

CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions "the Company" means MKW Engineering Limited; "the Buyer" means the customer who shall order or buy the Products or Contractual Services; "the Products" means the goods supplied by the Company under the terms of the Contract; "the Contractual Services" means those services supplied by the Company to the Buyer under the terms of the Contract; "the Contract" means any contract for the supply of the Products or the Contractual Services by the Company to the Buyer; "the Price" means the amount payable in respect of the Products (including delivery charges where applicable) or the Contractual Services (including any ancillary charges notified by the Company to the Buyer as set out in the quotation).

2. CONTRACT ACCEPTANCE

2.1 A quotation shall constitute an invitation to the Buyer to negotiate with the Company. An order placed with the Company shall be accepted by the Company at the time an unqualified acknowledgement and acceptance of such order is issued to the Buyer by the Company in writing. The placing of an order implies acceptance of the Conditions, upon which such an order is accepted and no purported term or condition proposed by the Buyer which is inconsistent with any of these Conditions, shall have any effect and these Conditions shall in all circumstances prevail. The Conditions shall apply to any supply of Goods or Contractual Services by the Company to the Buyer, unless the Buyer is notified otherwise in writing by the Company.

- 2.2 No employee or agent of the Company is authorised to give any guarantee or warranty or to make any representation in respect of the Goods or Contractual Services. In entering into the Contract the Buyer confirms it does not rely on any such representations. Unless otherwise agreed in writing no previous communications between the parties relating to the Products and the Contractual Services shall be incorporated into the Contract.
- 2.3 All quotations provided by the Company are based on the Buyer's specifications as supplied to the Company and the Company shall not be responsible for any inadequacies of the Products or the Contractual Services resulting from such specifications. The Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with any claim for infringement of any patent, copyright, design, trademark or other intellectual property rights of any third party arising from or in connection with the specification.
- 2.4 The order placed by the Buyer following receipt of the Company's quotation must be accompanied by sufficient technical information to enable the Company to proceed with the Contract forthwith.
- 2.5 The Company reserves the right at the expense of the Buyer to make any changes in any specification which are required to conform with any applicable safety or other statutory requirement.
- 2.6 Any quotation is valid for up to 30 days from the date of the quotation, unless otherwise stated. At the Company's sole discretion quotations submitted are subject to withdrawal by the Company at any time prior to Contract.
- 2.7 The Company reserves the right to subcontract all or any part of its obligations under the Contract.

3. INFORMATION SUPPLIED BY THE COMPANY

No warranty is given by the Company as to the accuracy or completeness of information supplied by the Company to the Buyer (whether that information is supplied in connection with a quotation or otherwise) and, to the extent that such exclusion of liability shall be permitted by law, the Company shall have no liability for any loss (including indirect loss), damage, costs or expenses (whether the same shall result from the negligence of the Company, its employees, agents, or others for whom it may in law be responsible or otherwise except negligence resulting in personal injury or death) which may be incurred by the Buyer in relation to such information.

4. DRAWINGS AND SPECIFICATIONS

4.1 Any drawings, specifications and particulars or weights and dimensions submitted with a quotation are approximate only, and the descriptions and illustrations contained in the Company's literature are intended merely to present a general idea of the Products and Contractual Services described therein. For the avoidance of doubt such documentation shall not form part of the Contract.

4.2 Unless the Company has agreed otherwise in writing, any specifications, drawings or technical documents intended for use in relation to the Products or the Contractual Services and submitted to the Buyer prior or subsequent to the formation of the Contract remain the exclusive property of the Company. Any such documents are, for the avoidance of doubt, confidential and they may not, without the written consent of the Company be utilised by the Buyer or copied, reproduced, transmitted or communicated to a third party.

4.3 The Company undertakes not to disclose to any third party any confidential information, drawings or specifications supplied by the Buyer.

5. DELIVERY AND DESPATCH

- 5.1 Any delivery or despatch times quoted are to be treated as estimates only and do not impose any contractual obligation on the Company . Any time stated for delivery or despatch will be quoted on the later of the date that the Company issues an acknowledgement of order or the date of delivery of all necessary information, drawings, specifications and free issue material from the Buyer to enable the Company to proceed.
- 5.2 Unless otherwise agreed in writing by the Company all deliveries are ex-works.
- 5.3 If the Products or Contractual Services are subject to import control the Buyer must obtain at his own expense an import licence, details of which must be provided to the Company to enable the Contract to proceed. The Company will be under no obligation to deliver the Products or Contractual Services until it has received such licence and will not be liable for any delay or failure to deliver the Products or Contractual Services as a result of the non receipt of such licence.
- 5.4 All Products shall be strapped, boxed or crated as the Company deems proper for protection during normal handling.
- 5.5 The Company will notify the Buyer in writing when the Products are ready for despatch. If the Company has not agreed to deliver the Products and if within 7 days after the date of notification that the Products are ready for despatch they have not been collected, the Company will be entitled to but not obliged to arrange insurance and storage at its own works or elsewhere on behalf of the Buyer and all costs for storage, insurance and demurrage shall be payable by the Buyer immediately on demand.

