

**CONDITIONS OF SALE****1. INTERPRETATION**

1.1 In these conditions, unless the context requires otherwise:

<b>Buyer</b>	means the company, firm, body or person who purchases the Goods and/or the Services, as the case may be from the Supplier;
<b>Consignment Stock</b>	means all stock of whatsoever nature of the Supplier which the Supplier may from time to time place at the Buyer's premises on consignment.
<b>Contract</b>	means the contract between the Supplier and the Buyer for the sale and purchase of the Goods and/or the provision of the Services as the case may be, which is governed solely by these conditions of sale (unless otherwise agreed in writing by the Supplier);
<b>Force Majeure Event</b>	shall have the meaning given at condition 22;
<b>Goods</b>	means (1) the goods (or any part of them) agreed in the Contract to be sold by the Supplier to the Buyer including all materials of whatsoever nature supplied in connection with the Services and (2) all Consignment Stock;
<b>Group</b>	means any subsidiary or parent undertakings of a company from time to time;
<b>Order</b>	means a purchase order in respect of the Goods and/or the Services, as the case may be, issued by the Buyer to the Supplier on the Buyer's official purchase order form, together with all specifications and other documents referred to in it;
<b>Services</b>	means hirework, treatment and other services (or any part of them) involving the use of materials provided by the Buyer (whether belonging to the Buyer or not) agreed in the Contract to be provided by the Supplier to the Buyer;
<b>Specification</b>	means any specification of the Goods, including related plans and drawings, that is agreed in writing by the Buyer and the Supplier.
<b>Supplier</b>	means Howco Group plc (Company Number SC079844) having its registered office at 1-3 Woodside Crescent, Glasgow, G3 7UL or whichever members of its Group from time to time supplies the Goods and/or provides the Services as the case may be, to the Buyer;

1.2 References to any statute or statutory provision shall be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced and shall include any orders, regulations, instruments or other subordinate legislation made under the statute or statutory provision.

1.3 The singular includes the plural and vice versa and any gender includes all genders.

1.4 Headings are inserted for convenience and shall not affect the construction of these conditions.

**2. THE CONTRACT**

2.1 The Supplier's quotations are not binding on the Supplier and do not constitute an offer by the Supplier. Any quotation is valid only for a period of 30 days from its date, unless previously withdrawn by the Supplier.

2.2 These conditions are the only conditions upon which the Supplier is prepared to deal with the Buyer and the Contract will be on these conditions to the exclusion of all other terms and conditions. All terms and conditions appearing or referred to in an Order or otherwise stipulated by the Buyer or which are implied by trade, custom, practice or course of dealing shall have no effect. These conditions apply to all sales and supplies by the Supplier and to all Consignment Stock supplied by the Supplier to third parties. Any variation of these conditions and any representations about the Goods and/or the Services shall have no effect unless confirmed in writing by the Supplier.

2.3 An Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence based solely upon these conditions.

2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

**3. PRICES**

3.1 Where the Goods and/or Services, as the case may be, are sold by reference to the Supplier's published price list, the price payable for the Goods shall be the ruling price as published in the price list current at the date of despatch of the Goods from the Supplier's works or, in the case of Consignment Stock, the date of use or onward sale of such Consignment Stock by the Buyer, and the price payable for the Services shall be the ruling price as published in the price list current at the date of completion of the Services.

3.2 In circumstances where Goods and/or Services are sold without reference to the Supplier's published price list the price for Goods and/or Services stated in the Order is based on the cost to the Supplier of raw materials, fuel and power, transport and labour and all other costs at the date of acceptance of the Order. If, at the date of despatch of the Goods from the Supplier's works, or, the date of use or onward sale of Consignment Stock by the Buyer or the date of completion of the Services, as the case may be, there has been any increase in all or any of such costs, the price payable for the Goods and/or the Services shall, if the Supplier so notifies the Buyer in writing, be increased accordingly.

