

General Terms and Conditions
of
HOERBIGER UK Ltd.
for
Product Deliveries and Services

Version valid as of July 1, 2015

1. INTRODUCTION

- 1.1 These terms and conditions (the “**Conditions**”) and any quotation and/or Order Confirmation issued by the Company in relation to the Goods and/or Services are expressly incorporated into any contract made between the Company and the Buyer for the sale and purchase of the Goods and the performance of the Services (the “**Contract**”).
- 1.2 The Contract constitutes the entire agreement between the parties in relation to the Goods and/or Services and supersedes any prior written and oral representation, agreement, arrangement, proposal or understanding between the parties in relation to its subject matter and:
- 1.2.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in the Contract; and
- 1.2.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Contract and which is expressly set out in this Contract will be for breach of contract; and
- 1.2.3 nothing in this condition 1.2 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 1.3 Subject to condition 17.12, no variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.
- 1.4 The Buyer's attention is in particular drawn to the provisions of condition 19.3. The Price and the Charges are based on these Conditions.

2. INTERPRETATION

- 2.1 The following definitions and rules of interpretation apply in these Conditions:
- “**Acceptance Tests**” means the tests carried out by the Company before Delivery in order to ensure that the Goods are in compliance with the Contract (pursuant to condition 5).
- “**Applicable Law**” means any statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal) which relates to this Contract and/or the Goods and/or the Services and/or the export, import, sale, distribution and marketing of the Goods and/or the Services (including the anti-bribery laws of any country having jurisdiction over the Buyer).
- “**Buyer**” means any person who purchases the Goods and/or Services from the Company and whose name appears on the Company's quotation, Order Confirmation or delivery note.
- “**Buyer Specification**” means a specification which is provided by the Buyer to the Company.
- “**Charges**” means the charges for the relevant Services set out in the Order Confirmation (or the relevant quotation if there is no Order Confirmation).
- “**Company**” means Hoerbiger UK Ltd a company incorporated in England and Wales (registration number 02072970) whose registered office is at 1649 Pershore Road, Stirchley, Birmingham, B30 3DR.
- “**Confidential Information**” means the terms of the Contract and any information that relates to a party (or any of its affiliates) or its business and which is disclosed to the other party in connection with the Contract including all technical or commercial know-how, specifications, inventions, processes or initiatives relating to the Goods and/or Services. The following will not be Confidential Information:

(i) information that is at the relevant time in the public domain (other than by a breach of condition 23); (ii) information that was received by the other party from a third party who did not acquire it in confidence, and (iii) information that is developed by the other party without any breach of the Contract.

“**Corrective Maintenance Services**” means maintenance carried out by the Company in order to remedy any functional defects that have arisen in the Equipment and which may include without limitation (i) fault tracing, (ii) remedying defects, (iii) provision and replacement of spare parts, and (iv) checking the functionality of the Equipment.

“**Delivery Point**” means the Company's premises which is detailed on the Company's quotation or Order Confirmation.

“**Equipment**” means such plant or machinery or parts of plant or machinery on which or with respect to which the delivered Goods shall be used and/or the Company shall perform the Services.

“**Force Majeure Event**” means an event or circumstance beyond the reasonable control of the Company including, without limitation, acts of God, war, military mobilisation, insurrection, riots, acts or threats of terrorism, embargoes, lightning, earthquake, fire, flood, storm, extreme weather conditions, strikes, lockouts and industrial disputes (whether or not relating to either party's workforce and/or its subcontractor's workforce), breakdown or failure of plant or machinery, change in Applicable Law or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

“**Goods**” means any goods which are detailed in the quotation and/or Order Confirmation or which the parties otherwise agree will be supplied to the Buyer by the Company (including any part or parts of them).

“**Installation Services**” means the installation of the Goods to be performed by the Company for the Buyer (if agreed by the parties).

“**Intellectual Property Rights**” means patents, rights to inventions, design rights, copyright (whether in drawings, plans, specifications, designs or otherwise) and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Liability**” means liability arising out of or in connection with the Contract whether in contract, tort, misrepresentation, under statute or otherwise arising from a breach of, or failure to perform or defect or delay in performance of, any of a party's obligations under the Contract and/or any defect in any of the Goods, in each case howsoever caused including if caused by negligence.

“**Losses**” means all liabilities (including any tax liability), direct, indirect and consequential losses, damages, claims, proceedings or legal costs (on an indemnity basis), judgments and all costs (including costs of enforcement) and expenses.