5.6 If the Buyer fails to accept delivery where delivery has been attempted by the Company or to arrange for collection of the Products on the despatch date, the Price together with any additional costs incurred by the Company as a result of such failure shall be payable by the Buyer immediately on demand.

5.7 The Buyer must satisfy himself as to the condition of the Products at the time of delivery or collection and the Products must be inspected and accepted in writing by the Buyer at the time of delivery or collection. The Company shall have no liability in respect of any defects or failure to correspondence with specification which could have been revealed by examination on delivery or collection unless the said defects are reported within 3 working days of delivery. In respect of any other defects, the Company shall not be liable unless such defects are notified to the Company within 3 working days of the Buyer becoming aware of such defect.

6. DAMAGES IN TRANSIT

Where the Company undertakes delivery of the Products and not where the Buyer collects the Products, the Company shall replace or (at its discretion) repair free of charge any Products damaged in transit, provided the Company shall receive notification of such damage within twenty four hours of delivery, confirmed in writing within 3 working days.

7. DELAY IN DELIVERY

7.1 Time shall not be of the essence with regard to delivery of the Products or the completion of the Contractual Services to the fullest extent permitted by law, the Company shall have no liability (in contract, tort or otherwise) to the Buyer in respect of any loss, damage, costs or expenses (including indirect loss or damage) which may be incurred by the Buyer from any delay in the delivery of the Products or the completion of the Contractual Services, whether or not the said

delay shall result from the negligence of the Company, its employees, agents or others for whom it may in law be responsible.

7.2 The Buyer shall not be entitled to refuse to accept delivery or collect the Products, or repudiate or cancel the Contract as a result of any delay in delivery of the Products or in the completion of the Contractual Services. Late delivery or late completion shall not affect the obligations of the Buyer to pay the Price.

7.3 Where the Products and/or the Contractual Services are to be supplied by instalments each such instalment shall constitute a separate contract and failure by the Company to perform any one or more instalment in accordance with the Contract or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.

8. PRICE AND PRICE ESCALATION

8.1 Unless otherwise stated all prices quoted are ex-works in Pounds Sterling.

8.2 The Price is based upon the costs of materials, labour, overhead, insurance, duties, currency regulations, or any other similar costs. The Price may be varied to take account of any increase in any of such costs or charges or changes in currency regulations or foreign exchange fluctuations which may occur before the Contract is fulfilled. In addition to the Price the Buyer shall pay Value Added Tax, or any other taxes, as appropriate.

8.3 In the event of variations or suspension of work due to the Buyer's instruction or lack of instructions the Company may vary the Price and/or the despatch date.

8.4 If such a variation is substantial or the suspension of work continues for more than 1 calendar month the Company shall be entitled to terminate the Contract and the Buyer shall pay the Price in full immediately on demand.

9. PAYMENT

9.1 Payment of the Price shall be made within 30 days from the date of an invoice submitted to the Buyer. the Company shall be entitled to issue an invoice at any time after delivery of the Products or performance of the Contractual Services.

9.2 The Buyer shall not be entitled to make any deduction from the Price by way of set off for any sum owed by the Company to the Buyer or otherwise.

9.3 In the event that the Price shall not have been paid in full by the due date, the Company shall be entitled to:

9.3.1 charge interest on all monies outstanding at the rate set out in the Late Payment of the Commercial Debts (Interest) Act 1998 (which for the avoidance of doubt shall apply to the Contract) accruing daily on all amounts due and outstanding; or

9.3.2 cancel the Contract or suspend any further delivery to the Buyer.

10. PASSING OF RISK

The risk in the Products supplied shall pass to the Buyer at the time when such Products are loaded on to the Buyer's transport or onto the transport of any person acting for the Buyer, at the time when the Company notifies the Buyer that the Products are available for collection or on delivery or attempted delivery to the Buyer by the Company, whichever is the earlier.

