

STANDARD CONDITIONS OF SUPPLY FOR BANICO LTD

1. DEFINITIONS

- 1.1 In these Conditions, the following expressions shall have the following meanings:
- "BANICO" shall mean Banico Ltd and reference to the consent authority or agreement of BANICO shall mean consent authority or agreement in writing signed by a Director or Manager of BANICO. "Conditions" shall mean the standard terms and conditions of supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and BANICO. "Customer" shall mean any person, firm or company receiving a quotation from and/or placing an order with BANICO. "Goods" shall mean all and every item of goods, equipment, machinery, tools, apparatus, components, supplies and every other product or part thereof supplied or proposed for supply by BANICO to the customer. "Connected Equipment" shall mean such equipment, machinery, parts, tools, apparatus, components, connections and every other product not supplied by BANICO but connected (directly or indirectly) to or used in conjunction with the goods. "Contract" shall mean any contract incorporating these Conditions. "Additional items" shall mean the following where incurred:
- The cost of packaging.
 - Any taxes (including Value Added Tax), duties (including Customs and Excise duties) or other charges levied by any Governmental or other authority in respect of or by any reason of the sale, delivery, export or import of the goods or any part thereof but excluding taxes assessed on profits or gains to BANICO.
 - Transportation Costs (including costs of carriage, insurance, handling, storage prior to or during transit, demurrage, landing charges and port or airport (dues).
 - BANICO's charge for installation and commissioning.
 - BANICO's charge for training personnel.
 - BANICO's charge for any test of the goods stipulated by the Customer. "Transgression" shall mean any breach of contract or tort or other act, default, omission or statement of BANICO, its employees, agents or sub-contractors in respect of which BANICO is liable to the Customer.

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. GENERAL

- 2.1 The Conditions supersede any previous terms and conditions published by BANICO and apply to all contracts for the sale or supply of Goods entered into by BANICO. No additions or modifications to or terms of conditions inconsistent with these conditions shall be binding upon BANICO unless agreed by BANICO in a document expressly referring to a modification, alteration, variation or addition of or to the relevant condition or conditions. In the event of any inconsistency between these conditions and any other document, or other matter forming part of such a contract, these conditions shall be paramount.
- 2.2 Where BANICO agrees to waive or vary any terms of conditions of the Contract, or provide any agreement authority or consent provided for in the Contract, the same shall not constitute a waiver, variation, consent, agreement, or authority in relation to any term or conditions other than expressly referred to.
- 2.3 All samples, drawings, illustrations, brochures, catalogues, price lists, particulars of weight and dimensions and other advertising or material submitted to the Customer are intended to be approximate only and to give a general impression of the Goods. Unless expressly incorporated the same shall not form part of the Contract. BANICO reserve the right to make minor alterations to the design specification or construction of the Goods without prior notification to the Customer.

3. PRICE AND PAYMENT TERMS

- 3.1 Any price stated by BANICO in a quotation or in any document incorporated in the Contract is strictly net and ex works. In particular (but without affecting the generality of the foregoing) unless the contrary is expressly stated the Additional Items may be added to the price.
- 3.2 BANICO reserve the right, by giving notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to BANICO which is due to any factor beyond the control of BANICO (such as, without limitation; any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other cost of manufacture) and change in delivery dates, quantities or specifications for the Goods which is requested for the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give BANICO adequate information or instructions.
- 3.3 Payment in full for the Goods (and additional emergency, accident, acts of God, war, riot, civil disturbance, act of terrorism or act of revolution, orders, regulations or by laws made by any governmental or other authority. Where circumstances amounting to force majeure will prevent delivery of Goods for more than one month after the estimated delivery date either the Customer or BANICO may by notice in writing cancel the order for those particular Goods without liability to compensate the other party for any loss or damage whatsoever sustained by reason of the non delivery or non acceptance of those Goods.
- 3.4 Where payment is not made on a 30 day net monthly account settlement basis then BANICO reserve the following right, where applicable. To re-invoice the goods at full list price if the aforementioned goods were subject to a discounted price.

