

## GENERAL TERMS AND CONDITIONS OF MIYACHI EUROPE UK

Miyachi Europe UK is registered as a branch of Miyachi Europe B.V. Company No. FC027959, Branch No. BR009677. Registered as a branch of an oversea company, 27<sup>th</sup> November 2007.

- **Amended 5<sup>th</sup> January 2009 and superseding all General Terms and Conditions filed previously.**

1. As of the date on which these General Terms and Conditions are filed, 'the seller (we)' will be deemed Miyachi Europe B.V. UK branch office, Company No. FC027959, Branch No. BR009677, with registered office, 16 Royal Scot Road, Pride Park, Derby DE24 8AJ. United Kingdom.
2. In these General Terms and Conditions, 'the seller (we)' refers to all parties applying these General Terms and Conditions to their quotations; 'the customer' refers to parties to which the said offers are addressed.
3. All our offers and quotations are made without obligation, unless otherwise agreed. Agreements are contracted only when the seller has received written acceptance from the customer. Until the time of such receipt, the seller has the right to alter or withdraw an offer or quotation. If a quotation includes an offer without obligation, and this is accepted, the seller has the right to withdraw the offer within one week of receiving written acceptance.
4. Verbal statements and statements made in brochures and advertising materials serve as general indications regarding the goods offered. They cannot be regarded as binding guarantees.
5. PRICES  
Rates and prices will remain valid for a period of 30 days of quotation issue date, unless detailed in the proposal document. If, following the acceptance of an order, circumstances arise which have an upward impact on cost, such as movements in raw material prices, wages, exchange rates, import duties, etc., we have the right to pass on the cost increase to our customer. The customer has the right to cancel the agreement only if the said cost increase occurs within three months of contracting of the agreement, but before delivery.
6. Prices are stated ex-factory/warehouse, for unpacked goods, exclusive of value added tax (VAT), installation and training. Prices will be increased by the cost of packaging, transport, insurance etc.
7. In the case of orders for goods worth less than £100 prices will be increased with a standard amount to cover order-handling cost.
8. No discounts may be claimed, on any grounds whatsoever, without our written authorization.
9. DELIVERY  
Unless otherwise agreed in writing, deliveries of goods which we do not have in stock shall be made as soon as possible following the receipt of such goods from our supplier or the completion of the order concerned at our factory. The seller will use reasonable endeavors to perform the contract within the required timescale.
10. We are not liable for any consequences of deliveries made later than the agreed delivery date, unless such delay is attributable solely to gross negligence or malicious intent on the part of our managers. In this case, our liability is limited to a maximum amount equal to the invoice value of the goods sold. Agreed delivery dates shall be extended by the period during which we are not in a position to make delivery due to force majeure. Force majeure refers to circumstances beyond our control, which prevent us from making delivery. Force majeure shall in any event include strikes and lock-outs in our own business, failure of our suppliers to deliver for reasons beyond our control, restrictive measures by domestic or foreign governments, fire, disruption of energy supplies, machinery breakdowns and the unavailability of means of transport.
11. We have the right to terminate call orders before a full order has been called, if, in the interim period, our suppliers discontinue the purchased goods or deliveries of aids relating to the purchase, such as raw materials and the like. If, at the end of the agreed call period, the customer has not yet called all the goods purchased, we shall have free disposal of the goods which have not been called. If the customer was granted any form of discount for quantity, in excess of the discount to which it would have been entitled if the agreement had been confined to the quantity called, the customer is required to repay the difference immediately, without prejudice to its commitment to pay us compensation for all damages suffered.
12. If delivery is required other than ex-factory/warehouse, the customer shall bear the risk for the goods sold as from the time at which they are ready for loading in the means of transport. However, the goods shall remain our property until such time as the purchase price is paid in full. If they are added or attached to another article, we shall be deemed to have acquired joint ownership of the article concerned by virtue of such addition or attachment. If the customer acquires ownership of the goods delivered by the seller by accession, the customer is required to compensate the seller for the resulting damages.
13. PAYMENT  
Subject to satisfactory customer credit approval, payment shall be made within 30 days of the invoice date, unless explicitly agreed otherwise. Where staged or pre-payments are detailed, payment shall be made in accordance with the schedule written in the proposal document. In the event of late payment, the customer shall be deemed to be in default, without further notice thereof being required. No claims for refunding of amounts paid shall be accepted, on any grounds whatsoever. Rejection of payment commitments on the grounds of settlement of amounts due, or of attachment, is not permitted without the explicit agreement of the parties, or unless granted by a court order.
