

# Locker Group Limited (incorporating Locker Wire Weavers Limited, Locker Heatshielding Limited and Locker Architectural Limited).

## Terms & Conditions of Tender and Sale

### A. CONDITIONS OF TENDER

1. This or any quotation or tender is subject to withdrawal or alteration in whole or part at any time until the order arising from it has been accepted in writing by the Seller or his duly authorised representative.
2. Unless previously withdrawn, the Seller's tender is valid for the period stated therein or when no period is so stated, for 30 days only after its date. The Buyer's order must be in writing and accompanied by sufficient information to enable the Seller to proceed with the Order forthwith. Otherwise, the Seller shall be at liberty to amend the tender delivery periods and tender prices to cover any increase in cost which has taken place after the date of tender.
- 3.1 The Seller's quotation cannot be accepted in part only unless confirmed by the Seller in writing. Individual items selected from a quotation or tender may be made the subject of a separate quotation or tender.
- 3.2 Notwithstanding the Buyer's acceptance of the Seller's quotation no binding contract shall exist until the Seller has confirmed acceptance of the Buyer's order in writing.
4. Unless other terms and conditions are expressly accepted by the Seller by means of a specific written amendment to the Seller's Conditions of Contract signed by a Director the contract will be on the Seller's Conditions of Contract comprised herein to the exclusion of any other terms and conditions (except those implied in favour of a Seller which are not inconsistent with the contract items) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the Buyer to the Seller. Any reference to the Buyer's order, specification or like document will not be deemed to imply that any terms and conditions endorsed upon, delivered with or referred to in such order, specification or like document will have effect to the exclusion or amendment of the contract terms. These terms and conditions apply also to orders placed with the Seller which have not been placed pursuant to a tender or quotation.
5. The copyright in all drawings, specifications and other technical information submitted by the Seller to the Buyer with or in connection with the tender or the contract shall remain vested in the Seller. The Buyer shall keep confidential and not without the Seller's prior consent in writing disclose to any third party, any information (whether of a technical or commercial nature) received by the Buyer from the Seller pursuant to the tender or the contract and the Buyer shall use the same only for the purposes of adjudicating the tender or the contract, or the operation of the goods as may be appropriate provided that nothing herein shall apply to any of such information which shall be in the Buyer's possession (with full right to disclose) prior to the Buyer receiving it from the Seller or shall become public knowledge other than through breach of this Clause, or shall be received by the Buyer from any third party (with full right to disclose).
6. Where the Seller has been or is to be designing the goods or is producing drawings in respect of the same, these have been or will be based entirely upon the Buyer's specification and requirements annexed hereto and notwithstanding any other provisions of these Terms and Conditions of Sale. The Seller accepts no responsibility for any inaccuracy or deficiency in the Buyer's specification or requirements and the Buyer acknowledges and agrees that the Seller is relying wholly on the information provided by the Buyer, and Where drawings have already been made and/or the goods designed the Buyer acknowledges that the same conform in all respects with the Buyer's requirements, and. The Seller shall not incur any liability whatsoever to the Buyer for any loss, damage, expenses, claims or liabilities of whatsoever nature arising directly or indirectly out of the use of the goods for any other purpose or in any other manner or circumstances than indicated in the specification and drawings.
7. In providing a tender for the supply of goods (and associated equipment) to meet the Buyer's basic outline, the resulting detailed design of the goods and associated equipment which the Seller will supply enjoys copyright and design right resulting from the work and effort involved in arriving at a suitable design and in certain circumstances, may also be the subject of one or more patents or applications for patent protection. These rights remain the sole property of the Seller and the supply of such goods and associated equipment does not constitute authority for the Buyer or its agents or any other supplier to reproduce the designs.  
Without prejudice to the foregoing in exceptional circumstances the Seller is prepared to consider granting licences for the reproduction of designs, subject to payment of an agreed royalty.

