

CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions:

"Buyer"	means the person or firm who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;
"Conditions"	means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
"Contract"	means the contract for the purchase and sale of the Goods incorporating any quote, order (as provided in Condition 2) and these Conditions, together with the E-Commerce Terms where orders are placed online via the Seller's website;
"E-Commerce Terms"	means the terms and conditions that apply to sales of Goods, in addition to these Conditions, when orders are placed via the Seller's website;
"Goods"	means the goods or services (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions;
"Incoterms"	means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail;
"Intellectual Property Rights"	means patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright, know-how, confidential information, trade secrets, trade or business names and any other similar protected rights in any country;
"Seller"	means Weidmuller Limited (registered in England under number 641676) or any of its subsidiaries with whom the Buyer enters into or proposes to enter into a Contract;
"writing or written"	includes facsimile transmission and comparable means of communication but excludes electronic mail (unless otherwise specified).

1.2 In these Conditions words importing the singular number shall include the plural and vice versa, words importing any gender shall include all other genders, words importing persons shall include bodies corporate, unincorporated associations and partnerships and vice versa and references to the whole shall include the part and vice versa.

2. BASIS OF THE SALE

2.1 These Conditions apply to the supply of all Goods by the Seller and are the only standard terms on which the Goods may be sold, offered or provided. Any attempt by the Buyer to use its own terms and conditions of purchase shall be void. If the Buyer is placing an order for the

purchase of Goods via the Seller's website, then the E-Commerce Terms shall apply in addition to these Conditions.

- 2.2 Each quote from the Seller to the Buyer shall not constitute an offer but shall be deemed an invitation to treat for the Buyer to purchase the Goods subject to these Conditions. Each acceptance of a quote by the Buyer from the Seller shall be deemed an offer by the Buyer to purchase the Goods subject to these Conditions.
- 2.3 A quote shall only be valid for a period of 30 calendar days from the date of issue.
- 2.4 No order in response to a quote by the Buyer or an order placed by the Buyer in any other circumstances shall be deemed to be accepted by the Seller until a written acceptance of the quote or order is issued by the Seller or (if earlier) the Seller commences to fulfil the quote or order in whole or in part. The Seller shall not be obliged to accept a quote or order, and shall not be obliged to give any reason for any such refusal.
- 2.5 Unless otherwise agreed in writing these Conditions shall prevail over any inconsistent terms implied by law or by trade custom, practice or course of dealing and any such inconsistent terms are hereby expressly excluded.
- 2.6 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 Seller which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising used by the Seller and any descriptions or illustrations confirmed in the Seller's catalogues or brochures are used or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the contract or any other contract between the Seller and the Buyer for the sale of the Goods.
- 2.7 No variation of these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller. At the request of either party the other party will verify whether any named individual has the requisite authority.
- 2.8 The Seller's employees or agents are not authorised to make any representations concerning the Goods including but without prejudice to the generality of the foregoing the fitness of the Goods for a particular purpose of the Buyer or their compatibility with any other products unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.9 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.10 It shall be the Buyer's responsibility to ensure that the Goods are suitable for their proposed use and correspond and conform with the requirements of any statute or regulation from time to time in force and affecting the manner in which the Buyer carries on its business or uses the Goods or with practices carried on by prudent persons carrying on the same or similar business as the Buyer.
- 2.11 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability or obligation on the part of the Seller.

