

WESSINGTON CRYOGENICS LIMITED
GENERAL CONDITIONS OF TRADING

1 INTERPRETATION

1.1 In these Conditions (and in every quotation and acknowledgement of order given by the Company) the following words shall have the following meanings:

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| “Company” | Wessington Cryogenics Limited (registered company number 1790882) trading as “Wessington” or such other trading name as notified to the Customer from time to time; |
| “Company’s Factory” | the factory at 2 Gadwall Road, Rainton Bridge South, Houghton le Spring, Tyne & Wear, DH4 5NL, United Kingdom (or any other factory notified to the Customer by the Company in writing); |
| “Company’s Materials” | all Documents, information and materials provided by the Company relating to the Products and/or the Services (to include, without limitation, any specifications produced by the Company whether or not on the Customer’s instructions); |
| “Conditions” | these terms and conditions as from time to time amended; |
| “Contract” | any contract between the Company and the Customer for the purchase and sale of Products and/or the supply of the Services incorporating these Conditions; |
| “Customer” | the person(s) partnership firm company or other party or organisation with whom or with which the Company contracts for the purchase of the Products or supply of the Services; |
| “Customer’s Materials” | all Documents, information and materials provided by the Customer relating to the Products and/or the Services (to include, without limitation, any specifications or customer requirements); |
| “Documents” | includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disc or other devise or record embodying information in any form; |
| “Incoterms” | 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; |
| “Intellectual Property Rights” | all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including 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; |
| “Products” | the products the subject of the Contract (including any part or parts of them); |
| “Relevant Items” | the Products bought by the Customer or any goods or materials of the Customer (or any third party on whose behalf the Customer enters into the Contract with the Company); |
| “Services” | the maintenance or repair of the Relevant Items and/or giving technical advice on the use of the Relevant Items and any other services from time to time the subject of the Contract; and |
| “Warranty Period” | (unless otherwise expressly agreed by the Company) the period of 12 months from the date of delivery or, in the case of valves and fittings to the Products, 90 days from such date. |

1.2 In these Conditions references to any statute or statutory provision will, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings must not affect the construction of these Conditions.

- 1.5 In these Conditions any reference to “persons for whom the Company contracts” includes without limitation a reference to every sub-contractor employee carrier and agent on behalf of whom the Company contracts.

2 QUOTATIONS AND CUSTOMER'S MATERIALS

- 2.1 All quotations by the Company are given on the basis that the Contract will not come into existence until confirmation by the Company (in accordance with Condition 3.6 below) has been given by the Company on receipt of the Customer's order. The Contract will be subject to these Conditions.
- 2.2 The Customer will be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable Customer's Materials) submitted by the Customer, and for giving the Company any necessary information relating to the Products or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 2.3 If any Product is to be manufactured (or any process is to be applied to the Product) or any Service is to be supplied by the Company in accordance with Customer's Materials, the Customer will indemnify the Company against all losses, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any Intellectual Property Rights of any other person which results from the Company's use of the Customer's Materials.
- 2.4 The Company reserves the right to make any changes in the specification of the Product or supply of Services which are required to conform with any applicable statutory or European Union requirements or, where the Products are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 2.5 All of the Company's materials will, at all times, be and remain (as between the Company and the Customer) the exclusive property of the Company. They will be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and will not be disposed of or used other than in accordance with the Company's written instructions or authorisation. The Company does not warrant that it owns the Company's Materials or that they are accurate or complete, unless otherwise expressly agreed in writing.

3 APPLICATION OF THESE CONDITIONS

- 3.1 These are the sole Conditions applicable to all Contracts between the Company and the Customer to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any quotation, purchase order, acknowledgement of order or Customer's Materials) at any time in the past or future put forward by or on behalf of the Customer and to the exclusion of all representations outside these Conditions.
- 3.2 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order or Customer's Materials will form part of the Contract simply as a result of such document being referred to in the Contract.
- 3.3 No variation of these Conditions or representations about the Products or Services will be effective unless agreed in writing and signed by either a director or company secretary of the Company. These Conditions will continue to apply notwithstanding that the quantity of any Product supplied, the type or scope of any Service supplied, the price at which it is supplied or, the terms of sale or supply or payment differ from those originally quoted by the Company. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.
- 3.4 Every term condition and stipulation in the Customer's order form (or any other term condition or stipulation howsoever binding on the parties) which would conflict with or in any other way vary qualify negative or supplement these Conditions shall not be applicable to any order placed with the Company unless there is a specific variation in accordance with Condition 3.3 above.
- 3.5 Each order for Products or Services by the Customer from the Company will be deemed to be an offer by the Customer to purchase Products or Services, subject to these Conditions.
- 3.6 No order placed by the Customer for Products will be deemed to be accepted by the Company until a written acknowledgement of order (whether by fax, email or letter) is issued by the Company or (if earlier) the Company delivers the Products to the Customer.
- 3.7 No order placed by the Customer for Services will be deemed to be accepted by the Company until a written acknowledgement of order (whether by fax, email or letter) is issued by the Company or (if earlier) the Company begins providing the Services to the Customer.

