

## **1. Terms & Conditions of Trade - Interpretation**

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

“Buyer” - J&P Engineering Services Limited T/A J&P Group, Scotsman House, The Sidings, Boundary Lane, Saltney, Chester CH4 8RD, United Kingdom

“Goods” any goods which the Buyer is to purchase from the Seller (including any of them or any part of them)

“Seller” – the organisation or person supplying Goods or Services

“Contract” - the contract between the Buyer and Seller for the manufacture, sale and purchase of the Goods

“Order” - any Purchase Order of the Buyer for the Goods, offered subject to these terms and conditions

“Price” – the agreed price (in sterling) contained in any Purchase Order

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

## **2. Formation and Incorporation**

2.1 These terms and conditions are the only conditions upon which the Buyer is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions subject to any variation under Condition 2.3. No terms and/or conditions endorsed upon, delivered with or contained in the Seller’s quotation acknowledgement or acceptance of order, specification or similar document will form part of the Contract and the Seller waive any right which it otherwise might have to rely on such terms and/or conditions. Any reference below or overleaf to such documents will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such documents will have effect to the exclusion or amendment of the Contract terms.

2.2 Each Order for Goods by the Company from the Seller shall be deemed to be an offer by the Company to purchase Goods subject to these terms and conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or implied by fulfilling the Order, in whole or in part, accepts the offer.

2.3 Any variation to the Order or these terms and conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Buyer.

2.4 Each Order is liable to cancellation by the Buyer if not unconditionally accepted by the Seller within 14 days of the Order.

### **3. Specification**

3.1 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable specification supplied or advised by the Buyer to the Seller.

3.2 The Seller shall comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

3.3 The Buyer shall have the right to inspect and test the Goods at all times and the Seller shall not unreasonably refuse any request by the Buyer to inspect and test the goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

3.4 If as the result of such inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within 7 days of inspection or testing the Seller shall take all steps necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

3.6 The Buyer may return any rejected Goods at the Seller's risk and expense. The right to reject shall extend to the whole or any part of a consignment. Rejected Goods shall not be replaced unless the Buyer so requires in writing.

3.7 The Seller shall be responsible for repayment to the Buyer of all costs losses damages and expenses whatsoever incurred by the Buyer due to rejection of the Goods and/or any additional expenditure reasonably incurred by the Buyer in obtaining other goods to replace the rejected Goods up to a maximum value equivalent to the price contained in the Purchase Order.

3.8 The Seller acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and the Buyer shall be entitled to reject the Goods if they are not in conformance with the Contract, however slight the breach may be.

3.9 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and properly packed and stored so as to reach their destination in an undamaged condition in the ordinary course.

3.10 The Buyer may at any time make changes in writing relating to the Contract including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increasing cost of, or time required for, the performance of the Contract an equitable adjustment shall be made to the price, delivery schedule or both. Any claim or adjustment by the Seller must be approved by the Buyer in writing before the Seller proceeds with such changes.

3.11 The Goods shall be of the best available design and of the best material and workmanship and be without fault and shall conform as to the quality quantity and

description with the particulars and/or specifications in the Contract and shall be new and unused unless otherwise specified.

3.12 The Goods shall be fit and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Seller by the Buyer and the Buyer relies on the skill and judgement of the Seller in the supply of the Goods and the execution of the Order.

#### **4. Delivery**

4.1 The Goods shall be delivered carriage paid to the Buyer's place of business as named overleaf on the Order, or if some other place of delivery is agreed by the Buyer in writing, by delivery of the Goods to that place during the Buyer's normal office hours. The Seller shall off-load the Goods of its own risk.

4.2 The Goods shall be delivered on the date or within the period specified in the Order, or if no such period is specified within 28 days of the Order.

4.3 Where access to the premises is necessary in connection with delivery or installation the Seller and its sub-contractors shall at all times comply with the reasonable requirements of the Buyer's Project Manager.

