

## ESSCO CONTROLS LIMITED BUSINESS TO BUSINESS STANDARD TERMS AND CONDITIONS

### 1. Interpretation

1.1 In addition to the terms defined in these Terms, in these Terms the following words have the following meanings:

**Available Products:** means the Energy Products, the Hydronics Products, the OEM Products and the Valve Products.

**Cancellation Charge:** as set out in the Quotation.

**Cancellation Date:** the date of receipt of notice to cancel the Contract by the Customer under condition 4.1 or by the Supplier under condition 4.2 (as the case may be).

**Claims:** all liabilities, claims, actions and proceedings, losses, damages, expenses and costs (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and all other legal and other professional costs and expenses).

**Contract** means the agreement between the Supplier and the Customer for the supply of the Products and the Services (as the case may be) set out in the Quotation in accordance with these Terms.

**Customer** the Customer set out in the Quotation.

**Customer Cancellation Policy:** the following obligations:

- a) the Supplier shall reimburse the Customer for the Deposit;
- b) the Customer shall pay the Cancellation Charge within 15 days of the Cancellation Date and

otherwise in accordance with the Standard Payment Terms;

**Customer Default:** any act or omission by the Customer or failure by the Customer to perform any relevant obligation in the Contract.

**Customer Obligations:** each of the following:

- a) co-operating with the Supplier in all matters relating to the Products and the Services;
- b) providing the Supplier and its Staff with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Products and the Services;
- c) providing the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Products and the Services, and ensuring that such information is and remains complete and accurate in all material respects;
- d) to the extent necessary, preparing the Customer's premises for supply of the Services;
- e) obtaining and maintaining all necessary licences, permissions and consents which may be required for the Products and the Services before the Contract Date;
- f) complying with all applicable laws and regulatory requirements

in relation to the Products and the Services;

- g) complying with any additional obligations as set out in the applicable Specification;
- h) making such arrangements with third parties to the satisfaction of the Supplier for the installation, configuration and maintenance of the Products as may be required in the Quotation or in any Documents or as may be notified in writing by the Supplier prior to the Quotation.

**Defect in the Products:** any defect in the Products which causes the Supplier to be in breach of the warranties it gives in clauses 8.5 and/or 8.5e) of the Contract.

**Delivery Address:** the address agreed between the parties to which delivery of the Products shall be made (whether in one or more instalments).

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Delivery Date** in relation to any Products means the date (if any) agreed between the parties for the delivery of those Products.

**Delivery Long Stop Date:** the long stop date by which the Products must be delivered stated in the Quotation or otherwise agreed in writing between the Supplier and the Customer or, in default of

either, 20 Business Days following the Delivery Date;

**Delivery Timescales:** those delivery timescales set out in the Quotation (if any).

**Deposit:** any agreed payment in advance or on account of Fees required by the Supplier.

**Documents** any brochures, catalogues, materials or other documents supplied by the Supplier with or in relation to the Products and/or the Services.

**Energy Products:** those products identified by the Supplier as products within the 'Energy' section of the Website.

**Excluded Losses:** the following types of loss and damage in each case whether direct, indirect or consequential: loss of profits; loss of business; loss of contracts or agreements; loss of revenue; loss of anticipated savings; loss of opportunity; loss of, or damage to, goodwill; pure economic loss; or any other indirect or consequential losses, damage, costs, charges, expenses, penalties or interest howsoever arising under this Agreement.

**Extended Warranty Fee:** has the meaning given to it in the Extended Warranty Terms.

**Extended Warranty Terms:** the Supplier's terms and conditions governing supply of its extended warranty in respect of the Products, as may be amended by the Supplier from time to time.

**Fees:** the fees for supply of the Products and the Services payable by the Customer pursuant to these Terms.

**Force Majeure Event:** events, circumstances or causes beyond a party's reasonable control including without limitation acts of God, fires, riots, civil

commotion, trade embargos and epidemics or pandemics.

**Hydronics Products:** those products identified by the Supplier within the 'Hydronics' section of the Website.

**Indemnify:** indemnify and keep fully and effectively indemnified.

**Insolvency Events:** any of the following events affecting a party:

- a) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or entering into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
- b) it applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the party other than for the sole purpose of a scheme for a solvent amalgamation of the party with one or more other companies or the solvent reconstruction of the party;
- d) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the party's assets and

such attachment or process is not discharged within 14 days;

- e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the party;
- f) any event occurs, or proceeding is taken, with respect to the party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs a) – e) above (inclusive); or
- g) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**Inspection:** reasonable inspection of the Products and, to the extent any of the Products are sold by sample, reasonable comparison of the Products with such sample, to ensure they do not contain any Defects, are in good working order, complete and fit in every way for the purpose for which they are intended to be used by the Customer, and **Inspect** shall be interpreted accordingly.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, rights in computer software, trade marks and service marks, business names and domain names, rights in get-up and trade dress goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual

property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Losses:** costs, expenses, damages, losses (including without limitation any direct, indirect or consequential losses, loss of profit, loss of reputation) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses.