4 INSTALMENTS

- 4.1 Each part delivery or instalment of Products will be deemed to be sold under a separate Contract.
- 4.2 Any default by the Company in respect of any part delivery or instalment shall not entitle the Customer to treat the Contract(s) in respect of any balance or instalment remaining to be delivered as having been repudiated.

5 AGENTS & SUB-CONTRACTORS

- 5.1 The Customer warrants that in so far as it contracts with the Company other than as a purchaser of the Products or Services it does so as agent of the purchaser of the Products or Services so that the said purchaser is bound by the terms of the Contract and by these Conditions as if it were the Customer.
- 5.2 Contracts may be performed in whole or in part by the Company or by any sub-contractor (which shall include any carrier or other agent appointed by the Company) and the Company enters into every Contract for itself and as agent of and trustee for each sub-contractor and every employee or agent of the Company and of any such

sub-contractor all of whom shall be entitled to the benefit of the Contract and (subject to the other provisions of these Conditions in relation to carriers only) shall be under no greater liability to the Customer or anyone claiming through the Customer than is the Company.

6 DESCRIPTION

- 6.1 The quantity or description of the Products (or, in the case of Services, the type of Services to be provided) will be as set out in the Company's quotation or (if later) the acknowledgement of order.
- 6.2 All 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 Products or Services described in them. They will not form part of the Contract and any sale to the Customer will not be a sale by sample. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.

7 DELIVERY OF PRODUCTS & COMPLETION OF SERVICES

- 7.1 Subject to Condition 8, delivery of the Products will be deemed to take place Ex-Works (the Company's Factory) unless otherwise expressly agreed by the Company as follows:
- 7.1.1 *if the Company agrees to deliver the Product itself*, the delivery will be deemed to take place:
- when the Product is tendered for off-loading by the Company at the place agreed for delivery; or
 - (if delivery is delayed as the result of any act or omission by the Customer or his employee or agent) at the time agreed for delivery or if no such time is agreed at the time when delivery would have taken place but for the said act or omission;
- 7.1.2 *if the Customer agrees to arrange collection of the Product but the Company is required to load the Product*, delivery will be deemed to take place when loading of the Product on to the collecting vehicle is complete or, if collection is delayed as the result of any act or omission by the Customer or his employee or agent, at the time agreed for collection;
- 7.1.3 *if the Company agrees to arrange delivery of the Product through a carrier*, (whether appointed by the Company or the Customer) delivery will be deemed to take place when the loading of the Product onto any carrier's vehicle is complete or, if collection is delayed as a result of any act or omission of the Customer or the carrier, at the time agreed for collection.
- 7.2 The Company will endeavour to provide plant, power and labour for loading at the Customer's expense. Neither the Company (nor the persons for whom the Company contracts) will be under any obligation to provide plant power or labour required for unloading which shall be provided by the Customer at its expense. If, for the purposes of unloading, use is made of the services of any employee of or of any plant or equipment belonging to (or the responsibility or in the control of) the Company, or of any of the persons for whom the Company contracts, such use will be at the sole risk of the Customer who will indemnify and keep indemnified the Company and the persons for whom the Company contracts against all losses, costs, claims, expenses and liabilities resulting from such use howsoever arising and for any defect to the said plant or equipment.
- 7.3 Except to the extent that the Company has guaranteed in writing a price for the Products or Services or date of availability of the Products or Services there will be no guarantee warranty or condition as to the price or date of availability of the Products or Services.
- 7.4 Any dates specified by the Company for delivery of the Products or completion of Services are intended to be an estimate and time for delivery will not be made of the essence by notice. The Company may deliver the Products or complete the Services in advance of the quoted delivery date or completion date on giving notice to the Customer. If no delivery dates are specified, delivery of the Products or completion of the Services will be within a reasonable time.
- 7.5 If for any reason the Customer, its agent or any carrier will not accept delivery of any of the Products when it is ready for delivery, or the Company is unable to deliver any of the Products on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 7.5.1 risk in the Products will pass to the Customer (including for loss or damage caused by the Company's, or any of the persons for whom the Company contracts', negligence) at the time the Products are ready for delivery and the Customer will insure the Products for their full Contract price;
- 7.5.2 the Products will be deemed to have been delivered in accordance with Condition 7.1 and the Customer will become liable to pay the full Contract price; and
- 7.5.3 either:
- the Company may return to its site and store the Products until delivery, whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage, return freight, costs of redelivery and insurance); or
 - the Company may sell the Products at the best price readily obtainable and (after deducting all storage, return freight and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 7.6 Any receipt for the Products or signed delivery documentation received by the Company or its agent, carrier or other supplier from the Customer or from any carrier acting for the Customer or from any other person into whose custody or control the Products are placed in performance of the Contract will be indisputable evidence of the quantity and condition of the Products and the acceptance of the Products by the Customer or the carrier or any other such person on behalf of the Customer.

