



HAMPSHIRE TOBACCO MACHINERY SERVICES

General Terms & Conditions

TERMS AND CONDITIONS of Spanfair Ltd, T/A Hampshire Tobacco Machinery Services (“the Seller”) whose normal place of business is Unit 5, Hawkes Farm, Common Hill Road, Braishfield, Romsey, Hampshire, SO51 0QJ for the sale of equipment and/or supply of services to any customer (“the Buyer”).

1. DEFINITIONS

In these General Terms and Conditions the following terms shall have the following meanings:-

Agreement: means any agreement concluded between the Seller and the Buyer.

Confidential Information: means the specific contents of the Agreement, and all information and data not already in the public domain which either Party receives from the other Party and which is marked as confidential or the confidential nature of which is known or can reasonably be deemed to be known by the receiving Party. This includes technical, financial and business information, names of actual or potential customers, partners, suppliers or proposed business transactions, reports, plans, computer programs, computer files, designs, models, know-how, and any other information which can be deemed confidential and all documents and records containing such information, relating to the disclosing Party and/or its subsidiaries, group companies or affiliated companies and/or business relations.

Sellers Equipment: means the equipment and/or services as more specifically described in the Agreement which the Seller contracts to sell to the Buyer (including equipment, accessories or spare parts)

Buyer's Equipment: means any equipment of the Buyer or in the Buyer's control (including Seller's Equipment) in relation to which the Seller contracts to provide services.

Equipment: means either Seller's Equipment or Buyers Equipment or both.

Direct Damages: means: (a) reasonable expenses which Buyer would have to incur to make the Seller's performance comply with the Agreement; (b) reasonable expenses incurred by Buyer to determine the cause and scope of the damage, insofar as the determination relates to direct damages within the meaning of the Agreement; (c) reasonable expenses incurred to prevent or to mitigate damages, insofar as the Buyer incurring such expenses demonstrates that these expenses resulted in mitigation of direct damages within the meaning of the Agreement;

Force Majeure: means an exceptional event or circumstance which is beyond the Seller's control that could not reasonably have been foreseen prevented or overcome by reasonable diligence and is not substantially attributable to the Buyer. This includes (but is not limited to) war, hostilities, invasion, rebellion, terrorism, revolution, civil war, riot, commotion, disorder, strike or lockout by persons other than the employees of the Seller, munitions, explosives, ionising radiation or contamination by radio-activity and natural catastrophes such as earthquakes, hurricanes, typhoons or volcanic activity.

Parties/ Party: means the Seller and the Buyer collectively and each of them individually.

2. GENERAL

2.1 These conditions of sale apply to all contracts for the sale of equipment, accessories or related spare parts and services by the Seller to the Buyer.

2.2 No amendment or qualification to these conditions will apply unless expressly accepted and confirmed in writing by the Seller.

2.3 To the extent they are not amended in accordance with 2.2 above, these conditions, the Seller's quotation and the technical specification constitute the entire agreement between the parties relating to the sale.

3. PERFORMANCE

3.1 The Seller shall use reasonable skill and diligence in carrying out services to the Buyer's Equipment but no warranty is given or implied that thereafter the Buyer's Equipment shall at all times operate satisfactorily or without malfunction.

3.2 Performance figures provided by the Seller are given in good faith and are based upon operating experience and, where appropriate, tests conducted in its own works, but the Buyer accepts sole responsibility for the capacity and performance of the Seller's Equipment being suitable for its proposed application.

3.3 Equipment supplied by the Seller is carefully inspected and, where practicable, submitted to the Seller's standard tests prior to leaving the works. Any further tests required by the Buyer, other than those specified in a separate supply contract, must be agreed in writing at the time of order and the costs incurred will be charged to the Buyer.

3.4 Materials required for test purposes will be provided by the Buyer in the quantities and at the times specified by the Seller, free of charge and will be representative of the Buyer's normal operating materials.

3.5 Where the Seller provides a certificate of test it shall be accepted as conclusive evidence of the capacity and performance of the Equipment.

4. BUYER'S RESPONSIBILITIES

4.1 The Buyer shall be responsible for all costs and other consequences of:-

4.1.1 any alterations made to the Buyer's Equipment prior to the commencement of the services; and

4.1.2 the fitting of any spare parts not made or authorised by the manufacturer of the Buyer's Equipment.

