

SYSPAL LTD - CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

"Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

"Confidential Information" means secret or confidential commercial, financial, marketing, technical or other information, know-how, trade secrets and other information in any form or medium whether disclosed orally or in Writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium or any part(s) of this information (and "confidential" means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);

"Consequential Loss" means the following types of loss whether arising from negligence, breach of contract or otherwise:

- loss of profits, revenue or other types of economic loss;
- loss of business or contracts;
- loss of anticipated savings or goodwill;
- losses arising from loss of data;
- any losses which arise other than directly and naturally from a breach of contract or other losses which a Court holds to be consequential, special or indirect losses; or
- any losses arising from any claim by a third party for any of the above types of loss.

"Contract" means any contract between the Seller and the Buyer for the purchase and sale of the Goods, incorporating these Conditions;

"Drawings" means plans, photographs, models, patterns, samples, data and technical information of every description whether written oral or three dimensional;

"Goods" means the goods (including any instalment of the goods or any parts for them) and/or the services and work which the Seller is to supply, provide or carry out in accordance with these Conditions;

"Intellectual Property" means any patent copyright (including any rights in any computer software), database right, moral right, registered design or other design rights, trade mark, typography right, service mark, business name, domain name, know-how, utility model or, where relevant, any application for any such right or any other rights in respect of any other industrial or intellectual property, whether registrable or not and wherever existing in the world and all rights to apply for any of the foregoing rights;

"Registered Office" means Cockshutt Lane, Broseley, Shropshire TF12 5JA;

"Seller" means SYSPAL LIMITED (registered in England under number 1433220);

"Writing" includes facsimile transmission, electronic mail and comparable means of communication.

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

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 Any reference in these Conditions to persons include an individual, company, corporation, firm or partnership and reference to the singular include the plural and vice versa as the context admits or requires.

2. Basis of the sale

2.1 Subject to any variation under Clause 2.3 the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).

2.2 Any estimate or quotation given by the Seller is an invitation to treat only and is valid for a period of 30 days only or such other period specified by the Seller (unless previously withdrawn by the Seller). Any orders issued by the Buyer are subject to acceptance in Writing by the Seller and a binding contract shall not be formed until the Seller has accepted the Buyer's offer in Writing.

2.3 No variation to these Conditions shall be binding unless it is expressly agreed in Writing; refers specifically to the Contract and is executed by a [duly authorised representative] [director] of the Seller.

2.4 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, and waives any claim for breach of, any such representations which are not so confirmed.

2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 All Drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions, details or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and they will not form part of the Contract unless otherwise agreed in Writing.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and specifications

3.1 It is the Buyer's obligation to ensure that the terms of its order and any applicable specification are complete and accurate.

3.2 The Buyer shall be solely responsible for the accuracy of the Buyer's designs, Drawings, specifications and other data supplied to the Seller by the Buyer or the Buyer's employees or agents and in conformity with which the Seller is to manufacture the Goods even if the Seller examines, inspects, studies or comments to the Buyer upon any such designs, Drawings, specifications or other data.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's acceptance or if none the Seller's quotation.

3.4 All dimensions quoted are nominal only.

3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss (including Consequential Loss), damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any Intellectual Property rights of any other person which results from the Seller's use of the Buyer's specification.

3.6 The Seller shall not be obliged to provide test or performance certificates unless agreed in Writing. Any costs incurred in carrying out such testing or inspection shall be paid by the Buyer in addition to the price of the Goods.

3.7 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety, statutory or EC requirements or which do not materially affect their quality or performance.

3.8 No order, Drawing or specification may be amended varied or cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including Consequential Loss), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such amendment, variation or cancellation. The Seller is not bound to agree to any such cancellation and may complete such order even if the Buyer purports to cancel it.

3.9 Unless otherwise stated Goods which are stated to be available "ex-stock" (or an equivalent term) are subject to availability.

3.10 Any sample supplied by the Seller is supplied only to give the Buyer a general indication of the quality, colour and/or type thereof and will not constitute a subsequent sale by sample.