- 7.7 Whilst the Company will use reasonable endeavours to match as closely as production processes allow the exact weights and/or volume capacity of any Products ordered by the Customer (to the extent that an exact weight and/or volume capacity is specified by the Customer in its order), the Customer acknowledges that the raw material and/or the machinery and equipment used to manufacture the Products can vary and it is not financially economical for the Company to process part of such raw material and/or to use any particular kind of machinery and equipment, and hence the manufacture of the raw material as a whole will result in discrepancies (which may be over or under) in the weights and/or volume capacity of the Products ordered by the Customer. The Customer will not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay the Contract price for the Products and the quantity so delivered will be deemed to be the quantity ordered and will not for the avoidance of doubt be deemed to be the delivery of incorrect Products.
- 7.8 Once the Products are delivered or deemed to be delivered pursuant to Condition 7.1 the liability of the Company whether for non-delivery, shortages, delay or damage to the Products during transit will cease and the Customer (subject to Condition 9.3) will be solely responsible for any such delay, shortage, non-delivery of Products or, Products damaged during transit (whether arising as a result of inadequate storage, treatment, transportation or otherwise).
- 7.9 Unless otherwise agreed by the Company in writing:
- 7.9.1 it is the responsibility of the Customer to arrange packaging during transit; and
- 7.9.2 the Company or any person for whom the Company contracts will not be liable for any Products which are damaged, lost or destroyed as a result of inadequate or unsuitable packaging whether by the Customer or its agent or any carrier (whether appointed by the Company or the Customer) unless such packaging was previously recommended by the Company in writing.
- 7.10 The Customer or its agents, upon reasonable notice and during reasonable hours, may inspect the Products after they have been manufactured but before they have been dispatched from the Company's Factory. Any additional inspections will be at the discretion of the Company and at the expense of the Customer. The Customer will indemnify the Company against all loss, damages, costs and expenses directly or indirectly incurred by the Company in connection with the Customer or its agents causing or suffering damage to the property or belongings of the Company or any third party whilst at the Company's Factory. The Company reserves the right to charge (in addition to the Contract price) the Customer for any changes, modifications or improvements that the Customer requests (during or after any of its inspections or testing of the Products) the Company to make to any Products manufactured to an agreed specification.
- 7.11 Due to the delicate nature of some Products, the Company reserves the right to specify the means by which those Products will be delivered, transported, installed or commissioned.
- 7.12 The Company will use reasonable endeavours to complete the Services by the date notified to the Customer in writing, but any such dates will be estimates only and time will not be of the essence. The Customer will:
- 7.12.1 co-operate with the Company in all matters relating to the Services; and
- 7.12.2 provide for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities requested by the Company;
- 7.12.3 supply, in a timely manner, such Customer's Materials and other information as the Company may request and ensure that they are accurate and complete in all material respects;
- 7.12.4 inform the Company of any health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises; and
- 7.12.5 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of the Customer's Materials.

