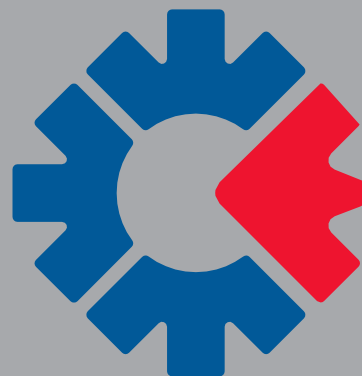




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# General Conditions of Trading

2 Gadwall Road, Rainton Bridge South, Houghton le Spring, Tyne and Wear, England. DH4 5NL

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## WESSINGTON CRYOGENICS LIMITED GENERAL CONDITIONS OF TRADING

### 1. INTERPRETATION

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

<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>"Company"</b>	Wessington Cryogenics Limited (registered company number 1790882) trading as "Wessington" or such other trading name as notified to the Customer from time to time;
<b>"Company's Factory"</b>	the factory at 2 Gadwall Road, Rainton Bridge South, Houghton le Spring, Tyne & Wear, DH4 5NL, United Kingdom (or any other factory notified to the Customer by the Company in writing);
<b>"Company's Materials"</b>	all Documents, information and materials provided by the Company relating to the Products (to include, without limitation, any specifications produced by the Company whether or not on the Customer's instructions);
<b>"Conditions"</b>	these terms and conditions;
<b>"Contract"</b>	any contract between the Company and the Customer for the purchase and sale of Products;
<b>"Customer"</b>	the person(s) partnership firm company or other party or organisation with whom or with which the Company enters into a Contract;
<b>"Customer's Materials"</b>	all Documents, information and materials provided by the Customer relating to the Products (to include, without limitation, any specifications or Customer requirements);
<b>"Data Protection Legislation"</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR as defined in the DPA; the Data Protection Act 2018 ("DPA"); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
<b>"Delivery Date"</b>	the date for delivery as detailed in the Order Acknowledgement and as may be amended pursuant to Condition 6.3;
<b>"Dispute"</b>	has the meaning given in Condition 17 ;
<b>"Dispute Notice"</b>	has the meaning given in Condition 17 ;
<b>"Deposit"</b>	such sum as detailed in the Order Acknowledgement as being payable by the Customer prior to the commencement by the Company of production of the Products;
<b>"Documents"</b>	includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disc or other device or record embodying information in any form;
<b>"Extended Warranty Period"</b>	any extension to the Standard Warranty Period as may be agreed by the Company;
<b>"Intellectual Property Rights"</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for

and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

<b>“Order”</b>	an order for Products submitted by the Customer in accordance with Condition 3 (Ordering Process), which shall include any applicable Customer’s Materials with which the Products must comply. References in these Conditions to Orders shall, where applicable, be read as references to instalments;
<b>“Order Acknowledgement”</b>	the written acceptance of an Order by the Company to the Customer, which may be by letter or by email, and which shall set out the Products and Price based on the Order and confirm the Delivery Date;
<b>“Price”</b>	the price for the Products as set out in the Order Acknowledgement;
<b>“Products”</b>	the products the subject of the Contract (including any part or parts of them);
<b>“Standard Warranty Period”</b>	in the case of: <ul style="list-style-type: none"><li>(a) valves and fittings, 90 (ninety) days from the Delivery Date; and</li><li>(b) any Products other than valves and fittings, 12 (twelve) months from the Delivery Date; and</li></ul>
<b>“Warranty Period”</b>	a Standard Warranty Period or Extended Warranty Period (as the case may be).

- 1.2 In these Conditions references to any statute or statutory provision will, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.4 In these Conditions headings must not affect the construction of these Conditions.
- 1.5 In these Conditions any reference to **“persons for whom the Company contracts”** includes without limitation a reference to every sub-contractor, employee, carrier, and agent on behalf of whom the Company contracts.
- 1.6 In these Conditions a reference to writing or written includes email.

