayed by causes within Purchaser's control, or by causes that affect Purchaser's ability to receive the product(s) may be placed in storage by Seller for Purchaser's account and risk. If Seller is unable to furnish or obtain or continue such storage, Purchaser will on request, provide or arrange for suitable storage facilities and assume all costs and risk in connection therewith.

**15. PROPRIETARY RIGHT**

15.1 Any drawings, data or other documentation, including, but not limited to; information as to price, size type or design, obtained by Purchaser from Seller in connection with Seller's proposal or any resulting contract, shall remain the sole property of Seller. Said drawings, data or their documentation including any parts thereof, will not be transferred to a third party, reproduced, viewed or observed by any other parties without Seller's written consent.

15.2 All drawings, data or other documentation, including any portions or parts thereof, are furnished only for the purpose indicated and Seller hereby retains all custodial, proprietary, parent or other rights it may have therein, including the exclusive rights of use, manufacture or sale

**16. LIMITATION'S OF LIABILITY AND INDEMNITY**

16.1 Seller shall not be liable, whether in contract, tort or otherwise, for loss of use, revenue or profit or the costs of capital or of substitute use or performance, or for incidental, direct or direct, economic loss, special or consequential damages or for any other loss or cost of similar type, or for claims by Purchaser for damages or purchaser's customers. Likewise Seller shall not under any circumstances be liable for the fault, negligence or wrongful acts of Purchaser or Purchaser's employees or Purchaser's other contractors or suppliers.

16.2 Purchaser shall indemnify and hold Seller harmless against all actions, claims or demands by third parties howsoever arising, directly or indirectly, in connection with the use, functioning or state of the Goods, and in particular; but without prejudice to the foregoing, shall indemnify Seller in respect of any liability as a result of a claim against Seller under Part I of Consumer Protection Act 1987 (or any statutory amendment or re-enactment thereof) and Purchaser shall at its own expense take out insurance to cover this indemnity

**17. NOTICES**

Any notice to be given or served hereunder shall be sufficiently given or served if sent by first-class post (by Airmail if to a foreign country) to the office of the addressee of such notice shown in the contract. Any document so sent by post shall be deemed to have been received four days after the time of posting and proof of posting addressed and stamped as aforesaid shall be proof of receipt by the addressee.

**18. GENERAL**

18.1 Each clause and sub-clause in these conditions is separate and enforceable accordingly.

18.2 Assignment may be made only with written consent of both parties.

**19. THIRD PARTY RIGHTS**

A person who is not a party to the Contract (including without limitation any employee, officer, agent, representative or sub-contractor of either party) shall not have any right to enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the seller and the purchaser.

**20. RELEVANT LAW AND JURISDICTION**

20.1 This Contract and any dispute or claim arising out of it or in connection with it shall be governed by and be construed all respects in accordance with English Law.

20.2 All disputes or claims arising out of or in relation to this Contract shall be subject to the non-exclusive jurisdiction of the English Courts to which the parties irrevocably submit.

20.3 The parties agree that the United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to the Contract

**Ore Sizer (UK) Ltd**

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Registered in England No. 2962060