8 EXPORT TERMS

- 8.1 Where the Product is supplied for export from the United Kingdom, the provisions of this Condition 8 will (subject to any special terms agreed in writing between the Customer and the Company) apply, unless the context otherwise requires, in addition to and without prejudice to any other provision (including Condition 7) of these Conditions.
- 8.2 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms will have the same meaning in these Conditions or the Contract, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter will prevail.
- 8.3 The Customer will be responsible for complying with any and all legislation or regulations governing the export of the Products from the United Kingdom and importation into the country of destination (to include, without limitation, the payment of any taxes and duties and the securing of valid licences and permits).
- 8.4 Unless otherwise agreed in writing between the Customer and the Company, the Products will be delivered Ex-Works (the Company's Factory) and, for the avoidance of doubt, the Company will be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 8.5 The Customer will be responsible for arranging for testing and inspection of the Products at the Company's Factory before the Products leave the Company's Factory. The Customer will agree with the Company any arrangements for testing and inspecting of the Products. The Company will have no liability for any claim in respect of any defect in the Products which should have been apparent on such inspection or which is made after shipment, or in respect of any damage during transit (save as provided in these Conditions) howsoever delivered.
- 8.6 Where the Products are delivered to a carrier (whether appointed by the Company or the Customer), an agent of the Customer or collected by the Customer for shipment or otherwise the liability of the Company will cease upon delivery or collection (as applicable) and the Customer shall be solely responsible for the Products as provided in Condition 7.8.

8.7 The Company reserves the right to notify the Customer in writing prior to delivery of the Products to the Customer that payment of all amounts due to the Company will be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company or, if the Company has agreed in writing on or before delivery of the Products to waive this requirement, by delivery to the Company of a bill of exchange drawn on the Customer payable 60 days after the order at such bank in England as may be specified in the bill of exchange.

9 NON-DELIVERY AND CANCELLATION

9.1 Neither the Company nor the persons for whom the Company contracts will under any circumstances whatsoever be liable for:

9.1.1 *non-delivery in whole or in part of any Products*, unless within 48 hours (excluding any Sunday, Good Friday, Christmas Day or Bank Holiday) of the advised intended or actual time as the case may be of delivery or collection the Customer delivers to the Company and the carrier (if applicable) written notice of such non-delivery and thereafter in the case of partial non-delivery affords the Company reasonable opportunity to witness a recount of the Products;

9.1.2 *any delivery of incorrect Products (i.e., not the Products set out in the order) not indicated on the receipt or other delivery documents (if any) referred to in Condition 7.6*, unless within 2 working days of such delivery, the Customer delivers to the Company written notice thereof at the address specified on the invoice and thereafter affords to the Company reasonable opportunity to examine the Products;

9.1.3 *any delay in delivery*, unless a specified delivery date has been guaranteed and agreed with the Customer in writing;

9.1.4 *any delay in delivery, non-delivery or delivery of incorrect Products*, if such delay, non-delivery or delivery of incorrect Products is as a result of:

- any act or omission of the Customer; or
- any cause beyond the Company's reasonable control.

9.2 The quantity of any consignment of Products as recorded by the Company upon despatch from the Company's place of business will be conclusive evidence of the quantity received by the Customer or its agent on delivery unless the Customer can provide conclusive evidence proving the contrary.

9.3 Where the Products are delivered to a carrier in accordance with Condition 7.1.3 or 8.6 the Company will not be liable for any delay in delivery, non-delivery or loss or damage arising during transit save that the Company may where the carrier has been appointed by it and in its discretion, at the cost of the Customer and so far as it is legally able assign to the Customer such rights as it may have against the carrier (subject to compliance by the Customer with the provisions of Condition 9.1) to the Customer.

9.4 Any liability of the Company for non-delivery of the Products or delivery of incorrect Products will be limited to replacing the Products within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Products.

9.5 Subject to the other provisions of these Conditions the Company will not be liable for any indirect, direct or indirect consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery, non-delivery or the incorrect delivery of the Products or delayed completion of the Services (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract.

9.6 The Customer will not be entitled to cancel any order for Products or Services without the written consent of the Company. If the Company consents to such cancellation the Customer will indemnify the Company against all costs, losses, claims and expenses it incurs as a result of the cancellation.

9.7 Without prejudice to Condition 9.6 if prior to cancellation the Company has contracted to purchase any raw materials, machinery or equipment to manufacture the Products the Customer will be obliged to pay the full Contract price less any sale proceeds received by the Company following the sale of the Products by the Company to a third party at the best price reasonably obtainable.