4.2 The Buyer shall throughout the period of the contract:-

4.2.1 take good care of the Equipment and operate it in a proper manner in accordance with operating manuals provided by the Seller;

4.2.2 carry out all maintenance, other than that which the Seller contracts to undertake, which the operating instructions for the Buyer's Equipment advise should be carried out as a matter of routine on a regular basis;

4.2.3 order and pay for such consumable items as may be specified by the Seller or required to operate the Equipment;

4.2.4 Permit the Seller and any person authorised by the Seller to have access to the Buyer's Equipment at all reasonable times;

4.2.5 Not make any alterations or additions to the Seller's Equipment or any part of it without the Seller's written consent; and

4.2.6 Provide such ancillary services such as uninterrupted power supplies or unskilled labour to assist with installation as may be reasonably necessary to enable the Seller to perform the services it contracts to provide.

4.3 It is the Seller's policy not to supply equipment or spare parts to any Buyer shown to have used the Seller's Equipment for making or handling counterfeit tobacco products. The Seller reserves the right to cease doing business with any such Buyer and to cancel any outstanding order without giving rise to any claim or penalty by the Buyer against the Seller.

5. TIMESCALES AND DELIVERY

5.1 The time for commencement of services is the latest of:-

- (i) the date of receipt of a written order;
- (ii) full access being given to the Buyer's site; and
- (iii) full information being given enabling the Seller to proceed uninterruptedly.

5.2 The time for delivery of Seller's Equipment is the latest of:-

- (i) the date of receipt of a written order;
- (ii) date of receipt of any deposit payment;
- (iii) full information being given enabling the Seller to proceed uninterruptedly; and
- (iv) where required, receipt of an irrevocable letter of credit with appropriate validity.

5.3 Where the Buyer requests a change either to the Seller's Equipment or to the specification the delivery time shall be adjusted accordingly.

5.4 Delivery periods will be extended by the amount of time that the implementation of the Agreement is delayed due to Force Majeure.

5.5 Whilst all reasonable endeavours will be made to meet the indicative service schedule or delivery date the Seller shall not be liable for a failure to meet those dates.

5.6 Delivery of Seller's Equipment is ex-works unpacked. Risk in the Seller's Equipment passes to the Buyer on the date on which written notice is given that the Equipment is ready for collection. Title to the Seller's Equipment will pass on receipt of full payment (including any retention) of the purchase price in cleared funds by the Seller.

5.7 Notwithstanding that delivery is ex-works, the Seller may at the Buyer's written request and expense and on its behalf arrange to pack, transport, insure and deliver the Equipment. The Seller shall not be liable for delay or damage in transit or non arrival of the product.

6. DELAYS AND STORAGE

6.1 If the Buyer fails to take delivery of any Seller's Equipment or to provide suitable forwarding instructions within 14 days of written notice of readiness for collection at the Seller's works, or requests a delay to the delivery, then the Seller's standard charges for demurrage, storage and insurance will be charged to and payable by the Buyer.

6.2 If the Buyer fails to take delivery of the Equipment within 30 business days after being notified by the Seller that the Equipment was ready for collection from the Seller's works or for delivery to the Buyer, the Seller may resell or otherwise dispose of all or part of the Equipment. The Seller will be entitled to deduct the costs of storage, sale, any exchange rate loss, any loss of profit and any other losses that result from the Buyer's breach from any monies paid by the Buyer to the Seller before accounting to the Buyer for any remaining monies paid by the Buyer to the Seller for the Equipment.

7. ACCESSORIES AND SPARE PARTS

7.1 In the case of accessories or spare parts for the Seller's Equipment the technical specification and parts content of the Equipment are assumed to conform to the bill of materials recorded at the time of original manufacture by the Seller. Any alteration or non standard modification to the Equipment may affect the compatibility of accessories or parts and must be communicated to the Seller prior to order.

7.2 Where orders are placed without further qualification of the equipment's condition the Seller shall not be liable for any losses arising from the non compatibility of accessories or parts.

8. ADDITIONAL COST

8.1 Additional costs (including a reasonable profit element) arising from (a) the Buyer's instructions or lack of instructions or request for delays or (b) interruption or suspension of work or (c) mistakes which are not within the Seller's control shall be added to the contract price and be paid by the Buyer accordingly.

9. REJECTION

9.1 Subject to Clause 3 above, any right that the Buyer may have to reject any Equipment as not complying with the contract must be exercised within 7 days of actual receipt by the Buyer and on the expiration of that time such right shall cease.

10. PRICE AND PAYMENT

10.1 The price for the Equipment shall be the price set out in the quotation for the order, or if no price is quoted, as set out in the Seller's published price list as at the date of delivery.

10.2 Any price quoted for the Seller's Equipment is the prevailing current ex-works unpacked price unless otherwise previously agreed in writing.

10.3 A standard payment structure will be issued with the quotation, which will include a deposit equal to a minimum of 30% of the price of Seller's Equipment.