### B. GENERAL CONDITIONS OF CONTRACT TERMS OF PAYMENT

- 1.1 Where credit approval is obtained all goods shall be paid for within 30 days from the end of the month in which they were invoiced by the Seller.
- 1.2 In the event of no credit approval being obtained, payment must be made in full in cleared funds before the Seller shall commence manufacture.
- 1.3 Payments are deemed to have been effected only when cleared funds are received by the Seller in sterling in the United Kingdom. Interest will be payable on all amounts overdue from day to day at the rate of 3% above The Seller's Clearing Banks Base Rate from time to time and shall accrue at such rate after as well as before any Judgment. Nothing herein shall be read or construed as entitling the Buyer to make late payment.
- 1.4 In the event of the Buyer defaulting under the contract or any other contract with the Seller, the contract price of such goods shall forthwith become payable in full and in addition, the Seller may postpone delivery or may cancel the contract or any other contract between the Seller and the Buyer but without prejudice to any right or remedy which the Seller may have against the Buyer in respect of such default.
- 1.5 Payment shall be made in full without any deduction or set-off whatsoever.
- 1.6.1 Unless the Seller has agreed to establish a credit account, payment must be made in full with the buyer's order. Where the Buyer applies for a credit account no goods will be delivered until either payment has been received in full or the Seller has agreed to open a credit account for the Buyer and in considering whether to open a credit account for the Buyer, the Seller may require such references and financial information in respect of the Buyer as the Seller deems in its absolute discretion is necessary.

### 2. PRICE VARIATION 2.1 GOODS

- a. The prices quoted in the Seller's tender or if no tender is involved, in the contract, are based on the Seller's costs and rates prevailing at the date thereof. In the event of alterations in such costs and rates the Seller shall be entitled to vary the price of goods to take account of variations in

factors including, but without limitation, the cost of labour, materials, delivery, foreign exchange fluctuations, taxes, duties and other production costs and the price so varied shall be invoiced to the Buyer and shall be paid as if it were the original price.

b. Paragraph 2.1 (a) shall not apply if the Seller's quotation expressly states that the price is fixed for a specific period or if the Buyer's order shall otherwise by agreement of the Seller be exempt from increase provided always that if the Seller is delayed from fulfilling the contract for reasons beyond his control the Seller reserves the right to adjust the contract price to accommodate any variation in his costs occasioned by such delays.

## **2.2 INSURANCE, CARRIAGE AND FREIGHT**

Any charges for insurance, carriage and freight included in the contract price are based on rates applicable at the date of quotation or tender. Should any such rates be varied in any way during the currency of the contract, then the contract price of all goods still to be delivered at the date on which the variation takes effect shall be increased or decreased to take account of such variation.

2.3 Unless expressly stated otherwise all prices are exclusive of Value Added Tax and any other taxes, duties and bank charges payable in respect of the goods imposed by the local government concerned.

2.4 Prices are subject to correction in the event of errors and omissions.

## **3. PACKING**

### **3.1 UK SALES**

Unless otherwise specified in the Seller's tender, the price includes the cost of packing in accordance with the Seller's standard practice. All returnable packing cases including but not limited to, skips, drums and packing materials must be returned to the Seller's works at the Buyer's expense and in good condition within one month from the date of receipt. If not so returned they will be charged for at the Seller's rate then prevailing.

### **3.2 EXPORT SALES**

Unless otherwise specified in the Seller's tender the price includes the cost of packing in accordance with the Seller's standard practice for the method of dispatch quoted.

## **4. LIMITS OF CONTRACT**

The contract price includes only such goods, accessories and works as are specified in the quotation or tender. Any alteration required by the Buyer involving extra expense to the Seller will be charged for as an extra, payable unless otherwise stated by the Seller in like manner as the contract price.

## **5. PLANNING DATA**

5.1. In certain circumstances the Seller shall require drawings showing the site layout, the building dimensions and the locations and dimensions of rooms, doors, windows, service points and such other details as the Seller may advise.

5.2 Any comment the Seller may make on such data is for information only and in no case shall imply an assumption of design responsibility for any building, structure, plant or facilities in which the Seller's goods are to be located. It shall be the Buyer's sole responsibility to ensure that any site location or other matter relating to the siting or positioning of the goods supplied is adequate for that purpose.

5.3 Any costs incurred by the Seller in correcting or overcoming the consequences of errors or discrepancies in information supplied by the Buyer or his agents shall be charged to the Buyer.

5.4 In case such drawings or information are not available from the Buyer or are of insufficient detail, the Seller reserves the right to charge for the preparation of suitable drawings and obtaining of information as an extra to the contract price.

