



OSBORN

an Astec Industries Co.

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CONDITIONS OF TENDER – SPARE PARTS

These terms and conditions govern the relationship between the Customer and Osborn as regards the purchase of machines:-

1 The Contract

- 1.1 The purpose of these terms and conditions are to govern the purchase of all machines purchased by the Customer from Osborn.
- 1.2 The Contract between the Customer and Osborn comprises the following documents, in their order of importance:-
 - 1.2.1 Osborn's tender;
 - 1.2.2 These terms and conditions;
 - 1.2.3 The Customer's order; and
 - 1.2.4 Osborn's acceptance of the Customer's order.
- 1.3 Osborn's tender is open for acceptance for a period of 30 (thirty) days from the date of tender.
- 1.4 There shall be no binding Contract until the Customer's order, confirming acceptance of these terms and conditions, has been received and a notification of acceptance by Osborn has been sent to the Customer.

2 Price

- 2.1 The Contract price stated in Osborn's tender is fixed for the period from the date of tender until the delivery date.
- 2.2 In the event that the delivery date is extended by a period in excess of 6 (six) months beyond the initial delivery date, due to circumstances not attributable to Osborn, Osborn shall have the right to escalate the Contract price.
- 2.3 All prices quoted include Value Added Tax at the ruling rate.
- 2.4 The Contract price is based on Osborn's standard level of quality assurance. Adherence to any other quality assurance requirements will be for the Customer's account.

3 Terms of Payment

- 3.1 Unless otherwise agreed, the terms of payment will be as follows:
 - 3.1.1 In the event that the Customer makes payment of Osborn's full invoice amount within 30 (thirty) days of the date of invoice, the Customer will receive a 1.5% early settlement discount.
 - 3.1.2 In the alternative the Customer may make payment to Osborn on delivery or collection, in which event no settlement discount will be applicable.
- 3.2 The goods will not be delivered or made available for collection until such time as the entire Contract price has been paid.
- 3.3 Osborn reserves the right to debit interest on all overdue amounts at the maximum rates prescribed by law from time to time.
- 3.4 Should any payment not be made the on due date, Osborn reserves the right to suspend work on the goods in which event all costs incurred as a consequence of such suspension shall be for the Customer's account.





- 3.5 A certificate signed by any director of Osborn shall constitute prima facie proof of the amount due by the Customer to Osborn and shall be valid as a liquid document for the purposes of securing judgment against the Customer or for any other purpose whatsoever.

4 Delivery

- 4.1 The method of delivery, as well as the applicable INCOTERMS ® 2010, if any, is stated in Osborn's Tender.
- 4.2 The delivery periods and dates quoted in the Tender are given in good faith, and based on present workshop loadings, availability of material and of labour and are subject to confirmation by Osborn. In the event of an order being placed, delivery dates will be calculated from the later of:
- 4.2.1 the date on which an official order is accepted by Osborn; or
- 4.2.2 the date on which all technical, financial and contractual details have been finalised, enabling Osborn to proceed uninterruptedly with the execution of the order.
- 4.3 Unless specifically agreed to in writing, no liability whatsoever will be accepted with regard to late delivery of equipment. Late delivery will not constitute grounds for cancellation of any Contract or for any claim for damages against Osborn.
- 4.4 Where specific dates for delivery are agreed to in writing, such delivery dates shall be extended to the extent that any delays were caused by the late receipt of any deposit, strikes, labour disputes, war, riot, civil commotion, inclement weather, delays of manufacturers or transportation carriers, accidents, power outages, regulations or orders of any Government or local authority or by any other cause beyond Osborn's control.
- 4.5 Failure to make any one delivery, due to any cause whatsoever, shall not affect or vitiate the Contract as regards other deliveries.

5 Risk

- 5.1 Any goods required to be delivered by Osborn in terms of the Contract shall be received, offloaded, stored and properly protected by the Customer.
- 5.2 Unless otherwise agreed, risk in the goods shall pass to the Customer upon delivery or collection, as the case may be, and shall thereupon be at the Customer's sole risk and he will be responsible for all damages, whether arising from fire, accident, weather, theft or any other cause.
- 5.3 Irrespective of whether the risk in any goods has passed to the Customer, ownership of any goods shall only pass to the Customer when those goods have been fully paid for by the Customer.

6 Collection of Goods

- 6.1 In the case of ex-works Contracts, Osborn shall notify the Customer of the date when the goods will be ready for collection and that the balance of the price in respect of those goods needs to be settled before collection. The Customer shall give reasonable notice of its intention to collect the goods, which notice shall include details of the carrier. The carrier will be required to produce documentation identifying the goods and establishing his authority to take delivery thereof. Carriers are presumed to be in possession of valid road transportation permits and Osborn will not be liable for any losses suffered by the Customer and/or his carrier as a result of the illegal carriage of the goods.
- 6.2 Should the Customer not collect the goods within 30 (thirty) days of receipt of the notice in terms of 6.1 above, Osborn shall notify the Customer that the goods will be sold to an



alternative purchaser should the goods not be collected within 7 (seven) days of dispatching this second notice.