3.3 Where the price for the Goods and/or the Services, as the case may be, is varied in accordance with condition 3.2, the price as varied shall be binding on the Buyer and such variation shall not entitle the Buyer to terminate the Contract.

- 3.4 There shall be added to the price for the Goods and/or the Services, as the case may be, any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods and/or performance of the Services, as the case may be, (whether initially charged on or payable by the Supplier or the Buyer).
- 3.5 All Goods are sold "ex works" and therefore the price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer unless otherwise stated. If the Supplier arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the point of delivery such costs shall be for the Buyer's account and shall not affect the provisions of the Contract as to the passing of risk.

#### **4. TERMS OF PAYMENT**

- 4.1 Prices quoted are net and are in sterling unless otherwise agreed. Payment in cleared funds must be received by the Supplier before delivery of Goods and/or carrying out of the Services as the case may be, unless the Contract provides otherwise. Where the Contract provides for credit terms, accounts shall be due for payment not later than the end of the month following the month of invoice or on such other terms as the Supplier may agree in writing.
- 4.2 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Supplier to the Buyer.
- 4.3 Where the Goods are to be delivered in consignments, each consignment shall be invoiced as delivered and each invoice will be treated as a separate account and be payable accordingly.
- 4.4 Where Services are to be performed over a period in excess of one month the Supplier shall, at the end of each month determine the value of the work carried out in that month (and all other uninvoiced work carried out pursuant to the Contract) and (unless the Contract otherwise expressly provides) a sum equal to such value (or any percentage thereof specified in the Contract) shall be invoiced and such invoice shall be paid in accordance with the foregoing provisions of this condition 4.
- 4.5 Failure to pay any invoice in accordance with the foregoing conditions 4.1 to 4.4, inclusive and all other terms specified in the Contract shall entitle the Supplier, at its sole option, to suspend further deliveries and/or work, as the case may be, under the Contract and on other contracts with the Buyer and/or to terminate the Contract and all or any other contracts with the Buyer, and that without prejudice to all other rights the Supplier may have in respect of such failure.
- 4.6 Interest shall be payable on overdue accounts calculated on a day to day basis on the amount outstanding at the rate of 4 % above the published base rate from time to time of the Governor and Company of the Bank of Scotland, such interest to run from the due date for payment until payment of the sum due has been made in full whether before or after judgement.
- 4.7 The Supplier may, where it has concerns as to the Buyer's financial position and/or in the case of failure to pay for any Goods and/or Services, or any part thereof as aforesaid, suspend delivery or performance of the Contract or any part thereof without liability until payment for satisfactory security for payment has been provided.
- 4.8 Where Goods are to be delivered outside the United Kingdom, payment must be made against delivery of the Goods or shipping documents F.O.B. UK Port unless credit arrangements within the United Kingdom approved by the Supplier have been made.

#### **5. TITLE TO GOODS**

- 5.1 Notwithstanding that risk in the Goods shall pass to the Buyer in accordance with condition 10, the Goods shall remain the property of the Supplier and title (legal and beneficial) to the Goods shall remain with the Supplier until payment in full (in cash or cleared funds) has been received by the Supplier:
- 5.1.1 for those Goods; and
  - 5.1.2 for all other Goods or Services supplied by the Supplier; and
  - 5.1.3 of all other monies due or which become due from the Buyer to the Supplier on any account.
- 5.2 Until title to the Goods passes to the Buyer under condition 5.1 the Buyer shall:-
- 5.2.1 hold the Goods on a fiduciary basis as trustee for the Supplier;
  - 5.2.2 keep the Goods at its own premises and (at no cost to the Supplier) separately from all goods of the Buyer or third parties in such a way that they remain readily identifiable as the property of the Supplier;
  - 5.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.2.4 maintain the Goods in satisfactory condition insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Buyer shall produce the policy of insurance to the Supplier; and
  - 5.2.5 hold the proceeds of the insurance referred to in condition 5.2.4 on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 5.3 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 5.3.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
  - 5.3.2 any such sale shall be a sale of the Supplier's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 5.4 Goods shall be deemed sold or used in the order delivered to the Buyer.
- 5.5 At any time before title to the Goods passes to the Buyer (whether or not any payment to the Supplier is then overdue or the Buyer is otherwise in breach of any obligation to the Supplier), the Supplier may (without prejudice to any other of its rights):-
- 5.5.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so);