5.5 Except as to buildings or structures to be erected by the Seller, the Seller accepts no responsibility for buildings or structural work or for any information or plan relating thereto which the Seller may supply. Any such information or plan should be submitted by the Buyer to his own architect or other professional advisor upon whom the Buyer must rely entirely. All plans must be returned to the Seller on completion of contract and must not be divulged to any third party without the Seller's prior written consent.

## **6. SPECIFICATIONS AND DRAWINGS**

All specifications, drawings and particulars of weights and dimensions submitted with the Seller's tender are approximate only and the descriptions and illustrations contained in the Seller's catalogues, price list and other advertising matter are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract or constitute a representation relating to the goods. Powers, capacities and other particulars are stated in good faith as approximately correct but deviations therefrom shall not be made the basis of any claim against the Seller except where specifically agreed to the contrary in writing by the Seller.

After acceptance of the Seller's tender, a plant layout outline drawing will be supplied free of charge on request.

## **7. INSPECTION AND DRAWINGS**

Where practicable, the Seller's products are submitted to standard tests at the Seller's works before dispatch. If tests other than those specified in the Seller's tender or tests in the presence of the Buyer or his representatives are required, the Buyer must notify the Seller at the time of the order and these will be charged for at the Seller's rates then prevailing. In the event of any delay on the Buyer's part in attending such tests after 7 days notice that the Seller is ready, the tests will proceed in the Buyer's absence and shall be deemed to have been made in his presence. The Buyer shall further be deemed to accept the results of any test carried out in those circumstances.

## **8. DELIVERY**

### **8.1 UK SALES**

Unless otherwise specified in the Seller's tender, delivery will be made Ex the Seller's works and the contract price is calculated on that basis. The Seller reserves the right to charge for loading extra to the contract price,

When the cost of transportation is expressly included in the contract price, the price quoted covers loading and delivery by any method of transport at the Seller's option. If transport is by rail, the General Conditions of Carriage of the Carrier shall apply. Unless otherwise specified, the Seller shall not be responsible for off-loading,

Delivery shall be deemed to have taken place:

where the transportation is not included, when the goods are ready for loading at the Seller's works or those of the Seller's sub contractor  
where transportation is included, when the goods have been conveyed to the place of delivery named in the contract ready for off loading  
whether or not the Buyer actually accepts delivery the Seller shall be entitled to deliver goods within a margin of 5% more or less than the quantities specified in the contract and the Buyer shall pay at the rate specified in the contract for the actual quantity delivered.

No short delivery within the said margin shall amount to a breach of contract on the Seller's part,

Where prior to delivery the Buyer desires to have the goods delivered to some place other than that specified at the time of the order the Seller may (but shall not be obliged to) make delivery to that other place and the additional costs of doing so may be charged to the Buyer, Any time or date specified by the Seller for delivery or completion is given and intended as an estimate only and time is not of the essence and the Buyer shall not be entitled to rescind the contract by reason of any delay in delivery nor shall the Seller incur any liability whatsoever for loss suffered directly or indirectly (including but not by way of limitation loss of profits) as a result of failure to make delivery on the specified date. Where the Seller is unable to make delivery without further information from the Buyer, the period for delivery shall be extended by any period of delay on the part of the Buyer and such further period as the Seller deems reasonable having regard to the effect of the Buyer's delay, Without prejudice to the sub paragraph above the period quoted for delivery shall in all cases be extended by any period during which the Seller is unable to effect delivery by reason of matters beyond its control, The Buyer shall ensure the provision of full and adequate access to the place of delivery and all other facilities and services thereat necessary to enable the Seller to make delivery in accordance with the Buyer's requirements, The Buyer is responsible in all cases for unloading and unpacking the goods and shall be responsible for and indemnify the Seller from and against all loss of or damage to the goods or any other property or the death or injury of any person arising during or as a direct result of such unloading or unpacking other than death arising out of the Seller's own negligence, The Buyer shall notify the Seller of any loss of or damage to the contract goods within such times as will enable the Seller to comply with the carrier's conditions relating to loss or damage in transit or within 3 days of delivery, whichever is the earlier. The Seller shall not be liable in respect of any loss or damage where notification is given to the Seller other than in accordance with this clause and in the absence of such notice the Buyer shall be deemed to have accepted the goods.