## 2. APPLICATION OF THESE CONDITIONS

- 2.1 The Contract will not come into existence until the Company issues an Order Acknowledgement in accordance with Condition 3.3. The Contract will be subject to these Conditions.
- 2.2 These are the sole Conditions applicable to all Contracts between the Company and the Customer to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any quotation, purchase order, acknowledgement of order or Customer’s Materials) at any time in the past or future put forward by or on behalf of the Customer and to the exclusion of all representations outside these Conditions.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Customer’s purchase order, confirmation of order or Customer’s Materials will form part of the Contract.
- 2.4 No variation of these Conditions or representations about the Products will be effective unless agreed in writing and signed by either a director or company secretary of each of the Company and an authorised representative of the Customer. Nothing in this Condition will exclude or limit the Company’s liability for fraudulent misrepresentation.
- 2.5 Save in respect of Customer Materials agreed by the Company in an Order Acknowledgement, every term, condition and stipulation in the Order (or any other term condition or stipulation) which would conflict with or in any other way vary, qualify, or supplement these Conditions shall not be applicable to any Order unless there is a specific variation in accordance with Condition 2.4 above.
- 2.6 In the event of inconsistency in any of the documents forming a Contract, the provisions of these Conditions shall prevail, save for provisions set out in the Order Acknowledgment which shall prevail over the provisions of these Conditions.

## 3. ORDERING PROCESS

- 3.1 The Customer will be responsible to the Company for ensuring the accuracy of the terms of any Order.
- 3.2 Each Order shall be agreed in the following manner:
  - 3.2.1 the Customer shall (unless agreed otherwise by the parties) give the Company its Order in accordance with the price and specifications outlined in the Company’s catalogues or brochures or any quotation issued by the Company;
  - 3.2.2 each Order shall be deemed a separate offer by the Customer to purchase Products subject to these Conditions, which the Company shall be free to accept or decline at its absolute discretion;
  - 3.2.3 each Order shall:
    - 3.2.3.1 be given in writing or, if given orally, shall be confirmed in writing within 2 (two) Business Days; and
    - 3.2.3.2 specify the type and quantity of Products ordered;
  - 3.2.4 within 5 (five) days of receipt of the Order in writing, the Company shall issue an Order Acknowledgement or a rejection of the Order.
- 3.3 No Order will be deemed to be accepted by the Company until the Company issues an Order Acknowledgement.
- 3.4 Following the issue of the Order Acknowledgement, if applicable the Customer shall pay the Deposit within the timescale detailed in the Order Acknowledgement. The Company shall not be required to commence production of any Products under any Order until such time as the Deposit has been paid by the Customer in full and in cleared funds.

## 4. CUSTOMER’S MATERIALS

- 4.1 If any Product is to be manufactured (or any process is to be applied to the Product) by the Company in accordance with Customer’s Materials, the Customer will indemnify the Company against all losses, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any Intellectual Property Rights of any other person which results from the Company’s use of the Customer’s Materials.
- 4.2 The Company reserves the right to make any changes to the Products which:
  - 4.2.1 are required to conform with any applicable statutory or regulatory requirements specified by the Customer in the Order and confirmed in the Order Acknowledgement; or

4.2.2 do not materially affect their quality or performance.

4.3 All of the Company's Materials will, at all times, be and remain (as between the Company and the Customer) the exclusive property of the Company. They will be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and will not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

## 5. DESCRIPTION

All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They will not form part of the Contract and any sale to the Customer will not be a sale by sample. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.

## 6. DELIVERY OF PRODUCTS

6.1 Delivery is completed when the Company places those Products at the Customer's disposal at the Company's Factory.

6.2 Any dates specified by the Company for delivery of the Products are intended to be an estimate and time for delivery will not be of the essence.

6.3 The Customer acknowledges and agrees that the Company shall be entitled to make such adjustment to the Delivery Date as it deems necessary (acting reasonably) where the Customer fails to pay:

6.3.1 the Deposit in accordance with Condition 3.4;

6.3.2 any invoice due pursuant to Condition 11.2,

and the Company shall notify the Customer to any such adjustment to the Delivery Date. For the avoidance of doubt, the Company shall not be required to commence the next stage of production of any Products under any Order until such time as sums payable to Conditions 6.3.1 and/or 6.3.2 above have been paid by the Customer in full and in cleared funds.