14. If the customer is compulsorily wound up or applies for a moratorium on payments, and if the goods purchased (including articles to which they are added or attached) are made subject to attachment, the outstanding amount becomes payable on demand, in full, with immediate effect. In this case, we have the right to claim and recover the goods, and to acquire disposal thereof, in order to attempt to recover the outstanding amount from the proceeds, as far as possible.
15. In the event of late payment, for any reason whatsoever, the customer shall be charged for all costs and expenses incurred in enforcing and collecting the debt. The customer shall also be liable for interest, which shall be determined monthly at a rate 8% above the base rate of the Bank of England of the debit balance in the month concerned. Interest is due as from the final payment date.
16. EXECUTION  
Goods sold per unit shall be delivered in standard packaging. Goods should be inspected by the customer immediately on delivery for packing errors and defects, damage, non-conformity, shortages, losses which would be discoverable on reasonable inspection. We will accept no liability for any of the above unless notified by the customer within 48 hours of delivery. Warranty is given as 1 year from date of delivery based on single shift (8 hours) per day usage. Warranty covers parts only and is exclusive of labour, travel and expenses. Warranty will be excluded where goods are damaged by improper use, use not described in the manual, not maintained in accordance with product guidelines. Repair or replacement of any defective goods shall be at the sole discretion of the seller. Consumable products such as flashlamps, water filters, flow tubes and wear parts are also excluded from Warranty.
17. If, following the realization of a sale, we issue a new version of the goods in question, including the use of different raw materials and/or a change of supplier; we are free to deliver the goods sold in the old or the new version.
18. The stipulations of Article 17 above apply likewise to goods which we do not produce entirely in-house, subject to restrictions resulting from the refusal or failure of our suppliers to supply sound replacement goods or parts.
19. If an item of equipment which we produce proves not to have the capacity we specified in writing at the time of sale, we should be notified thereof as soon as this can reasonably be expected to have been detected, and in any event, within 30 days of delivery. We shall then ensure the specified capacity, through improvement or replacement of the item in question.
20. All claims under Articles 17, 18 and 19 shall lapse if our instructions for use are not followed accurately and in full, and, in the event that a piece of equipment does not operate satisfactorily or properly, if the use thereof is not discontinued immediately, pending further instructions from us, which should then be requested immediately. Such claims shall likewise lapse if inadequate efforts have been made to contain the damage.
21. EXCLUSION AND LIMITATION OF LIABILITY  
Liability Excluded and Limited: The following terms and conditions set out our liability to you under or for breach of the contract (including any warranty), and for or in respect of tort, negligence, breach of statutory duty, liability imposed by statute, strict liability, accidental or negligent misrepresentation and any other liability whatsoever arising under, in connection with or in the course of performance of the contract, and references in the contract to our 'liability' shall include all such liability.  
Liability Not Limited: We do not limit or exclude our liability to you for death or personal injury caused by our negligence or for fraud or fraudulent misrepresentation, or to refund any payments.  
Excluded Types of Loss: Subject to the preceding provision, we shall have no liability to you for: loss of revenue, bargain, profit, anticipated savings, contract, business, expectation, use, production, or goodwill; any costs, expenses, liabilities, or commitments suffered, incurred or entered into in reliance on the contract; any costs of purchasing substitutes or replacements for the deliverables elsewhere; any special, indirect or consequential losses; any liability of the customer to any third party.  
Property Loss and Damage: Our liability for the cost of repairing or replacing, and/or for the diminution in value of, any property lost, damaged or destroyed, where caused by any negligent act or omission by us or our representatives, shall be limited to the customer order value with the seller per incident, or if there is more than one incident arising out of the same cause, for all such incidents in the aggregate. Our liability for the cost of repairing or replacing, and/or for the diminution in value of, any property lost, damaged or destroyed, where caused by any defect in any product or other goods supplied under the contract, or defective repair or rectification work we provide under warranty, shall be limited to the customer order value with the seller in aggregate for all incidents occurring in any calendar year.
22. PRODUCT LIABILITY  
The seller requests the customer should indemnify the seller against any liability incurred by the seller in respect of damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the products supplied by the seller, as well as any reasonable costs, claims, demands and expenses arising out of or in connection with that liability. The seller insists the customer holds suitable product liability insurance to ensure the seller will be able to be recompensed should the indemnity need to be acted upon.
23. All our agreements are subject to English law.