“**Order Confirmation**” means a written acknowledgement by the Company to the Buyer confirming that it has accepted the Buyer's order for the Goods and/or the Services in accordance with condition 3.3.

"Place of Manufacture" means the location where the final assembly of the Goods is performed by or on behalf of the Company prior to the Goods being delivered to the Buyer.

"Preventative Maintenance Services" means preventative maintenance services carried out by the Company in relation to the Equipment which may include: (i) checking its condition and functionality, (ii) adjustments, (iii) provision and replacement of worn parts, (iv) cleaning and lubrication as necessary, (v) such other preventative maintenance services agreed between the parties from time to time.

"Price" means the price of the Goods set out in the relevant Order Confirmation (or the relevant quotation if there is no Order Confirmation).

"Services" means the services carried out by the Company which include Corrective Maintenance Services, Preventative Maintenance Services, Installation Services and such other services as agreed between the parties in writing from time to time.

"Specification" means the specifications, designs and drawings according to which the Goods are manufactured or to be manufactured.

- 2.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality).
- 2.3 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.
- 2.4 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.
- 2.5 To the extent only of any conflict or inconsistency between the provisions of these Conditions, the quotation or the Order Confirmation, the following order of precedence shall apply:
 - 2.5.1 these Conditions,
 - 2.5.2 the Order Confirmation; and
 - 2.5.3 the quotation.

3. QUOTATION, ORDER CONFIRMATION and THE CONTRACT

- 3.1 A quotation issued by the Company is only valid for a period of 30 days from the date upon which it is issued by the Company to the Buyer (provided that the Company has not previously withdrawn it, which the Company may do at its discretion) and will constitute and invitation to treat and not an offer.
- 3.2 Each order or acceptance of a quotation for Goods and/or Services by the Buyer (an "Order") shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to these Conditions. The Buyer shall ensure that the terms of the Order and any applicable Buyer Specification are detailed, complete and accurate.
- 3.3 A contract for the supply of Goods and/or Services by the Company to the Buyer will be formed when the Company accepts the Order by issuing a written Order Confirmation to the Buyer or (if earlier) the Company delivers the Goods and/or commences performing the Services. The Company is under no obligation to accept an Order.
- 3.4 These Conditions are the only terms and conditions on which the Company will supply goods and/or services to the Buyer and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Buyer purports to apply under any purchase order, specification or similar document (whether or not such document is referred to in the Contract) and any other terms and conditions that may be applied by trade, custom, practice or course of dealing.
- 3.5 The Buyer cannot withdraw an Order once it has been accepted by the Company in accordance with condition 3.3 above.

- 3.6 The Company is entitled, at its discretion, to deliver the Goods by separate instalments. Each instalment will be deemed to be a separate contract and no cancellation or termination of any one contract relating to an instalment will give the Buyer the right to cancel or terminate any other contract. Each instalment shall be invoiced and paid for in accordance with the provisions of the relevant contract.

PROVISION OF GOODS

4. DESCRIPTION OF GOODS

- 4.1 The quantity and description of Goods shall be set out in the Company's quotation or Order Confirmation. The Company will, at its discretion, be entitled to substitute any materials or parts which are used in the Goods and which are unavailable for any reason with alternative materials or parts, to the extent that (a) this does not materially affect the quality or performance of the Goods, or (b) this is necessary to comply with any health or safety or other legal requirements.
- 4.2 All drawings, technical documents and other technical information relating to the Goods or the manufacture of the Goods (the "Technical Information") submitted by the Company to the Buyer prior or subsequent to the formation of the Contract and all Intellectual Property Rights contained therein shall remain the property of the Company.
- 4.3 The Buyer shall not, without the consent of the Company, use the Technical Information for any other purpose than in connection with this Contract. Technical Information must not, without the prior written consent of the Company, be used for any other purpose or be copied, reproduced, transmitted or communicated to any third party.
- 4.4 Any information and drawings shall be supplied in the number of copies agreed upon between the parties or at least one copy of each. The Company shall not be obliged to provide manufacturing drawings for the Goods or for spare parts.
- 4.5 The Technical Information and all other samples, drawings, descriptive matter, specifications and advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them, and shall not form part of the Contract. This is not a sale by sample.