9.8 Where the Customer has ordered Products or Services subject to credit provided by any form of credit provider the Company will have the right upon giving written notice to the Customer (without thereby incurring any liability to the Customer for any losses, costs or damages incurred by the Customer as a direct or indirect result of the provisions of this Condition) to suspend or cease supply of the Products or Services regardless of whether payment for the Products or Services is then due and payable, if the Customer has reached its credit limit with the credit provider and/or the credit provider has reduced the level of credit available to the Customer whether or not the Customer has been informed of this by the credit provider.

9.9 In order for the Company to comply with its obligations under the Contract or the law, the Company may by written notice recall any or all Products sold to the Customer. Upon receipt of such written notice the Customer will at the Company's expense give such assistance without delay as the Company may reasonably require for the purpose of recalling any Products. Such assistance, without limitation, will include procuring that the Products (whether or not sold by the Customer to any third party) are not used (or any use that has commenced, ceases) and are returned to the Company for repair, improvement, or replacement.

10 PRICE

10.1 Unless otherwise expressly agreed in writing, the price for the Products (or, as the case may be, Services) will be set out in the Company's quotation or (if later) the acknowledgement of order.

10.2 The Company shall be entitled to increase the Contract price of the Products or Services to take into account foreign exchange fluctuation, currency regulations, alteration of duties, increases in costs of labour, raw materials, overhead charges or changes made to the Contract at the request of the Customer (including without limitation delivery dates, quantities or specifications for the Products) or such other events beyond the Company's reasonable control which occur between the date when the Contract price was agreed and the time when performance of the Contract is complete.

- 10.3 All duties taxes (including value added tax) and similar charges and all costs of loading, unloading, carriage and insurance payable in respect of the Products or Services will be for the account of the Customer except to the extent that the Contract price is stated to specifically include such charges.
- 10.4 Where the Services are provided on a time and materials basis:
- 10.4.1 the charges payable for the Services will be calculated in accordance with the Company's standard daily fee rates, as amended from time to time by the Company giving not less than one month's notice to the Customer;
- 10.4.2 the Company's normal daily fee rate for each individual person is calculated on the basis of an 8 hour day, worked between 8.00 am and 5.00 pm (excluding weekends and public holidays);
- 10.4.3 the Company will be entitled to charge the following overtime rates:
- for Mondays to Fridays (excluding public holidays): 133% of the normal daily fee rate for any time worked by each individual outside of the hours stated in Condition 10.4.2;
 - for Saturdays: 150% of the normal daily fee rate for each individual;
 - for Sundays and public holidays: 200% of the normal daily fee rate for each individual.

11 PAYMENT

- 11.1 Unless otherwise agreed between the Company and the Customer in writing and subject to Conditions 11.6 and 11.7, accounts are payable in full in cash or cleared funds on the 30th day after the date of the Company's invoice.
- 11.2 If any amount due under any Contract between the Company and the Customer remains unpaid after the due date, the Company will be entitled also to interest thereon whether before or after judgement at the rate from time to time provided under the Late Payment of Commercial Debts (Interest) Act 1998. The Company's entitlement to interest will be without prejudice to the Company's other rights and remedies to suspend outstanding deliveries of Products or provision of Services under that or any other such Contract and (in the case of Products) recover without notice and at the Customer's risk all or any Products supplied to the Customer.
- 11.3 Time for payment will be of the essence.
- 11.4 No payment will be deemed to have been received until the Company has received cleared funds.
- 11.5 All payments payable to the Company under the Contract will become due immediately upon termination of this Contract howsoever arising despite any other provision.
- 11.6 The Company reserves the right to demand a deposit in cleared funds of up to 30 % of the Contract price for any Products before commencement of the manufacture of the Products. If a deposit is requested, the Customer will pay it to the Company within 5 days of request (and until such deposit is received in full the Company will be entitled to delay the manufacture or delivery of the Products). Without prejudice to the Company's other rights, the Company will be entitled to retain and deal with the deposit in any manner it deems fit if the Contract is cancelled under Condition 9.6 or terminated under Condition 15.
- 11.7 The Company reserves the right following completion of the manufacture of the Products for which it has received a deposit, to demand the outstanding amount of the Contract price upon notice that the Products are ready for collection or delivery, notwithstanding the provisions of Condition 11.1.
- 11.8 The Company retains a general lien on any of the Customer's equipment, materials or goods in its possession for the unpaid balance of any and all payments or sums whatsoever that the Customer owes to the Company under the Contract or otherwise. The Company shall be entitled to sell such equipment, materials or goods in the event that the said unpaid balance is not made in full by the due date. The proceeds of sale may be taken by the Company for reimbursements of the expense of the exercise of the lien and the sale, and payment of the said unpaid balance, and the Company shall account to the Customer for any surplus risk in any such equipment, materials or goods will remain with the Company whilst the lien is exercised and until the said equipment, materials or goods are sold.