4. RISK AND PROPERTY

- 4.1 Risk of damage to or loss of the Goods shall pass to the Customer:
- In the case of Goods to be delivered at Banico's premises at the time when Banico notified the Customer that the Goods are available for collection; or
 - In the case of Goods to be delivered otherwise than at Banico's premises, at the time the Goods are despatched from Banico's premises notwithstanding that Banico may provide or arrange carriage.
- 4.2 Notwithstanding despatch and the passing of risk in the goods, or any other provision of these conditions, the property in the Goods shall not pass to the Customer until Banico has received in cash or cleared funds payment in full of the price of the Goods.
- 4.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the goods as Banico's fiduciary agent and bailee, and shall keep the Goods separate from those of the carrier and third parties and properly stored, protected and insured and identified as Banico's property. Until that time the Customer shall be entitled to re-sell or use the Goods in the ordinary course of its business but shall account to Banico for the proceeds of sales or otherwise of the Goods, where tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the customer and third parties and, in the case of tangible proceeds properly stored, protected and insured.
- 4.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence), Banico shall be entitled at any time to require the Customer to deliver up the Goods to Banico and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are sold and repossess the Goods.
- 4.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Banico, but if the Customer does so all monies owing by the Customer to Banico shall (without prejudice to any other right or remedy of Banico) forthwith become due and payable.

5. PERFORMANCE AND FORCE MAJEURE

- 5.1 While BANICO take all reasonable steps to comply therewith, any time or date specified to delivery or performance or any other obligation of BANICO is an estimate only and not guaranteed. BANICO do not accept liability for loss or damage caused by delays in delivery or failure to deliver and subject to the proviso clause 5.2 below such delays or failure shall not entitle the Customer to rescind the contract.
- 5.2 Without prejudice to the generality of Clause 5.1 BANICO shall have no liability for any delay or default in delivery or performance or any other obligation caused directly or indirectly by any cause or causes beyond the reasonable control of BANICO (force majeure) including (without prejudice to the generality of the foregoing) fire, flood, pest, break down or unavailability of plant or machinery, failure of raw material or supply of raw material, inability to obtain sufficient labour or sufficient skilled labour (including due to industrial action), loss of vehicle, ship or other carrier and any time limits for claims are limited by them.
- 5.3 Unless otherwise agreed by BANICO it reserves the right to make part deliveries and to submit invoices for goods supplied as part of an order to be paid on a 30 day net monthly account settlement basis.

6. DELIVERIES AND CARRIAGE

- 6.1 Delivery of the goods shall be made by the Customer collecting the Goods at BANICO's premises at any time after BANICO has notified the Customer that the goods are ready for collection, or if some other place for delivery is agreed by BANICO, by BANICO delivering the Goods to that place. Where no specific instructions about the manner in which the Goods are to be delivered to the Customer or the delivery address are given BANICO reserve the right in its absolute discretion to choose the means of carriage to the Customer and to direct the Goods to the Customer's last known business address.
- 6.2 Where BANICO provide its own transport or contract directly with a carrier then BANICO will repair or at its option replace Goods lost or damaged in transit (other than by default of the Customer) provided that notification of such loss or damage is made to BANICO separately to the carrier within the period stipulated by the carrier terms of carriage for claims against the carrier (or where no such period is stipulated or BANICO use their own transport) within 7 days of despatch of the invoice date. On request BANICO will inform the Customer of the name and address of the carrier and any time limits for claims against them.
- 6.3 BANICO shall be under no liability arising from their carrier or carriers or from the act or omission of such carrier or carriers and the Customer waives all rights under section 32 (2) of the Sale of Goods Act 1979 in addition to any other rights hereby excluded or restricted.
- 6.4 Any dates quoted for delivery of the Goods are approximate only and BANICO shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by BANICO in writing. The Goods may be delivered by BANICO in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 6.5 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by BANICO to deliver any one or more of the instalments in accordance with these conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated. If the Customer fails to take delivery of the Goods or fails to give BANICO adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of BANICO's fault) then, without prejudice to any other right or remedy available to BANICO, BANICO may:
- Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) or storage; or
 - Sell the Goods at the best price readily obtainable and (after deducting reasonable storage and selling expenses) charge the Customer for any shortfall below the price under the contract.
- 6.7 Claims for shortage or damage must be notified within 7 days.

