



STANDARD TERMS AND CONDITIONS
FOR THE SALE OF GOODS AND SERVICES

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1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

“Buyer”

means the person(s), firm or company who purchases the Goods and/or Services from the Company;

“Company”

means Alexander Dennis Limited, company number SC268016, the registered office of which is at 16 Charlotte Square, Edinburgh EH2 4DF;

“Contract”

means any contract, howsoever concluded, between the Company and the Buyer for the sale and purchase of the Goods and/or the Services, incorporating these Conditions;

“Goods”

means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them) and where the context permits shall include goods supplied which are incidental to the Services;

“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;

“Items”

means any items upon which the Services are to be or have been performed;

“LIBOR”

means the arithmetic mean (rounded upwards to four decimal places) of the rate or rates of interest per annum which the principal London offices of any three clearing banks as the Company shall nominate for the purpose, quote for offering six months sterling deposits to leading banks in the London Inter-Bank Market at or about 11:00am (London time) on the first business day of the relevant interest period or if such day is not a business day on the next succeeding business day;

“Sales Deal Sheet”

means any form that summarises and details the commercial, pricing, technical and service elements of any agreed deal, duly signed and approved by both the Buyer and ADL.

“Services”

means any services agreed in the Contract to be supplied to the Buyer by the Company;

“Warranty Statements”

means the separate warranty statements of the Company in force at the date of the Contract which apply to the categories of Goods being purchased by the Buyer a copy of which is attached to these Conditions as varied, if appropriate, by a Warranty Variation Sheet

“Warranty Variation Sheet”

means the separate sheet issued by the Company setting out agreed variations to the Warranty Statements and **clause 9** of these Conditions a copy of which [will be supplied by the Company to the Buyer at the date of the Contract]

1.2 Any reference to a statute, statutory provision or subordinate legislation in these Conditions includes such legislation as amended and in force from time to time and any legislation which modifies, consolidates (with or without modification), re-enacts or supersedes it.

2. APPLICATION OF TERMS

- 2.1 Subject to any variations under **clause 2.3** the Contract will be on 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 documents).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company’s sales and any variations to these Conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.
- 2.4 Each order for Goods or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase the Goods or Services subject to these Conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods or Services to the Buyer.

- 2.6 Any quotation or tender document is given by the Company on the basis that no contract will come into existence until the Company despatches a written acknowledgement of order to the Buyer or (if earlier) the Company delivers the Goods or Services to the Buyer. Unless otherwise agreed in writing any quotation is valid for a period of 60 days only from its date, provided that the Company has not previously withdrawn or amended it and the Company reserves the right to withdraw or amend any quotation during such 60 day period until the Company despatches a written acknowledgement of an order placed by the Buyer based upon such quotation or (if earlier) the Company delivers the Goods or Services to the Buyer.

3. DESCRIPTION

- 3.1 The Buyer must ensure that the terms of its order and applicable specifications are complete and accurate in order to enable the Company to perform the Contract in accordance with its terms and the quantity, quality and description of and subject to **clause 3.3** any specification for the Goods or Services shall be those set out in the Buyer's order acknowledged in writing by the Company.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They will not form part of this Contract.
- 3.3 The Buyer acknowledges that the Company has a policy of continuous improvement of its products and the Company shall be entitled without notice (at any time prior to the time of delivery as set out in **clause 4.2**) to change the specification of the Goods or Services which the Company considers reasonable or desirable, unless specified otherwise by the Buyer, without affecting the enforceability of the Contract.
- 3.4 All information, drawings, models, know how, samples, designs and similar items relating to the Goods or Services prepared by the Company and the copyright and other intellectual property rights therein shall remain the property of the Company or other owner so that property therein shall not pass to the Buyer and shall be returned by the Buyer on demand, shall be treated as confidential and shall not be copied, reproduced or disclosed to any third party without the Company's prior written consent.
- 3.5 If any Goods are to be manufactured or any process is to be applied to Goods, or the Services are to be provided, in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company, on demand, against all loss, damage, cost and expense 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 patent, copyright, registered design, trademark, service mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
- 3.6 The Buyer shall not remove, obscure, alter or tamper with any plate, trade or other identification mark, name or number placed on the Goods by or on behalf of the Company.

- 3.7 In the case of a supply of Services the Company reserves the right to carry out and charge for further work which it considers to be necessary unless this in the opinion of the Company represents a substantial divergence from the Buyer's order which is acknowledged in writing by the Company in which case the Company will first seek the written authority of the Buyer.

