

CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

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

"GOODS" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

"SELLER" means Metalfin Ltd (a private company registered in England with limited liability under company number 8026751) whose registered office is at 25 High Street, Cobham, Surrey KT11 3DH;

"CONDITIONS" means the standard terms and conditions of sale set out in this document;

"CONTRACT" means the contract for the purchase and sale of the Goods which shall comprise these Conditions; any special terms and conditions agreed in Writing between the Buyer and the Seller; and the Order;

"ORDER" means an order by the Buyer which is accepted by the Seller; and

"WRITING" includes telex, cable, e-mail, facsimile transmission and comparable means of communication.

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

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

2. Basis of Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any Order of the Buyer which is accepted by the Seller in accordance with these Conditions. The Contract shall constitute the entire agreement between the parties to the exclusion of any other terms and conditions or any other agreement, arrangement or understanding which is made or purported to be made between the Seller and the Buyer whether written or oral, relating to its subject matter.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the

Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.6 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller's acceptance of the Buyer's Order.
- 2.7 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in the Contract.

3. **Orders and Specifications**

- 3.1 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative. If the Contract price exceeds £15,000, then the Contract must be authorised on behalf of the Seller by any one manager of the Seller. In the event that a Contract in which the Contract price exceeds £15,000 is not authorised by a manager of the Seller, then that Contract shall be voidable at the option of the Seller. Should the Seller exercise this option, then that Contract shall be void and to no effect and neither party shall have any claim of any nature whatsoever against the other.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 Subject to clause 3.7 below, the quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's Order (if accepted in Writing by the Seller in accordance with clause 3.1).
- 3.4 If the Goods are to be manufactured, designed, built or configured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall hold the Seller harmless and shall fully and promptly indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.7 The Seller reserves the right to supply Goods which may vary in weight by up to 10% from the amount stated in the Contract. Where the Seller under-delivers Goods by an amount not exceeding 10% by weight, the provisions of Sub-section (1) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such lesser amount of Goods shall be deemed to be delivery under the Contract and shall be paid for by the Buyer at the rate set out in the Contract. Where the Seller delivers Goods by an amount no greater than 10% by weight of the amount set out in the Contract, the provisions of Sub-sections (2) and (3) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such greater amount shall be deemed to be delivery under the Contract and paid for by the Buyer at the rate set out in the Contract. In the event of the Seller delivering an amount greater than 10% by weight in excess of the quantity set out in the Contract, the Buyer shall have the option of paying for such excess at the rate set out in the Contract or at its option, returning such additional Goods to the Seller (in the same condition as delivered to the Buyer) Provided Always that such Goods must be returned no later than 14 days from the date of delivery.
- 3.8 The Seller reserves the right to supply Goods which may vary in dimension by up to 10% from the amount stated in the Contract. Where the Seller under-delivers Goods by an amount not exceeding 10% by dimension the provisions of sub-section (1) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such lesser amount of Goods shall be deemed to be delivery under the Contract and shall be paid for by the Buyer at the rate set out in the Contract. Where the Seller delivers goods by an amount no greater than 10% by dimension of the amount set out in the Contract the provisions of sub-sections (2) and (3) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such greater amount shall be deemed to be delivery under the Contract and paid for by the Buyer at the rate set out in the Contract. In the event that the Seller delivering an amount greater than 10% by dimension in excess of the quantity set out in the Contract, the Buyer shall have the option of paying for such excess at the rate set out in the Contract or at its option, returning such additional Goods to the Seller (in the same condition as delivered to the Buyer) Provided Always that such Goods must be returned no later than 14 days from the date of delivery,
4. **Price of the Goods**
- 4.1 The price of the Goods shall be the Seller's quoted price subject always to the provisions of clause 2.6. All prices quoted are valid for 7 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 The cost of returnable pallets and containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5. **Terms of Payment**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction, whether by way of set-off, counterclaim, abatement or otherwise) within 30 days after the end of the month in which the Goods are delivered, and the Seller shall be entitled to recover the price, notwithstanding that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

- 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above National Westminster Bank's base lending rate from time to time calculated on a daily basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.4 In the event that the Seller owes money to the Buyer under any contract or other arrangement entered into between the Seller and the Buyer the Seller shall be entitled to set off such sums owed by the Seller to the Buyer against any sums which the Buyer shall owe to the Seller pursuant to this contract.