3.11 If the Seller's performance of the Contract is suspended following the Seller's acceptance of a request from the Buyer or is delayed through the Buyer's default (including, without limitation, lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the Goods), the Seller shall be entitled to and the Buyer shall immediately make payment in accordance with the Contract for any part of the Goods which were already despatched to the Buyer or were ready for despatch or were being manufactured prior to the suspension or delay and for any other additional costs that the Seller incurs including storage, insurance and interest as a result of such suspension or delay provided that:

3.11.1 if the Buyer fails to collect or accept delivery of the Goods or any part of them within 30 days of written notification from the Seller that the Goods are ready for collection or delivery, the Seller will be entitled (without prejudice to the Seller's other remedies under the Contract for such breach) to sell the Goods and to apply the proceeds of sale (if sold) towards payment of all outstanding sums owned by the Buyer to the Seller under the Contract; and

3.11.2 the Seller shall store the Goods at the Buyer's risk from the date upon which they are ready for despatch.

4. Trial Basis

4.1 Where the Seller has given the Buyer permission in Writing the Buyer may take the Goods on a trial basis.

4.2 The trial period shall extend to a maximum of 14 days ("the Period") from the date the Buyer collects the Goods from the Seller or from the date the Seller delivers the Goods to the Buyer.

4.3 The Goods shall be at the Buyer's risk from delivery in accordance with clause 10.

4.4 If the Buyer wishes to purchase the Goods, the Buyer shall inform the Seller in Writing within the Period and the Seller shall issue an invoice for the cost of the Goods in accordance with Clause 7 and the terms of payment stated in Clause 8 shall apply.

4.5 If the Buyer does not wish to purchase the Goods, the Buyer shall notify the Seller in Writing within the Period and shall arrange for the Goods to be delivered back to the Seller within 7 days of notifying the Seller that the Buyer does not intend to purchase the Goods. The risk and the cost of delivering the Goods to the Seller will be borne by the Buyer.

4.6 If the Buyer has not notified the Seller of his intentions by the end of the Period the Buyer shall be deemed to have accepted the Goods and the Seller shall issue the Buyer with an invoice in accordance with Clause 4.4.

4.7 On return of the Goods to the Seller, the Seller shall inspect the Goods for any damage and the Buyer shall be liable for any costs in rectifying such damage. If the damage cannot be rectified the Buyer shall be liable for the replacement costs of the damaged Goods and the Seller shall issue an invoice to the Buyer in accordance with Clause 4.4.

5. Drawings, Tooling and Information

5.1 The Intellectual Property in all Drawings, jigs, fixtures, samples or other tooling prepared manufactured or supplied by the Seller shall vest in and remain with the Seller and the Buyer undertakes that it shall not disclose to any other person or use the same other than for the purposes of the Contract and that it shall at the request of the Seller at any time immediately deliver the same to the Seller together with all copies thereof in its possession or control.

5.2 The Buyer shall indemnify the Seller against all loss or damage to the Seller's tangible property which is at any time in the Buyer's possession or control.

5.3 Any damage to or loss of free issue material supplied by the Buyer to the Seller for the purpose of the manufacture of the Goods shall remain at the Buyer's risk notwithstanding that the property in such free issue material shall pass to the Seller until such time as the property in the Goods shall pass to the Buyer in accordance with Clause 10.2.

6. Safety and Recall

6.1 The Buyer shall comply at all times with the written instructions and all written guidelines issued from time to time attached to the Goods concerning their storage, application, installation, repair, maintenance and use and the Buyer shall refer its employees and its customers to such instructions and guidelines. The Buyer shall ensure that the Goods are only installed by those persons approved by the Seller.

6.2 The Buyer should satisfy itself that the persons responsible for the storage, application, installation, use, repair or maintenance of any Goods supplied by the Seller have all the information required on health and safety and the Seller shall not be liable to the Buyer in any civil proceedings brought by the Buyer against the Seller in respect of a breach of the user instructions or any applicable health and safety legislation or any regulations, orders or directions made pursuant to such health and safety legislation in force from time to time or under any directive, regulation, order or other instrument relating to health and safety where such exclusion of liability is permitted by law.

6.3 The Buyer shall keep the Seller properly informed of all customer complaints concerning the Goods and shall comply with any directions of the Seller in any issues, proceedings or negotiations relating to such complaint and the Buyer shall forthwith provide the Seller with all information relating to any defects or safety hazards in the Goods which it has or of which it becomes aware or of which it ought reasonably to have become aware.

6.4 If the Seller notifies the Buyer in Writing of any defect in the Goods previously delivered to the Seller or any error or omission in the instructions for the use and/or assembly or installation of the Goods (whether or not any such defect, error or omission represents a breach of the warranty in Clause 11 or any other provision of the Contract) which exposes or may expose consumers to any risk of death, injury or damage to property, the Buyer shall co-operate fully and promptly with any steps taken by the Seller under Clause 6.5 below.