3. ORDERS AND SPECIFICATIONS

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

- 3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.3 Minimum pack quantities for the Goods are set out in the Seller's price lists and certain items may only be ordered in minimum quantities for prices advertised.
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any Intellectual Property Rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Seller may be cancelled, or modified, by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation or modification.
- 4. PRICE OF THE GOODS**
- 4.1 The price of the Goods shall be the price prevailing for the Goods as listed in the Seller's price list current at the date of delivery of the Goods or in the case of delivery of the Goods by instalment, current at the date of delivery of each instalment unless specifically agreed in writing by the Seller and the Buyer at the date of acceptance of the Buyer's order or at the date of acceptance of the Seller's quote for the Goods that the price of the Goods shall be a fixed price.
- 4.2 Where the price for the Goods has been agreed to be a fixed price in accordance with Condition 4.1 the Seller reserves the right by giving notice to the Buyer at any time up to delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in the delivery dates or address, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise agreed in writing between the Seller and the Buyer or under Condition 4.4 the price of the Goods includes packaging only. The Buyer shall pay all costs and expenses associated with any deliveries that the Seller agrees in writing to make other than delivery of the Goods EXW (as defined by Incoterms). All export prices are exclusive of any documentation charges, translation costs, the cost of packaging, transport, custom certification and insurance. Any additional export specific Buyer requirements will be specified and quoted in the Seller's quote as accepted by the Buyer or in the Buyer's order as accepted by the Seller in accordance with these Conditions.
- 4.4 If the Seller agrees to package or deliver the Goods otherwise than in accordance with the Seller's usual form of packaging or delivery EXW, the Buyer shall be liable to pay the Seller additional charges for such packaging, delivery and insurance when it pays for the Goods.
- 4.5 The price is exclusive of any applicable Value Added Tax, any other charges, taxes and import and export duties, which the Buyer shall be additionally liable to pay to the Seller.

4.6 The Seller reserves the right to charge a small value order charge and/or not to apply its normal trade discounts and standard delivery conditions as set out in Condition 4.3 to any small value order.

5. TERMS OF PAYMENT

5.1 The Seller shall be entitled to invoice the Buyer for the price of the Goods and/or the Services (as the case may be) at any time prior, on or following delivery of the Goods and/or performance of the Services (as the case may be) in accordance with Condition 4, unless the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the full amount at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 Unless otherwise agreed in writing between the parties, the terms of payment shall be:

5.2.1 in the case of goods delivered in the United Kingdom, within 30 days from the last date of the month in which the Seller's invoice was issued, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer; or

5.2.2 in the case of export sales, in accordance with Condition 11.5 and 11.6 hereof.

5.3 The time of payment of the price shall be of the essence of any Contract between the Seller and the Buyer.

5.4 Payment of the price shall be in pounds sterling unless the Seller (at the Seller's discretion) specifies another currency on its invoice to the Buyer.

5.5 No payment shall be deemed to have been received until the Seller has received cleared funds. All payments to the Seller under the contract between the Seller and the Buyer shall become due immediately on its termination despite other provision.

5.6 Any claim by the Buyer that an invoice rendered by the Seller is in the incorrect amount or contains any other error must be notified to the Seller in writing within 7 days of the date of the invoice. If the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to claim that the invoice is incorrect or contains any error whatsoever. The parties shall negotiate in good faith to attempt to resolve the dispute promptly.

5.7 If the Buyer fails to make any payment on the due date then the whole of the balance of the price of the Goods then outstanding shall become due and payable forthwith and, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.7.1 cancel any Contract or suspend any further deliveries of Goods (whether in transit or ordered under any Contract) to the Buyer, refuse to accept any further orders for Goods or resell any Goods forming part of any Contract to any other person;

5.7.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

5.7.3 charge the Buyer interest (both before and after judgment) on the amount outstanding in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 (the "Act") at the rate of interest set out in the Act as specified from time to time;

5.7.4 charge the Buyer any costs incurred by the Seller in manufacturing costs in respect of items not yet supplied against the Buyer purchase order be these the full sales cost of goods held by the Seller or any supplier of the Seller to fulfil the Buyers purchase

order or any partial costs incurred as a result of the Supplier cancelling production of items on the Buyer purchase order;

- 5.7.5 make a storage charge for any undelivered Goods at its rates current from time to time;
 - 5.7.6 a general lien on all goods and property belonging to the Buyer and such lien shall be exercisable in respect of all sums lawfully due from the Buyer to the Seller; and the Seller shall be entitled on the expiration of 14 days' notice in writing to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.
- 5.8 No deduction shall be made by the Buyer in respect of any set-off or counterclaim howsoever arising.
- 5.9 The Seller shall not be obliged to accept or perform any order where the value of the order exceeds or in aggregate with other orders or existing indebtedness of the Buyer exceeds the Seller's assessed credit limit for the Buyer.