11. RETENTION OF TITLE

The Company and the Buyer expressly agree that, until the Company has been paid in full for the Products comprised in the Contract or any other contract between them:-

11.1 The Products remain the property of the Company and the Buyer shall store such Products in a proper manner without charge to the Company so that they are clearly identified as belonging to the Company.

11.2 The Company may recover those Products on demand from the Buyer if still in the Buyer's possession if any of the circumstances set out in Clause 20 occurs; and for the purpose of such recovery the Company, its agents or servants may enter upon any land or buildings upon which it is reasonably believed that the Products are situated between the hours of 9.00 a.m. to 5.00 p.m. Monday to Saturday on reasonable notice.

11.3 If the Buyer incorporates the Products into any other products or uses the Products as materials for other products or in any way renders the Products unidentifiable the property in those other products is, upon such incorporation or use, transferred to the Company and the Buyer as bailee of them for the Company will store the same for the Company in a proper manner without charge to the Company.

11.4 In the event of any disposal of the Products to a third party prior to payment in full the Buyer shall account to the Company for the sum outstanding from the Company. If the Buyer has not received any sum due from such end user the Company may recover the sum due to the Buyer from the Buyer's customer provided that the Company accounts to the Buyer for any excess over the sum due to it less any expenses incurred by the Company recovering the debt.

12. WARRANTY AND DEFECTS

12.1 Subject to clause 12.2 the Company warrants that the Products and Contractual Services shall correspond with their specification at the time of delivery or in the case of the Contractual Services at the time of the performance and will be free from defects in design, material and workmanship for a period of 12 calendar months from the earlier date of delivery or installation.

12.2 The warranty at clause 12.1 is given by the Company subject to the following:-

12.2.1 the Company shall be under no liability in respect of any defect in the Products or Contractual Services arising from any drawing, design or specification supplied by the Buyer.

12.2.2 the Company shall be under no liability for defects in free issue materials supplied by the Buyer for processing or incorporation into the Products. The Company shall be under no obligation to examine any such materials prior to such processing or incorporation.

12.2.3 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Products and/or the Contractual Services without the Company's approval.

12.2.4 the Company shall be under no liability if the Price has not been paid by the due date for payment.

12.2.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Company including where such parts, materials or equipment are incorporated into the Products in respect of which the Buyer shall only be entitled to the benefit of such warranty or guarantee given by any manufacturer to the Company.

12.2.6 the Company shall not be liable for any costs incurred in returning the the Products.

12.3 Save as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.4 Where any valid claim in respect of any of the Products or Contractual Services which is based on any defect in the quality or condition of the Products or Contractual Services or their failure to meet specification is notified to the Company in accordance with clause 5.8, the Company shall be entitled to replace the Products, or to re-perform the Contractual Services (or the parts in question), free of charge or, at the Company's sole discretion, refund to the Buyer the Price (or a proportionate part of the Price), but the Company shall have no further liability to the Buyer.

12.5 If the Company or its agents are on the site or sites of the Buyer through the Buyer's instructions for any reason relating to the Contract the Company's liability for accidents and damage to property (without prejudice to the provisions of Clauses 3, 5, 7, 12 and 13) be limited to the Price and the Buyer's exclusive remedy is contained under the provisions of Clause 18 hereof.

13. SITE VISITS

The Buyer shall indemnify the Company against all liabilities to other persons (including the servants and agents of the Company or the Buyer) for bodily injury, damage to property or other costs which may arise out of or in consequence of the execution of the Contract or Contractual Services whilst on the Buyer's premises and against all costs, charges and expense that may be occasioned by the Company by the claims of such persons provided that the Buyer shall not be bound to indemnify the Company against any such liability or claim if the injury, damage or loss in question was caused solely by the wrongful acts or omissions of the Company, its agents or servants.

14. INSURANCES

14.1 Without prejudice to the Buyer's liability to indemnify the Company under Clause 13 the Buyer shall maintain as follows:-

- (1) Such insurances as are necessary to cover the liability of the Buyer in respect of personal injuries or death arising out of or in the course of or caused by the carrying out of the Contract or Contractual Services whilst on the Buyer's premises and;
- (2) Such insurances as are necessary to cover the liability of the Buyer in respect of injury or damage to property, real or personal arising out of or in the course of or by reason of the carrying out of the Contract or Contractual Services and caused by any negligence, omission or default of the Buyer, his servants or agents provided that the Company may without prejudice to the generality of the foregoing require by written notice not later than the date of the commencement of the Contract or Contractual Services the Buyer to effect and keep in force such additional insurance as may be necessary to comply with any specific requirement of the Contract.