10.4 Any delays after fourteen days of an agreed date, which will be written as notice to the Buyer that the Equipment is ready for collection, the Seller shall be entitled to charge interest at a rate of 2% per annum above HSBC Plc's London quoted sterling base rate from the date 30 days after the due date until the date of actual payment. In the event that a retention is agreed dependant upon acceptance tests, and the Buyer delays such testing for any reason beyond three months from delivery, the Buyer shall forthwith be obliged to pay the balance of that retention.

10.5 Payment shall be made in London in Sterling or at such other place or in such other currency as the Seller may direct.

10.6 Value Added Tax (VAT) and any direct or indirect taxes on purchases and customs dues are not included in the quoted price and are payable by the Buyer at the rates prevailing at the relevant time.

10.7 Packing cases and materials will be charged as an additional cost to the Buyer.

10.8 The price is based upon designs, technical specifications and labour, materials and transport costs and costs of conforming to statutory obligations applying at the date of the Seller's quotation. In the event of changes being requested subsequently by the Buyer or required by law or otherwise due to matters beyond the Seller's control the Seller reserves the right to modify technical specifications, delivery or service schedules and prices at any time on giving notice in writing.

11. GUARANTEE

11.1 The Seller warrants that on delivery the Seller's Equipment will conform to all aspects of technical specification as outlined in the order with the equipment being fit for purpose and be free from material defects in design, material and workmanship.

11.2 The Seller shall make good by replacement, or at its option repair, any defect in Seller's Equipment supplied by it which materially affects the operation of Seller's Equipment, arises solely from faults in the Seller's materials or workmanship and which:-

(i) in the case of new Seller's Equipment, appears within 12 calendar months of delivery operated on a single shift or 2,000 operating hours (whichever is the sooner); or

(ii) In the case of factory rebuilds, where the Seller's Equipment is termed "as new" , appears within 6 months of delivery operated on a single shift or 1,000 operating hours (whichever is the sooner).

11.3 This guarantee extends to Seller's Equipment that has been properly used and maintained by the Buyer in accordance with the training and or instructions provided by the Seller. Fair wear and tear, wilful damage, negligence or abnormal working conditions is excluded.

11.4 This guarantee will be of no effect if the Buyer alters the Seller's Equipment without the Seller's prior written consent.

11.5 In the case of goods that are not of the Seller's manufacture the Buyer shall only be entitled to such benefits as may be recoverable from the original supplier.

11.6 The Seller warrants that it will provide support for the Equipment for a minimum period of 3 years from the date of supply. The Seller will provide a quoted price for any support required which, if agreed in writing by the Buyer, will be subject to these General Terms and Conditions where applicable.

12. LIABILITY

12.1 The Seller shall not be liable for:-

12.1.1 Any indirect or consequential losses;

12.1.2 Any loss or damage to any material in the course of being processed by the Equipment;

12.1.3 Any Direct Losses that exceed, in aggregate, the price paid by the Buyer for the Equipment or the services;

12.1.4 Any loss of profit or opportunity;

12.1.5 Any delay in performance or non-performance due to Force Majeure

12.1.6 Any delay in anticipated delivery time except to the extent provided in the Seller's quotation.

12.1.7 Any materials used in machinery product performance, introduced as new or developing, to support the Buyer's requirement.

12.2 The Seller's aggregate liabilities in connection with any contract with the Buyer shall be limited to the amount paid by the Buyer in respect of the same contract provided that this shall not limit the Seller's liability for negligence or wilful default directly causing personal injury or death.

12.3 All descriptions and illustrations contained in catalogues, price lists and any other advertising material are intended merely to present general information on the services and products and do not form part of the contract between the parties unless specifically incorporated therein.

12.4 The parties acknowledge and agree that the charges for the services and/or the Seller's Equipment supplied reflect the scope of the liabilities of the parties set out in this clause 12.

12.5 No warranty is given or implied as to the suitability of Seller's Equipment for use in a country other than that for which it was originally ordered or for use with material not conforming to samples tested by the Seller and approved for use.

12.6 Modifications or development work required, which are outside the control of the Seller, will be highlighted and managed in a separately agreed statement of supply as an amendment to the Agreement.

13. TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the contract with immediate effect by giving written notice to the other party if:

13.1.1 The other Party commits a material breach of its obligations under this contract and (if such breach is remediable) fails to remedy that breach within thirty days after receipt of notice in writing of the breach;

13.1.2 The other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or is deemed either unable to pay its debts or as having no reasonable prospect of doing so;

13.1.3 A petition is filed, notice is given, a resolution is passed or an order is made for or in connection with the winding up of the other party;

13.1.4 The other party, being an individual, is the subject of a bankruptcy petition or order; or

13.1.5 Any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events referred to in 13.1.1 to 13.1.4 above.

13.2 Without limiting its other rights and remedies, the Seller may terminate the contract:-

13.2.1 By giving the Buyer one month's written notice;

13.2.2 With immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the contract on the due date for payment.

13.3 Subject to the remainder of clause 13.3 the Buyer may cancel its contract with the Seller by giving sixty (60) days' written notice to the Seller. Upon receipt of the Buyer's notice of cancellation, the Seller shall, unless the Buyer's notice states otherwise, discontinue the cancelled Equipment and the Seller will not enter into any new sub contracts or place any new orders for materials, facilities, supplies or services in connection with the performance of such cancelled order. The Seller shall make reasonable efforts to cancel existing orders or contracts with its suppliers.