6. DELIVERY

- 6.1 The Seller shall deliver the Goods to the Buyer EXW (as defined by Incoterms). Accordingly the Buyer shall take delivery of the Goods within 14 days of the Seller's notification to the Buyer that the Goods are ready for collection from the location set out in the Seller's quote ("Delivery Location").
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 6.3 The Seller reserves the right at its sole discretion to deliver the Goods by instalments. Each instalment shall constitute a separate contract and may be invoiced separately. Any delay in delivery or failure in an instalment shall not entitle the Buyer to cancel any instalment.
- 6.4 The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.5 Delivery of the Goods shall be completed on completion of loading of the Goods at the Delivery Location.
- 6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery or within 14 days after notification under Conditions 6.1 and 6.3 (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs and expenses (including, without limitation, storage and insurance) of storage and risk in the Goods shall pass to the Buyer as the Goods will be deemed delivered; or
 - 6.6.2 treat the Contract as repudiated and terminate the Contract with immediate effect and sell the Goods at the best price readily obtainable and provided the Buyer has paid in full for the price of the Goods (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

If the Buyer has not paid the Seller shall charge the Buyer for all storage and related costs and expenses (including insurance).

- 6.7 Subject to Condition 8 or unless required to do so by any other of the Conditions the Buyer may not return the Goods or any part of the Goods to the Seller after delivery unless the Seller specifically agrees in writing to their return and in which case the Buyer shall be liable to pay the Seller a re-stocking charge.
- 6.8 The Buyer is responsible for checking the condition, quantity and specification of the Goods at the time of delivery. Any variations must be reported in writing to the Supplier immediately but no later than 24 hours from the date of the delivery note.

7. RISK AND TITLE

- 7.1 Risk in the Goods shall pass to the Buyer on delivery EXW (as defined in Incoterms).
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other sums then due to the Seller on any account.
- 7.3 Until title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and any third parties and properly stored, protected and insured against all risks for their full price from the date of delivery, not remove or obscure any identifying mark or packaging and identified as the Seller's property. If the Goods are incorporated or mixed with other products (the "New Goods") in such a way as the Goods are not a readily identifiable and removable part of the New Goods the Buyer shall store such New Goods in accordance with this sub-condition and title in such New Goods shall vest in the Seller. The Seller shall be entitled to enter the Buyer's premises during business hours upon reasonable notice to verify the Buyer's compliance with this sub-condition.
- 7.4 The Buyer shall be entitled to resell the Goods or the New Goods at the best price obtainable or use the Goods and the New Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods or the New Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer or third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.5 Upon any sale of the New Goods, then if the proceeds of sale exceed the price of the Goods or the balance of the price of the Goods due to the Seller from the Buyer, the Seller shall apply the balance of the proceeds of sale as follows:
- 7.5.1 first, reimbursing the Seller the cost and expense of the taking of possession and sale of the New Goods and any damages which the Seller has suffered as a result of any repudiation of the contract by the Buyer; and
- 7.5.2 secondly, paying any sums due and owing to the creditors of the Buyer in respect of other items used in connection with the manufacture of the New Goods where the property in such items has remained vested in such other creditor by reason of an effective reservation of title clause and the claims of such other creditor pursuant to such reservation of title clauses have been certified to the Seller by the Buyer or its liquidator, creditor or receiver by such other creditors.
- 7.6 Until title in the Goods or the New Goods passes to the Buyer (and provided the Goods or the New Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods or the New Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods or the New Goods are stored and repossess the Goods or the New Goods and to withhold delivery of any undelivered Goods and stop any Goods in transit.

7.7 On termination of any Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this Condition 7 shall remain in effect.

8. WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, incorrect application, failure to follow the Seller's instructions (whether oral or in writing), misuse alteration or repair of the Goods without the Seller's approval or use of the Goods with other incompatible products;

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or third party to the Seller;

8.2.5 the Seller shall not be liable for breach if the Buyer continues to use the Goods after providing any notice under Condition 8.4.