14.2 If the Buyer fails to comply with the provisions of this Clause the Company (without prejudice to any other rights and remedies) may effect the said insurances and recover the cost of doing so from the Buyer.

15. ACCESS

The Buyer shall from time to time make available to the Company such parts of the site and such means of access thereto as shall be necessary to enable the Company to execute the Contract or Contractual Services.

16. BUYER'S FACILITIES

16.1 The Buyer shall provide at the site such facilities, (if necessary) as are specified by the Company for the purposes of completing the Contract or Contractual Services.

16.2 The Buyer shall indemnify the Company against any damage or loss whatsoever arising from the use by the Company, its agents or servants of the facilities provided by the Buyer.

17. HEALTH AND SAFETY

The Company and the Buyer shall comply with the Health and Safety at Work Act 1974 ("the Act") and any statutory modifications thereof or regulations published thereunder. Without prejudice to the generality of the foregoing the Company and the Buyer shall submit to one another all information required by the Act in accordance with the safe

handling, installation and use of the Product, equipment and facilities as specified for the purpose of completing the Contact or Contractual Services.

18. LIMITATION OF LIABILITY

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 18.

Without prejudice to the provisions of Clauses 3, 5, 7 and 12, the Company's entire liability under the Contract and the Buyer's exclusive remedy shall be as follows:-

- (1) The Buyer's remedies (whether in contract or in tort, including negligence) against the Company for any breach of the Company's obligations hereunder or otherwise for any act, omission or statement of the Company its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract, shall subject to Sub-Clause (3) below be limited to actual money damages not exceeding the Price and for the purpose of this Sub-Clause (1) a number of causes, whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as one cause occurring at the date of the last of such causes.
- (2) The Company will accept liability for direct physical injury to or death of persons which is caused by the negligence of the Company or its employees, agents, or sub-contractors and the above money limits shall not apply.
- (3) In no event will the Company be liable for any loss of profits, business or anticipated savings or for damages in respect of special or indirect loss howsoever caused even if the Company has been advised of the possibility of such loss or damages. Furthermore the Company will not be liable in

respect of any claim against the Buyer by any other party (except with regard to personal injury claims arising under the foregoing Sub-Clause) for any loss or damage caused by the Company's failure to perform its responsibilities.

- (4) No action, (whether in contract or in tort, including negligence and regardless of form including arbitration proceedings) arising out of the Contract or any other services of any kind supplied or to be supplied hereunder may be brought by either party more than two years after the party concerned becomes aware of the facts constituting the cause of the action.
- (5) The Buyer agrees that it is fair and reasonable for the Company to limit its liability hereunder and accordingly the Buyer agrees that except as expressly set forth in this Clause 18 all conditions or warranties expressed or implied statutory or otherwise are hereby excluded to the fullest extent permitted by law.

19. PATENT RIGHTS AND INTELLECTUAL PROPERTY

19.1 The Company will not accept liability or give any warranty in respect of any patent infringement or alleged infringement which arises as a result of the Buyer's instructions express or implied and the Buyer shall indemnify the Company against all liability, loss, damage, costs or expenses awarded against or incurred by the Company as a result of such infringement or alleged infringement, loss, damage, costs or expenses.

19.2 The Buyer shall indemnify the Company against all liability arising from any infringement of patent rights, registered design, trade marks, tradename or

copyright or any other intellectual property rights caused by the manner of the Buyer's use or sale of the Products.

20. CANCELLATION

20.1 If the Buyer fails to make any payment when it becomes due or enters into any voluntary arrangement with its creditors or if, being an incorporated company, has a receiver appointed or becomes subject to an administration order or if the Buyer ceases or threatens to cease to carry on its business or if the Buyer shall be taken over by or amalgamate with a competitor of the Company or become part of a group of companies of which any member is a competitor of the Company or passes a resolution for winding up or a Court makes an order to that effect or if not being an incorporated Company has a receiving order made against it or the Company reasonably apprehends any of the above events may occur in relation to the Buyer or if there is any breach by the Buyer of any of these Conditions then the Company may defer or cancel any further deliveries of the Products or the completion of the Contractual Services and treat the Contract as terminated but without prejudice to the Company's rights to any unpaid purchase price of Products delivered and Contractual Services supplied and to damages for any consequential loss incurred.

20.2 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages, charges and expenses incurred by the Company as a result of such cancellation.

21. TESTS

21.1 Products manufactured, where practicable, are submitted to standard tests at the Company's works before despatch. If tests other than standard or tests in the presence of the Buyer or representatives are required these, unless otherwise agreed, must be made at the Company's works or at some place nominated by the Company and will be charged for as extras.