4. DELIVERY

- 4.1 The Buyer will take delivery of the Goods upon the Company giving it notice that the Goods are ready for delivery provided that for the purposes of these Conditions:
- 4.1.1 in the case of Goods (other than parts) the time of delivery shall be when the Goods are delivered at the address specified by the Buyer in its order or such other address agreed in writing;
- 4.1.2 in the case of Goods which are parts the time of delivery shall be when the Goods are despatched by the Company to the Buyer provided that s.32(2) of the Sale of Goods Act 1979 shall not apply to the Contract and therefore the Company shall be under no obligation to arrange a contract with the carrier on behalf of the Buyer; and
- 4.1.3 in the case of Services, the time of delivery shall be the receipt by the Buyer from the Company of the notice referred to at **clause 4.7** that the Items are ready for collection or, if earlier collection of the Items by the Buyer.
- 4.2 Any dates specified by the Company for delivery of the Goods or Services are intended to be an estimate and time for delivery of the Goods or Services shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.
- 4.3 Unless otherwise agreed by the Company with the Buyer in writing, the Company will not be liable for any loss (including loss of profit), cost, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or Services (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract.
- 4.4 If for any reason the Buyer will not accept delivery of any of the Goods upon the Company notifying the Buyer that the Goods are ready for delivery pursuant to **clause 4.1** or will not accept delivery of the Items upon the Company notifying the Buyer that the Items are ready for collection pursuant to **clause 4.7**, or the Company is unable to deliver the Goods because the Buyer has not provided appropriate instructions documents licences or authorisations, or the Buyer has requested that the Goods or Items be held in storage until a later date:
- 4.4.1 the Company may arrange for the Goods or Items to be stored until the Buyer accepts delivery whereupon the Buyer will be liable for all reasonable related costs and expenses (including without limitation storage and insurance);
- 4.4.2 the Goods will be deemed to have been delivered;
- 4.4.3 risk in the Goods or Items will pass to the Buyer (including for loss or damage caused by the Company's negligence) at the time the Goods or Items are put in storage; and

- 4.4.4 if the Goods or Items or part thereof remain uncollected for three months the Company may sell the same and use the proceeds to satisfy all sums due from the Buyer and if the sale proceeds exceed the total monies due from the Buyer the Company shall account to the Buyer for the excess and if the sale proceeds are less than the total monies due from the Buyer the Company may sue for the remainder as a debt.
- 4.5 In the case of Goods which are parts, if the Company delivers to the Buyer a quantity of Goods up to five per cent more or less than the quantity set out in the Contract the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the *pro rata* Contract rate.
- 4.6 Where delivery or performance is to be made by instalments:
- 4.6.1 failure by the Company to deliver or perform any instalment shall not entitle the Buyer to treat the Contract as repudiated; and
- 4.6.2 acceptance by the Buyer of each instalment and timely payment for each instalment are conditions precedent to the Company's obligation to deliver further instalments in respect of such Contract.
- 4.7 The Services shall be performed at the Company's premises and the Buyer shall at its own cost deliver the Items to the Company's premises and collect them upon the Company notifying the Buyer that they are ready for collection.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods or Items as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods or Items (even if caused by the Company's negligence) unless the Company has agreed with the Buyer in writing to be so liable in the Contract and written notice is given to the Company within seven days (or, in the case of parts, 48 hours) of the time of delivery as set out at **clause 4.1** or deemed delivery in accordance with **clause 4.4**.

6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery as set out at **clause 4.1** or deemed delivery in accordance with **clause 4.4** and where the Company is carrying out repairs on behalf of the Buyer and Goods or Items are on the Company's premises for such purpose risk in such Goods or Items shall remain with the Buyer.
- 6.2 Ownership (legal and beneficial) of the Goods shall not pass to the Buyer until the Company has received in full all sums due to it in respect of those Goods in accordance with **clause 8**, unless agreed otherwise between the Company and the Buyer.

- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 6.3.1 hold the Goods on a fiduciary basis as trustee for and on behalf of the Company;
 - 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company;
 - 6.3.5 hold the proceeds of the insurance referred to in **clause** 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account; and
 - 6.3.6 deliver up the Goods to the Company on demand.
- 6.4 The Buyer's right to possession of the Goods shall terminate immediately if before ownership of the Goods passes to the Buyer pursuant to **clause** 6.2:
- 6.4.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act 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 of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - 6.4.2 the Buyer 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 Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 6.4.3 the Buyer encumbers or in any way charges any of the Goods; or
 - 6.4.4 the Contract is terminated pursuant to **clause** 16.
- 6.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.6 Until title in the Goods has passed to the Buyer in accordance with this **clause** 6, the Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7. PRICE

- 7.1 Unless otherwise agreed by the Company in writing the price for the Goods and Services shall be the price agreed between the Buyer and the Company as detailed in the appropriate Sales Deal Sheet.
- 7.2 Without prejudice to the obligation on the Buyer to pay the price pursuant to **clause 8.1** the Company shall invoice the Buyer:
- 7.2.1 for Goods (other than parts) before the Goods are despatched from the Company's premises;
- 7.2.2 for parts at the time of delivery as set out at **clause 4.1.2**; and
- 7.2.3 for Services at the time of delivery as set out at **clause 4.1.3**;

and where delivery is to be by instalments each instalment may be invoiced separately. The Company may also invoice the Buyer at the time of deemed delivery in accordance with **clause 4.4**. Any error in an invoice of the Company must be notified to the Company within seven days.

- 7.3 The Company reserves the right, by giving notice to the Buyer at any time before delivery or within a reasonable time after delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company including, without limitation, any change in specification effected by the Company, any foreign exchange fluctuation, currency regulation, alteration of import or export duties tariffs or taxes (in cases where the Company is to pay the same), increase in the costs of labour, materials, sub-contracted services, transport, or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods or Services which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

8. PAYMENT

- 8.1 Unless otherwise agreed in writing, payment of the price:
- 8.1.1 for the Goods (other than parts) shall be due before the Goods are despatched from the Company's premises;
- 8.1.2 for parts shall be due at the time of delivery as set out at **clause 4.1.2**; and
- 8.1.3 for Services shall be due at the time of delivery as set out at **clause 4.1.3**,

or, in each case, the date of deemed delivery in accordance with **clause 4.4** provided that the Company reserves the right to call for a non refundable deposit with the Buyer's order as a condition of acceptance of such order by the Company.

- 8.2 Time for payment shall be of the essence.

- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds (which shall include confirmed irrevocable letters of credit) and the Company shall have a general lien on all property of the Buyer in the Company's possession to secure any sum due from time to time from the Buyer to the Company.
- 8.4 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 8.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, 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 Company to the Buyer.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of four per cent per annum above LIBOR accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.7 Unless otherwise stated in the Company's acknowledgement of the Buyer's order the price shall be payable in pounds sterling.

9. QUALITY AND WARRANTY

- 9.1 The Buyer shall, until the time for delivery set out at **clause** 4.1 or deemed delivery in accordance with **clause** 4.4, be entitled to inspect the Goods or Items during the Company's normal business hours upon giving the Company reasonable notice in writing.
- 9.2 Where the Company is not the manufacturer of the Goods, the warranties referred to in **clause** 9.3 shall not apply but the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 9.3 The Company gives the following warranty in respect of Goods in addition to the warranties in the Warranty Statement:
- 9.3.1 new Goods (other than parts) will be free from defects as to materials and workmanship for 12 months from the sooner of first registration and 6 months from the time of delivery as set out at **clause** 4.1.1 or deemed delivery in accordance with **clause** 4.4;
- 9.3.2 second hand Goods (other than parts) shall have no warranty, excepting certain parts which the Company and the Buyer have agreed in writing shall be subject to warranty protection; and
- 9.3.3 parts shall be free from defects as to materials and workmanship for 12 months from the time of delivery as set out at **clause** 4.1.2 or deemed delivery in accordance with **clause** 4.4.