In the event of cancellation under this clause 13, the Buyer shall be liable to the Seller for the value of the Equipment made and or delivered prior to cancellation, the Seller's costs incurred in providing such Equipment together with the Seller's reasonable termination expenses including the costs incurred or irrevocably committed including any exchange rate losses, the Seller's reasonable wind down costs and a contribution to the Seller's lost profit margin of 10% of the price for the cancelled Equipment. The Seller will be entitled to deduct and retain such sums from any monies paid by the Buyer to the Seller under the terms of the contract.

13.4 The parties accrued rights and remedies as at termination shall not be affected.

13.5 Clauses that expressly or by implication have effect after termination shall continue in full force and effect.

14. INTELLECTUAL PROPERTY

14.1 The Seller shall at all times retain full right and title to any intellectual property in the Seller's Equipment including (but not limited to) inventions, whether patentable or not, designs, copyright and know-how, notwithstanding that the parties may cooperate in specifying the performance, design or construction of the Seller's Equipment.

14.2 The Buyer is deemed by entry into the contract to agree to cooperate in the obtaining or enforcement of any intellectual property rights by the Seller at the Seller's cost.

14.3 Subject to clause 12.2 the Seller agrees to indemnify the Buyer against any claims or liabilities arising out of any infringement of any third party intellectual property rights arising from possession or use of Seller's Equipment provided the Seller is immediately given absolute control of the defence of any claim of infringement. The Seller shall be entitled to modify the Seller's Equipment for the purposes of defence or settlement of any third party claims or potential claims.

15. CONFIDENTIALITY

15.1 The Parties shall maintain strict confidentiality with respect to Confidential Information and shall:-

(i) not distribute, disclose or disseminate Confidential Information to any person other than those of its employees, who reasonably need to know such information for the purpose of the performance of the obligations under this Agreement;

(ii) keep all documents and materials which constitute or contain Confidential Information in safe custody and restrict access to such documentation to employees who reasonably need to have such access for the purpose of the performance of this Agreement;

(iii) use the Confidential Information solely for the purposes for which such Confidential Information is disclosed to it.

15.2 The Parties shall impose the confidentiality obligations upon their respective employees by written agreement and shall see to it that their employees shall at all times fully comply with such obligations.

15.3 The confidentiality obligations shall not apply if and insofar as:-

(i) the disclosing Party consents in writing to the receiving Party disclosing such information to a third party or third parties (such consent not to be withheld unreasonably), provided that upon such disclosure the receiving Party shall impose the confidentiality obligations set forth in this Article on such third party or third parties; or

(ii) the receiving Party is under a statutory obligation to disclose such information to the competent authorities.

15.4 Each Party may request the other Party to disclose Confidential Information if such a disclosure is necessary for a justifiable specific purpose. The other Party shall, subject to the nature of the specific purpose, not unreasonably withhold its consent.

15.5 This Article (Confidentiality) shall continue to apply after the Agreement for a period of five years.

16. NOTICES

16.1 Any notice or other communication shall be in writing and delivered personally or sent by first class letter post, recorded delivery or courier to the other party's registered office or principal place of business or by fax to the number provided. Notices and communications delivered personally shall be deemed received when left with the addressor; if sent by first class post or recorded delivery on the second business day after posting; if delivered by courier on the date and at the time the courier's receipt is signed; if sent by fax on the day of transmission provided it is sent during normal business hours and if after business hours on the next business day after transmission. Notices purported to be served by e-mail will not be accepted.

17. WAIVER

17.1 A waiver of any right under the contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay in exercising any right or remedy under the contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.

18. SEVERANCE

18.1 If a court or any other competent authority finds that any provision of the contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the contract shall not be affected.

19. NO PARTNERSHIP

19.1 Nothing in the contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties. No party shall have authority to act as agent for, or to bind the other party in any way.

20. THIRD PARTIES

20.1 A person who is not a party to the contract shall not have any rights under or in connection with it.

21. LAW

The contract between the parties, and any dispute or claim arising out of or in connection with it, shall be governed by and construed in accordance with English law and the parties irrevocably submit to the jurisdiction of the courts of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any sale of goods by the Seller.