- 6.3 In the event that the Customer does not collect the goods and make payment of the balance of the price within 7 (seven) days of the notice referred to in 6.2 above, Osborn shall be entitled to sell the goods to an alternative purchaser. In such an event the deposit paid by the Customer shall be retained by Osborn as compensation for storing the machine and in respect of finding an alternative purchaser.

7 Specifications

- 7.1 Any specifications relating to design, dimensions, mass, capacity, material, power or performance contained in any drawings, quotations, advertisements and catalogues are given in good faith and shall be taken to be approximate. Osborn will not be bound to the correctness thereof and will not be held liable for any direct or consequential loss, howsoever arising, suffered by the Customer and/or a third party as a result of such specifications not being accurate. Any specification shall not be construed as a warranty or contractual obligation, unless it is expressly declared to be so.
- 7.2 Because of the constant research on Osborn's equipment, Osborn reserves the right to make product changes and improvements at any time without prior notice.

8 Guarantee

- 8.1 The equipment of Osborn's own manufacture is guaranteed against failure due to faulty material and workmanship for a period of 3 (three) months from date of dispatch or collection from Osborn's works.
- 8.2 Osborn's responsibility in respect of any guarantee is limited to the replacement of any defective part, ex-works, and does not include any liability for direct or consequential damage due to loss of production or any other cause whatsoever, nor does it include the cost of labour in replacing the part.
- 8.3 Parts requiring replacement in terms of this clause must be returned to Osborn's Elandsfontein works for examination, carriage paid by the Customer.
- 8.4 While any goods or machines are covered by this guarantee, only Osborn manufactured or approved parts may be used for maintenance or repair works to such machines. Failure to adhere to this condition will vitiate the provisions of this guarantee.
- 8.5 Goods not of Osborn's own manufacture shall be subject only to the warranties if any of the manufacturers of such goods.
- 8.6 Osborn will accept no responsibility for repairs or modifications carried out by others without its written consent.
- 8.7 Any unauthorised repair work carried out by third parties shall vitiate the provisions of this guarantee, as will start-up of the machine by personnel other than those of Osborn.
- 8.8 The guarantee set out above is in lieu of all other guarantees whether express or implied by law.
- 8.9 Notwithstanding anything to the contrary contained herein:
- 8.9.1 Osborn gives no other warranties, express or implied, than what is expressed herein.
- 8.9.2 Osborn gives no warranties in respect of equipment being used for a purpose other than what it is intended for, or for defects arising from fair wear and tear and/or neglect.
- 8.10 Osborn shall only be responsible for latent defects which manifest themselves within 12 months from the date of start-up, or 15 months from date of dispatch from Osborn's works, whichever event shall first occur in time, provided that the Customer has notified Osborn of such latent defect within 15 (fifteen) days of becoming aware of the latent defect.



9 Modifications

- 9.1 Equipment supplied by Osborn is of standard design and is manufactured to standard drawings and specifications. Should any modifications to the above be called for by virtue of any request by the Customer, or his inspection authority, the cost of such modifications (including waiting time) will be for the Customer's account.
- 9.2 Should modifications to any goods be requested by the Customer or his representative, they will be effected solely at the Customer's risk.
- 9.3 Unless otherwise specified, Osborn offers no guarantee and will not assume responsibility for the failure of goods modified at the Customer's request.
- 9.4 Osborn reserves the right to extend any quoted delivery period as a result of a request to modify goods, in the event that such a request is made after the Tender date. The period of such extension shall be determined by Osborn in its absolute discretion.
- 9.5 Equipment supplied by Osborn comes standard with systems (for examples guards) which are installed to ensure the safety of the machine during operation. Should the Customer prefer to install their own systems (for examples guards, cages or interlocks) or specifically requests that Osborn not install its standard systems on the machines, then the Customer shall indemnify and hold harmless Osborn and its employees and officers from and against any and all actions, proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property, arising from or in connection with equipment supplied without such systems pursuant to this Contract.

10 Inspection

The goods may be inspected at any time during normal working hours while in the course of manufacture, provided the Customer's inspectors or representatives make arrangements with Osborn's works manager or quality control engineer not less than 48 hours ahead of the time and day of inspection. It will be deemed that the Customer has inspected the goods before the time for delivery or collection. The quoted delivery period may be extended by any delay or waiting time occasioned as a result of an inspection.

11 Demurrage and Storage Charges

Unless otherwise agreed in writing, should dispatch of the goods be delayed due to factors outside Osborn's control, beyond the agreed ex-works completion date, Osborn reserves the right to levy demurrage charges against the Customer's account at a rate of 0.5% per month or portion thereof, of the selling price of the goods. Should lack of suitable storage space at Osborn's works necessitate the transfer of the goods to a warehouse, the warehousing charges, insurance and transport charges to and from the warehouse will be for the Customer's account.

12 Beyond Economical Repairs

"Beyond Economical Repair (BER) parts and/or assemblies, and/or parts replaced as a result of the repair work (Scrapped Parts) are agreed as unwanted by the Customer unless specifically agreed otherwise in writing.

The Customer agrees to allow Osborn to destroy and or dispose of such parts at their discretion.