12 RETENTION OF TITLE

- 12.1 The Products are at the risk of the Customer from the time of delivery (as specified in Condition 7.1).
- 12.2 Ownership of the Products will not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 12.2.1 the Products; and
- 12.2.2 all other sums which are or which become due to the Company from the Customer on any account whatsoever (in respect of any other Products or Services or otherwise).
- 12.3 Until ownership of the Products has passed to the Customer, the Customer must:
- 12.3.1 hold the Products on a fiduciary basis as the Company's bailee;
- 12.3.2 store the Products (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- 12.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;

- 12.3.4 maintain the Products 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 (and, on request from the Company, produce the policy of insurance to the Company); and
- 12.3.5 hold the proceeds of the insurance referred to in Condition 12.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 12.4 The Customer may resell the Products before ownership has passed to it solely on the following conditions:
- 12.4.1 any sale must be effected in the ordinary course of the Customer's business at full market value; and
- 12.4.2 any such sale must be a sale of the Company's property on the Customer's own behalf (and the Customer must deal as principal when making such a sale).
- 12.5 The Customer's right to possession of the Products will terminate immediately if:
- 12.5.1 the Customer has a bankruptcy or winding up order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or a notice of intention to appoint an administrator is given by the Company or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 12.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 12.5.3 the Customer encumbers or in any way charges any of the Products;
- 12.6 The Company will be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.
- 12.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Product is or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

13 QUALITY

- 13.1 The Company warrants to the Customer that (subject to the other provisions of these Conditions):
- 13.1.1 *in respect of Products*, during the Warranty Period the Products will:
- be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - be reasonably fit for any particular purpose for which the Products are being bought (if the Customer has notified that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company); and
- 13.1.2 *in respect of Services*, the Services will be supplied with reasonable skill and care.
- 13.2 The Company shall not be liable for a breach of any of the warranties in Condition 13.1.1 unless:
- 13.2.1 the Customer gives written notice of the defect or failure (including a description of the Procedure used with the Products before the defect or failure was detected and a list of equipment used with the Products identifying the manufacturer and seller of such equipment) to the Company, and (if the defect is as a result of damage in transit) to the carrier or haulier, within 7 days of the time when the Customer discovers or ought reasonably to have discovered the defect;
- 13.2.2 the Company is given a reasonable opportunity (after receiving the notice) of examining such Products and the Customer (if asked to do so by the Company) returns such Products or relevant samples of the Products to the Company's place of business at the Customer's cost for the examination to take place there; and
- 13.2.3 the Products alleged to be defective are kept separate from the other goods of the Customer and in reasonable and suitable conditions.
- 13.3 The Company shall not be liable for a breach of the warranty under Condition 13.1.2 unless:
- 13.3.1 the Customer gives written notice of the unsatisfactory Service to the Company (or where a sub-contractor was used, the sub-contractor) within 7 days of the time when the Customer discovers or ought reasonably to have discovered that the Company breached its warranty under Condition 13.1.2;
- 13.3.2 the Company is given a reasonable opportunity (after receiving the notice) of examining any Relevant Items and the Customer (if asked to do so by the Company) forwards such Relevant Items to the Company's place of business at the Company's cost for the examination to take place there; and
- 13.3.3 the Relevant Items are kept separate from the other goods and materials of the Customer and in reasonable and suitable Condition.