8.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the Buyer which is based on any defect in the quality, quantity or condition of the Goods or their failure to correspond with any specification shall (whether or not delivery is refused by the Buyer) be notified in writing to the Seller within 24 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified in writing to the Seller in accordance with these Conditions, the Seller shall be provided with the opportunity to inspect the Goods in order to seek to resolve any such notified defect. The Buyer shall not take any corrective action in relation to a defect in the Goods. If the Seller finds a fault or defect in the Goods that means that the Goods do not comply with their specification, then the Seller shall, at its option, be entitled to repair (where possible) or replace the Goods (or the defective part) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but this shall be the Buyer's sole remedy in relation to any breach of warranties in respect of the Goods and the Seller shall have no further liability to the Buyer. If the Seller does not find a fault or defect after any inspection, then any dispute between the parties relating to such default shall be referred to the dispute resolution procedure at

Clause 13.6. If the Seller requests the Buyer shall return, at the Seller's expense, the Goods or defective part to the Seller.

- 8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or failure to perform any of the Seller's obligations under the Contract where such delay or failure is due to any cause beyond the Seller's reasonable control and the Seller shall be entitled to a reasonable extension of time for performing such obligations. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, acts of terrorism, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery, material breach of contract or other default of the Seller's suppliers or sub-contractors.
- 8.8 The Buyer warrants that the Goods will be used by it and/or any of its immediate end-users in accordance with the relevant technical specifications (where available) as published on the Seller's website or provided in the Seller's catalogue for the Goods supplied by the Seller. The Buyer shall use all reasonable endeavours to ensure that all end-users are aware of and comply with the relevant technical specifications for the Goods. The Buyer also undertakes that the Goods will be installed by competent personnel of the Buyer or where installation is not by the Buyer the Buyer shall use all reasonable endeavours to ensure its immediate end-users and where possible any other end-users have the Goods installed by competent personnel or where applicable in accordance with the end-user's design specifications prepared by such competent personnel that are aware of the end user's application and installation requirements. The Seller shall have no liability to the Buyer and/or an end-user in respect of the use or installation of the Goods and/or combination of the Goods with any other goods.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:-

- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 breach of the terms implied Section 12 of the Sale of Goods Act 1979;
- 9.1.4 defective products under the Consumer Protection Act 1987; or
- 9.1.5 any matters in respect of which it would be unlawful for the Seller to exclude or restrict liability.

9.2 Subject to Condition 9.1:-

- 9.2.1 the Seller shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and
- 9.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, including losses caused by the Seller's deliberate personal repudiatory breach shall not exceed the price of the Goods.

10. INDEMNITY

10.1 The Seller shall indemnify the Buyer against any damages (including reasonable costs and expenses) that may be awarded against the Buyer in a court of competent jurisdiction to any third party in respect of any claim or action that the Goods infringe or that their use or resale infringes the Intellectual Property Rights of any third party subsisting in the United Kingdom of the said third party provided that:

- 10.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 10.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 10.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the written consent of the Seller (which shall not be unreasonably withheld);
- 10.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 10.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller, for all damages and costs (if any) awarded in favour of the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this Condition.

10.2 If any claim of whatsoever nature is made against the Seller by any other person as a result of any defect in the Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, incorrect application or use of the Goods, failure to follow the Seller's instructions (whether oral or in writing) or any statutory, regulatory or industry requirement or guideline, misuse, alteration or repair of the Goods without the Seller's approval or use of the Goods with other incompatible products, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with the claim. The Buyer shall indemnify the Seller against any claim by any third party that the Buyer's specifications, instructions, information or documents infringes the Intellectual Property Rights of such third party provided the Seller gives the Buyer prompt written notice of such claim, immediate and sole conduct of the defence or settlement of such claim and the Seller acts in accordance with the Buyer's reasonable instructions and gives the Buyer such assistance as it may reasonably require with such claim.

11. EXPORT TERMS

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

- 11.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 11.3 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered EXW.
- 11.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which occurs after shipment, or in respect of any damage during transit.
- 11.5 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller or, if the Seller has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of Barclays Bank PLC in England as may be specified in the bill of exchange.
- 11.6 The Buyer shall pay the price for the Goods in pounds sterling unless otherwise agreed in writing between the parties.