**Order:** the Customer's written acceptance of the Quotation in accordance therewith.

**Order Limit:** as set out in the Quotation.

**OEM Products** those products identified by the Supplier as products within the 'OEM' section of the Website.

**Personal Data:** as defined in the Data Protection Legislation.

**Products:** those of the Available Products set out in the Quotation to be supplied by the Supplier to the Customer pursuant to the Contract.

**Prices:** the prices payable by the Customer set out in the Quotation for the Products and Services.

**Quotation:** the Supplier's quotation setting out the Products and/or Services it is prepared to supply to the Customer pursuant to these Terms and the Order Limit (if any), Delivery Longstop Date (if any), Delivery Timescales (if any) and Cancellation Charge (if any).

**Price Increase Reasons:** any of the following:

- a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b) any request by the Customer to change the Delivery Date(s), quantities or types of Products ordered, the scope of the Services, or the Specification; or
- c) any delay caused by any acts or omissions of the Customer or its Staff or any instructions of the Customer or failure of the Customer or its Staff to give the Supplier adequate or accurate information or instructions.

**Services:** those Services selected by the Customer as set out in the Quotation.

**Specification:** any specification for the Products and the Services (as the case may be), including any related plans and drawings supplied by the Customer.

**Staff** unless the context indicates to the contrary, in relation to a party, its officers, directors, employees, agents, consultants and third-party contractors.

**Standard Payment Terms:** payment by the Customer of the Supplier's invoice in full and cleared funds by electronic bank transfer to the Supplier's account nominated in writing within 30 days of the date of such invoice.

**Supplier:** Essco Controls Limited trading as Essco Group incorporated and registered in

England and Wales with company number 06166936 whose registered office address is 2 Chawley Park, Cumnor Hill, Oxford, England, OX2 9GG.

**Supplier Cancellation Policy:** the following provisions to the extent they are applicable:

- a) the Supplier shall be under no obligation to reimburse the Deposit or any part thereof to the Customer;
- b) the Customer shall pay the Cancellation Charge within 15 days of the Cancellation Date and otherwise in accordance with the Standard Payment Terms.

**Supplier's fault:** fault for which the Supplier is liable (or would be liable but for the Contract), including such fault of the Supplier's Staff.

**Supplier's negligence:** negligence for which the Supplier is liable (or would be liable but for the Contract), including such negligence of the Supplier's Staff.

**Terms:** these terms and conditions as may be amended by the Supplier from time to time.

**Valve Products:** those products identified by the Supplier as products within the 'Valve' section of the Website.

**Website:** the Supplier's website accessible via [http:// www.esscogroup.co.uk](http://www.esscogroup.co.uk) or such other URL notified to the Customer by the Supplier from time to time.

- 1.2 A reference to a statute or statutory provision is a reference to such statute or provisions as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made

under that statute or statutory provision, as amended or re-enacted.

- 1.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 A reference to **writing** or **written** includes emails but not fax.
- 1.5 Unless the context otherwise requires, words in the plural shall include the singular and words in the singular shall include the plural.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.8 In the event of any ambiguity or inconsistency between the provisions of these Terms and the Quotation, the provisions of these Terms shall prevail.

## 2. Basis of Contract

- 2.1 The Quotation is not an offer and may be withdrawn by the Supplier at any time. The Quotation is valid for a period of 30 days from its date of issue or the date of withdrawal by the Supplier (if earlier).
- 2.2 The Order constitutes an offer from the Customer to the Supplier. The Order shall be deemed to be accepted when the Customer receives the Supplier's written acceptance of the Order at which point and on which date the Contract shall come into existence (**Contract Date**).

2.3 The Contract will be on these Terms to the exclusion of any other terms of business. No terms endorsed upon, delivered with, or contained in any Customer's document (including any purchase orders or Specification) will form part of the Contract.

2.4 All of these Terms shall apply to the supply of both Products and Services except where application to one or the other is specified.