21.2 If the Buyer or representatives fail or are unable to attend such tests after being given reasonable notice by the Company (in any case not more than 7 days) that the Company are ready to carry out tests, the tests will proceed in the absence of the Buyer or its representatives but will be deemed to have been made in the Buyer's presence. All costs and expenses incurred by the Buyer and the Buyer's representatives are to the Buyer's account.

22. EXPORT TERMS

22.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

22.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 22 shall (subject to any special terms agreed in writing between the Buyer and the Company) apply notwithstanding any other provision of these Conditions.

22.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.

22.4 Unless otherwise agreed in writing between the Buyer and the Company, the Products shall be delivered to the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

22.5 The Buyer shall be responsible for arranging for testing and inspection of the Products at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Products which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

22.6 The Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim.

23. WAIVER

No waiver by the Company of any breach of the Contract by the Buyer shall be considered a waiver of any subsequent breach of the same or any other provision.

24. FORCE MAJEURE

The Company shall not be responsible or liable in any manner for any loss, (direct or indirect), arising from any delay or default in the performance of any of the Company's

obligations under the Contract where such delay or default arises as a result of any circumstances beyond the control of the Company including (but without prejudice to the generality of the foregoing) war, industrial action, riot, malicious damage, fire, storm, flood, Act of God, accident, non-availability or shortage of material or labour, failure by any sub-contractor or supplier to perform, failure of production equipment, or any statute, rule, bylaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority. If performance of the Contract shall be delayed by any such circumstances then the Company shall have the right to suspend further performance of the Contract until such time as the cause of the delay shall no longer exist.

If the performance of the Contract by the Company shall be prevented by any such circumstances and such events continue for a period of 3 months or more then the Company shall also have the right to be discharged from further performance of and liability under the Contract. If the Company exercises such right the Buyer shall thereupon pay all sums due under the Contract less a reasonable allowance for such part of the Contract as has not then been performed.

25. ASSIGNMENT

The Buyer shall not, without the Company's prior written consent, assign or transfer or purport to assign or transfer the Contract to any other person whatever.

26. LIMIT OF CONTRACTS

Any quotation includes only such goods, materials and services as are specified therein. In the event of any material information, specification or instructions supplied by the

Buyer being defective, the Buyer shall be responsible to the Company for all additional work occasioned by such defect.

27. NOTICES

Any notice required or permitted to be given to either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

28. CONSTRUCTION

This Contract shall be governed by the laws of England and Wales. The parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

29. VARIATIONS

No variation of these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties to the Contract.

30. CONTRACTS (RIGHTS OF THIRD PARTIES ACT 1999)

Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act.

31. NO AUTHORITY

The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

32. SEVERABILITY

Each of the Clauses and Sub-Clauses contained in these Conditions shall be construed as independent of every other Clause and Sub-Clause and in the event of any Clause or Sub-Clause being determined by any court of law as being unenforceable then such determination shall not effect the applicability of any other Clause or Sub-Clause and the unaffected provisions of any Clause or Sub-Clause shall remain in full force and effect.

CONDITIONS OF PURCHASE

1. CONFLICTING CONDITIONS

In the case of conflict between the conditions printed on this Order and any conditions purported by the Seller to be incorporated into the Order including but not limited to any conditions printed on the quotation forms, advice notes, invoices or similar documents issued by the Seller then the conditions on this Order Form shall prevail. The execution of this Order or any part thereof by the Seller shall be deemed to be an acceptance of the terms and conditions herein.

2. ACCOUNTS

Payment will be made through the Accounts Department of MKW Engineering Limited (hereinafter called "the Company") at Stargate Industrial Estate, Ryton, Tyne and Wear, NE40 3EX within 60 days of the receipt of the relevant invoice but so that no invoice shall be deemed to be validly issued unless issued after the delivery of the goods to which it relates. Any queries in connection with accounts should be sent to the address set out above. The Company reserves the right to deduct from any moneys due or becoming due to the Seller the amount of any bona fide contra accounts which the Company may have against the Seller for materials supplied, or for services rendered by the Company to the seller in connection with this or any other contract.

3. ALTERATIONS

- (a) No alterations in quantity, quality, specification or price may be made without the Company's prior written approval.

- (b) All prices should be fixed and firm for the duration of the delivery period quoted on the Company's order.