6.4 The Customer shall collect the ordered Products from the Company's Factory on the Delivery Date.

6.5 The Company will endeavour to provide plant, power and labour for loading at the Customer's expense. Neither the Company (nor the persons for whom the Company contracts) will be under any obligation to provide plant power or labour required for unloading which shall be provided by the Customer at its expense. If, for the purposes of unloading, use is made of the services of any employee of or of any plant or equipment belonging to (or the responsibility or in the control of) the Company, or of any of the persons for whom the Company contracts, such use will be at the sole risk of the Customer who will indemnify and keep indemnified the Company and the persons for whom the Company contracts against all losses, costs, claims, expenses and liabilities resulting from such use howsoever arising and for any defect to the said plant or equipment.

6.6 Except to the extent that the Company has guaranteed in writing a price for the Products or date of availability of the Products there will be no guarantee warranty or condition as to the price or date of availability of the Products.

6.7 Any receipt for the Products or signed delivery documentation received by the Company from the Customer or from any carrier acting for the Customer or from any other person into whose custody or control the Products are placed in performance of the Contract will be indisputable evidence of the quantity and condition of the Products and the acceptance of the Products by the Customer.

6.8 Whilst the Company will use reasonable endeavours to match as closely as production processes allow the exact weight, volume, pressure, performance specification, flow rate and/or colour of any Products ordered by the Customer (to the extent that exact weight, volume, pressure, performance specification, flow rate and/or colour is specified by the Customer in the Order), the Customer acknowledges that the raw material and/or the machinery and equipment used to manufacture the Products can vary and may result in discrepancies (which may, as relevant, be over or under) in the weight, volume, pressure, performance specification, flow rate and/or colour of the Products ordered by the Customer. The Customer will not be entitled to object to or reject the Products or any of them by reason of any such discrepancy and shall pay the Price for the Products and the quantity so delivered will be deemed to be the quantity ordered and will not for the avoidance of doubt be deemed to be the delivery of incorrect Products.

6.9 Once the Products are delivered or deemed to be delivered pursuant to Condition 8.1 the liability of the Company whether for non-delivery, shortages, delay or damage to the Products during transit will cease and the Customer will be solely responsible for any such delay, shortage, non-delivery of Products or, Products damaged during transit (whether arising as a result of inadequate storage, treatment, transportation or otherwise).

6.10 Unless otherwise agreed by the Company in writing:

6.10.1 the Company will use reasonable packaging when preparing the Order for transit as may be set out in the Order Acknowledgement or otherwise at the Company's discretion (acting reasonably); and

6.10.2 the Company or any person for whom the Company contracts will not be liable for any Products which are damaged, lost or destroyed after risk transfers from the Company to the Customer in accordance with Condition 12.

6.11 The Customer, upon reasonable notice and during reasonable hours, may inspect the Products after they have been manufactured but before they have been dispatched from the Company's Factory. Any additional inspections will be at the discretion of the Company and at the expense of the Customer. The Customer will indemnify the Company against all loss, damages, costs and expenses directly or indirectly incurred by the Company in connection with the Customer causing or suffering damage to the property or belongings of the Company or any third party whilst at the Company's Factory. The Company reserves the right to charge the Customer (in addition to the Price) for any changes, modifications or improvements that the Customer requests (during or after any of its inspections or testing of the Products) the Company to make to any Products.

6.12 Subject to Condition 8.9.2, the Company may charge the Customer on a daily basis at the day rate set out in the Order Acknowledgement or as otherwise agreed between the parties (acting reasonably) for the storage of the Products in the event that the Customer fails to collect the Order on or after the Delivery Date. The Company shall invoice for any such storage charges in accordance with Condition 11.1.2.

6.13 Each part delivery or instalment of Products will be deemed to be sold under a separate Contract.

6.14 Any default by the Company in respect of any part delivery or instalment shall not entitle the Customer to treat the Contract(s) in respect of any balance or instalment remaining to be delivered as having been repudiated.

## 7. EXPORT TERMS

7.1 Where the Product is supplied for export from the United Kingdom, the provisions of this Condition 7 will (subject to any terms agreed in writing between the Customer and the Company) apply, unless the context otherwise requires, in addition to and without prejudice to any other provision (including Condition 6) of these Conditions.