- 5.5.2 require delivery up to it of all or any part of the Goods.
- 5.6 The Supplier may at any time appropriate sums received from the Buyer as it thinks fit notwithstanding any purported appropriation by the Buyer.
- 5.7.1 The Buyer's right to possession of the Goods (other than the Consignment Stock) shall terminate immediately if:
- 5.7.1.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, (or being a body corporate) it, convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a notice is given, a resolution is passed or an order is made, for or in connection with or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
  - 5.7.1.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performance of his/its obligations under the Contract or any other contract between the Supplier and the Buyer, the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
  - 5.7.1.3 the Buyer encumbers or in any way charges any of the Goods; or
  - 5.7.1.4 (being an individual) the Buyer is the subject of a bankruptcy petition or order; or
  - 5.7.1.5 (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver; or
  - 5.7.1.6 any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 5.7.1.1 to clause 5.7.1.5 (inclusive); or
  - 5.7.1.7 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
  - 5.7.1.8 the Buyer's financial position deteriorates to such an extent that in the Supplier's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 5.7.1.9 (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 5.7.2 For the avoidance of doubt, the Buyer shall have no right to retain possession of the Consignment Stock and the Supplier may at any time:-
- 5.7.2.1 retake possession of all or any part of the Consignment Stock and enter any premises for that purpose (or authorise others to do so)
  - 5.7.2.2 require delivery up to it of all or any part of the Consignment Stock.
- 5.8 The Supplier shall be entitled to recover payment for the Goods notwithstanding that the Goods remain the property of the Supplier pursuant to condition 5.1.
- 5.9 The Buyer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, and/or to recover them in accordance with condition 5.5 or condition 5.7, as appropriate.
- 5.10 The Buyer shall allow the Supplier access during working hours to its premises where Consignment Stock is or has been stored for the purposes of ascertaining whether the Buyer has used or sold on any Consignment Stock. The Supplier shall be entitled to receive payment in accordance with these conditions for all Consignment Stock used or sold on by the Buyer or damaged or destroyed while risk therein lies with the Buyer in terms of condition 10 and to issue invoices in respect thereof.

## **6. THE GOODS**

- 6.1 Upon delivery and for a period of 3 months from the date of delivery, the Goods will, subject to the other provisions of these conditions:
- 6.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1994;
  - 6.1.2 be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Supplier in writing and the Supplier has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Supplier; and
  - 6.1.3 where the Contract provides that the Goods are to comply with a British Standard specification of a particular year or to a similar standard of another country, comply with such standard specification or to an equivalent standard specification (whether British Standard or otherwise) (minor variations being disregarded).
- 6.2 The Supplier shall not be liable for a breach of any of the warranties in condition 6.1 unless:
- 6.2.1 the Buyer gives written notice of the defect to the Supplier, and (if the defect is a result of damage in transit) to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
  - 6.2.2 the Supplier is given a reasonable opportunity after receiving such notice of examining such Goods and the Buyer (if asked to do so by the Supplier) returns such Goods to the Supplier's works at the Buyer's cost for the examination to take place there.
- 6.3 The Supplier shall not be liable for a breach of any of the warranties in condition 6.1 if:
- 6.3.1 the Buyer makes any further use of such Goods after giving such notice; or
  - 6.3.2 the defect arises because the Buyer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