4. INSPECTION AND RIGHT OF ACCESS

- (a) The Company, its customers or its customer's representatives shall be entitled to a right of access to the Seller's premises or the Seller's sub-contractors' premises at all reasonable times for the purpose of checking progress and carrying out or witnessing tests and/or procedures.
- (b) The Seller shall give the Company 7 days advance notice in writing of any tests. Reasonable facilities shall be provided at the Seller's expense for the Company or Company's representative. The Seller shall provide the Company with such certificates as the Company may require. Such inspection does not relieve the Seller of any liability nor does it imply acceptance of the goods or work as stated in this order.

5. DELIVERY

- (a) Delivery shall be effected carriage paid as stated in this Order or at such other place of delivery as may be required by the Company's representatives. Title to the goods shall pass to the Company when delivered to the Company or Company's representatives.
- (b) Delivery shall be effected at the time or times specified by the Company either in this Order or otherwise, in any case time being of the essence of the contract. If delivery is not so effected then the Company shall have the right to cancel this order but without prejudice to its rights of action for breach of contract or otherwise. If the goods are to be delivered by instalments the Order will be treated as a single order and not severable. The Company reserves the right to return to the Seller at the Seller's expense any goods or

materials delivered prior to the date stipulated by the Company and to withhold payment for any goods or materials so delivered.

- (c) The Buyer shall be entitled to reject any goods not delivered in accordance with this Order and shall not be deemed to have accepted any goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any patent defect in the goods has become apparent.
- (d) The Seller shall immediately replace goods if in a damaged condition upon being called upon to do so by the Company. Such goods shall be replaced without extra charge with goods in a condition complying with the requirements stated in this Order.
- (e) In the event of any special measures being necessary for unloading, the Seller shall ensure that the Company is given 7 days advance notice in writing of any such measure. If no such notification is given then the Company shall have the right to cancel this Order but without prejudice to the Company's rights of action for breach of contract or otherwise.

6. DELIVERY NOTES

The Seller shall furnish the Company with a delivery note for all goods supplied under this Order. For goods delivered to an address other than that of the Company, the Seller shall furnish the Company with a copy delivery note signed by an authorised signatory as proof of delivery to the place nominated by the Company.

7. HAZARDOUS GOODS

Any goods and/or materials which are hazardous shall be marked with the appropriate international danger symbols and the name of the goods or materials in English. In

addition the Seller shall provide advice and precautionary leaflets (in English) in respect of any such goods and/or materials where appropriate (in particular in relation to the handling of the goods) and shall observe all United Kingdom and International agreements relating to the packing, labelling and carriage of hazardous goods.

8. MARKING

In accordance with EC Machinery Directive, where applicable, it shall be the Seller's responsibility to ensure that all goods, machinery, plant and equipment specified on this order and delivered at the place of delivery specified in the order will carry the CE mark of the European Union.

9. PACKAGES

Where practicable separate invoices must be rendered for returnable packages, and whenever possible all packages must be clearly marked and labelled with the Company's order number and the Seller's name. Unless otherwise stated on the face of this order, no additional charges will be accepted for packing and/or the use and/or the return of packing materials, nor shall the Company be under any obligation to return any packing materials to the Seller. If requested in writing prior to delivery the Company shall endeavour to preserve packing materials or containers for collection by the Seller at the Seller's expense. Such collection must be effected promptly following the Company's written request.

10. CARRIER

If a carrier is specified he shall not be regarded as an agent for the Company.

11. REJECTION

Goods supplied shall conform to the specification overleaf and (if supplied for the purpose of a contract named in this Order) they shall also comply with the

requirements of that contract. If the goods do not so conform to such specification or requirements the Buyer may, without prejudice to any other remedy:

- (a) reject the Goods wholly or in part and rejection may take place at the time of delivery or subsequently. On any such rejection occurring, the Company shall have the right to treat this Order as repudiated and to obtain supplies elsewhere, and any costs or loss resulting from extra expense incurred by the Company shall be charged to the Seller. No payment shall be made for rejected goods which will remain at the Seller's risk and which shall be removed by the Seller and at the Seller's expense forthwith upon rejection. The Buyer may demand repayment of any sums paid in respect of such goods; or
- (b) require the Seller to repair the goods or supply replacement goods confirming to the Order within 7 days.

12. CANCELLATION

- (a) In the event of the Seller failing to comply with any of its obligations under the contract, the Company shall have the right at any time while the Seller's default continues to cancel the contract as to the undelivered balance of the goods, but without prejudice to the Company's rights and remedies in respect of the Seller's default.
- (b) The Company reserves the right to require the Seller to suspend delivery or the execution of any work covered by this Order and to suspend payment of a proportionate part of any sums due from the Company under this Order should it be necessary for the Company in its discretion to decline or postpone acceptance of the goods, materials or service by reason of war, industrial action, riot, malicious damage, fire, storm, flood, Act of God, accident or of any other unforeseen contingencies outside the Company's control and if such

reason continues for a period of 2 months or more the Company shall be entitled to treat the Order as frustrated.