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 Products and/or the Services referred to in them. They shall not form part of the Contract nor have any contractual force. The Customer shall ensure that the terms of the Quotation any applicable Specification are complete and accurate in all material respects.

### **3. Prices**

3.1 The Prices are as set out in the Quotation.

3.2 The Supplier may, by giving notice to the Customer no later than 7 Business Days before Delivery, increase any or all of the Prices of the Products and/or the Services to reflect any increase in the cost of the Products and/ or the Services that is due to one or more Price Increase Reasons.

3.3 The Customer shall, when it is due to pay the Prices pay in addition the Supplier's charges for transport (unless the Customer uses its own carrier), packaging and insurance and value added tax or any other applicable tax or duty.

### **4. Cancellation**

4.1 The Customer may cancel the Contract:

a) no later than 10 Business Days before the Delivery Date, or if there is no Delivery Date, no later than 20 Business Days before the Delivery Long Stop Date provided the Order does not exceed the Order Limit and/or contain Energy Products and/or OEM Products; or

b) no later than 8 weeks before the Delivery Date or if there is no Long Stop Delivery Date, 10 weeks before the Long Stop Delivery Date if the Order is equal to or exceeds the Order Limit and/or contains Energy Products and/or OEM Products.

in each case by notifying the Supplier to that effect. In the event of such cancellation the Customer Cancellation Policy shall apply.

4.2 Without prejudice to its other rights or remedies, if the Customer fails to remedy any Customer Default within a period of 2 Business Days of it arising, the Supplier may cancel the Contract by notifying the Customer to that effect and in such event the Supplier Cancellation Policy shall apply. A failure by the Supplier serve such notice immediately after expiry of such 2 Business Day period shall not constitute nor be deemed to constitute a waiver of its right to cancel the Contract under this condition 4.2.

4.3 In the event of cancellation of the Contract under condition 4.1 or condition 4.2, the Contract shall automatically terminate on the Cancellation Date.

4.4 Where delay in delivery of any Products exceeds the Delivery Long Stop Date and provided the delay is not caused by a Customer Default, the Customer may terminate the Contract with immediate

effect by giving notice to the Supplier without thereby incurring any liability to the Supplier and the Supplier shall refund the Deposit within 10 Business Days of the date of termination.

## **5. Customer Payments**

- 5.1 The Deposit amount shall be the amount specified in the Quotation for supply of the Products and the Services, or, if there is no such amount specified, the amount agreed by Customer and the Supplier before or within 2 Business Days of the Contract Date or if they fail to reach such agreement, an amount equal to 20% of the Fees.
- 5.2 The Customer shall pay the Deposit within the later of 5 Business Days of the Contract Date or the date of agreement of the Deposit amount.
- 5.3 The Supplier shall be under no obligation to perform any of its obligations in relation to supply of the Products and the Services until it has received payment of the Deposit in full in cleared funds.
- 5.4 On or before the Contract Date the Customer shall provide valid and up-to-date contact and billing details and the Supplier shall provide details of the bank account to which payment of the Deposit and Fees shall be made.
- 5.5 The Supplier may invoice the Customer and other charges at any time after delivery is completed, and the Customer shall pay such invoice in accordance with the Standard Payment Terms. Time shall be of the essence for payment of the Fees.
- 5.6 The Customer shall make all payments due under the Contract without any deduction, whether by way of abatement, set-off, counterclaim or otherwise.

- 5.7 The Supplier may apply any payment made by the Customer to the Supplier to such of the Products or Services as the Supplier thinks fit in the absence of express direction by the Customer.
- 5.8 If the Customer fails to make payment due to the Supplier under the Contract by the applicable due date, the Supplier may (without prejudice to its other rights and remedies):
- a) charge the Customer interest, such interest accruing daily both before and after judgment on the amount unpaid at the annual rate of 8% above the Bank of England's base rate from time to time or 8% during any period such base rate is below or equal to 0%, until payment is received in full whether before or after judgment; and
  - b) on giving the Customer not less than 5 Business Days' notice, suspend supply of the Products and/or the Services at no liability to the Supplier until payment is received in full.
- 5.9 All amounts payable under the Contract:
- a) shall be payable in pound sterling;
  - b) are exclusive of value added tax (or any other applicable replacement tax) which shall be added to the Supplier's invoices at the applicable rate; and
  - c) subject to condition 15 and condition 4 are non-cancellable and non-refundable.