6.5 The Seller may at its discretion recall any Goods already sold by the Buyer to its customers (whether for a refund or credit or for replacement of the Goods which shall in each case be undertaken by the Seller) and/or issue any written or other notification to its customers about the manner of use or operation of any Goods already sold by the Buyer to its customers.

7. Price of the goods

7.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of despatch of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or such other period specified by the Seller or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

7.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture or supply), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

7.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

7.4 Unless otherwise agreed in writing the price for the Goods shall be exclusive of any value added tax or other similar taxes or levies and all costs or charges in relation to packaging, labelling, loading, unloading, carriage, freight and insurance all of which amounts the Buyer will pay, where appropriate, in addition when it is due to pay for the Goods.

8. Terms of payment

8.1 Payment of the price for the Goods is due in pounds sterling or such other currency as the Seller shall specify 30 days after the earlier of :

- 8.1.1 delivery of Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the same, in which event the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods; or
- 8.1.2 the date of invoice.
- 8.2 In the event that the Buyer is required to pay a deposit to the Seller such deposit will be non-returnable if the contract is terminated for any reason (other than as a result of the default of the Seller). The Seller shall not be required to commence work under the contract until payment of the deposit has been received.
- 8.3 Time for payment shall be of the essence. No payment shall be deemed to have been received until the Seller has received cleared funds and receipts for payment will be issued only upon request.
- 8.4 The Seller may at any time at its discretion withdraw credit facilities and/or require the Buyer to make payment in cash or to provide security for payment.
- 8.5 Notwithstanding any other provision, all payments payable to the Seller under the Contract shall become due immediately upon termination of the Contract for whatever reason.
- 8.6 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 8.7 Without prejudice to any other rights and remedies which the Seller may have under the Contract, the Seller shall, in respect of all debts owed by the Buyer to the Seller, have a general lien on any of the Buyer's goods and property in the Seller's possession and the Seller shall be entitled after 14 Working Days' notice to the Buyer to dispose of such goods or property as the Seller thinks fit and to apply any proceeds of sale towards the payment of such debts.
- 8.8 If payments received from the Buyer are not stated to refer to a particular invoice, the Seller may appropriate such payment to any outstanding invoice addressed to the Buyer from the Seller.
- 8.9 No indulgence granted by the Seller to the Buyer concerning the Buyer's obligations under this Clause 8 shall be or be deemed to be a credit facility but if any such facility is granted to the Buyer by the Seller, the Seller may withdraw it at its sole discretion at any time.
- 8.10 If any sum due from the Buyer to the Seller under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Buyer to the Seller shall become due and payable immediately and, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 8.10.1 cancel or suspend its performance of the Contract or any order including suspending deliveries of the Goods and suspending delivery of any other goods to the Buyer until arrangements as to payment or credit have been established which are satisfactory to the Seller;;
- 8.10.2 require the Buyer to pay for the Goods prior to their despatch or collection from the Seller's place of business; and
- 8.10.3 charge the Buyer:
- 8.10.3.1 interest calculated on a daily basis on all overdue amounts (both before and after judgement) until actual payment at the rate of eight per cent (8%) per annum above the base lending rate of National Westminster Bank prevailing from time to time until payment is made in full; and
- 8.10.3.2 the cost of obtaining judgement or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.
- 8.11 Each Contract shall be subject to the Seller being satisfied as to the Buyer's credit status both prior to and during the period of the Contract. If the Seller becomes dissatisfied with the Buyer's credit status the Seller may suspend performance of the Contract until the Buyer satisfies the Seller as to the Buyer's creditworthiness or gives the Seller such security as the Seller shall deem appropriate for the price.
- 9. Delivery**
- 9.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises within [7] days of the Seller notifying the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller in Writing, by the Seller delivering the Goods to that place.