4.4 The Seller shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

4.5 Time for delivery shall be of the essence of the Contract.

4.6 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:

4.6.1 cancel the Contract in whole or in part;

4.6.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;

4.6.3 recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods in substitution from another supplier Goods up to a maximum value equivalent to the price contained in the Purchase Order, and

4.6.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

4.7 The Buyer shall not be deemed to have accepted the Goods until the Buyer has had twenty one days to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

4.8 No Goods supplied under the Contract earlier than the date for delivery set out in these terms and conditions, or in any delivery schedule, will be accepted or paid for unless the Buyer notifies the Seller in writing of its intention to accept the same.

4.9 The Seller shall supply the Buyer on delivery of the Goods with all operating and safety instructions, warning notices clearly displayed and other information as may be necessary for their proper use, maintenance and repair for the Buyer to accept delivery of Goods.

4.10 Unless the Buyer expressly agrees otherwise in writing, containers and packing must be supplied free but will be returned, if required, at the Seller's risk and expense.

4.11 Where more than one item of Goods is involved in the Order and the Buyer agrees to accept delivery by instalments, the Contract shall be construed as a separate contract in respect of each instalment. Nevertheless failure to deliver any instalment shall entitle the Buyer at its option to treat the Contract as repudiated.

4.12 If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.

4.13 The Goods shall be properly packed, clearly labelled and adequately protected against damage and deterioration in transit.

4.14 The Seller will repair or replace Goods damaged or lost in transit or during off-loading or stacking free of charge provided the Buyer gives written notice to the Seller of the damage or loss within a reasonable time after receipt of a despatch note.

## **5. Risk/Ownership**

5.1 Risk in the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

5.2 The ownership of the Goods shall pass to the Buyer upon acceptance by the Buyer.

## **6. Price**

6.1 The price payable for the Goods shall be that stated in the Order and unless otherwise stated shall be:

6.1.1 inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, installation, commissioning, training, insurance and delivery of the Goods to the delivery address and any duties, imposts, levies or taxes other than value added tax; and

6.1.2 fixed for the duration of the Contract.

6.2 No variation in the price nor extra charges can be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Buyer.

## **7. Payment**

7.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and each invoice shall quote the number of the Order. The Seller shall render a separate invoice in respect of each consignment delivered under the Order.

7.2 Unless otherwise stated in the Order the Buyer shall pay the price of the Goods as per the payment terms outlined in the Purchase Order.

7.3 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller or associated Company of the Seller to the Buyer against any sums payable by the Buyer to the Seller or associated company of the Seller under the Contract where associated company has the same meaning as ascribed to it by section 416 Income and Corporation Taxes Act 1988.

7.4 Payment will be made 45 days after the last day of the month in which the Buyer receives the Sellers invoice.

## **8. The Buyer's Property**

8.1 Materials, equipment, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller shall at all times be and remain the exclusive property of the Buyer and shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.

8.2 The Seller warrants that the sale or use of the Goods by the Buyer will not infringe any British or foreign patent, copyright, trade mark, trade name or registered design or other right of any third party.

8.3 The Seller undertakes to indemnify the Buyer against all loss damage liability actions proceedings costs claims or expenses which the Buyer may suffer or incur by reason or any breach of the warranty in Condition 8.2.

8.4 Should the Buyer receive notice of any claim that the Goods infringe any such patent, copyright, trade mark, trade name or registered design or any other right of any third party the Buyer shall have the right to terminate the Contract forthwith but such termination shall be without prejudice to any other right of action the Buyer may have.

## **9. Warranties and Indemnity**

9.1 The Seller warrants to the Buyer that the Goods:

9.1.1 will be of satisfactory quality within the meaning of the Sale of Goods Act 1994, and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;

9.1.2 will be free from defects in design, material and workmanship;

9.1.3 will correspond in every respect with any specifications, drawings, samples or descriptions provided by the Buyer; and

9.1.4 will comply with all statutory requirements and regulations and voluntary codes of conduct relating to the Goods and their sale and supply.