- (c) If the Seller becomes insolvent or makes any arrangement with its creditors or have a receiver, administrative receiver or administrator appointed or commence to be wound up (other than voluntarily for amalgamation or reconstruction) or if the Company reasonably apprehends that any of the above events may occur then the Company may, without prejudice to any other rights, terminate this contract by notice to the Seller, the Receiver, the Administrative Receiver or any person in whom the Seller's affairs have become vested, such notice to have immediate effect.

13. PROPERTY

- (a)(i) Subject to the provisions of this Clause, so much of the goods as shall have from time to time been manufactured and everything relating thereto, and all materials and other things whatsoever which the Seller shall acquire or allocate for incorporation in such goods shall, without prejudice to any other rights of the Company under the contract, vest in and become the Company's absolute property as from the time work under the contract begins or the materials or things are so acquired, or allocated and shall thenceforth be in the Seller's possession for the sole purpose of completing work under the contract and shall not be within the Seller's ownership, control or disposition.
- (ii) Neither the Seller nor any sub-contractor, nor any other person shall have a lien on the goods or any materials or things which have become vested in the Company under sub-clause (a)(i) hereof for any sum due to the seller, its sub-contractor or any other person, and the Seller shall take all such steps as may be reasonably necessary to ensure that the Company's title to the goods and

the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the goods or any such materials or things.

- (iii) Without prejudice to the vesting of the goods and all such materials and things as aforesaid under sub-clause (a)(i) hereof the Seller shall secure that as from the time when work under the contract begins or as soon thereafter as is practicable and that as from the time when any such materials or other things are so acquired, or allocated such a mark shall be placed thereon or attached thereto where possible or, where this is not possible, such a notice shall be displayed and record made in the Seller's books as may be necessary for the purpose of ensuring that the goods or all such materials or things as aforesaid are readily identifiable as being the Company's property and if any direction is given the Company to the Seller as to the steps to be taken to ensure that the goods or any such materials or things shall be readily identifiable as being the Company's property the Seller shall comply with that direction.
- (iv) Notwithstanding the provisions of this Clause the Seller shall remain responsible for all risks in the goods materials and work until they are delivered to the Company and shall insure against all such risks.
- (b) PROVIDED ALWAYS that if the goods and materials supplied pursuant to the contract to which this Order relates are to be used by the Company in the performance of any contractual relationship which the Company has with any third party ("the Third Party Contract") then to the extent that the Third Party Contract contains any provisions relating to the vesting of title to goods which provisions are at variance with the provision of clause 14(a) thereof the provisions in such Third Party Contract shall prevail.

14. QUALITY

All deliveries furnished under this Purchase Order must be of the quality specified or sample proffered and approved and fit for their general purpose or any particular purpose notified to the Seller. All goods are subject to inspection after delivery. The Company reserves the right to reject at any time during the continuance of the contract any goods ordered in respect of the contract which prove to be faulty or not up to sample or specification. The risk in respect of rejected goods passes to the Seller immediately on notice of rejection.

Section 14(1) of the Sales of Goods Act, 1979 is expressly excluded. It is a condition of purchase that the Seller shall re-imburse the Company the full consequential loss suffered by the Company (including the cost of any tests) arising from failure to supply goods or materials and/or carry out the service as specified or referred to on this Order or of or to a satisfactory quality or fit for their purpose.

15. GUARANTEE

The Seller shall fully guarantee the Company for a period of twenty four months, or such other period as may be stated in the order, from the date of delivery in respect of any defect which may arise in the case of the goods attributable to faulty material, workmanship or design unless such design was carried out in detail by the Company. Any defective parts shall be replaced by the Seller within 7 days without extra cost to the Company, delivery to take place in accordance with the Company's instructions.

16. INDEMNITY

The Seller shall indemnify the Company in respect of:-

- (a) all claims, damages and expenses including but not limited to consequential loss or damage, loss of profits, business revenue goodwill or anticipated savings suffered by the Company in consequence of the Seller's negligence or

breach of duty or on the part of the Seller's sub-contractors or agents or servants in any way arising out of or connected with the execution of performance of the Contract or any defect in any goods, their defective design, their defective assembly, or the breach of any of the provisions of this contract;

- (b) all claims made against the Company by a third party or any of the Company's servants for any of the matters specified in clause 16(a);
- (c) it is expressly agreed that the provisions of this Clause 16 are considered reasonable by the parties.