- 6.3.3 the Buyer alters or repairs such Goods without the written consent of the Supplier; or
- 6.3.4 the breach is attributable to defective materials supplied to the Supplier by third parties.
- 6.4 Subject to conditions 6.2 and 6.3 if any of the Goods do not conform with any of the warranties in condition 6.1 the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods provided that, if the Supplier so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Supplier.
- 6.5 Notwithstanding any other provision of these conditions, if the Supplier complies with condition 6.4 it shall have no further liability for a breach of any of the warranties in condition 6.1 in respect of such Goods.
- 6.6 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Supplier against all liabilities, costs, expenses, damages 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 in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 6.6 shall survive termination of the Contract.
- 6.7 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 6.8 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 7. THE SERVICES**
- 7.1 The Supplier shall use all reasonable endeavours to perform the Services substantially in accordance with all applicable specifications. No warranty is given that performance of the Services on materials delivered to the Supplier in connection with the Services will not cause or give rise to distortion, faults and/or defects in such materials. The Supplier shall, subject always to the Supplier being satisfied (in its entire discretion) as to availability of capacity and facilities, endeavour to correct any distortion, fault and/or defect which appears or develops during or are caused by the Services at the Buyer's expense and risk provided that:
- 7.1.1 the Buyer gives written notice of the distortion, fault or defect to the Supplier within 7 days of the time when the Buyer discovers or ought to have discovered such distortion, fault or defect; and
- 7.1.2 the Supplier is given a reasonable opportunity after receiving such notice of examining the affected materials and the Buyer (if asked to do so by the Supplier) returns such materials to the Supplier's works at the Buyer's cost for the examination to take place there; and
- 7.1.3 the Buyer makes any further use of such materials after giving such notice.
- 7.2 The Supplier shall not be obliged to check or test material delivered to it in connection with the Services unless specifically requested in writing to do so.
- 7.3 If the Buyer specifically requests the Supplier to check and/or test material delivered to the Supplier in connection with the Services (whether before or after the Services have been carried out), the Supplier shall be entitled to charge at its current rates for such checking and testing.
- 7.4 Unless the Contract provides to the contrary, all waste material resulting from the performance of the Services shall become the property of the Supplier but the Supplier may at any time order the Buyer to remove any such waste material and the Buyer will, on receipt of any such order from the Supplier, comply forthwith with such order.
- 7.5 The Buyer warrants that all material delivered to the Supplier in connection with the Services:
- 7.5.1 shall correspond with the description in the Contract and the Buyer will (if requested) provide test certificates obtained at its own expense;
- 7.5.2 is and will be suitable to be treated as hirework in the manner set out in the Contract and will not be in a defective or dangerous condition;
- 7.5.3 will be prepared and ready for treatment in accordance with the Contract.
- 7.6 Any additional work which is required to be done by the Supplier prior to commencing the Services shall be the subject of an additional charge.
- 7.7 The Supplier shall carry out the Services in reliance upon the warranties contained in condition 7.5 and shall not be obliged to inspect the material or make further investigation to ensure that such warranties are correct and accurate when the material is delivered to the Supplier.
- 7.8 In the event of the Buyer being in breach of the warranties contained in condition 7.5, the Supplier shall be entitled to charge the price stipulated in the Contract for the Services together with a charge for any extra or additional work arising from such breach of warranty including the cost of re-treating the material if necessary.
- 7.9 The Supplier shall not be responsible for any loss or damage of whatsoever kind (including consequential loss) suffered by any party (including the Buyer) as a result of any breach by the Buyer of the warranties contained in condition 7.5.
- 7.10 The Buyer shall indemnify the Supplier and hold the Supplier indemnified in respect of all damage and/or loss (including indirect, consequential or economic loss) incurred by the Supplier caused (directly or indirectly) by material delivered to the Supplier by or on behalf of the Buyer in connection with the services and in respect of all claims, costs, liabilities and expenses incurred by the Supplier to third parties arising out of the provision of the Services, and that, in each case, notwithstanding that there has been no breach of the Warranties contained in condition 7.5.
- 7.11 The Supplier will have a lien on all the Buyer's goods and materials in the possession of the Supplier for the purpose of the provision of the Services in respect of all sums owing to the Supplier for such Services.