5. ACCEPTANCE TESTS

- 5.1 Acceptance Tests will be carried out only if explicitly agreed between the parties in writing.
- 5.2 Acceptance Tests carried out under this Contract shall, unless otherwise agreed, be carried out by the Company in accordance with the Company's procedures and at the Place of Manufacture during the Company's normal working hours.
- 5.3 The Company shall notify the Buyer in writing of the Acceptance Tests in due time to permit the Buyer to be present or to arrange for a representative to be present whilst they are performed. If the Buyer is not present or represented, an Acceptance Tests report will be sent to the Buyer within a reasonable period following completion of the Acceptance Tests.
- 5.4 If the Acceptance Tests show that the Goods are not in accordance with the Contract, the Company shall remedy any deficiencies with the Goods in order to ensure that the Goods comply with the Contract. Further Acceptance Tests shall then be carried out by the Company at the Buyer's request, unless the deficiency identified was not material.
- 5.5 Unless otherwise agreed between the parties, the Buyer shall bear all costs for Acceptance Tests carried out by the Company at the Place of Manufacture. The Buyer shall also bear all travel and living costs and expenses incurred by the Buyer or its representative as a consequence of attending the Acceptance Tests.

6. DELIVERY, TITLE and RISK OF LOSS

- 6.1 Unless otherwise agreed in writing between the parties delivery of the Goods are Ex Works the Delivery Point, INCOTERMS 2010. Delivery of the Goods will be deemed to occur when the Company completes its delivery obligations under that INCOTERM ("Delivery").
- 6.2 Full risk of damage to or loss of the Goods (including transport, carriage, freight and delivery delays and losses) shall pass to the Buyer on Delivery.
- 6.3 The Company will notify the Buyer when the Goods are available for delivery. The Buyer must take delivery within 7 days of the Company providing the Buyer with such notice.
- 6.4 The quantity of any delivery of Goods as recorded by the Company at the Delivery Point shall be conclusive evidence of the quantity of Goods received by the Buyer on Delivery, unless the Buyer can provide, to the Company's satisfaction, documentary evidence proving the contrary.
- 6.5 The Company will use reasonable endeavours to deliver the Goods on the estimated delivery date set out in the quotation and/or the Order Confirmation but time for delivery of the Goods will not be of the essence of the Contract. Any delivery dates specified by the Company in the quotation, Order Confirmation or otherwise are estimates only.
- 6.6 If the Buyer fails to take Delivery of the Goods:
- 6.6.1 risk in the Goods shall pass to the Buyer (including for loss of, or damage to, the Goods caused by the Company's negligence) at the time when the Company completes its delivery obligations under the Ex Works, INCOTERMS 2010; and
- 6.6.2 the Company may store, or arrange for storage of, the Goods until the Buyer takes possession of them whereupon the Buyer shall be liable for, and will reimburse the Company on demand in respect of, all related costs and expenses incurred by the Company in connection with this condition (including, without limitation, storage and insurance).
- 6.7 If the Company is unable to deliver the Goods when it intends to for any reason attributable to the Buyer, including where the Buyer has not provided appropriate instructions, documents, licences and authorisations:
- 6.7.1 risk in the Goods shall pass to the Buyer (including for loss of, or damage to, the Goods caused by the Company's negligence) at the time that the Company intended to make delivery of the Goods (as previously notified to the Buyer in writing); and
- 6.7.2 the Company may store, or arrange for storage of, the Goods until the Buyer takes possession of them whereupon the Buyer shall be liable for, and will reimburse the Company on demand in respect of, all related costs and expenses incurred by the Company in connection with this condition (including, without limitation, storage and insurance).
- 6.8 Subject to conditions 6.9 and 6.10, legal and beneficial ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds):
- 6.8.1 all sums due to it in respect of the Goods; and
- 6.8.2 all other sums which are or which become due to the Company from the Buyer on any account whatsoever.
- 6.9 The Buyer may resell the Goods in the ordinary course of its business and, if it does, legal and beneficial ownership of the Goods will pass to the Buyer immediately prior to the Buyer entering into a binding contract for the sale of those Goods.
- 6.10 The Company may, by giving written notice to the Buyer, pass legal and beneficial ownership of the Goods (or any of them) to the Buyer at any time before such ownership would otherwise have passed to the Buyer.
- 6.11 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 6.11.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 6.11.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 6.11.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

- 6.11.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.12 The Buyer's right to possession, use and resale of the Goods will terminate immediately if, before ownership of the Goods passes to it in accordance with conditions 6.8, 6.9 and 6.10:
- 6.12.1 the Buyer: has a receiver, administrator or provisional liquidator appointed; is subject to a notice of intention to appoint an administrator; passes a resolution for its winding up; has a winding up order made by a court in respect of it; enters into any composition or arrangement with creditors; ceases to carry on business; or is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;
- 6.12.2 the Company gives the Buyer written notice that it has concerns regarding its financial standing;
- 6.12.3 the Buyer fails to pay any sum due to the Company under the Contract on or before the due date; or
- 6.12.4 the Contract expires or terminates for any reason.
- 6.13 The Buyer grants, and will procure that the owner of any relevant third party premises grants, the Company and the Company's agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession, use and resale has terminated, to recover them.
- 6.14 If the Buyer's right to possession, use and resale of the Goods terminates in accordance with condition 6.12, upon recovering possession of the Goods the Company will issue the Buyer with a credit note for all or any part of the Price of the Goods together with value added tax thereon.