6. **Delivery, Inspection and Complaints**

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and subject to 6.4 below, the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods Provided Always that the time of delivery of the Goods shall not be of the essence of this contract and only delays by the Seller in the delivery of the Goods (or any instalments) which exceed 6 months shall give the Buyer the right to terminate this contract or purchase similar goods elsewhere.
- 6.5 If the Buyer fails to take delivery of the Goods at the time stated for delivery or fails to give the Seller adequate delivery instructions (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then risk in the Goods shall pass to the Buyer and the Goods shall be deemed to have been delivered on the date of delivery and without prejudice to any other right or remedy available to the Seller, the Seller may:

- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.6 The Buyer shall examine the Goods upon delivery and satisfy itself that they conform to Contract. A claim that Goods are not in accordance with the Contract will not be accepted by the Seller unless notice in writing, specifying the alleged default, is given to the Seller within 7 days of delivery of the Goods.
- 6.7 Failure to notify the Seller of the non-delivery of the Goods, or any of them, within 7 days of the due date for delivery will release the Seller from liability for claims for non-delivery.
- 6.8 Any Goods considered to be damaged or defective (together with their packaging materials) shall be retained by the Buyer intact as delivered for a period of twenty one days from notification of the claim to the Seller, within which time the Seller or its agents shall have the right to investigate the complaint and examine the Goods and, if possible, to remedy any defect. Any breach of this condition will release the Seller from any liability for Goods which are alleged not to conform to Contract.
- 6.9 If the Seller agrees with the Buyer that the Goods are damaged or defective and that it is not possible to remedy any defect then the Seller shall, at its sole option, replace the Goods or credit the Buyer accordingly.
- 6.10 If the Seller disagrees with the Buyer that the Goods are damaged or defective then the dispute shall be referred to an independent third party appointed jointly by the Seller and the Buyer or, failing agreement within 7 days, by a party appointed, on the application of either the Seller or the Buyer, by the President for the time being of Institute of Chartered Accountants. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne equally by, the Seller and the Buyer.
- 6.11 The Seller shall have no liability to the Buyer in respect of damaged or defective Goods (and the Buyer shall be required to pay the full contract price) where:-
- (a) any claim made by the Buyer is not in accordance with these Conditions;
 - (b) damage has been sustained after delivery of the Goods to the Buyer, or its agents;
 - (c) defects are caused by installation, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Goods or by wear and tear, accident or misuse, improper operation or neglect or if any adjustment, alteration or other work has been performed on the Goods by any person other than the Seller or its employees or agents;
- or

- (d) a receipt has been obtained by the Seller, duly signed by the Buyer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition.

7. **Risk and Property**

7.1 Risk of damages to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds, payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until property in the Goods passes to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as the Seller's bailee;
- (b) store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.

7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- (b) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and
- (c) the proceeds of any such sale shall be held by the Buyer as the Seller's bailee and in a fiduciary capacity, and the Buyer shall pay the proceeds into a separate bank account opened for that purpose and approved by the Seller and shall ensure that in no circumstances are the proceeds mingled with other money or paid into an overdrawn bank account but are at all times identifiable as the Seller's money; and

- (d) if the Buyer has not received the proceeds of any such sale as referred to in and pursuant to clause 7.4 (c) it will, if called upon to do so by the Seller, assign to the Seller within seven days after being required in writing so to do by the Seller, all rights against the person or persons by whom the proceeds are owed
- 7.5 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored or otherwise located, but in any event, and without limitation, hereby undertakes to secure full rights of access at any time to any such premises for the Seller, its agents and employees to recover the Goods and to undertake any work required to remove them, notwithstanding that the Goods may be affixed or attached to any other goods or property.
- 7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
8. **Warranties and Liability**
- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from the date of delivery.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure by the Buyer to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's written approval;
- 8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the price due for the Goods has not been paid;
- 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

- 8.3 If the Seller agrees that it is or (as the case may be) it is found to be liable under the provisions of clause 8.2 above, then the Seller's entire liability to the Buyer shall be limited, at the option of the Seller, to repairing or replacing the Goods or refunding the purchase price (or a proportionate part thereof) for them.
- 8.4 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Without limiting the generality of this clause 8.4, the Buyer shall be responsible for ensuring that the Goods are fit for the purpose for which it wishes to use them and the Seller gives no warranty (and none shall be implied) that the Goods are fit for any particular purpose.
- 8.5 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 8.6 Nothing in these Conditions is intended to exclude or limit the liability of the Seller to the Buyer for the following matters:-
- 8.6.1 death or personal injury caused by the Seller's negligence;
 - 8.6.2 failure to give good title to the Goods; or
 - 8.6.3 fraud or fraudulent misrepresentation.

However, save for these matters and save for the liability accepted by the Seller under clauses 8.3 and 6.4 and clause 9 below the Seller shall have no liability of any nature whatsoever to the Buyer whether for breach of contract, any act or omission (including negligence), breach of any statutory duty, breach of any warranty, condition or other term implied by law, misrepresentation (unless fraudulent) or in any other manner whatsoever. Under no circumstances shall the Seller be liable to the Buyer for any loss of profits, loss of contracts, loss of goodwill, administration and management expenses, or any consequential or indirect loss or damage of any nature even if any of these matters were reasonably foreseeable.