7.2 The Customer will be responsible for complying with any and all legislation or regulations governing the export of the Products from the United Kingdom and importation into the country of destination (to include, without limitation, the payment of any taxes and duties and the securing of valid licences and permits).

7.3 Unless otherwise agreed in writing between the Customer and the Company, the Products will be delivered Ex-Works (the Company's Factory) (Incoterms® 2010) and, for the avoidance of doubt, the Company will be under no obligation to give notice under section 32(3)

of the Sale of Goods Act 1979.

- 7.4 The Company will be responsible for arranging any testing and inspection of the Products at the Company's Factory before the Products leave the Company's Factory in accordance with any requirements set out in the Order Acknowledgement.
- 7.5 The Company reserves the right to notify the Customer in writing prior to delivery of the Products to the Customer that payment of all amounts due to the Company will be made by:
- 7.5.1 irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company (and all costs relating to such letter of credit shall be the responsibility of the Customer); or
- 7.5.2 if the Company has agreed in writing on or before delivery of the Products to waive the requirements of Condition 7.5.1, by delivery to the Company of a bill of exchange drawn on the Customer payable 60 (sixty) days after the order at such bank in England as may be specified in the bill of exchange.

## 8. NON-DELIVERY AND CANCELLATION

- 8.1 The Company will not under any circumstances whatsoever be liable for:
- 8.1.1 non-delivery in whole or in part of any Products, unless within 48 (forty-eight) hours (excluding any Sunday, Good Friday, Christmas Day or Bank Holiday) of the advised Delivery Date the Customer delivers to the Company written notice of such non-delivery and thereafter in the case of partial non-delivery affords the Company reasonable opportunity to witness a recount of the Products;
- 8.1.2 any delivery of incorrect Products (i.e., not the Products set out in the Order) not indicated on the receipt or other delivery documents (if any) referred to in Condition 6.7, unless within 2 (two) Business Days of such delivery, the Customer delivers to the Company written notice thereof at the address specified on the invoice and thereafter affords to the Company reasonable opportunity to examine the Products;
- 8.1.3 any delay in delivery, unless a specified Delivery Date has been guaranteed and agreed with the Customer in writing;
- 8.1.4 any delay in delivery, non-delivery or delivery of incorrect Products, if such delay, non-delivery or delivery of incorrect Products is as a result of:
- 8.1.4.1 any act or omission of the Customer; or
- 8.1.4.2 any cause beyond the Company's reasonable control.
- 8.2 The quantity of any consignment of Products as recorded by the Company upon despatch from the Company's place of business will be conclusive evidence of the quantity received by the Customer or its agent on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 8.3 Any liability of the Company for non-delivery of the Products or delivery of incorrect Products will be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.
- 8.4 Subject to the other provisions of these Conditions, the Company will not be liable for any costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery, non-delivery or the incorrect delivery of the Products (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract.
- 8.5 The Customer will not be entitled to cancel any Order for Products and subject to an Order Acknowledgement without the written consent of the Company. If the Company consents to such cancellation the Customer will indemnify the Company against all costs, losses, claims and expenses it incurs as a result of the cancellation.
- 8.6 Without prejudice to Condition 8.5 if prior to cancellation the Company has contracted to purchase any raw materials, machinery or equipment to manufacture the Products the Customer will be obliged to pay the full Price less any sale proceeds received by the Company following the sale of the Products by the Company to a third party at the best price reasonably obtainable.
- 8.7 Where the Customer has ordered Products subject to credit provided by any form of credit provider the Company will have the right upon giving written notice to the Customer (without thereby incurring any liability to the Customer for any losses, costs or damages incurred by the Customer as a direct or indirect result of the provisions of this Condition) to suspend or cease supply of the Products regardless of whether payment for the Products is then due and payable, if the Customer has reached its credit limit with the credit provider and/or the credit provider has reduced the level of credit available to the Customer whether or not the Customer has been informed of this by the credit provider.
- 8.8 In order for the Company to comply with its obligations under the Contract or the law, the Company may by written notice recall any or all Products sold to the Customer. Upon receipt of such written notice the Customer will at the Company's expense give such assistance without delay as the Company may reasonably require for the purpose of recalling any Products. Such assistance, without limitation, will include procuring that the Products (whether or not sold by the Customer to any third party) are not used (or any use that has commenced, ceases) and are returned to the Company for repair, improvement, or replacement.
- 8.9 If the Customer fails to take delivery of an Order on the Delivery Date, then, except where that failure or delay is caused by the Company's failure to comply with its obligations under this Agreement:
- 8.9.1 Delivery of the Order shall be deemed to have been completed at 9.00am on the Delivery Date; and
- 8.9.2 The Company shall store the Order until delivery takes place, and charge the Customer for all related costs and expenses as set out in Condition 12.3 (including insurance).