7. LATE DELIVERY of GOODS

- 7.1 The Company shall have no Liability to the Buyer for delays in performance of its obligations under condition 6 (where "performance" shall include but not be limited to fabrication, shipment, delivery, assembly or installation) nor shall any such delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days from the estimated delivery date.
- 7.2 Where the Buyer exercises its right to terminate the Contract under condition 7.1 above the Company will issue a credit note for the Price plus any VAT payable thereon (pro rated as appropriate to reflect any Goods which have been delivered in accordance) against any invoice raised for such Goods. The Company will have no further Liability to the Buyer in such circumstances.

8. EXPORT CONTROL

- 8.1 The Goods may be subject to export and re-export restrictions under some countries' export control laws, orders and regulations, which may require the approval of the respective government or the relevant authorities for any re-export or retransfer ("**Export Control Regulations**").
- 8.2 If the Buyer transfers the Goods (regardless of the mode of provision) to a third party, the Buyer shall comply with all applicable national and international (re-)export control laws, orders and regulations, in particular (without limitation) with embargoes, and shall obtain and renew any necessary governmental export permits or similar authorisations which may be required.
- 8.3 Prior to any transfer to a third party of the Goods, the Buyer shall without limitation check and guarantee by appropriate measures that such transfer does not violate embargoes, complies with the rules prohibiting or requiring prior authorisation for the use of the Goods in connection with some activities or other goods or for trading with some entities, persons or organisations.
- 8.4 If required to enable authorities or the Company to conduct export control checks, the Buyer, upon request by the

Company, shall promptly provide the Company with all information pertaining to the particular end customer, the particular destination and the particular intended use of the Goods, as well as any export control restrictions existing.

- 8.5 The Buyer shall indemnify and hold harmless the Company from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with (re-)export control laws, order or regulations by the Buyer, and the Buyer shall compensate the Company for all losses (whether direct or indirect) and expenses resulting thereof.

PROVISIONS FOR SERVICES

9. PROVISION OF THE SERVICES

- 9.1 The Company warrants that the Services will be provided with reasonable skill and care.
- 9.2 If, during the term of the Contract, the Company receives written notice from the Buyer of any alleged breach by the Company of the warranty contained in condition 9.1 above, the Company shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice.

10. CORRECTIVE and PREVENTATIVE MAINTENANCE SERVICES

- 10.1 The Company will provide the Preventive Maintenance Services (according to DIN 31051) to the Buyer at the times or with the intervals specified in the Order Confirmation or as otherwise agreed between the parties.
- 10.2 The Company will provide the Corrective Maintenance Services as soon as is reasonably practicable following a notification in writing from the Buyer that such Corrective Maintenance Services are required.
- 10.3 If Corrective Maintenance Services are carried out shortly before Preventative Maintenance Services are due, the Company may, with the Buyer's consent, thereby also carry out the Preventative Maintenance Services. For such co-ordinated maintenance the Company may not charge the Buyer for any costs which are already covered by the agreed fee for Preventative Maintenance Services.
- 10.4 The Preventative Maintenance Services and the Corrective Maintenance Services will be carried out by the Company during the Company's normal working hours (details of which are available from the Company on request), unless otherwise agreed in writing between the parties.

11. BUYER'S RESPONSIBILITIES in relation to THE EQUIPMENT

- 11.1 The Buyer shall:
- 11.1.1 provide such general care and maintenance (at its own expense) as is reasonably required in relation to the Equipment on a daily basis in order to ensure that the Equipment is kept in good and substantial repair;
- 11.1.2 maintain a log of all care and maintenance that the Buyer provides in accordance with 11.1.1 above.

12. COMPANY'S EXCLUSIVE RIGHT

- 12.1 The Buyer shall not without the Company's prior written consent carry out or allow any third party to carry out any Preventative Maintenance Services or Corrective Maintenance Services which the Company has agreed to provide pursuant to the Contract, or any services similar thereto. If the Buyer breaches this condition 12.1, the Company's warranty provided in condition 16.2 shall cease immediately.