## 8.2 EXPORT SALES

Where the contract provides for preparing and loading on TIR vehicle ex-works, the Seller will load the machinery or plant on a vehicle at his works or at the works of his sub-contractor. Delivery in accordance with the contract shall be deemed to be effected at the time of such loading onto the vehicle whereupon risk in the goods shall pass to the Buyer.

Where the contract provides for delivery FOB the Seller will deliver the goods on board in the manner customary at the port of shipment selected by him (but the Seller shall not be required to give the buyer any notice relating to insurance) and the same shall thereupon be deemed to be delivered in accordance with the contract and risk in the goods shall pass to the Buyer. No claim for damaged goods, for shortages or non delivery will be accepted by the Seller unless written notice of such damage or shortage is received by the Seller within 14 days of receipt of goods by the Buyer or within 14 days of the defect being discovered where the defect could not reasonably have been discovered earlier, or (in the case of non delivery) 14 days from the date on which the goods could in the normal course of events have been expected to be received by the Buyer.

Where the contract provides for delivery GIF by sea, road, rail or air, the Seller will load the machinery or plant on board a vessel, vehicle or aircraft for conveyance to the port or place of destination specified in the contract and will tender to the Buyer or his agent as soon as is reasonably possible the Bill of Lading, Certificate of Shipment, International Railway Consignment Note or Airway Bill as the case may be, insurance policy or certificate and invoice relating to the consignment. Delivery in accordance with the contract shall be deemed to be effected at the time of such loading and risk shall pass to the Buyer. The Buyer shall accept the documents tendered by the Seller if they correspond to the contract and shall take delivery of the goods at the destination specified and shall bear all other costs and charges arising out of carriage of the goods.

8.3 The Seller shall be entitled to make delivery by instalments.

8.4 Any times quoted are to date from notice of coming into force of the contract, the conditions for which shall be as defined in the contract, but in the absence of such definition shall include the acceptance by the Seller of a written order to proceed, settlement of all necessary technical details and receipt by the Seller of any payment due with order.

## 9. PROPERTY IN THE GOODS AND RISK

9.1 The legal and equitable title to the goods supplied under the contract (in this clause referred to as "the Contract Goods" which expression includes any of them) shall remain vested in the Seller until the price for the Contract Goods has been paid in full and no other sum whatever shall be due from the Buyer to the Seller and until such payment the Buyer will hold the Contract Goods in a fiduciary capacity as bailee for the Seller. The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the Seller. Without prejudice to the other rights of the Seller if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

9.2 If, notwithstanding that the property in the Contract Goods has not passed to the Buyer, the Buyer shall sell the Contract Goods or any part of them in such manner as to pass to a third party a valid title the Buyer shall hold the proceeds of such sale (or sales) on trust for the Seller and such proceeds of sale shall be held separately and not paid into any bank or other account which is overdrawn but shall at all times be identifiable as the Seller's money and the Buyer shall account to the Seller for the same to the extent necessary to pay the price for the Contract Goods and all other sums due from the Buyer to the Seller.

9.3 The Buyer shall so long as the Seller is entitled to the property in the Contract Goods store the same (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

9.4 Without prejudice to any of the Seller's other rights (whether to damages or under the contract or otherwise howsoever) the Seller may at any time after the price for the Contract Goods has become due and remains unpaid rescind the contract and/or recover the Contract Goods which are still the Seller's property and is hereby authorised by the Buyer to enter onto the Buyer's premises or any other premises at which the contract goods may be stored either by himself or the Seller's servants or agents for that purpose.

9.5 Whether or not the price of the Contract Goods or any other sum has become due from the Buyer under the contract such price or such sum will be deemed to be due from the Buyer immediately on his committing any act of bankruptcy (or analogous act) or making an arrangement with his creditors or his taking the benefit of any Act for the time being in force for the relief of insolvent debtors or his suffering or allowing any execution whether legal or equitable to be levied on his property or to be obtained against him or (being a body corporate) his having had convened a meeting of creditors (whether formal or informal) or his having entered into liquidation (or analogous status)(whether voluntary or compulsory) except a voluntary liquidation for the purpose only of the reconstruction or amalgamation or his having had a Receiver or Manager (or analogous person) appointed of his undertaking or any part thereof or his having a resolution passed or a petition presented to any Court for his winding-up (or analogous status) or there being any proceedings commenced relating to his insolvency or possible insolvency.