17. LEGAL REQUIREMENTS

- (a) It shall be the Seller's responsibility to ensure that every item of machinery, plant and equipment used, employed or hired by the Seller for the purpose of this Order from whatsoever source and in whatever circumstances obtained conforms structurally to legal requirements. The Seller shall arrange or cause to be arranged such inspection and tests as are imposed by law and shall hold harmless and indemnify the Company against any liability whatsoever which may result from the Seller's use, employment or hire of machinery, plant or equipment for purposes of this Order. Where any item of machinery, plant or equipment is supplied, hired or engaged with driver, every person employed, directed or permitted by the owner to drive shall in all circumstances be regarded as the servant or agent of the owner.
- (b) It shall be the Seller's responsibility to ensure that every person employed to operate any item of machinery, plant and equipment used, or hired by the Seller for the purpose of this order is suitably trained and qualified.

18. PURCHASER'S MATERIALS

- (a) If the Company or its agents issue goods or materials free of charge to the Seller in connection with this Order such goods and materials remain the Company's property and shall be maintained by the Seller in good order and condition. The risk in such goods or materials shall be the Seller's and shall be insured accordingly. Where there are surplus goods or materials these shall be disposed of in accordance with the Company's instructions.

- (b) Where there is a shortage of goods or materials the Seller shall make no substitute. The Seller must inform the Company in writing of any shortages and obtain from the Company the exact materials to complete this order. Substitute materials can only be used in accordance with the Company's express instructions.

19. INTELLECTUAL PROPERTY

The Seller warrants its title to any copyright, patent, trade mark, secret process or any other intellectual property rights used in connection with the goods, and shall keep the Company indemnified against all claims, losses (whether direct or indirect) or expenses in respect thereof.

20. PATTERNS, DRAWINGS, DYES, MOULDS AND TOOLS

All patterns, drawings, dyes, mould, tools and any other documents or objects or anything else supplied by the Company shall be returned on completion of the Order. Such documents or objects are not to be used for the execution of orders other than those placed by the Company and ownership remains with the Company. When requested all patterns, drawings, dyes, moulds and tools shall be returned to the Company at the Seller's expense.

21. ASSIGNMENT OF ORDER

The Seller shall not without the Company's prior consent in writing assign or transfer this Order, or enter into any sub-contract in respect thereof with any third party save that the Seller may subcontract orders for raw materials.

22. PUBLICITY AND CONFIDENTIALITY

This Order shall not without the Company's consent in writing be used in any way for purpose of advertisement, nor shall it without such consent be disclosed to any third party. The Seller shall treat all information provided by the Company as confidential and use such information only for the purpose of supplying the goods as stated in this Order.

23. WORKING CONDITIONS AND STATUTORY OBLIGATIONS

(a) The Seller, its sub-contractors and agents (together with all employees of such persons) shall whilst engaged upon work at the Company's premises or the premises of any of the Company's associated companies at all times observe and be bound by the rules, regulations and procedures from time to time applicable to the Company's employees at those premises and shall at all times fulfil comply with and observe all statutory obligations (copies of which have been supplied), orders, bylaws and other requirements applicable to such premises.

(b) In particular but without limitation the Seller shall comply with all statutory obligations arising under health and safety legislation.

24. CONTRACT (RIGHTS OF THIRD PARTIES ACT) 1999

Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999

to rely upon or enforce any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act.

25. SUCCESSORS AND ASSIGNMENT

This Contract shall be binding upon and ensure for the benefit of the personal representatives or successors in title of the parties to but shall not be assignable by either party.

26. VARIATIONS

No variation of these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties to the Contract.

27. WAIVER

No failure to exercise or delay in exercising any right or remedy under these Conditions shall constitute a waiver thereof and no waiver by the Company of any breach or non-fulfilment by the Seller of any provision of this Order shall be deemed to be a waiver of any subsequent or other breach of that or any other provision hereof. No single or partial exercise of any right or remedy under this Order shall preclude or restrict the further exercise of any such right or remedy and the rights and remedies of the Company provided in this Order is cumulative and not exclusive of any rights and remedies provided by law.

28. NO AUTHORITY

The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

29. LAW

This Order shall be construed in all respects in accordance with the laws of England and Wales. The parties hereby submit to the exclusive jurisdiction of the laws of England and Wales.

30. NOTICES

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that party at its registered office or principal place of business or such other address as may at the time have been notified pursuant to this provision to the party giving the notice.

31. PROVISIONS

If any provisions of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.