13. ALTERATIONS TO THE EQUIPMENT

- 13.1 The Buyer must immediately notify the Company of any changes in the location of the Equipment to the extent such change in any way impacts the performance of the Company's obligations under the Contract. The Company may, at its discretion, amend the Charges to the extent necessary to reflect any increased costs and expenses which result (whether directly or indirectly) from the Buyer changing the location of the Equipment.

- 13.2 The Buyer shall without undue delay and in any event within 24 hours of it occurring inform the Company by notice in writing of any alterations concerning the Equipment or its operation or other measures taken by the Buyer which may affect the Company's obligations under the Contract. If such alterations or measures materially affect the Company's obligations, and if the parties fail to agree on how to amend the Contract in respect thereof, the Company may, with immediate effect, terminate the Contract by notice in writing to the Buyer and the Buyer will reimburse the Company for its reasonable costs and expenses incurred in performing its obligations under the Contract up to the date of termination (including, without limitation, for preparatory work in connection with any order and work in progress).

14. HEALTH and SAFETY

- 14.1 The Buyer shall ensure that the premises where the Services are carried out by the Company (the "Premises") are safe and free from any danger or hazards to health.
- 14.2 The Buyer shall take all necessary measures to protect any person employed or engaged by the Company to provide the Services (the "Company Personnel") from exposure to any safety or health hazard.
- 14.3 The Buyer will inform the Company Personnel of any safety regulations in force at the Premises prior to the Company Personnel commencing the Services.
- 14.4 The Company may at its discretion communicate to the Buyer suggestions with respect to the security of the Equipment and the operation thereof.
- 14.5 The Company is entitled to interrupt the performance of the Contract if it is of the opinion that the security conditions at the Premises required for the performance of the Contract are not satisfactory and the Company shall in such circumstances be entitled to withdraw the Company Personnel from the Premises without incurring any Liability to the Buyer for failure to provide the Services in accordance with the Contract.
- 14.6 The Buyer will indemnify the Company on demand against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Company does or will incur or suffer as a result of the Buyer breaching the provisions of this condition 14.

15. INSTALLATION SERVICES

- 15.1 Unless otherwise agreed in writing by the parties the charges for the Installation Services shall be determined on a time and materials basis at the Company's then standard daily fee rates or on fixed price basis as set out on the quotation and/or the Order Confirmation.

GENERAL PROVISIONS

16. QUALITY

- 16.1 In the case of Goods (or parts of components thereof) that the Company has not manufactured ("Third Party Goods"), the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company by the third party manufacturer in respect of such Third Party Goods but the Company shall have no further Liability to the Buyer in respect of such Third Party Goods.
- 16.2 Subject to the other provisions of this condition 16 the Company warrants that:
- 16.2.1 on Delivery and for a period of 12 months thereafter (the "Warranty Period") the Goods will be (a) free from defects in material and workmanship; and (b) if applicable, will materially conform to the Specification; and
- 16.2.2 the Services shall be performed by specialised personnel in accordance with the Contract.
- 16.3 The Company shall not be liable for a breach of any of the warranties in condition 16.2 unless:
- 16.3.1 the Buyer gives written notice of the defect or non conformity under condition 16.2.1 or breach of condition 16.2.2 to the Company immediately and in