- 9.2 Any dates quoted by the Seller for delivery of the Goods are approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 9.3 The Seller may make delivery of the Goods in instalments and invoice the Buyer for each instalment individually. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated or to refuse to accept subsequent instalments.
- 9.4 The Seller shall not be liable for any loss (including Consequential Loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract.
- 9.5 The Seller shall only be liable for any non-delivery of Goods (even if caused by the Seller's negligence) if the Buyer gives written notice to the Seller within 7 days of the date when the Goods would, in the ordinary course of events, have been delivered.
- 9.6 If the Buyer gives notice to the Seller in accordance with Clause 9.5, the liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time, issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods or the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 9.7 If the Buyer fails to take delivery of the Goods when they are ready for delivery or the Seller is unable to deliver the Goods on time because the Buyer has not provided adequate delivery instructions, documents, licences or authorisation then the Goods shall be deemed to have been delivered, risk passing to the Buyer and, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 9.7.1 store the Goods until actual delivery and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); or
- 9.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the Contract price.
- 9.8 The Buyer will provide at its expense and at the place of delivery adequate and appropriate equipment and manual labour for loading the Goods.
- 9.9 The Buyer shall be deemed to have accepted the Goods as being in accordance with the Contract unless:
- 9.9.1 within 14 days of the date of delivery of the Goods, the Buyer notifies the Seller in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within 14 days); or
- 9.9.2 the Buyer notifies the Seller in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time where the defect or failure would not be so apparent within 14 days of the date of delivery;
- 9.9.3 failing which the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 10. Risk and Property**
- 10.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 10.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 10.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, full legal, beneficial and equitable title to and property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 10.3 Until full legal, beneficial and equitable title to and property in the Goods passes to the Buyer:
- 10.3.1 the Buyer shall hold the Goods on a fiduciary basis as the Seller's bailee;
- 10.3.2 the Buyer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them, without any charge to the Seller, and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods (whether or not supplied by the Seller) and are clearly identifiable as belonging to the Seller and the Seller shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Buyer reasonable notice of its intention to do so;
- 10.3.3 the Seller may at any time, on demand and without prior notice, require the Buyer to deliver the Goods up to the Seller, revoke the Buyer's right to resell or use the Goods and the Seller may repossess and resell the Goods if any of the events specified in Clause 15 occurs or if any sum due to the Seller from the Buyer under the Contract or on any other account or under any other contract is not paid when due;
- 10.3.4 for the purposes of this Clause the Seller, its employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Buyer and/or any other location where any of the Goods are situated at any time without prior notice;
- 10.3.5 the Seller shall be entitled to maintain an action against the Buyer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Buyer; and
- 10.3.6 [The Seller hereby authorises the Buyer to use and/or sell the Goods in the normal course of the Buyer's business and to pass good title in the Goods to its customers, if they are purchasers in good faith without notice of the Seller's rights. This right shall automatically cease on the occurrence of any event set out in Clause 15 and/or if any sum due. If the Buyer sells the Goods prior to paying the full price thereof the Buyer shall hold the proceeds of sale on trust for the Seller and shall immediately pay the proceeds of the sale into a separate bank account. At the Seller's request, the Buyer shall assign to the Seller all claims that the Buyer may have against purchasers of the Goods from the Buyer.]
- 10.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 10.5 Nothing contained in this Clause shall confer any right on the Buyer to return the Goods or refuse or delay payment.
- 11. Warranty of Quality of Goods**