9.2 The Seller shall indemnify and keep indemnified the Buyer in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

9.2.1 breach of any warranty given by the Seller in relation to the Goods;

9.2.2 any claim that the Goods infringe, or their use, resale or importation infringes the British or foreign patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right of any other third party except to the extent that the claim arises from any specifications, drawings, samples or descriptions provided by the Buyer;

9.2.3 any claim made against the Buyer in respect of any liability, loss, damage, cost or expense sustained by the Buyer's employees or agents by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises from the Goods; or

9.2.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods in accordance with the Contract

9.2.5 any defect in packaging or containers of the Goods or any misleading or inaccurate information or data supplied at any time by the Seller its servants or agents

9.2.6 any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Seller.

9.3. The Seller shall effect with a reputable insurance company a policy or policies covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Buyer produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium thereunder.

## **10. Termination**

10.1 The Buyer shall be entitled to cancel any Order in whole or in part by giving notice to the Seller at any time prior to delivery of the Goods in which event the Buyer's sole liability shall be to pay to the Seller fair and reasonable compensation for work-in-progress at the time of cancellation.

10.2 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

10.2.1 the Seller commits a breach of any of the terms and conditions of the Contract;

10.2.2 any distress, execution or other legal process is levied upon any of the assets of the Seller;

10.2.3 the Seller enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purpose of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the Seller's undertaking or assets;

10.2.4 the Seller ceases or threatens to cease to carry on its business;

10.2.5 the financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy;

10.2.6 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller;

10.2.7 the Seller does not pay any money due from it to the Buyer; or

10.2.8 there is any breach of these Conditions by the Seller.

10.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

10.4 No concession or delay on the part of the Buyer shall be construed as a waiver of any rights and remedies.

10.5 The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving to the Seller notice in writing whereupon all work on the Contract shall be discontinued. The Seller shall pay fair and reasonable compensation for the work in progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss whatsoever.

## **11. Remedies**

Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with or the Seller fails to comply with any of the terms of this Contract the Buyer shall be entitled to avail itself of any one or more of the following

remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

11.1 to rescind the Order;

11.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

11.3 at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

11.4 to refuse to accept any further deliveries of the Goods but without any liability to the Seller;

11.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and

11.6 to claim such damages as may have been sustained in consequence of the Seller's breaches of the Contract.

## **12. Health and Safety**

12.1 Any Goods supplied or installed under the Contract shall be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health and all Goods will be supplied with full instructions for their proper use maintenance and repair and with any necessary warning notices clearly displayed.

12.2 The Seller agrees before delivery to furnish the Buyer in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied whether in use or otherwise and thereafter information concerning any changes in such properties or ingredients. The Buyer will rely on the supply of such information from the Seller in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any other relevant legislation.

12.3 In respect of all goods supplied the Seller will maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Buyer, its customs, relevant British Standards, statutory and regulatory bodies.

12.4 It is the responsibility of the Seller to acquaint itself with the purposes for which the Goods supplied are to be used.

12.5 The Seller shall indemnify the Buyer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any breach of this Condition.

### **13. Assignment**

13.1 This Contract is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or subcontract any of its obligations under the Contract.

13.2 The Buyer may assign the Contract or any part thereof to any person, firm or company.

### **14. Force Majeure**

14.1 The Buyer reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business through any circumstances beyond its reasonable control.

14.2 Without prejudice to the generality of condition 14.1 the following shall be included as causes beyond the Buyer's or Seller's reasonable control:

14.2.1 governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition;

14.2.2 Act of God, fire, explosion, flood, epidemic or accident;

14.2.3 import or export regulations or embargoes;

14.2.4 labour disputes not including the work-force of the Seller;

14.2.5 inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour; or

14.2.6 a power failure or breakdown of machinery.

### **15. Notices**

15.1 Any notice given under or pursuant to the Order may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission or other means of telecommunications resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the face hereof, or to such other address as the party may by notice to the other have substituted, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

## **16. General**

16.1 Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.

16.2 Any provision of the Contract which is held by a competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.

16.3 Failure of the Buyer to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

16.4 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

16.5 The formation, construction, performance, validity and all aspects of the Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English courts.