- any event no later than 3 business days from following its discovery; and
- 16.3.2 in the case of the Goods, at the Company's option the Buyer returns the relevant Goods to the Company (at such location as is specified by the Company) at the Buyer's expense or permits the Company or its agent or sub-contractor to inspect the relevant Goods at the Buyer's premises.
- 16.4 The Company shall not be liable for a breach of any of the warranties in condition 16.2 if:
- 16.4.1 the Buyer continues to use the Goods after becoming aware of the breach of the warranty;
- 16.4.2 the defect arose because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or, if no such instructions were provided by the Company, the Buyer failed to store, install, commission use or maintain the Goods in accordance with good industry practice;
- 16.4.3 the Buyer (or a third party on the Buyer's behalf) alters or repairs such Goods without the written consent of the Company; or
- 16.4.4 the Warranty Period has expired.
- 16.5 The Company has no responsibility under the warranty provided in condition 16.2 and the Company shall not be liable to the Buyer for:
- 16.5.1 fair wear and tear of the Goods;
- 16.5.2 maintenance services carried out outside of the Contract by a third party;
- 16.5.3 defects arising out of materials provided or a design stipulated or specified by the Buyer;
- 16.5.4 defects resulting from defective maintenance, deviant operating conditions, faulty installation, incorrect storage, insufficient security, use of inadequate operational materials by the Buyer or third parties or other similar circumstances;
- 16.5.5 for defects resulting from unapproved repair, alterations or changes to the Goods by the Buyer or third parties on behalf of the Buyer;
- 16.5.6 for defects resulting from any other actions of the Buyer or third parties.
- 16.6 Without limiting the generality of the foregoing provisions of this condition 16, the Buyer expressly acknowledges and agrees that where the Company manufactures and/or supplies the Goods according to a Buyer Specification, the Buyer, as the author of the Buyer Specification, assumes sole responsibility for ensuring that the Goods are fit for the purpose for which the Buyer intends to use the Goods and the Company will not be liable to the Buyer for any defects or damage attributed to usage of the Goods in accordance with a Buyer Specification.
- 16.7 Subject to conditions 16.3 to 16.6 the Company's only Liability to the Buyer for breach of the warranties in condition 16.2 will be:
- 16.7.1 in the case of the Goods, at its option to repair or replace the relevant Goods or refund the Price (pro rated as appropriate such that the refunded sum reflects on those Goods which are in breach of the warranties in condition 16.2.1);
- 16.7.2 in the case of the Services, at its option, reperform or rectify the Services or refund the Charges (pro rated as appropriate such that the refunded sum reflects on those Services which are in breach of the warranty in condition 16.2.2)
- 16.8 If the Company complies with condition 16.7 it shall have no further Liability for a breach of any of the warranties in condition 16.2 in respect of the Goods and/or the Services.
- 16.9 Legal and beneficial ownership of Goods which the Company replaces pursuant to this condition 16 shall, where it has transferred to the Buyer, transfer back to the Company immediately following the Company replacing the Goods. Any repaired or replacement Goods shall have the benefit of the warranty provided in condition 16.2 for the unexpired portion of the original Warranty Period.
- 16.10 All claims by the Buyer under condition 16.2 will be subject to audit and approval of the Company. The Company will notify the Buyer of the Company's disposition of each warranty claim in writing within a reasonable time period.
- 16.11 Approved warranty claims shall be performed and completed within a reasonable time period.
- 16.12 If the Buyer seeks to claim that the Company has breached condition 16.2 and the Company determines that no breach has occurred for which the Company is liable, the Buyer will reimburse the Company for all costs incurred in investigating and responding to the claim.
- 16.13 The Buyer shall at its own cost arrange for any dismantling and reassembly of Equipment other than the Goods to the extent that this is necessary for the Company to comply with condition 16.7 or otherwise remedy any defects with the Goods and/or Services.
- 16.14 The Buyer shall at its own cost ensure that the Company is provided with such support and assistance (including providing access to the Equipment on request) that is required by the Company to comply with condition 16.7 or otherwise remedy any defects with the Goods and/or Services.
- 16.15 Any additional costs incurred with respect to the Goods and/or Services delivered, repaired or replaced (as appropriate) in connection with the warranty in condition 16.2 including without limitation travel expenses and the Company's costs for installation and removal of defective Goods shall be borne by the Buyer.
- 16.16 The warranty in condition 16.2 is given by the Company and accepted by the Buyer in place of all other express, implied or statutory terms, representations, warranties and conditions (including without limitation, in place of any warranty or condition of quality, merchantability or fitness for a particular purpose) in connection with any defect in the Goods or Services.
- 16.17 The only remedy for breach of the warranty in condition 16.2 is as set out herein. The Buyer shall not have further remedy, warranty claims or any additional rights and any such remedy, rights and claims are, subject to condition 19.4, hereby expressly excluded including without limitation damages, claims for non-fulfilment or faulty performance of the Company except in the case of gross negligence or wilful default of the Company.
- 17. PRICE and PAYMENT**
- 17.1 Unless otherwise agreed by the Company in writing, the Charges and the Price shall be as set out in the Order Confirmation (or the relevant quotation if there is no Order Confirmation).
- 17.2 The Price shall be exclusive of all costs or charges in relation to packaging, loading, unloading, carriage, insurance and delivery of the Goods (the "Expenses").
- 17.3 Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.
- 17.4 The Company will be entitled to invoice the Buyer for the Price and any Expenses following the Company issuing the Order Confirmation or, if earlier, from the date of Delivery of the Goods under condition 6.1.
- 17.5 The Company will be entitled to invoice the Buyer for the Charges and any Expenses following commencement of performance of the Services.
- 17.6 Each invoice will be payable by the Buyer within 30 days following the date on which the invoice is issued. All payments will be made in sterling in cleared funds.
- 17.7 Time for payment of the Price and the Charges shall be of the essence. If a Credit Facility (as defined in condition 18.1) has been granted and the Buyer defaults on the payment of any one instalment thereunder, the full Price and any outstanding Charges will immediately become due and payable.
- 17.8 Notwithstanding condition 20.1.1, if the Buyer fails to make any payment due to the Company under the Contract on or before the due date the Company will be entitled to withhold further deliveries of the Goods and/or further