- 11.1 If the Buyer establishes to the Seller's reasonable satisfaction that there is a defect in the materials or workmanship of the Goods manufactured or there is some other failure by the Seller in relation to the conformity of the Goods with the Contract then the Seller shall at its option, at its sole discretion and within a reasonable time;
- 11.1.1 repair or make good such defect or failure in such Goods free of charge to the Buyer (including all costs of transportation of any Goods or materials to and from the Buyer for that purpose);
- 11.1.2 replace such Goods with Goods which are in all respects in accordance with the Contract; or
- 11.1.3 issue a credit note to the Buyer in respect of the whole or part of the Contract price of such Goods as appropriate having taken back such Goods or materials relating to the Contract.
- subject, in every case, to the remaining provisions of this Clause 11 provided that the liability of the Seller under this Clause 11 shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of the Seller's liability under this warranty.
- 11.2 Clause 11.1 shall not apply unless the Buyer:
- 11.2.1 notifies the Seller in writing of the alleged defect within 7 days of the time when the Buyer discovers or ought to have discovered the defect and in any event within 12 months of the delivery of the Goods to the Buyer or such other periods as agreed by the Seller in writing; and
- 11.2.2 affords the Seller a reasonable opportunity to inspect the relevant Goods and, if so requested by the Seller and where it is reasonable to do so, promptly returns to the Seller or such other person nominated by the Seller a sample of the Goods within 14 days, carriage paid by the Buyer, for inspection, examination and testing and/or otherwise permit the Seller to have access to the Goods at the Buyer's premises or other location where they may be.
- 11.3 The Seller shall be under no liability under the warranty at Clause 11.1 above:
- 11.3.1 for any Goods manufactured or appropriated to the Contract in accordance with any design, specification, instruction or recommendation made to the Seller by the Buyer;
- 11.3.2 in respect of any type of defect, damage or wear specifically excluded by the Seller by notice in writing; or
- 11.3.3 if the Buyer makes any further use of the Goods after giving notice in accordance with Clause 10.2.
- 11.3.4 in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 11.3.5 if the total price for the Goods has not been paid by the due date for payment;
- 11.3.6 for any parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller to the extent that they are assignable by the Seller to the Buyer.
- 11.4 If the Seller elects to replace the Goods pursuant to Clause 11.1, the Seller shall deliver the replacement Goods for the Buyer at the Seller's own expense at the address to which the defective Goods were delivered and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Buyer) re-vest in the Seller and the Buyer shall make any arrangements as may be necessary to deliver up to the Seller the defective Goods which are being replaced to the Seller.
- 11.5 The warranties set out in these Conditions are the only warranties which shall be given by the Seller and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12. Exclusion and Limitation of Liability**
- 12.1 Clause 9 and the following provisions set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 12.1.1 any breach of these Conditions or the Contract; and
- 12.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence, or for fraudulent misrepresentation.
- 12.3 The Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price of the Goods. In respect of which the Buyer suffered or incurred such loss or damage; and
- 12.4 The Seller shall not be liable to the Buyer for any Consequential Loss whatsoever and howsoever arising from the Goods.
- 12.5 The price of the Goods has been calculated on the basis that the Seller will exclude or limit its liability as set out in the Contract and the Buyer by placing an order agrees and warrants that the Buyer shall insure against or bear itself any loss for which the Seller has excluded or limited its liability in the Contract and the Seller shall have no further liability to the Buyer.
- 12.6 Where the Seller has not acted as carrier but has at the Buyer's request arranged for carriage of the Goods to the Buyer, the Seller accepts no liability for damage or loss in transit and claims for such damage or loss shall be made by the Buyer directly on the carrier provided that the Seller will use its reasonable endeavours to assist the Buyer to secure recompense from the carrier.
- 12.7 The Buyer shall satisfy itself that the persons responsible for the use of any Goods supplied by the Seller have all the information required on health and safety and the Seller shall not be liable to the Buyer in any civil proceedings brought by the Buyer against the Seller in respect of a breach of the user instructions or any health and safety regulations, orders or directions made pursuant to the Health and Safety at Work Act