9.6 The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 (or its statutory successor). Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

9.7 Notwithstanding the foregoing provisions the risk in the Contract Goods shall pass on the earliest of (a) payment of full contract price; (b) delivery to the Buyer as defined herein or (c) delivery to a carrier.

9.8 The Buyer warrants that it is not at the time of entering into the contract insolvent and knows of no circumstances which would entitle any creditor to appoint a Receiver or to petition for a winding-up or bankruptcy order or to exercise any other rights over or against its assets.

#### **RETENTION OF TITLE**

The risk in the goods shall pass from the seller to the buyer upon delivery of such goods to the buyer. However notwithstanding delivery and the passing of risk in the goods, title and property in the goods, including full legal and beneficial ownership, shall not pass to the buyer until the seller has received in cash or cleared funds payment in full for all goods delivered to the buyer under this and all other contracts between the seller and the buyer for which payment of the full price of the goods thereunder has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and buyer under which the goods were delivered.

#### **10. DELAYS AND VARIATIONS**

In the event of temporary suspension of work or any delay in the Seller's execution of the contract occasioned by the Buyer's instructions or lack of instructions or information or failure to meet the Buyer's obligations hereunder or by any other cause beyond the Seller's control, all reasonable expenses incurred as a result of the suspension or delay shall be added to the contract price. The Buyer shall be entitled to make variations to the work by giving the Seller reasonable notice in writing thereof. Within a reasonable time after receipt of any such notice, the Seller shall inform the Buyer in writing of any adjustments that would be necessary to the prices and delivery dates named in the contract and the Buyer shall decide forthwith whether or not the said variation shall be carried out. Unless and until the Buyer shall have confirmed to the Seller in writing that the said variation is to be carried out, such notice shall be deemed not to have been given.

#### **11. LOSS OR DAMAGE IN TRANSIT**

When the price quoted includes the cost of transportation the Seller shall repair, or at his option, replace free of charge goods proved to the satisfaction of the Seller to have been lost or damaged in transit, provided that the Seller is given written notification of such loss or damage within such times as will enable him to comply with the carrier's Conditions of Carriage affecting loss or damage in transit or, where delivery is made by the Seller's own transport, within three days after receipt of the Advice Note, such time being strictly of the essence. The Seller shall not in any event be obliged to consider nor will it be liable in respect of any claim submitted outside this period.

#### **12. STORAGE**

If for whatever reason the Seller does not receive forwarding instructions sufficient to enable him to dispatch the machinery, plant or goods within 7 days after the date of notification that it is ready for dispatch, the Buyer shall take delivery or arrange for storage. If the Buyer fails immediately following the expiration of the 7 days to take delivery or arrange for storage the Seller may at his option either store the machinery, plant or goods at his own works or elsewhere on behalf of the Buyer on such terms as the Seller may in his absolute discretion think fit.

Insofar as the storage is done by the Seller, the Seller's storage charges shall be those current at the time of storage. In any event, the cost of storage arising therefrom such as, but not limited to, insurance, demurrage and double handling charges shall be payable by the Buyer and shall be added to and form part of the price of the goods. This clause shall apply also in the event of the Seller being unable to obtain access to the due place for delivery.

#### **13. GUARANTEE AND EXCLUSIONS**

13.1 In respect of goods manufactured by the Seller (excluding any expendable items) the Seller shall upon receipt of written notice by the Buyer within a period of 6 months from the date of delivery but not otherwise repair or, at the Seller's option, replace any goods which are proved to the Seller's satisfaction to be defective in design material or workmanship provided always that this obligation will not apply where:

- the goods or part thereof have been materially altered in any way whatsoever or have been subjected to misuse or unauthorised repair which has caused or contributed to the defect or defects; or
- the goods or part thereof have been incorrectly installed or connected by someone other than the Seller or a person approved by the Seller and this has caused or contributed to the defect or defects; or
- the Buyer has materially failed to observe or perform the requirements or any maintenance procedures relating to the goods; or the Buyer has failed to notify the Seller of any defect or suspected defect within a reasonable period of the same coming to the Buyer's knowledge; or
- the Buyer is in material breach of this or any other contract made with the Seller including (but not limited to) clause 13.5 hereof; or
- where the defect arises from a defect in the Buyer's own design, drawings or specification or because the goods have not been properly stored by or on behalf of the Buyer.