performance of the Services until payment of all overdue sums has been made. Any additional costs or expenses incurred by the Company as a result of exercising its rights under this condition will be reimbursed by the Buyer on demand.

- 17.9 If any sum payable under the Contract is not paid on or before the due date for payment the Company will be entitled to charge the Buyer interest on that sum at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.
- 17.10 The Buyer shall make all payments due under the Contract in full without any set-off or any deduction or withholding whether by way of counterclaim, discount, abatement or otherwise.
- 17.11 Notwithstanding any other provision to the contrary, all payments payable to the Company under the Contract shall become due immediately on termination of the Contract.
- 17.12 The Company reserves the right to amend the terms and methods of payment should the Buyer default in, or delay making any payment to the Company.

18. BUYER FACILITIES and PAYMENT

- 18.1 The Company may, solely at its discretion, allow the Buyer to pay the Price and/or the Charges in an agreed number of instalments ("a Credit Facility"). The Buyer acknowledges and agrees that a Credit Facility will not be granted unless or until the Company has completed a satisfactory credit reference check on the Buyer and the Buyer has supplied two current and acceptable trade

19. LIMITATION OF LIABILITY

- 19.1 Subject to conditions 6, 7 and 16, the following provisions set out the entire Liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer under or in connection with this Contract (including in relation to any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods).
- 19.2 Subject to condition 19.4, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are, to the fullest extent permitted by law, excluded from the Contract.
- 19.3 Subject to condition 19.4:
 - 19.3.1 the Company's maximum aggregate Liability shall be limited to the Price plus any Charges; and
 - 19.3.2 the Company will have no Liability to the Buyer for loss of profit, loss of business, loss of revenue, loss of contract, loss of data, loss of production, loss of anticipated savings, loss of opportunity, loss of reputation or depletion of goodwill (in each case whether direct, indirect or consequential) or any indirect, consequential or special loss.
- 19.4 Nothing in the Contract excludes or limits the Liability (if any) of one party to the other:
 - 19.4.1 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable;
 - 19.4.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
 - 19.4.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - 19.4.4 for any matter which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

20. TERMINATION

- 20.1 Without prejudice to any of its other rights or remedies the Company may without incurring any Liability to the Buyer terminate the Contract or suspend the delivery of the Goods and/or or performance of any further Services under the Contract if the Buyer:-

- 20.1.1 fails to pay any amount due under the Contract on the due date for payment; or
- 20.1.2 commits a breach of any other terms of the Contract and, if such a breach is remediable, fails to remedy that breach within 30 days of it being notified in writing of the breach; or
- 20.1.3 being an individual shall die; or
- 20.1.4 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 20.1.5 has a resolution passed or proceedings are commenced for its administration or liquidation (other than for a voluntary winding up for the purposes of reconstruction or amalgamation) or if a Receiver or Manager is appointed over all or any part of its assets or undertaking of the Buyer; or
- 20.1.6 suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

21. CONSEQUENCES OF TERMINATION

- On termination of the Contract for any reason:
 - 21.1 the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
 - 21.2 the Buyer shall immediately return at its own expense all equipment owned by the Company and, if the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them and recover its reasonable costs and expenses of doing so from the Company; and
 - 21.3 subject to condition 21.4, all rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of termination.
 - 21.4 The following conditions shall survive termination of the Contract for any reason: conditions 1, 3, 6, 7, 16, 17, 19, 21, 22, 23 and 29.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1 Subject to condition 22.2 all Intellectual Property Rights used in the manufacture of or subsisting in the Goods (including but without limitation the Specification) are and shall remain the exclusive property of the Company or (as the case may be, the third party rights owner) and the furnishing thereof to the Buyer does not convey to the Buyer any ownership interest therein or licence for the use thereof.
- 22.2 All Intellectual Property Rights in any Buyer Specification are and shall remain the exclusive property of the Buyer. The quotation and the Order Confirmation shall clearly state if the Goods are being manufactured to the Buyer's Specification.
- 22.3 Where the Goods are manufactured and/or supplied by the Company according to a Buyer Specification, the Buyer will indemnify, keep indemnified and hold harmless the Company in full and on demand from all Losses which the Company incurs or suffers directly or indirectly in any way whatsoever as a result of any claim or action against the Company by any third party that the use by the Company of all or any part of the Buyer Specification to manufacture and/or supply the Goods infringes the Intellectual Property Rights of that third party or of another person.
- 22.4 The Company shall retain the property and the Intellectual Property Rights subsisting in all documents supplied to the Buyer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of the Company.