## 9. DEPOSITS

- 9.1 The Customer shall pay any Deposit to the Company in accordance with Condition 3.4.
- 9.2 Without prejudice to the Company's other rights, the Company will be entitled to retain and deal with the Deposit in any manner it deems fit if the Contract is terminated under Condition 15.

## 10. PRICE

- 10.1 The Company shall be entitled to increase the Price to take into account foreign exchange fluctuation, currency regulations, alteration of duties, increases in costs of labour, raw materials, overhead charges or changes made to the Contract at the request of the Customer (including without limitation delivery dates, quantities or specifications for the Products) or such other events beyond the Company's reasonable control which occur between the date of issue of the Order Acknowledgement and the time when performance of the Contract is complete.
- 10.2 All duties taxes (including value added tax) and similar charges and all costs of loading, unloading, carriage and insurance payable in respect of the Products will be for the account of the Customer except to the extent that the Price is stated to specifically include such charges.

## 11. PAYMENT

- 11.1 The Company shall invoice the Customer for:

- 11.1.1 each Order at the intervals set out in the Order Acknowledgement; and
- 11.1.2 any storage charges incurred pursuant to clause 6.12 following the end of the month in which such storage charges are incurred.
- 11.2 The Customer shall pay invoices in full and in cleared funds within 30 (thirty) days of receipt. Payment shall be made to the bank account nominated in writing by the Company.
- 11.3 If the Customer fails to make any payment due to the Company by the due date for payment, then, without limiting the Company's remedies under Condition 15, the Customer shall pay interest on the overdue amount at the rate of 4% (four percent) a year above the Bank of England's base rate from time to time. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. In relation to payments disputed in good faith, interest under this Condition 11.3 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 11.4 Time for payment will be of the essence.
- 11.5 No payment will be deemed to have been received until the Company has received cleared funds.
- 11.6 Notwithstanding any other provision of these Conditions to the contrary, all payments payable to the Company under the Contract will become due immediately upon termination of this Contract howsoever arising.
- 11.7 The Company retains a general lien on any of the Customer's equipment, materials (including Customer's Materials) or goods in its possession for the unpaid balance of any and all payments or sums whatsoever that the Customer owes to the Company. The Company shall be entitled to sell such equipment, materials or goods in the event that the said unpaid balance is not made in full by the due date. The proceeds of sale may be taken by the Company for reimbursements of the expense of the exercise of the lien and the sale, and payment of the said unpaid balance, and the Company shall account to the Customer for any surplus risk in any such equipment, materials or goods will remain with the Company whilst the lien is exercised and until the said equipment, materials or goods are sold.

**12. RISK AND RETENTION OF TITLE**

- 12.1 The Products are at the risk of the Customer from the Delivery Date.
- 12.2 Title in the Products will not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of both:
  - 12.2.1 the Products; and
  - 12.2.2 all other sums which are or which become due to the Company from the Customer on any account whatsoever (in respect of any other Products).
- 12.3 If for any reason the Customer does not collect the Products in accordance with Condition 6.4, risk in the Products will pass to the Customer (including for loss or damage caused by the Company's, or any of the persons for whom the Company contracts', negligence) at the time the Products are ready for delivery, and the Customer will insure the Products for the Price of those Products and the Company shall store the Products at the Company's Factory until delivery, whereupon the Customer will be liable for all related costs and expenses incurred by the Company relating to or connected with such storage by the Company (including, without limitation, storage, return freight, costs of redelivery and insurance).
- 12.4 The Company will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from the Company.
- 12.5 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Product is or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