## **6. Supply of the Services**

- 6.1 To the extent the Services are set out in a Specification, the Supplier shall supply the Services in accordance with such Specification in all material respects.
- 6.2 The Supplier warrants to the Customer that it shall supply the Services using reasonable care and skill.
- 6.3 The Supplier shall use all reasonable endeavours to meet any date(s) set for performance of the Services but any such date(s) shall be estimates only and time shall not be of the essence for supply of the Services.
- 6.4 The Supplier reserves the right to amend the Services to the extent necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

## **7. Customer's obligations**

- 7.1 Without prejudice to its other obligations set out in these Terms, the Customer shall perform the Customer Obligations.
- 7.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by a Customer Default:
  - a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend supply of the Services and the Products until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any such obligations; and

- b) the Customer shall reimburse the Supplier on written demand for any costs, expenses, charges or losses (including penalties and interest) sustained or incurred by the Supplier arising directly or indirectly from the Customer Default

## **8. The Products**

- 8.1 The description of the Products (if any) is as set out in the Quotation but is always subject to any technical and use limitations and restrictions specified in the Supplier's catalogue or data sheets (if any).
- 8.2 The Supplier reserves the right to make any changes to the Specification, design, materials or finish of the Products which are required to conform with any applicable safety or legal requirements without being in breach of Contract or incurring any liability to the Customer.
- 8.3 Any variation of the Products from any Specification, design, materials or finish which does not adversely affect the suitability of the Products for any particular purpose for which they are supplied to the Customer will not constitute a breach of Contract or impose any liability upon the Supplier.
- 8.4 The Supplier shall use reasonable endeavours to pass on to the Customer the benefit of any warranties of any Products given by the manufacturer thereof.
- 8.5 Without prejudice to condition 8.4 and subject to the other provisions of these Terms the Supplier warrants to the Customer that the Products will, for a period of 24 months from completion (or deemed completion) of delivery the Products (as the case may be):



- a) conform substantially with their description and any applicable Specification;
- b) be free from material defects in design and workmanship;
- c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- d) be fit for the purpose (if any) held out by the Supplier; and
- e) to the extent any Products are sold by sample, that the bulk of such Products will correspond in quality with any relevant sample. To the extent that the Products are not of satisfactory quality the Supplier will not be liable to the Customer in respect of any deviation in quality unless more than 3% of the Products do not correspond in quality with any relevant sample.

## 9. Extended Warranty

- 9.1 The Customer may purchase an Extended Warranty before or on the Contract Date by written request to the Customer to that effect (**Extended Warranty Request**).
- 9.2 The Supplier shall confirm acceptance of the Extended Warranty Request on or around receipt thereof and thereafter shall invoice the Customer for the Extended Warranty Fee. The Customer shall pay such invoice within 28 days of the date of receipt thereof.
- 9.3 Without prejudice to the foregoing, the Customer shall be entitled to a reasonable extension of time to pay the invoice issued pursuant to condition 9.2 if the Supplier delays in confirming acceptance of the Extended Warranty Request.

9.4 If the Customer purchases an Extended Warranty in accordance with the foregoing provisions of this condition 9, then the Extended Warranty Terms shall apply in addition and without prejudice to the provisions of these Terms.

9.5 In the event of any ambiguity or inconsistency between the provisions of the Extended Warranty Terms and the provisions of the Contract, the provisions of the Extended Warranty Terms shall prevail.

## 10. Delivery of the Products

10.1 Any and all Delivery Timescales and Delivery Dates are approximate only and time shall not be of the essence for delivery of the Products.

10.2 If requested by the Supplier in the Quotation or otherwise, the parties shall agree a schedule specifying Delivery Dates for delivery of the Products (**Delivery Schedule**) not later than 2 weeks prior to dispatch of the Products (of the first instalment thereof if the Products are delivered in instalments).

10.3 Delivery of the Products shall be made during Normal Business Hours. The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's written request.

10.4 The Customer shall be responsible, at its sole cost and expense, for preparing the Delivery Address for delivery of the Products (in one or more instalments as the case may be) and for the provision of all necessary access and facilities reasonably required to deliver the Products. If the Supplier is prevented from carrying out delivery on the Delivery Date because no such preparation has been carried out, the Supplier may levy additional charges to

recover the Supplier's loss and expense arising from this event.

10.5 Delivery shall be completed once the Products are unloaded at the Delivery Address. Unloading of the Products shall be at the Customer's risk.

10.6 A representative of the Customer shall be present at the Delivery Address. On Delivery such representative shall Inspect the Products. The Customer shall accept delivery by notifying the Supplier to that effect within 2 Business Days of Inspection and without prejudice to the provisions of clauses 15.7 to 15.9 inclusive if the Customer fails to provide such notice within such 2 Business Day period it shall be deemed to have accepted delivery.