7. TERMS AND CONDITIONS

- 7.1 THESE CLAUSES DEFINE THE CUSTOMER'S RIGHT IN RESPECT OF ANY LOSS OR DAMAGE CAUSED BY THE GOODS OR FOR ANY STATEMENTS MADE BY BANICO OR THEIR SERVANTS OR AGENTS. CUSTOMERS ARE ADVISED TO READ THESE PROVISIONS CAREFULLY AND TO CHECK THAT THEY ARE COVERED BY INSURANCE AGAINST ANY LOSS OR DAMAGE THEY MAY SUSTAIN IN RESPECT OF WHICH THE POTENTIAL LIABILITY OF BANICO IS OR MAY BE RESTRICTED OR EXCLUDED HEREUNDER.
- The Customers of BANICO are experts in their own specialised fields and utilise the Goods for a multitude of applications specific to their business. To the best of BANICO's knowledge, the workability, reliability, and accuracy of the Goods is of the highest quality but all goods are supplied on the understanding that Customers will use their own specialised skill and judgement in assessing the fitness of the Goods for the intended uses and the results and level of performance which will be derived therefrom. BANICO's prices are kept as low as practical and BANICO do not include any reserve for potential liability. Accordingly:
- 7.2 Subject to sub-clause 7.7 below BANICO's liability shall be limited to such liability as shall be accepted by the original equipment manufacturer.
- 7.3 From the time of despatch of the Goods from BANICO's premises the Customer shall be responsible for any defect in the Goods or loss, damage, nuisance or interference whatsoever consequential or otherwise or wastage of material resulting from or caused by or to the Goods or by the Connected Equipment and BANICO accordingly excludes all liability for the same.
- 7.4 It is the responsibility of the Customer to satisfy itself as to the workability, reliability, accuracy and suitability of the Goods. No Goods, warranty or other term, expressed or implied (by statute or otherwise) is given by BANICO that the Goods and (where appropriate) the Connected Equipment (whether or not BANICO or its servants or agents recommend its use) either separately or in conjunction with will enable the Customer to attain any particular performance or result or be suitable for any particular capacity notwithstanding that the requirement for such performance, result or capacity or that such particular purpose or conditions may have been known to BANICO its employees or agents.
- 7.5 Any representation whenever made by or on behalf of BANICO is made on the understanding that the Customer shall test and use its own skill and judgement in assessing the accuracy, practicability, safety in operation and commercial viability thereof before placing reliance upon the same. Accordingly, BANICO will be under no liability in respect of any loss or damage suffered by the Customer by reason of its placing reliance on such representation.
- 7.6 (a) To the extent that BANICO is held legally liable to the Customer for any single Transgression, BANICO's liability from the same shall not exceed the purchase price of the Goods specified in the contract with reference to which or in regard to in the course of which the Transgression occurred or five thousand pounds sterling (whichever shall be the greater) provided that a number of Transgressions, whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as a single Transgression.
- 7.7 BANICO shall not be liable to the Customer by reason of any representation or any implied warranty condition or other term, or any duty in common law, or under the express terms of the contract, for any consequential loss or damage (whether for loss or profit or otherwise), costs, expenses or other claims for consequential compensation which arises out of or in connection with the supply of Goods or their use, adaptation, or resale by the Customer and accordingly the Customer shall indemnify BANICO against all loss, damages, costs and expenses awarded against it (whether pursuant to the Customer Protection Act 1987 or otherwise) and incurred by it in connection with any such claim by a person to whom the Customer has supplied the Goods.
- 7.8 Although the exclusion and limitation on liability is considered reasonable by both parties, in the event of the exclusions or limitations or liability being declared void in any judicial or arbitration proceedings but such exclusion or limitation or liability would be valid if some parts thereof were deleted, such exclusion or limitation or liability shall apply with such modification as may be necessary to make it valid and effective and shall be enforced by the extent permitted by law.

8. CONFIDENTIALITY AND COPYRIGHTS

- 8.1 (a) The Customer shall keep confidential the design of the Goods and any information, knowhow or data (hereinafter collectively called confidential matters) obtained or in contemplation of the contract for the supply of the Goods and shall not divulge the same to any third party without the consent in writing of BANICO provided that the provisions of this clause shall not apply to matters which the Customer can establish to the reasonable satisfaction of BANICO.
- were in the public domain otherwise than by breach of this clause
 - were in the possession of the Customer before being disclosed by BANICO
 - were obtained by a third party who is free to divulge the same
- (b) The Customer shall divulge confidential matters only to those employees and agents who are directly involved in the supply or operation of Goods and shall insure that such employees are aware of and bound by these obligations as to confidentiality.
- 8.2 All estimates and designs, drawing plans, models, specifications and written technical details supplied by BANICO to the Customer remain BANICO's property and the submission for disclosure of the same to the Customer is subject to the condition that they must not be copied down or described in whole or in part to any third party without BANICO's prior consent and that they must be returned to BANICO on request.