**13. QUALITY**

- 13.1 The Company warrants to the Customer that the Products shall on delivery and for the Warranty Period:
  - 13.1.1 conform to the specifications set out in the Order and confirmed in the Order Acknowledgement;
  - 13.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended);
  - 13.1.3 be free from defects in design, material and workmanship;
  - 13.1.4 be reasonably fit for any particular purpose for which the Products are being bought (if the Customer has notified that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company); and
  - 13.1.5 comply with all statutory and regulatory requirements applicable to the normal use of the Products for which they are manufactured.
- 13.2 The Company shall not be liable for a breach of any of the warranties in Condition 13.1 unless:
  - 13.2.1 the Customer gives written notice of the defect or failure (including a description of the procedure used with the Products before the defect or failure was detected and a list of equipment used with the Products identifying the manufacturer and seller of such equipment) to the Company within 5 (five) Business Days of:
    - 13.2.1.1 (in the case of a defect that is apparent on normal visual inspection) Delivery; and
    - 13.2.1.2 (in the case of a latent defect) a reasonable time of when the Customer discovers or ought reasonably to have discovered the defect; and
  - 13.2.2 the Company is given a reasonable opportunity (after receiving the notice) of examining such Products and the Customer (if asked to do so by the Company) returns such Products or relevant samples of the Products to the Company's place of business at the Customer's cost for the examination to take place there; and
  - 13.2.3 the Products alleged to be defective are kept separate from the other goods of the Customer and in reasonable and suitable conditions.
- 13.3 The Company shall not be liable for a breach of any of the warranties in Condition 13.1 if:
  - 13.3.1 the Customer makes any further use of such Products after giving the written notice under Condition 13.2.1; or
  - 13.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, operation, use or maintenance of the Products (if there are no such instructions) good trade practice (as the case may be); or
  - 13.3.3 the Customer defaces, alters, modifies, adapts or repairs the Products without the written consent of the Company; or
  - 13.3.4 the defect arises after the Products have been delivered; or
  - 13.3.5 the defect arises as a result of fair wear and tear, erosion, corrosion, fire or explosion, or the wilful damage, negligence or abnormal working conditions of the Customer or third party; or
  - 13.3.6 the Products were used for a purpose other than the purpose for which they were manufactured (or produced) and/or otherwise misused or caused by the Customer or the Customer's employees, sub-contractors or agents (or any person not authorised or trained to work on or with the Products does so); or
  - 13.3.7 any payment for the Products has not been paid on the due date for payment; or
  - 13.3.8 the defect arises from the Customer's Materials or any drawing, design or specification supplied by the Customer; or
  - 13.3.9 the defect arises from the Customer failing during any Extended Warranty Period to maintain the Products in accordance with any reasonable instructions provided the Company, any legislation, any applicable codes of practice and/or good

industry practice.

- 13.4 The warranties given in Condition 13.1 do not extend to:
- 13.4.1 Products, parts, materials or equipment not manufactured by the Company in respect of which the Customer will only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company; and
- 13.4.2 any defects in any Products in relation to which the Company has been authorised, certified, permitted or required by any independent authority (under its rights and powers under any applicable laws, codes of practice and regulations) to manufacture and/or sell the Products in any particular condition or manner or to any particular specification (however, the Company will endeavour to assign its rights against any such independent competent authority to the Customer); and
- 13.4.3 any negligence on the part of the Customer in not properly checking the suitability, usefulness and adequacy of any Products ordered by it.
- 13.5 Subject to Conditions 13.2, 13.3 and 13.4, if any of the Products do not conform with any of the warranties in Condition 13.1 the Company will at its option:
- 13.5.1 repair or replace such Products or the defective part (and in such an event the Customer will be entitled to only the residue of the Warranty Period in respect of the repaired or replaced Products); or
- 13.5.2 refund the price of such Products at the *pro rata* Contract rate provided that, if the Company so requests, the Customer will, at the Company's expense, return the Products or the parts of such Products which are defective to the Company;
- 13.6 If the Company complies with Condition 13.5 it will have no further liability for a breach of any of the warranties in Condition 13.1 in respect of such Products.
- 13.7 The Customer will indemnify the Company against all costs, losses, claims and expenses that the Company incurs in examining, testing, repairing, re-delivering and recommissioning on demand any Product, parts, materials or equipment in respect of which the defect or failure is not within the scope of any warranty under Condition 13.1.
- 13.8 These Conditions shall apply to any repaired or replacement Products supplied by the Company.
- 13.9 If the Company and the Customer dispute whether any Products comply with any of the warranties in Condition 13.1, the provisions set out at Condition 17 shall apply.