- 13.4 The Company shall not be liable for a breach of any of the warranties in Condition 13.1 if:
- 13.4.1 the Customer makes any further use of such Products or Relevant Items after giving the written notice under Condition 13.2 or Condition 13.3 (as the case may be); or
 - 13.4.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, operation, use or maintenance of the Products or Relevant Items (if there are no such instructions) good trade practice (as the case may be); or
 - 13.4.3 the Customer defaces, alters, modifies, adapts or repairs the Products or Relevant Items (as the case may be) without the written consent of the Company; or
 - 13.4.4 the defect arises after the Products or Relevant Items (as the case may be) have been delivered to a carrier appointed by the Company, save to the extent the provisions of Condition 9.3 apply; or
 - 13.4.5 where the carrier is appointed by the Customer or the Customer collects the Products or Relevant Items (as the case may be), the defect arises after the Products or Relevant Items (as the case may be) have been collected by the Customer or its carrier or agent; or
 - 13.4.6 the defect arises as a result of fair wear and tear, erosion, corrosion, fire or explosion, or the wilful damage, negligence or abnormal working conditions of the Customer; or
 - 13.4.7 the Products or Relevant Items (as the case may be) were used for a purpose other than the purpose for which they were manufactured (or produced) and/or otherwise misused or caused by the Customer or the Customer's employees, sub-contractors or agents (or any person not authorised or trained to work on or with the Products or Relevant Items (as the case may be) does so); or
 - 13.4.8 the total price for the Products (or any related Services) has not been paid on the due date for payment; or
 - 13.4.9 the defect arises from the Customer's Materials or any drawing, design or specification supplied by the Customer; or
 - 13.4.10 any advice or instructions given to the Customer in respect of or incidental to the Services supplied, were not followed or complied with by the Customer or any of the Customer's employees, sub-contractors or agents (or by any third party).
- 13.5 The warranties given in Condition 13.1.1 do not extend to:
- 13.5.1 Products, parts, materials or equipment not manufactured by the Company in respect of which the Customer will only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company; and
 - 13.5.2 any defects in any Products in relation to which the Company has been authorised, certified, permitted or required by any independent authority (under its rights and powers under any applicable laws, codes of practice and regulations) to manufacture and/or sell the Products in any particular condition or manner or to any particular specification (however, the Company will endeavour to assign its rights against any such independent competent authority to the Customer);
 - 13.5.3 any negligence on the part of the Customer in not properly checking the suitability, usefulness and adequacy of any Products ordered by it.
- 13.6 Subject to Conditions 13.2, 13.3 and 13.4, if any of the Products do not conform with any of the warranties in Condition 13.1.1 the Company will at its option:
- 13.6.1 repair or replace such Products or the defective part (and in such an event the Customer will be entitled to only the residue of the Warranty Period in respect of the repaired or replaced Products); or
 - 13.6.2 refund the price of such Products at the *pro rata* Contract rate provided that, if the Company so requests, the Customer will, at the Company's expense, return the Products or the parts of such Products which are defective to the Company;
- 13.7 If the Company complies with Condition 13.5 it will have no further liability for a breach of any of the warranties in Condition 13.1 in respect of such Products.
- 13.8 The Customer will indemnify the Company against all costs, losses, claims and expenses that the Company incurs in examining, testing, repairing, re-delivering and recommissioning on demand any Product or Relevant Item in respect of which the defect or failure is not within the scope of any warranty under Condition 13.1

14 LIMITATION OF LIABILITY

- 14.1 Subject to Condition 13, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 14.1.1 any breach of the Contract or these Conditions; and
 - 14.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 14.4 Subject to Conditions 14.2 and 14.3:

14.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising will be limited as follows:

- *in respect of defective Products*, to an amount equal to the Contract price for those Products; and
- *in the case of unsatisfactory Services*, to an amount equal to the Contract price for those Services; and
- *in connection with other aspects of the performance or contemplated performance of this Contract or otherwise (to the extent that the amount equal to the Contract price is insufficient)*, to £100,000;

14.4.2 the Company will not be liable to the Customer for:

- losses, costs, claims or other liability whether direct, indirect, direct or indirect consequential loss or damage (all four items to include without limitation loss of profit, loss of business, depletion of goodwill and like loss), costs, expenses or claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with loss, damage or contamination of the Customer's or any third party's products (whether of a solid, liquid or gas nature) used in conjunction with or stored in any Products whether or not those Products are proven to be defective; and
- any indirect, direct or indirect consequential loss or damage (all three items to include without limitation loss of profit, loss of business, depletion of goodwill and like loss), costs, expenses or claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

15 TERMINATION

15.1 The Company shall without prejudice to its other rights and remedies be entitled in any of the following events to terminate wholly or in part any or every Contract between the Company and the Customer or to suspend further deliveries under any or every such Contract:

15.1.1 if the Customer fails to take delivery of any Products under any Contract between the Company and the Customer; or

15.1.2 if the Customer becomes insolvent or suffers any event as provided in Condition 12.5 or if the Company has reasonable cause to believe that any of these events are likely to occur then the Company shall be entitled to exercise its aforementioned rights of termination or suspension at any time during which the event of default giving rise thereto has not ceased or been remedied and in the event of any suspension the Company will be entitled as a condition of resuming delivery under any Contract between the Company and Customer to require pre-payment of or such security as the Company require for payment of the price of any further delivery; or

15.1.3 if the Customer is in the opinion of the Company in material breach of the Contract or these Conditions.