13.2 Where the Seller is not the manufacturer of the goods, the Seller shall use reasonable endeavours to make over to the Buyer the benefit of any warranty or guarantee given by the manufacturer of those goods.

13.3 Save as provided in clause 13.1 and 13.2 the Seller shall be under no liability under the contract for any personal injury, death, loss or damage of any kind whatsoever whether consequential or otherwise including, but not limited to, loss of profits to the full extent permitted by law. The Seller hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which but for such exclusion would or might subsist in the Buyer's favour except that such exclusion will not apply to any implied condition that the Seller has or will have the right to sell the goods when the property is to pass and any other implied condition which the Seller is not permitted by law to exclude.

13.4 Under no circumstances will the Seller or his servants, agents, or sub-contractors be liable for any loss or damage of any kind whatsoever (except arising from death or personal injury) whether consequential or otherwise caused directly or indirectly by any negligence on the Seller's part or on the part of the Seller's servants, agents or sub-contractors in connection with or arising out of the manufacture or supply of the goods or in connection with any advice or statement given or made by or on the Seller's behalf.

13.5 The Buyer shall afford to the Seller reasonable access to the goods to examine the same where the Buyer alleges damage to or fault in the goods and the Buyer shall not process, use or otherwise deal with such goods until the Seller has inspected the same.

#### **14. CANCELLATION**

14.1 If the Buyer cancels, extends or delays or purports to cancel, extend or delay the contract or part thereof, or fails to take delivery of any goods at the time agreed (if any) or if no time is agreed within a reasonable time, then the Buyer will be liable (without prejudice to any of the Seller's other rights to claim damages) to indemnify the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the supply or non-supply of the

goods including (but not by way of limitation) the cost of any material, plant or tools used or intended to be used therefore and the cost of materials, labour and other overheads including a percentage in respect of profit and the costs of haulage, shipping and insurance.

14.2 If the Seller is unable (whether temporarily or permanently) to procure any services, goods or components necessary to enable him to supply the goods or if the supply of the goods is prevented or hindered by reason of Act of God, War, Act of Parliament or orders, regulations or by-laws made under any statutory authority, labour disputes including those involving the Seller's work force, civil commotion, fire, flood or any causes of whatsoever kind and whenever occurring being a cause beyond the Seller's control, the Seller may cancel the contract by notice in writing to the Buyer so far as it relates to goods not then supplied or work not then done and such cancellation shall not give rise to any claims by the Buyer provided always that the Buyer shall remain liable to pay for goods delivered prior to the date of such cancellation. Without prejudice to the foregoing, the Seller may in the case of unavailability of any raw materials substitute other materials of a similar quality.

## 15. DESIGN ETC

15.1 Where the goods are manufactured in accordance with information or drawings supplied by the Buyer or the Buyer's design or specification or where the Seller's standard of goods are altered in accordance with the Buyer's instructions:

no guarantee or warranty is given or shall be deemed to be given or implied by the Seller as to the practicability, efficiency, safety or otherwise of the goods (this being without prejudice to any other of the contract terms),

the Buyer shall indemnify and keep the Seller indemnified against all liability incurred by the Seller as a result of such goods infringing any patent registered design copyright or other like protection or the provisions of any statute statutory instruments or regulations for the time being in force, the Buyer shall indemnify and keep indemnified the Seller from and against all losses (direct, indirect, consequential or otherwise, including loss of profits) costs, claims, demands, liabilities, proceedings or damage whatsoever and howsoever arising (including where arising out of the death or injury of any person) caused by the goods or their use save only in the case of the death or any personal injury caused by the Seller's own negligence.

15.2 No variation by the Seller in the specification or design of any goods shall constitute a breach of contract or impose upon the Seller any liability whatsoever.

15.3 The Seller shall be under no liability whatsoever to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer should any goods supplied by the Seller infringe any patent, registered design, copyright or other like protection or the provision of any statute or statutory instrument or regulation for the time being in force.

15.4 Unless otherwise agreed in writing all patterns, drawings, tools etc produced by the Seller shall remain the Seller's property and must not be used or copied by the Buyer.