#### 14. LIMITATION OF LIABILITY

- 14.1 Subject to Condition 13, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 14.1.1 any breach of the Contract or these Conditions; and
- 14.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 14.4 Subject to Conditions 14.1, 14.2, and 14.3:
- 14.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising will be limited to £100,000 (one hundred thousand pounds).
- 14.4.2 the Company will not be liable to the Customer for:
- 14.4.2.1 whether direct or indirect, for loss of profit, loss of revenue, loss of sales or business, loss of anticipated savings, depletion of goodwill, and like loss, costs, expenses or claims for compensation whatsoever (howsoever caused) which arise out of or in connection with loss, damage or contamination of the Customer's or any third party's products (whether of a solid, liquid or gas nature) used in conjunction with or stored in any Products whether or not those Products are proven to be defective; and
- 14.4.2.2 any indirect, special or consequential loss or damage, costs, expenses or claims for compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

#### 15. TERMINATION

- 15.1 The Company shall without prejudice to its other rights and remedies be entitled in any of the following events to terminate the Contract or to suspend further deliveries under the Contract:
- 15.1.1 the Customer fails to pay the Deposit within 7 days of the Deposit becoming due and payable in accordance with the timescale detailed in the Order Acknowledgement;
- 15.1.2 the Customer fails to pay any payment due pursuant to Condition 11.1 within 7 days of such payment becoming due and payable in accordance with the timescale detailed in the Order Acknowledgement;
- 15.1.3 immediately if the Customer fails to take delivery of any Products; or
- 15.1.4 if the Customer:
- 15.1.4.1 becomes insolvent;
- 15.1.4.2 has a bankruptcy or winding up order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or a notice of

intention to appoint an administrator is given by the Company or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

- 15.1.4.3 suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 15.1.4.4 encumbers or in any way charges any of the Products;
- 15.1.5 suffers any event as provided in Condition 15.1.4 or if the Company has reasonable cause to believe that any of these events are likely to occur then the Company shall be entitled to exercise its aforementioned rights of termination or suspension at any time during which the event of default giving rise thereto has not ceased or been remedied and in the event of any suspension the Company will be entitled as a condition of resuming delivery to require pre-payment of or such security as the Company require for payment of the price of any further delivery; or
- 15.1.6 if the Customer is in the opinion of the Company in material breach of the Contract or these Conditions.

## 16. SET OFF

- 16.1 The Customer will not be entitled to withhold or deduct payment of any amount payable to the Company either by way of set-off, counterclaim, discount, abatement or otherwise because of any disputed claim by the Customer in respect of defective Product or any other alleged breach of the Contract nor shall the Customer be entitled to set off against any amount payable to the Company any monies which are not then presently payable by the Company or for which the Company disputes liability.
- 16.2 The Company will at any time in its absolute discretion be entitled to set off, counterclaim, abate or discount any monies owed by it to the Customer against any monies (howsoever arising) owed by the Customer to the Company.

## 17. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

- 17.1 If a dispute arises out of or in connection with these Conditions or the performance, validity or enforceability of the Contract (**Dispute**) then the parties shall follow the following procedure:
  - 17.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, an authorised officer of the Company and an authorised officer of the Customer shall attempt in good faith to resolve the Dispute;
  - 17.1.2 if the authorised officer of the Company and authorised officer of the Customer are for any reason unable to resolve the Dispute within 30 (thirty) days of service of the Dispute Notice, the Dispute shall be referred to a director or the company secretary of the Company and a senior officer of the Customer who shall attempt in good faith to resolve it; and
  - 17.1.3 if the director or the company secretary at the Company and the senior officer of the Customer are for any reason unable to resolve the Dispute within 30 (thirty) days of it being referred to them, the parties will agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 (fourteen) days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed by the parties the mediation will start not later than 14 (fourteen) days after the date of the ADR notice.
- 17.2 No party may commence any court proceedings under Condition 19.8 in relation to the whole or part of the Dispute until 30 (thirty) days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 17.3 If the Dispute is not resolved within 30 (thirty) days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 30 (thirty) day period, or the mediation terminates before the expiry of that 30 (thirty) day period, the Dispute shall be finally resolved by the courts of England in accordance with Condition 19.8.