9. DELAYS AND ALTERATIONS BY THE CUSTOMER

- 9.1 Any alteration requested by the Customer and any interruption in the performance of the contract by BANICO due to instruction from or lack of information from or decision by the Customer its employees or agents, will entitle BANICO to charge additional fees or to be paid an additional price to the extent that the same necessitate additional work or otherwise increase the cost to BANICO of performing in accordance with the contract (or the contract altered).

10. PAYMENT IN ADVANCE OR TERMINATION

- 10.1 BANICO reserve the right to require payment in full before proceeding with manufacturing or ordering from BANICO's suppliers or delivering or performing any other work whatsoever for the Customer. The Customer shall indemnify BANICO against all losses sustained or extra expenditure incurred as a result of any suspension of manufacturing, ordering, delivery or other work including a reasonable allowance for storage.
- 10.2 In the event that:
- The Customer shall suffer any distress or execution to levy against its assets or shall commit any act of bankruptcy or shall enter into any arrangement or composition with its creditors or make an offer to do so as regards a company a resolution is proposed or petition is issued for its winding up or a receiver or manager is appointed over the whole or a substantial part of the Customer's assets or the equivalent of any of the above events occur; or
 - The Customer fails to make any payment owed to BANICO on whatever account on the due date; or
 - The Customer fails to make any payment in advance when requested in accordance with clause 10.1 above within 7 days of being requested to do so; or
 - The Customer fails to take delivery of or to collect the goods within 7 days of being notified by BANICO that they are to be delivered or are ready to be collected; or
 - The Customer is in breach of the terms and conditions of the contract with BANICO (including breach of these conditions) and shall fail to remedy the same within 21 days of notice by BANICO specifying the breach requiring remedy or if the breach shall be unremediable. Then and in such case BANICO shall, at its option, be entitled to terminate any of its contracts, with the Customer forthwith and recover all losses or damage resulting to BANICO (including (and without limitation to) loss of profits or other consequential loss.

11. ERRORS

- 11.1 BANICO accepts no liability to reimburse Customers or to compensate Customers for loss arising or to replace the Goods supplied where either:
- Orders are placed verbally (whether or not subsequently confirmed in writing); or
 - Written orders are placed which are ambiguous or inaccurate or which duplicate an earlier order; or
 - Confirmation orders are not marked as such notwithstanding that the goods supplied (or the quantity of such Goods supplied) are not such as the Customer required or that the Goods are delivered to an address or by means of carriage other than that required or that the Customers requirement for the Goods has diminished or ceased (whether because of another supply of the same similar Goods or for any other reason) or that the price is other than understood by the Customer or that (in case of confirmation orders not being marked as such) the same order has been supplied twice.
- 11.2 Where BANICO agrees in its discretion, to replace Goods supplied with other Goods a reasonable handling charge will be added to the price of those other Goods where BANICO, in its discretion, issues a credit or makes other reimbursement a reasonable handling charge will be deducted from the same.

12. NOTICES

- 12.1 Any notice or other document required or referred to in the Conditions or otherwise in contract shall be deemed served or sent by registered or recorded delivery post addressed the party for whom it is intended at such party's registered or main office or last known address and shall be deemed to have been received and duly served 48 hours after the date of posting.

13. LEGAL CONSTRUCTION, INTERPRETATION AND LIMITS OF THE CONTRACT

- 13.1 The Contract shall be governed in all respects by English Courts. The text of these conditions and of any other document incorporated in the contract written in the English Language is the authentic text and any difficulties or uncertainties arising shall be solved solely by reference to that text.
- 13.2 Save for statements or representations confirmed in writing in the contract, no oral statements of whatsoever nature by whomsoever made shall form part of the contract. In contracting with BANICO the Customer acknowledges that he has not relied on any oral statements or representations made to him save those confirmed as aforesaid.
- 13.3 In the contract, the use of masculine, feminine or neuter gender shall be deemed to incorporate the other genders to the extent committed by context.
- 13.4 Clause headings are inserted for convenience only and shall have no effect on the construction of any contract.