- 7.12 Where the material supplied for the Services is delivered to the Supplier by a third party on behalf of the Buyer, the Supplier may inspect the material for the purposes of ascertaining whether the material delivered corresponds to the description of the material in the Contract and the Supplier shall be entitled to charge an additional sum in respect of such inspection and the necessary and incidental administration costs of the Supplier in connection therewith, such charge to be at the rate of charge made by the Supplier at the date of carrying out such work.
- 7.13 The Buyer agrees and acknowledges that the price to be paid for the Services does not include insurance of any materials delivered to the Supplier by or on behalf of the Buyer in connection with the Services and therefore risk of deterioration in, destruction of or damage to such material shall at all times remain with the Buyer notwithstanding such materials being in the possession of the Supplier.

## **8. LIMITATION OF LIABILITY**

- 8.1 No warranty, guarantee, indemnity or other term as to the quality, fitness for purpose or otherwise of goods supplied by third parties is given by the Supplier.
- 8.2 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.
- 8.3 Nothing in these conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence or for fraudulent misrepresentation.

### **THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 8.4**

- 8.4 Subject to conditions 8.2 and 8.3:

8.4.1 the Supplier's total liability in contract, tort or delict (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable by the Buyer in terms of the Contract;

8.4.2 the Supplier shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **9. DELIVERY AND COMPLETION DATES**

- 9.1 The dates for delivery of the Goods and the dates for carrying out the Services are approximate only and, unless otherwise expressly agreed by the Supplier in accordance with these conditions, time is not of the essence for such delivery or performance. Without prejudice to condition 8.4, the Supplier will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform. The Supplier shall not be liable for any delay in delivery of the Goods or the Services that is caused by a Force Majeure Event or the Buyer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or the Services.
- 9.2 No delay shall entitle the Buyer to reject such delivery or performance nor any further instalment of the Goods or part of the Services, as the case may be in delivery of the Goods or any instalment thereof or in the performance of the Services or any part thereof or to repudiate the Contract or any other orders placed by the Buyer or contracts between the Supplier and the Buyer.

## **10. DAMAGE, SHORTAGE OR LOSS IN TRANSIT**

- 10.1 Unless otherwise agreed by the Supplier in accordance with these conditions, risk in the Goods (other than the Consignment Stock) passes to the Buyer when these Goods are despatched from the Supplier's works and in the case of Consignment Stock, passes to the Buyer on delivery to the Buyer's premises and shall remain with the Buyer until the Consignment Stock is delivered to the Supplier's works. The Supplier accepts no responsibility for any damage or loss in transit. Claims for damage or loss in transit should be made on the carrier and any conditions imposed by the carrier in relation to claims for damage or loss in transit should be complied with.
- 10.2 Where the Contract provides for delivery of Goods elsewhere than at the Supplier's works, risk will pass at the point specified in the Contract. The Supplier will have no liability in relation to claims by the Buyer in respect of loss or damage in transit in such circumstances unless the Buyer:
- 10.2.1 gives written notice to the Supplier within 21 days of non-delivery or within 7 days of the delivery of the Goods in any other case;
- 10.2.2 where the Goods are transported by an independent freight carrier, complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.
- 10.3 Risk in material delivered to the Supplier in connection with the Services shall at no time pass to the Supplier.

## **11. DELAYED ACCEPTANCE**

If for any reason the Buyer is unable to accept delivery of the Goods when the Goods are due and ready for delivery, the Supplier may arrange storage of the Goods at the Buyer's risk and the Buyer shall be liable to the Supplier for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Supplier may have in respect of the Buyer's failure to take delivery of the Goods or pay for them in accordance with the Contract.