## 18. COMMUNICATIONS

- 18.1 All communications between the parties about this Contract must be in writing and delivered by hand, by pre-paid first class post or by email as follows:
  - 18.1.1 in case of communications to the Company, to its registered office or such address as shall be notified to the Customer by the Company, or to the email address from time to time notified to the Customer; or
  - 18.1.2 in the case of the communications to the Customer, to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Customer, or to the or email address from time to time notified to the Company.
- 18.2 Communications will be deemed to have been received:
  - 18.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
  - 18.2.2 if delivered by hand, on the day of delivery; and
  - 18.2.3 if sent by email, at the time of transmission or, if this time falls outside business hours at 9.00 am on the next Business Day after transmission.

## 19. CONFIDENTIALITY & INTELLECTUAL PROPERTY

- 19.1 The Customer will not disclose to any third party whatsoever any designs, drawings, financial (in particular price-related) information or customer information, technical or commercial know-how, inventions, processes, initiatives, data or any other confidential information the Company may make available to the Customer nor use the same for any purpose other than the performance of the Contract without the Company's prior written consent. The Customer shall only disclose such confidential information to such of its employees or agents as need to know for the performance of the Contract and the Customer shall ensure that such employees or agents are subject to like obligations of confidentiality as bind the Customer.
- 19.2 The Customer will not infringe or cause or suffer to be infringed any or all of the Company's or any third party's Intellectual Property Rights in all of the Company's Materials and/or the Products.
- 19.3 The Customer will indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of any infringement of any Intellectual Property Rights of:
  - 19.3.1 the Company arising from use of the Company's Materials and/or Products otherwise than in accordance with the Contract



- or any instructions given by the Company; or
- 19.3.2 any other person arising from the Company's use of the Customer's Materials or adherence to the Customer's instructions.
- 19.4 The Company reserves the right (with the full co-operation of the Customer) to have conduct of any litigation proceedings or negotiation of claims regarding the infringement or alleged infringement:
  - 19.4.1 of any third party's Intellectual Property Rights in the Company's Materials and/or the Products by the Company and/or the Customer and/or any third party; and
  - 19.4.2 of any of the Company's Intellectual Property Rights in the Company's Materials and/or the Products by the Customer and/or any third party.

20. **GENERAL**

- 20.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. For the purposes of the Data Protection Legislation both parties will be a controller of any personal data processed pursuant to the Contract. The terms "controller", "personal data" and "processing" or "processed" shall have the meaning given to them in the Data Protection Legislation.
- 20.2 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.
- 20.3 Should any delay occur in completion or partial completion of any Contract as the direct or indirect result of an act of God, war, riot, civil commotion, strike, lockout, industrial dispute or other local disturbances or restriction, epidemic or pandemic, fire, the elements, explosion, or failure of plant or machinery, Acts, orders or regulations of the Government, delay on the part of any supplier, shortage of raw materials, failure on the part of the Customer or any carrier, or any other cause beyond the reasonable control of the Company, then any express or implied time for completion of the Contract shall be extended for a reasonable time having regard to the effect of the delaying cause on the performance of the Contract or the Company shall have the right to cancel the Contract or reduce the volume of any Products ordered by the Customer without liability.
- 20.4 Failure or delay by the Company in enforcing or partially enforcing any provision of these Conditions will not be construed as a waiver of any of its rights under these Conditions.
- 20.5 Any waiver by the Company of any breach of, or any default under, any provision of these Conditions by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 20.6 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns. Any other person (a 'third party') has no such rights or remedies by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 20.7 The Company shall be entitled to subcontract any or all of its rights and obligations under these Conditions without the prior written consent of the Customer.
- 20.8 Without prejudice to Condition 20.6, the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Conditions without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).
- 20.9 Without prejudice to Conditions 20.7 and 20.7, the Company shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Conditions without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed).
- 20.10 These Conditions and all Contracts will be governed by and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.