12. INTELLECTUAL PROPERTY

- 12.1 Unless otherwise agreed in writing with the Seller or its authorised representative the Seller shall retain the exclusive property and reserve the copyright in all documents supplied or produced to the Buyer in connection with the Contract and it shall be a condition of such supply or production that the contents of such documents or any part thereof shall not be communicated either directly or indirectly to any other person, firm or company without the prior consent of the Seller in writing.
- 12.2 The Intellectual Property Rights in or relating to the Goods shall (subject to any existing rights of any third party in any design or invention incorporated or used in the design of the Goods) remain exclusively the property of the Seller and neither the Buyer nor any employee, agent, contractor or other person authorised by the Buyer shall at any time make any unauthorised use thereof.

13. GENERAL

- 13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and may be given either personally, by first class post or facsimile transmission, addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Where given by first class post such notice will be deemed to have been served 48 hours after posting and proof that the envelope containing the notice was properly addressed and sent prepaid shall be sufficient evidence of service. Notice given in person shall be deemed to be served immediately. Notice given by facsimile shall be deemed to be served on a working day at the time of transmission if sent prior to 4.00 p.m. (British standard time or summer time as applicable), if after 4.00 p.m. (British standard time or summer time as applicable) on the next working day.
- 13.2 Neither this Contract nor any details thereof nor the Buyer's or Seller's name shall be used by the other party for advertisement, publicity, or otherwise without the other party's prior written consent.
- 13.3 All information, specifications and Intellectual Property Rights including drawings, designs and other data supplied by either party to the other (the "receiving party") in the course of the performance of the Contract shall be treated in confidence by the receiving party and shall not be disclosed to any third party nor shall it be used or copied for any purpose other than for the performance of the Contract without the disclosing party's prior written agreement. The

receiving party shall return all Specifications, drawings, designs and other data and information supplied upon completion and/or earlier termination of the Contract and/or these Conditions.

- 13.4 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.5 If any provision of these Conditions is held by any competent authority to be illegal, void, voidable, unreasonable, invalid or unenforceable in whole or in part, it shall to the extent such illegality, voidness, voidability, unreasonableness, invalidity or unenforceability be deemed severable and the remaining provisions of these Conditions and /or any Contract and the provision in question shall continue in full force and effect.
- 13.6 Dispute Resolution Procedure:
- 13.6.1 Subject as may be provided elsewhere in these Conditions, all disputes, differences or questions arising in relation to these Conditions shall be referred in the first instance to the Managing Director of the Buyer and the Managing Director of the Seller, who shall meet together and attempt to settle the dispute between themselves (acting in good faith) within two (2) calendar months.
- 13.6.2 If the Managing Directors fail to resolve the matter within two (2) calendar months, then either party may refer the dispute to an appropriate court or tribunal, or may (at its discretion) opt for mediation (in which case such an election shall bind the other party until a conclusion is made or the mediator rejects the case).
- 13.6.3 Any reference to mediation shall be made in accordance with the procedures of the Centre for Effective Dispute Resolution (CEDR). The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within fourteen (14) days after the date of the request that the dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on the application of either party. The mediation shall be conducted in English at the offices of CEDR in London. Mediation is without prejudice to the rights of the parties to the injunctive relief or to the rights of the parties in any future proceedings.
- 13.7 The Contract and any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and the Buyer and the Seller hereby irrevocably submit to the exclusive jurisdiction of the English Courts for the settlement of all disputes or claims which may arise out of or in connection with the Contract.
- 13.8 The Buyer shall not be entitled to assign or otherwise transfer the Contract or any of its rights or obligations thereunder without the prior consent in writing of the Seller.
- 13.9 The Seller will make searches of the Buyers details with Credit Reference and Fraud Protection Agencies when the Seller considers the Buyers application for credit and when updating the Buyers existing information. The Seller will also provide details of any searches made on the Buyer and how the Buyer manages their Account to the Sellers credit insurers if such credit insurer requests such information in writing.
- 13.10 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.11 Save where expressly stated in these Conditions, the parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.12 Except as expressly provided otherwise, no remedy under these Conditions shall be exclusive of any other remedy and all remedies shall be cumulative.

Revised March 2011