## **12. TERMINATION**

In the event that if the Buyer enters into a deed of arrangement or commits an act of bankruptcy or combines with his creditors or if a receiving order is made against him or (being a company) it shall pass a resolution or the Court shall make an order that the Buyer shall be wound up (otherwise than for the purposes of amalgamation or solvent reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Buyer or if the Buyer suffers the appointment or the presentation of a petition for the appointment of an administrator or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the Court to make a winding-up order or if the Buyer takes or suffers any similar action in consequence of debts or if the financial responsibility of the Buyer shall, in the opinion of the Supplier, become impaired or if the Buyer shall commit any breach of any part of the Contract, the Supplier may without prejudice to its other rights and remedies in those circumstances, stop all Goods in transit and suspend further deliveries, suspend provision of the Services, withdraw test certificates issued in respect of Goods or Services supplied but remaining unpaid, and by notice to the Buyer may terminate the Contract immediately.

### 13. TESTS

13.1 The Supplier will supply test certificates in respect of Goods required by the Buyer to be supplied to a particular specification but shall not be obliged to carry out any tests to the Goods other than those specified in such certificates.

13.2 The test certificates supplied by the Supplier shall be conclusive as to the results of the testing of a sample of the Goods but the Supplier gives no warranty that

13.2.1 the sample which has been tested is typical or representative of the whole of the Goods;

13.2.2 if the test were repeated in respect of the whole of the Goods the results would be the same in respect of either the whole or any particular part or parts of the Goods.

13.3 If the Buyer considers that the Goods supplied do not correspond with the details and specifications shown in the test certificates or are not in accordance with the Contract, the Buyer shall only be entitled to credit in respect thereof if:

13.3.1 the Buyer shall within 48 hours of delivery of the Goods have notified the Supplier of such matters specifying the particular nature of the problem; and

13.3.2 The goods are in the condition in which they left the Supplier's premises and are undamaged free from corrosion and have not been worked or machined in any way.

PROVIDED that if the reason why the Goods supplied are unsuitable is as a result of an error on the part of the Buyer, the Supplier shall not be obliged to give credit for the Goods or accept their return, unless it in its absolute discretion decides to do so and in such circumstances the Supplier shall impose such terms including the making of a handling charge as it thinks fit for the return of such material.

### 14. PATENTS

The Buyer shall indemnify the Supplier against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design right, copyright, trademark or other industrial or intellectual property rights resulting from compliance by the Supplier with the Buyer's instructions, whether express or implied.

### 15. INDEMNITY

The Buyer agrees upon demand to indemnify the Supplier against all losses, damages, injury, costs and expenses of whatever nature suffered by the Supplier to the extent that the same are caused by or related to:

15.1 designs, drawings or specifications given to the Supplier by the Buyer in respect of the Goods; and/or

15.2 defective materials or products supplied by the Buyer to the Supplier; and/or

15.3 the improper incorporation, assembly, use, processing, storage or handing of Goods by the Buyer.

### 16. NON-STANDARD ORDERS

Where the Contract is in respect of Goods or materials of a type, size or quality not normally produced by the Supplier and/or Services not normally performed by the Supplier, the Supplier will use all reasonable endeavours to produce the Goods and/or perform the Services, as the case may be, but if such production and/or performance proves impossible, impracticable or uneconomical, the Supplier reserves the right to cancel the Contract or the uncompleted part of it, in which event the Buyer will only be liable to pay to the part of it actually delivered or performed.

### 17. PATTERNS, DIES, TOOLS, DRAWINGS AND EQUIPMENT

17.1 Where the Buyer supplies patterns, dies, tools, drawings or equipment, the Supplier shall be entitled to assume that the same are in good condition, true to drawing and entirely suitable to the Supplier's methods of production, and for the production of the Goods in the quantities required; and no responsibility is accepted by the Supplier for their accuracy.

17.2 All replacements, alterations and repairs to the Buyer's patterns, dies, tools, drawings and equipment shall be paid for by the Buyer.