- 8.7 The Seller's total liability to the Buyer in respect of all other losses than those expressed to be excluded in this clause 8 arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by the Seller's deliberate personal repudiatory breach or a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed 100% of the price paid for the Goods in any one calendar year.
- 8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

- 8.8.1 Act of God, explosion, flood, tempest, fire or accident;
 - 8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.8.4 import or export regulations or embargoes;
 - 8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.8.7 power failure or breakdown in machinery.
- 8.9 These Conditions do not create any right enforceable by any person not a party to it except that a person who is the permitted successor to or assignee of the Seller is deemed to have the benefit of all rights of the Seller.

9. **Indemnity**

- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
 - 9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
 - 9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
 - 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
 - 9.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer

(which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

9.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

10. **Insolvency of Buyer**

10.1 This clause applies if:

10.1.1 the Buyer makes any 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); or

10.1.2 an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to 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.

11. **Export Terms**

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

11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

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

11.4 The Buyer is responsible for complying with all UK laws regarding UK military items exported from the UK regardless of destination.

- 11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before collection. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after collection, or in respect of any damage during transit.
- 11.6 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer at Buyer's expense in favour of the Seller and confirmed by a recognised European Bank acceptable to the Seller or, if the Seller has agreed in Writing on or before acceptance of the Buyer's Order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of National Westminster Bank in England as may be specified in the bill of exchange.
- 11.7 The Buyer undertakes not to offer the Goods for resale in any country notified by the Seller to the Buyer at or before the time the Buyer's Order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

12. **ANTI-BRIBERY**

- 12.1 The Buyer, (which for the purposes of this clause 12 shall include all of the Buyer's employees, agents, representatives, affiliates and any person employed by or acting on behalf of the Buyer) agrees with the Seller that it will not, in connection with the Goods to be supplied under this Contract or in respect of any other agreement or understanding between the Buyer and the Seller, bribe, or attempt to bribe (which shall include without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage charitable donations, facilitation payments, and/or political contributions (whether of money or anything of value)) the Seller or any of the Seller's employees, agents, representatives, affiliates or persons employed by or acting on behalf of the Seller, any customers, potential customers, public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("**Relevant Party**").
- 12.2 The Buyer represents and warrants to the Seller that it has not, prior to the date of this Contract, bribed or attempted to bribe any Relevant Party in order to secure and/or retain any business with the Seller whether in connection with this Contract or otherwise.
- 12.3 The Buyer acknowledges and agrees that it is familiar with and will abide by the anti-bribery and anti-money laundering laws in all the countries in which it is incorporated or established and in which it does business.
- 12.4 The Buyer agrees that it will not take or knowingly permit any action to be taken that would cause the Seller to be in violation of any applicable anti-bribery or anti-money laundering laws.
- 12.5 The Buyer agrees that its books, records and all accounts shall accurately reflect any and all payments in respect of transactions of the Buyer whether under this Contract or otherwise, and the Seller (and the Seller's authorised representatives) shall have

the right to inspect, audit and to take copies of the Buyer's books, records and accounts at any time on prior written notice.

- 12.6 If the Buyer discovers that it has or may have violated any of the provisions in this clause 12, the Buyer shall immediately notify the Seller and cooperate with any investigations by the Seller into such matters.
- 12.7 Without prejudice to the generality of clauses 12.1 to 12.6 inclusive, the Buyer covenants with the Seller to establish and at all times maintain and implement such anti-bribery policies and procedures as may be required to ensure that it prevents bribery or attempted bribery taking place on the Buyer's behalf.
- 12.8 The Buyer agrees that in addition to the Seller's termination rights set out elsewhere in this Contract, the Seller may immediately terminate this Contract in the event of a breach of this clause 12 by the Buyer.
- 12.9 The Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages, claims, demands and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any breach of this clause 12, whether or not the Contract has been terminated.

General

- 13.1 The Seller is a member of a group of companies and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 13.5 Neither the Seller nor the Buyer intends that any term of the Contract shall be enforceable by virtue of the contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The Contract shall be governed by the laws of England and the Seller and the Buyer submit to the exclusive jurisdiction of the English courts. In the event of any dispute or difference arising between the parties which cannot be resolved through negotiation, the parties shall attempt to resolve the same in accordance with the Guidelines for Conciliation and Mediation or the Guidelines for Supervised

Settlement Procedure (“Mini Trial”) of the Chartered Institute of Arbitrators. If such dispute or difference is not resolved by one of these procedures within 28 days of the parties entering into it, or if either party refuses to participate in it, the same shall be referred to a single arbitrator to be agreed upon by the parties pursuant to section 16(3) of the Arbitration Act 1996 (“the Act”) or in default of agreement, to be appointed by the President or Vice President for the time being of the Chartered Institute of Arbitrators. In this clause 12.5, “dispute or difference” does not include a claim for the price of the Goods by the Seller from the Buyer. The Arbitration shall be regarded as commenced for the purposes set out in section 14(1) of the Act when one party sends to the other a notice to concur in the appointment of an Arbitrator. The seat of the arbitration shall be in London. The Arbitrator shall determine the dispute or difference in accordance with the Law of the Contract.

September 2012