16 SET OFF

16.1 The Customer will not be entitled to withhold or deduct payment of any amount payable to the Company under any Contract either by way of set-off, counterclaim, discount, abatement or otherwise because of any disputed claim by the Customer in respect of defective Product or Service or any other alleged breach of the Contract nor shall the Customer be entitled to set off against any amount payable to the Company under any Contract any monies which are not then presently payable by the Company or for which the Company disputes liability.

16.2 The Company will at any time in its absolute discretion be entitled to set off, counterclaim, abate or discount any monies owed by it to the Customer against any monies (howsoever arising) owed by the Customer to the Company.

17 GENERAL

17.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction 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.

17.2 Should any delay occur in completion or partial completion of any Contract as the direct or indirect result of an act of God, war, riot, civil commotion, strike, lockout, industrial dispute or other local disturbances or restriction, fire, the elements, explosion, or failure of plant or machinery, Acts, orders or regulations of the Government, delay on the part of any supplier, shortage of raw materials, failure on the part of the Customer or any carrier, or any other cause beyond the reasonable control of the Company, or of any persons for whom the Company contracts then any express or implied time for completion of the Contract shall be extended for a reasonable time having regard to the effect of the delaying cause on the performance of the Contract or the Company shall have the right to cancel the Contract or reduce the volume of any Products (and/or the scope of any Services) ordered by the Customer without liability.

17.3 These Conditions and all Contracts will be governed by and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.

17.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

17.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

- 17.6 The Customer agrees that the details of the Customer's name, address and payment record may be submitted to a credit reference agency or fraud prevention agency, and personal data will be used by or on behalf of the Company.
- 17.7 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns. Any other person (a 'third party') has no such rights or remedies by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, except that the persons for whom the Company contracts will have the benefit of and the right to enforce the Contract.

18 COMMUNICATIONS

- 18.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
- 18.1.1 *in case of communications to the Company*, to its registered office or email address from time to time notified to the Customer or such changed address as shall be notified to the Customer by the Company; or
- 18.1.2 *in the case of the communications to the Customer*, to the registered office of the addressee (if it is a company) or (in any other case) to any address or email address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Customer.
- 18.2 Communications will be deemed to have been received:
- 18.2.1 *if sent by pre-paid first class post*, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- 18.2.2 *if delivered by hand*, on the day of delivery;
- 18.2.3 *if sent by facsimile transmission*, on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

19 CONFIDENTIALITY & INTELLECTUAL PROPERTY

- 19.1 The Customer will not disclose to any third party whatsoever any designs, drawings, financial (in particular price related) information or customer information, technical or commercial know-how, inventions, processes, initiatives, data or any other confidential information the Company or its agents may make available to the Customer nor use the same for any purpose other than the performance of the Contract without the Company's prior written consent. The Customer shall only disclose such confidential information to such of its employees or agents as need to know for the performance of the Contract and the Customer shall ensure that such employees or agents are subject to like obligations of confidentiality as bind the Customer.
- 19.2 The Customer will not infringe or cause or suffer to be infringed any or all of the Company's or any third party's Intellectual Property Rights in all of the Company's Materials and or the Products.
- 19.3 The Customer will indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of any infringement of any Intellectual Property Rights of the Company or any other person caused or procured or permitted by the Customer from the Customer's direct or indirect use or enjoyment of the Company's Materials and/or the Products.
- 19.4 The Company reserves the right (with the full co-operation of the Customer) to have conduct of any litigation proceedings or negotiation of claims regarding the infringement or alleged infringement:
- 19.4.1 of any third party's Intellectual Property Rights in the Company's Materials and/or the Products by the Company and/or the Customer and/or any third party; and
- 19.4.2 of any of the Company's Intellectual Property Rights in the Company's Materials and/or the Products by the Customer and/or any third party.