17.3 Where the patterns, dies, tools, drawings and equipment are not supplied by the Buyer only those which are specifically made by the Supplier and separately charged to the Buyer in full, shall, when paid for by the Buyer, become the property of the Buyer.

17.4 Carriage on patterns, dies, tools and equipment supplied by the Buyer will be paid by the Supplier in one direction only.

17.5 The Supplier will take all reasonable care of the Buyer's patterns, dies, tools, drawings and equipment while in the Supplier's possession but does not accept liability for loss or damage thereto, however arising except where neglect on the part of the Supplier or its agents was the direct cause of loss or damage and in those circumstances the Supplier's liability shall be limited to the actual cost of replacement or repair to the exclusion of all other expenses, consequential losses, loss of profits and other expenses, liabilities and losses however arising.

17.6 The Supplier reserves the right to destroy or otherwise dispose of patterns, dies, tools, drawings and equipment in possession or custody (whether or not the property of the Buyer) from which the Buyer has not required Goods to be made for a period of 12 months or more in the case of patterns, and three years in all other cases.

### 18. PACKING

18.1 Unless otherwise agreed in writing by the Supplier in accordance with these conditions, the Supplier will make a charge for all packing cases and packing materials used in delivering the Goods. Where such packing cases and packing materials are stated to be returnable, the charge made will be credited in full on return to the Supplier's works carriage paid in good condition, within one month of receipt by the Buyer. Where such packing cases and packing materials are not returnable, the Buyer will dispose of all packing in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.

18.2 The Supplier uses all reasonable endeavours to ensure, where necessary, suitability of packing before despatch, but no claim will be accepted by the Supplier for breakage or damage in transit on the ground of alleged unsuitability for packing.

**19. ASSIGNMENT AND SUBCONTRACTING**

- 19.1 None of the rights or obligations of the Buyer under the contract may be assigned or transferred in whole or in part without the prior written consent of the Supplier.
- 19.2 The Supplier shall be entitled to assign, transfer or subcontract any work relating to the contract without obtaining the consent of, or giving notice to the Buyer.

**20. HEALTH AND SAFETY**

The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Supplier (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above. For these purposes the Buyer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

**21. NOTICES**

- 21.1 Any notice or other communication to be given under these conditions must be in writing and addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as the party may have specified to the other party in writing and may be delivered or sent by pre-paid first class letter post or facsimile transmission.
- 21.2 Any notice or document shall be deemed served, if delivered, at the time of delivery, if posted, 48 hours after posting, and if sent by facsimile transmission, at the time of transmission.

**22. FORCE MAJEURE**

- 22.1 The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the Supplier's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

**23. GENERAL**

- 23.1 Each right or remedy of the Supplier under the Contract is without prejudice to all other rights and remedies of the Supplier whether under the Contract or not.
- 23.2 The invalidity, illegality or unenforceability of any provision of these conditions shall not affect the other conditions, which shall remain in full force and effect and any provision found to be invalid, illegal or unenforceable shall, to the extent of such invalidity, illegality or unenforceability, be severable.
- 23.3 No waiver by the Supplier of any of the requirements of the Contract or of any of its rights thereunder shall be effective unless given in writing and signed by or on behalf of the Supplier and no forbearance, delay or indulgence by the Supplier in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party nor shall any waiver by either party of any of the requirements hereof or any of its rights hereunder release the other from full performance of its obligations stated herein.
- 23.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 23.5 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

**24. LAW AND JURISDICTION**

The contract (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with:-

- 24.1 where the supplies of Goods and/or Services made by the Supplier under the Contract are made from the Supplier's works in England, English law; and
- 24.2 where the supplies of Goods and/or Services made by the Supplier under the Contract are made from the Supplier's works in Scotland, Scots law

and the parties hereby submit to the exclusive jurisdiction of the English courts where English law applies or of the Scottish courts where Scots law applies.