23. CONFIDENTIALITY

- 23.1 Subject to condition 23.2, each party will:
- 23.1.1 only use the other party's Confidential Information for the purpose of performing its obligations under the Contract;
 - 23.1.2 keep the other party's Confidential Information secret, safe and secure; and
 - 23.1.3 not disclose the other party's Confidential Information to any other person.
- 23.2 Each party may disclose the other party's Confidential Information:
- 23.2.1 to the extent required by law or any court of competent jurisdiction or the rules of any governmental or regulatory body; and
 - 23.2.2 to those of its officers, directors, employees and professional advisers and, in the Company's case, sub-contractors, who need access to that Confidential Information so that it can perform its obligations under the Contract. A party disclosing the other party's Confidential Information under this condition 23.2.2 will procure that each person to whom it discloses Confidential Information will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this condition 23.

24. ASSIGNMENT

- 24.1 The Company may assign, transfer, charge or deal in any other manner with the Contract or any of its rights and obligations under or arising out of the Contract.
- 24.2 The Buyer shall not assign, transfer, or deal in any other manner with the Contract or any of its rights and obligations under or arising out of the Contract without the prior written consent of the Company (such consent to be given or withheld at the Company's discretion).
- 24.3 The Buyer shall not sub-contract any of its obligations under the Contract to any person without the Company's prior written consent (such consent to be given at the Company's discretion).

25. FORCE MAJEURE

- 25.1 The Company will not be in breach of this Contract or otherwise liable to the Buyer for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 25.2 Where a Force Majeure Event subsists for a continuous period in excess of 120 days, either party shall be entitled to give notice in writing to the other party to terminate the Contract.

26. INSURANCE

- 26.1 The Company has and will maintain for the duration of the Contract factory insurance and product liability insurance. The Company is not obliged to maintain any further insurance policies under this Contract.

27. COMPLIANCE with APPLICABLE LAW

- 27.1 The Buyer warrants that it will comply with all Applicable Law in connection with this Contract.

28. ANTI CORRUPTION

- 28.1 The Buyer will, and will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Contract:
 - 28.1.1 not commit any act or omission which causes or could cause it or the Company to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
 - 28.1.2 comply with the Company's anti-corruption policy as updated from time to time;
 - 28.1.3 keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection

- with this Contract and the steps it takes to comply with this condition 28.1, and permit the Company to inspect those records as required;
- 28.1.4 promptly notify the Company of:
 - 28.1.4.1 any request or demand for any financial or other advantage received by it; and
 - 28.1.4.2 any financial or other advantage it gives or intends to give, whether directly or indirectly in connection with this Contract; and
- 28.1.5 promptly notify the Company of any breach of this condition 28.1.
- 28.2 The Company may terminate this Contract immediately by giving written notice to that effect to the Buyer if the Buyer is in breach of condition 28.1.

29. GENERAL

- 29.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 29.2 If any provision of the Contract is found by any court or any other competent body in any proceedings relating to the Contract to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 29.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract and will not prevent or restrict future exercise of that, or any other provision of the Contract. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 29.4 All formal notices between the parties under the Contract shall be in writing and delivered by hand or sent by pre-paid first class post to the addresses of the parties as they appear on the quotation and the Order Confirmation. The quotation, Buyer acceptance of the quotation and the Order Confirmation may all be sent via e-mail provided that the sender uses a return receipt on the e-mail containing the quotation, Buyer acceptance of the quotation or the Order Confirmation (as the case may be) as proof that the email has been sent and received and that a printed copy of the documents sent by email is delivered by post within 7 days of the date of the return receipt of the email.
- 29.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 29.6 The Contract (and any non-contractual obligations arising out of or in connection with it) will be governed by English law. The English courts have non-exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to non-contractual dispute).