## 16. TERMINATION

16.1 The contract will terminate immediately upon service of written notice of termination by the Seller on the Buyer on any one or more of the following grounds:

that the Buyer has committed an act of bankruptcy (or analogous act) or has made an arrangement or composition with his creditors or is otherwise taking the benefit of any Act for the time being in force for the relief of insolvent debtors or has suffered or allowed any execution whether legal or equitable to be levied on the Buyer's property or obtained against the Buyer or (being a body corporate) the Buyer has convened a meeting of creditors (whether formal or informal) or has entered into liquidation (or analogous status) (whether voluntary or compulsory) except a voluntary liquidation for the purpose only of reconstruction or amalgamation or has a Receiver or Manager (or analogous person) appointed of the Buyer's undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the Buyer's winding-up (or analogous status) or any other proceedings have been commenced relating to the Buyer's insolvency or possible insolvency including but not limited to an application for the appointment of an administrator that the Buyer has failed to observe and perform any of his obligations or duties under the contract or any contract with the Seller.

where the Buyer has caused or has threatened to cease trading

the Seller has reasonable grounds for considering that the Buyer may not be solvent.

16.2 The termination of the contract in any way whatsoever will be without prejudice to the rights, obligations and liabilities of either party accrued prior to termination.

## 17. STATUTORY REQUIREMENTS ETC

Unless otherwise agreed or where the Buyer is responsible for design, the Seller shall use all reasonable endeavours to ensure that the goods shall be manufactured

in accordance with the appropriate requirements, statutory or otherwise, concerning safety, health, etc operative within the UK at the date of tender.

## 18. IMPORT LICENCES ETC

In respect of goods to be exported by the Seller, the Buyer will forthwith obtain all import licences (or equivalent permits) and any other authorisation necessary in respect of the importation of the goods into the Country to which they are to be consigned and the Buyer shall promptly inform the Seller of the grant of the same.

## 19. ASSIGNMENT

The Seller may license or subcontract all or any part of its contractual rights and obligations without the Buyer's consent. The Buyer may not assign, subcontract or license any of its rights and obligations hereunder without the prior written consent of the Seller.

## 20. LAW

20.1 This agreement shall be governed by English Law in every particular and shall be deemed to have been made in England.

20.2 Any proceedings arising out of or in connection with this agreement may be brought in the English Courts.

20.3 Any submissions by the parties to such jurisdiction shall not limit the Seller's right to commence proceedings arising out of this agreement in any other jurisdiction it may consider appropriate.

20.4 Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served in accordance with paragraph 24 hereafter.

## 21. INSTALLATION

It is essential that the installation of the goods is supervised by members of the Seller's engineering staff. The Seller's printed forms of Terms & Conditions for Supervising Engineers shall apply in addition to the above General Conditions of Contract. A copy of the Terms and Conditions for Supervising Engineers may be obtained from the Seller on request and the Buyer shall be deemed to have notice of them whether or not he applies for a copy.

**22. FORCE MAJEURE**

22.1 The Seller shall not be liable for any failure or delay to supply or deliver the goods where such failure or delay is caused by the non-availability of materials, Acts (or threatened Acts) or War, national emergency, prohibited governmental legislation or regulations (whether in the United Kingdom or elsewhere) civil commotion, strikes, lock-outs, trade disputes, local combination of workmen, non-availability of labour, Act of God, severe weather or any cause beyond the control of the Seller.

22.2 In the event of delay caused by any matter specified in the preceding clause, the Seller shall be entitled to suspend deliveries in whole or in part until the matter causing delay ceases or is remedied.

**23. CONSTRUCTION**

The sub-headings do not form part of these conditions and will not be taken into account in the construction or interpretation of the same. If any one or more of the above conditions is or becomes invalid or unenforceable at law, the Seller may at its election:

23.1 determine the contract

23.2 elect that the remaining provisions of the contract shall continue in full force and effect

**24. NOTICES**

Any notice or notices to be served hereunder by either party shall be sent by pre-paid recorded delivery, or registered post to the registered office of the relevant party;

or in the case of an unincorporated body the last known principal place of business or by facsimile transmission or by electronic mail or by telex and shall be deemed to have been received by the addressee within 48 hours of posting or 24 hours if sent by facsimile transmission or by electronic mail or by telex to the correct facsimile number or electronic mail number of the addressee (with correct answer back).