- 9.4 The Company shall not be liable for a breach of any of the warranties referred to in **clause 9.3**, **clause 9.11** or the Warranty Statements unless:
- 9.4.1 the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within seven days of the time when the Buyer discovers or ought to have discovered the defect; and
- 9.4.2 the Company is given a reasonable opportunity after receiving the notice to examine such Goods or Items and the Buyer (if asked to do so by the Company) returns such Goods or Items to the Company's place of business or such other place as the Company shall direct in writing at the Buyer's cost for the examination to take place there.
- 9.5 The Company shall not be liable for a breach of any of the warranties referred to in **clause 9.3**, **clause 9.11** or the Warranty Statements;
- 9.5.1 in respect of any further damage or deterioration to the condition of the Goods or Items caused by the Buyer continuing to use the Goods or Items after giving the notice referred to at **clause 9.4.1**; or
- 9.5.2 if the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Items or (if there are none) good trade practice and the Buyer shall on request allow the Company the right to inspect its maintenance records on reasonable notice during normal business hours; or
- 9.5.3 if the defect arises because the Buyer used the Goods or Items with replacement parts, accessories or equipment not manufactured or approved by the Company pursuant to **clause 9.10** or with parts, accessories or equipment supplied by the Buyer to be fitted by the Company; or
- 9.5.4 if the Buyer maintains and/or cleans the Goods or Items with anything other than a non-corrosive detergent (ie ph neutral); or
- 9.5.5 if the defect arises as a result of the Goods or Items being altered modified repaired or replaced by any person other than the Company or its duly authorised service representative; or
- 9.5.6 if the defect is as a result of the specification given by the Buyer to the Company not approved in writing to the Company; or
- 9.5.7 if the defect arises as a result of use of the Goods or Items by the Buyer in adverse conditions (including, but not limited to, extremes of climate, unmade roads or overloading) or in an unacceptable manner (determined by observations taken independently on behalf of the Company) where speed calming devices have been installed; or
- 9.5.8 if the defect is the result of vandalism, fair wear and tear, neglect, abuse or misuse by the Buyer (or its employees servants or agents), or accident damage; or
- 9.5.9 if the claim is made by anyone other than the first registered owner of the vehicle; or

- 9.5.10 if the Goods are a body and the defect is caused by any defect in a chassis which is not manufactured by the Company or by the Company not being given adequate instructions as to how the body is to be fitted to the chassis; or
- 9.5.11 if the Goods are a chassis and the defect is caused by any defect in a body which is not manufactured by the Company or the Company not being given adequate instructions as to how the chassis is to be fitted to the body.
- 9.6 Subject to **clauses** 9.4 and 9.5, if any of the Goods do not conform with any of the warranties referred to in **clause** 9.3 or the Warranty Statements;
- 9.6.1 the Company shall at its sole option **either** repair or replace such Goods (or the defective part) and (only where the Goods are parts) the Company shall charge for and the Buyer shall pay for all reasonable labour costs of the Company in respect of such repair **or** (only where the Goods are parts) refund the price of such Goods at the *pro rata* Contract rate;
- 9.6.2 if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company or to such location as the Company directs in writing and collect the Goods when they have been repaired;
- 9.6.3 any repairs to the Goods shall be carried out by the Company (or its agent) as soon as reasonably practicable having regard to the availability of parts and labour;
- 9.6.4 the Company shall not reimburse the Buyer for any repair work carried out by the Buyer to any Goods unless the Company has consented in writing to the Buyer carrying out its own repair works prior to the works being carried out and the Buyer claims such expenses from the Company using the form prescribed by the Company from time to time which form shall be supplied to the Buyer by the Company; and
- 9.6.5 if the Company complies with this **clause** 9.6 it shall have no further liability for a breach of any of the warranties set out at **clause** 9.3 in respect of such Goods.
- 9.7 If the Company elects to repair the Goods and where it repairs Items it shall carry out such repairs in the most efficient manner possible. Any further repairs necessary which become apparent and which would affect the repair if not so rectified will be brought to the Buyer's attention. Unless such further repair is covered by the warranty set out at **clause** 9.3 (in the case of Goods) and **clause** 9.11 (in the case of Items) the Company shall charge and the Buyer shall pay for such additional repairs.
- 9.8 Orders for insurance repairs will not be accepted by the Company unless signed by both the Buyer and the insurance company. The Company will not permit the removal of any Goods from its premises until the Company has been paid in full for such repairs. The Buyer will be liable for payment of all value added tax, the amount of any excess on the insurance policy, and any charges incurred by the Company to the extent that the insurance company fails to pay such charges within thirty days of signature of the satisfaction note by the Buyer.

- 9.9 Any Goods replaced will belong to the Company and will be delivered by the Buyer to the Company at the Buyer's expense as soon as reasonably practicable following the carrying out of the relevant works (if not carried out at the Company's premises) and any repaired or replacement Goods will only be guaranteed on these terms for the unexpired portion of the relevant period set out in the warranty set out at **clause 9.3**.
- 9.10 The Goods are intended for use only with replacement parts, accessories and equipment manufactured by or approved by the Company and the Buyer shall indemnify the Company in respect of any claim whatsoever for loss or damage caused wholly or partly by the fitment of any such item, not so approved by the Company. The Buyer shall at its own cost maintain an accurate record of each replacement part, or accessory or item of equipment fitted to the Goods (including unique identification number) and shall allow the Company the right to inspect such records on reasonable notice and during normal business hours.
- 9.11 The Company warrants that the Services will be carried out using reasonable care and skill and will rectify any defects which are due to its own negligence which occur within 6 months of the date of delivery as set out in **clause 4.1.3** or deemed delivery in accordance with **clause 4.4** and the liability of the Company will be limited to rectifying the defective Services.
- 9.12 For the avoidance of doubt, the warranties contained in the Warranty Statements are entirely subject to the terms of these Conditions, including in particular and without prejudice to the generality of the foregoing, the terms of Clause 9 and Clause 10 of these Conditions, and in the event of any dispute between the terms of the Warranty Statements and these Conditions, the terms of these Conditions will take precedence.