The credit due to the customer for these Scrapped Parts will:

- a) Either reflect as a credit line item (detailed) in the tender or;
- b) Be included (not detailed) in the price offered for the repair.

The Customer must specifically identify any Scrapped Parts it requires to be returned with the repaired work in advance of Osborn beginning work on the Repair on their written order instructions.

Osborn reserves the right to amend the price of related offer or acceptance thereof according to the differing treatment of these Scrapped Parts. (e.g.. if customer requests return of a part which had been intended for scrapping in the offer the scrapping credit can be reversed and the subsequently increased price charged)”

13 Interpretation, Non Variation and Waiver

- 13.1 These terms and conditions shall not be modified by any conditions contained in or on the Customer's order form or sought to be imposed by the Customer unless expressly agreed to by a director of Osborn in writing.
- 13.2 Unless otherwise stated in the Tender, the point of delivery terms used are to be interpreted in accordance with the INCOTERMS ® 2010 as published by the International Chamber of Commerce.
- 13.3 These terms and conditions contain all the terms and conditions between the parties in respect of the subject matter hereof and any acts, representations, statements, warranties or guarantees not covered herein will be of no force and effect.
- 13.4 No amendment, deletion, modification or addition to any of these terms and conditions shall be of any force or effect unless they are reduced to writing and signed by a director or Osborn.

14 Confidentiality

- 14.1 Where Osborn provides its drawings and designs to the Customer, the Customer undertakes to keep all such drawings and designs as supplied to it confidential and undertakes further not to use such drawings and designs for any purpose other than for which they were intended.
- 14.2 The Customer hereby indemnifies Osborn for any loss suffered as a result of a breach by the Customer, its employees, agents or the like of the confidentiality provisions provided for above.

15 Various

- 15.1 The Customer shall not be entitled to cede or assign any of its rights or obligations arising from the contractual relationship between the parties without the prior written consent of Osborn.
- 15.2 These terms and conditions, the tender, acceptance thereof and any further contractual documents shall in all respects be governed and interpreted in terms of the laws of the Republic of South Africa.
- 15.3 No failure or delay on the part of either party in exercising any right, power or privilege will operate as a waiver of any right, power or privilege of the waiving party.
- 15.4 No single or partial exercise of any right, power, or privilege will preclude any other or further exercise thereof or the exercise of other right, power or privilege.



- 15.5 These terms and conditions shall furthermore govern all future contracts for the purchase of standard machines by the Customer from Osborn, unless specifically varied in writing between the parties.

16 Cancellation

- 16.1 Once accepted, the Customer may not cancel an order except upon:
16.1.1 The written approval of Osborn; and
16.1.2 Payment by the Customer of a cancellation charge to be fixed by Osborn.

17 Damages

Neither party shall be responsible for any indirect or consequential loss suffered by the other party arising from any cause whatsoever.

18 Breach

Should either party commit a material breach of the contract and fail to remedy such breach within 14 (fourteen) days of written notice requiring the breach to be remedied, then the party giving such notice shall be entitled at its option, either to cancel the contract and claim damages or to claim specific performance of all the defaulting party's obligations together with damages, if any, whether or not such obligations have fallen due for performance.

19 Disputes

- 19.1 In the event that a dispute arises between the parties relating to the Contract, and such dispute is a claim for payment of the Contract price, or a portion thereof, by Osborn against the Customer, Osborn shall be entitled to institute such action as may be appropriate in any Court which has jurisdiction or by means of arbitration, which decision shall be in Osborn's sole discretion.
- 19.2 In the event that a dispute arises between the parties relating to the Contract, and such dispute is not a claim for payment of the Contract price by Osborn against the Customer, such dispute may be referred to arbitration, in which event the following procedure shall be followed:
- 19.2.1 In the event that the alleged claim of the aggrieved party is for payment of R500,000.00 or more, the Managing Directors, or equivalents thereof, of the parties will meet in an attempt to settle the dispute.
- 19.2.2 In the event that the alleged claim of the aggrieved party is for payment of less than R500,000.00, Senior Managers, or equivalents thereof, of the parties will meet in an attempt to settle the dispute.
- 19.2.3 If the Managing Directors or Senior Managers of the parties, as the case may be, are unable to resolve the dispute within 30 (thirty) days of a request by either party that the Managing Directors or Senior Managers, as the case may be, so resolve the dispute, either party may refer the dispute to arbitration by giving notice thereof to the other party.
- 19.2.4 The arbitration will be conducted in terms of the Rules for the Conduct of Arbitrations as published by the Association of Arbitrators (Southern Africa).
- 19.2.5 The venue of the arbitration will be Johannesburg.
- 19.2.6 The arbitrator's award will be final and binding and not subject to appeal.



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20 Domicilia and Notices

- 20.1 Osborn chooses as its domicilia citandi et executandi its address and fax number as appears on its tender or offer, unless Osborn notifies a different address and/or fax number to the Customer.
- 20.2 The Customer chooses as its domicilia citandi et executandi its address and fax number as appears on its order, unless the Customer notifies a different address and/or fax number to Osborn.