- etc 1974 or under any other directive, regulation or order or other instrument relating to health and safety where such exclusion of liability is permitted by law.
13. **Buyer's Indemnity**
- 13.1 The Buyer acknowledges that the Seller places particular reliance upon the provisions of the Contract and in addition to any other remedy available to the Seller, the Buyer irrevocably and unconditionally agrees to indemnify the Seller, its employees, sub-contractors and agents (who shall have no duty to mitigate their loss) in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees and all Consequential Loss whether direct or indirect made against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:
- 13.1.1 the manufacture and sale of the Goods by the Seller in accordance with the Buyer's designs, drawings, specifications or other data or information furnished or instructions given by the Buyer;
- 13.1.2 any claims that any Intellectual Property or Confidential Information or other exclusive right of any third party has been infringed through the manufacture, sale or use of the Goods (save to the extent the same have been supplied in accordance with specifications or designs of the Seller);
- 13.1.3 the cancellation of any order by the Buyer after its acceptance by the Seller;
- 13.1.4 any breach by the Buyer of its obligations under the Contract;
- 13.1.5 any breach by the Seller of its obligations under the Contract or any other act or omission (including, without limitation, negligence) of the Seller, its employees and agents in excess of the liability of the Seller under the Contract.
14. **Confidentiality**
- 14.1 The Buyer shall keep and procure to be kept secret and confidential all Confidential Information belonging to the Seller disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use nor disclose the same save for the purposes of the proper performance of the Contract or with the prior written consent of the Seller. Where disclosure is made to any employee, consultant or agent, it shall be done subject to obligations equivalent to those set out in this Clause 14 and the Buyer shall use its best endeavours to procure that any such employee, consultant or agent complies with such obligations. The Buyer shall be responsible to the Seller in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.
- 14.2 The obligations of confidentiality in this Clause 14 shall not extend to any matter which either party can show:
- 14.2.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under the Contract; or
- 14.2.2 was in its written records prior to the date of the Contract; or
- 14.2.3 was independently disclosed to it by a third party entitled to disclose the same; or
- 14.2.4 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
- 14.3 The supply of Goods under the Contract shall not constitute a licence for the Buyer to use the Confidential Information for any purpose other than that for which the Confidential Information is provided to the Buyer.
- 14.4 On expiry or termination of the Contract (for whatever reason) the Buyer shall promptly return to the Seller or dispose of in accordance with the Seller's instructions all Confidential Information and other data and documents and copies thereof disclosed or supplied to the Buyer pursuant to or in relation to the Contract and shall certify to the Seller when the same has been completed.
15. **Breach of Contract or Insolvency**
- 15.1 The Seller may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the Buyer) immediately suspend further performance of the Contract or delivery of the Goods or stop any Goods in transit or by notice in Writing to the Buyer terminate the Contract without liability to the Seller if:
- 15.1.1 the Buyer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
- 15.1.2 the Buyer fails to remedy a breach of its obligations under the Contract which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in Writing by the Seller to remedy or desist from such breach within a period of 14 days;
- 15.1.3 any distress execution or diligence is levied upon any of the Buyer's goods or property and is not paid out within 7 days or it being levied;
- 15.1.4 the Buyer (being a partnership) or the Buyer's partner offers to make any arrangements with or for the benefit of the creditors of the Buyer or the Buyer's partner generally or there is presented in relation to the Buyer or the Buyer's partner a petition of bankruptcy;
- 15.1.5 the Buyer (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Buyer calls a meeting for the purpose of passing a resolution to wind up its company, or such a resolution is passed or the Buyer presents or has presented a petition to wind up or present or have presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of the Buyer's business, undertaking, property or assets;
- 15.1.6 the Buyer ceases, or threatens to cease, to carry on business; or
- 15.1.7 a secured lender to the Buyer takes any steps to obtain possession of the property on which it has security or otherwise to enforce its security;
- 15.1.8 the Buyer suffers or undergoes any procedure analogous to any of those specified in Clause 15.1.3 to 15.1.7 inclusive or any other procedure available in the country in which the Buyer is constituted, established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor;
- 15.1.9 the Buyer undergoes a change of control and for the purposes of this Clause 15.1.9, "control" has the meaning specified in Section 416 of the Income and Corporation Taxes Act 1998;
- 15.1.10 the Seller reasonably believes that any of the events specified in Clause 15.1.1 to 15.1.9 is about to occur in relation to the Buyer.
- 15.2 Notwithstanding any such termination or suspension in accordance with Clause 15.1 above the Buyer shall pay the Seller at the Contract rate for all Goods delivered up to and including the date of suspension or termination and the termination of the Contract or any contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any such owing or to become owing to the other.
16. **Export Terms**
- 16.1 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 of 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, these Conditions shall prevail.
- 16.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause 16 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 16.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation, use or sale of the Goods into the country of destination, the payment of any duties or taxes on them and the transportation and storage of the Goods.
- 16.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered f.o.b. from the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 16.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 16.6 Payment of all amounts due to the Seller shall be made by telegraphic transfer or cleared funds to such branch of National Westminster Bank Plc in England as shall be notified to the Buyer and the Goods shall only be despatched for shipment once cleared funds of all amounts due to the Seller have been received by the Seller in accordance with this Clause 16.6.
- 16.7 The Buyer undertakes not to offer the Goods for resale in the United Kingdom or any other country notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.
17. **Force Majeure**
- 17.1 The Seller reserves the right to suspend or cancel the Contract in whole or in part (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business and its obligations under the Contract due to circumstances beyond the reasonable control of the Seller affecting its ability to perform any of its obligations under the Contract including, without limitation, Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, whether of the affected party's own employees or others, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services.
18. **General**
- 18.1 Any Intellectual Property created by the Seller in the course of the performance of the Contract or otherwise in the manufacture of the Goods shall remain the Seller's Property and the Buyer shall not act in any way to breach the Intellectual Property of the Seller.
- 18.2 Any notice required or permitted to be given by 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.
- 18.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement does not and is not intended to give any right to enforce any of its provisions to any person who is not a party to it.
- 18.4 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.5 If any provision of these Conditions is held by any competent authority to be invalid, illegal or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 18.6 The Contract sets out the entire agreement and understanding between the Buyer and the Seller in connection with the sale of the Goods and shall supersede and replace all documentation previously issued by the Seller purporting to set out its terms and conditions of sale of the Goods.
- 18.7 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.