10. LIMITATION OF LIABILITY

- 10.1 Subject to **clause 9**, 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 Buyer in respect of:
- 10.1.1 any breach of these Conditions; and
- 10.1.2 any representation, statement or act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the warranty as to title implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury or under the Consumer Protection Act 1987 or caused by the Company's fraudulent misrepresentation.

- 10.4 Subject to **clauses** 10.2 and 10.3:
- 10.4.1 the Company's total liability in contract, delict (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 Contract price for the Goods or Services;
- 10.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract including costs of hire of replacement vehicles; and
- 10.4.3 the Company shall not be liable in contract, delict (including negligence or breach of statutory duty) misrepresentation or otherwise to the extent that such loss or damage was caused by any negligent or wrongful act or omission of the Buyer.

11. ASSIGNATION

- 11.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 11.2 The Company may assign or sub contract the Contract or any part of it to any person, firm or company.

12. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) or extend the time for delivery if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 180 days, either party shall be entitled to give notice in writing to the other party to terminate the Contract.

13. GENERAL

- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 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.

- 13.3 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.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 13.5 The Company reserves the right to vary, amend or alter the terms of these Conditions at any time. In such event the Company shall provide the Buyer with a further copy of these Conditions, as varied, amended or altered (the "Updated Conditions") and the Updated Conditions shall thereafter apply to the Contract insofar as it remains to be performed, and all future contracts between the Company and the Buyer for the provision of Goods and/or Services unless otherwise notified in writing by the Company to the Buyer.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Scottish law and the parties submit to the exclusive jurisdiction of the Scottish courts.
- 13.7 Only the Company and the Buyer and their permitted assignees and in the case of the Company its subcontractors and any other company in the Group shall have any rights under this Contract.

14. COMMUNICATIONS

- 14.1 All communications shall be between the representatives of the Company and the Buyer who negotiated the terms of the Contract and shall be in writing provided that all communications relating to a dispute between the parties must be in writing to the managing director of the Buyer or the Company and in all cases notices must be either delivered by hand or sent by pre-paid first class post or sent by facsimile transmission.
- 14.2 Communications shall be deemed to have been received:
 - 14.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
 - 14.2.2 if delivered by hand, on the day of delivery;
 - 14.2.3 if sent by facsimile transmission on a working day prior to 4 pm, at the time of transmission and otherwise on the next working day.

15. EXPORT TERMS

- 15.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Contract, but if there is any conflict between the provisions of Incoterms and this Contract, the latter shall prevail.
- 15.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this **clause** 15 shall (subject to any special terms, expressly agreed in writing between the Buyer and the Company) apply notwithstanding any other provision of this Contract.
- 15.3 The Buyer shall be responsible for complying with any legislation or regulations whatsoever governing the importation of the Goods into the country of destination including (without limitation) the payment of any duties on them.
- 15.4 Unless otherwise expressly agreed in writing between the Buyer and the Company or set out in these Conditions, the Goods shall be delivered FOB the named port of shipment.
- 15.5 Payment of all amounts due to the Company will be made by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a UK clearing bank acceptable to the Company and will be payable against a bill of lading.
- 15.6 The Buyer shall be responsible for arranging all costs of freight and insurance from the time the Goods pass the ships rail at the named port of shipment and s.32(3) of the Sale of Goods Act 1979 shall not apply to the Contract and the Company shall therefore be under no obligation to give notice to the Buyer to enable the Buyer to arrange insurance for the Goods.
- 15.7 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company 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. TERMINATION

- 16.1 This **clause** 16 applies if:
- 16.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
- 16.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;
- 16.1.3 the Buyer ceases, or threatens to cease, to carry on business;
- 16.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly;

- 16.1.5 the Buyer commits any material breach of this Contract and, in the case of a remedial breach, such breach is not remedied within seven days of the Company notifying the Buyer of such breach; or
- 16.1.6 if the Buyer is outside the United Kingdom, anything corresponding with the above occurs.
- 16.2 If this **clause** 16 applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.