10.7 The Supplier shall ensure that each delivery of the Products is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Products, special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered. The quantity of any consignment of Products as recorded in any delivery note signed by or on behalf of the Customer will be conclusive evidence of the quantity delivered unless the Customer can provide conclusive evidence to the contrary.

10.8 If other than because of the Supplier's fault the Customer fails to take delivery of any of the Products when they are ready for delivery, or to provide any instructions, documents, licences or authorisations required to enable the Products to be delivered on time, then:

a) delivery the Products will be deemed to have been completed;

b) all risk in the Products will pass to the Customer (including risk of loss or damage caused by the Supplier's negligence)

c) the Supplier may (without prejudice to its other rights) sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the Prices; and

d) the Supplier may store or arrange for the storage of the Products until actual delivery or sale and charge the Customer for all related costs, charges and expenses (including insurance).

10.9 The Customer acknowledges and agrees that the Supplier shall not install the Products nor be responsible whatsoever for any installation thereof.

## **11. Intellectual Property Rights**

11.1 The Customer acknowledges and agrees that the Supplier or its licensors own all Intellectual Property Rights in connection with the Services, and in and to the Products, in any preparatory materials relating to the design and manufacture of the Products, and in any Documents, and that nothing in these Terms transfers ownership of or grants the Customer any rights in relation to such Intellectual Property Rights.

## **12. Data Protection**

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation while performing their obligations under the Contract.

12.2 Details of how the Supplier processes Personal Data in relation to the Customer is

set out in its privacy policy (as may be varied, amended or updated by the Supplier from time to time) on its Website.

### **13. Risk/Ownership**

13.1 Risk (including risk of loss or damage caused by the Supplier's negligence) in the Products shall pass to the Customer upon completion of delivery or deemed completion of delivery (as the case may be).

13.2 Ownership of the Products shall not pass to the Customer until the Supplier has received payment in full of all amounts from time to time outstanding and payable to the Supplier by the Customer. The Supplier is entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Supplier.

13.3 Until ownership of the Products has passed to the Customer, the Customer shall:

- a) hold the Products on a fiduciary basis as the Supplier's bailee;
- b) store the Products (at no cost or expense to the Supplier) separately from all other Products of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;
- c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
- d) maintain the Products in satisfactory condition and keep them insured on behalf of the Supplier and to the reasonable satisfaction of the Supplier (but at the Customer's expense) for their full price against all risks to and produce to the Supplier on

request the policy of insurance, the latest receipt evidencing payment of the premium, and any relevant schedule; and

- e) hold the proceeds of the insurance referred to in condition d) on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

13.4 The Customer shall not resell the Products before ownership has passed to it other than on the following conditions:

- a) any sale must be affected in the ordinary course of the Customer's business at full market value and the Customer shall account to the Supplier accordingly; and
- b) any such sale must be a sale of Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

13.5 Where the Supplier is unable to determine whether any items are the Products, the Customer will be deemed to have sold all items of the kind set out in the Quotation.

13.6 Until ownership of the Products has passed to the Customer, the Customer grants to the Supplier and its Staff an irrevocable licence enter any premises where the Products are or may be stored at any time in order to inspect them, or, where the Customer's right to possession has terminated, to recover them. Such license shall automatically expire on transfer of ownership of the Products from the Supplier to the Customer in accordance with these Terms or repossession of such Products by the Supplier (as the case may be). This

condition 13.6 shall survive termination of the Contract.

#### **14. Indemnities**

##### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

14.1 The Customer shall indemnify the Supplier against all Claims in connection with the Contract arising out of or in connection with any claim brought or threatened against the Supplier by any third party, except to the extent the Supplier is liable to the Customer under these Terms.

14.2 To the extent that any Products are to be manufactured in accordance with a Specification, the Customer shall indemnify the Supplier against all Claims suffered or incurred by the Supplier arising out of or 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 condition 14.2 shall survive termination of the Contract.

14.3 An indemnified party shall take reasonable steps to mitigate any Losses it claims under an indemnity in this condition 14. An indemnifier shall not be liable under an indemnity in this condition 9 to the extent such liability is caused by an indemnified party's negligence or the negligence of its Staff.

#### **15. Exclusions and Limitations of Liability**

##### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

15.1 Nothing in the Contract shall limit or exclude the liability of the Supplier for:

a) death or personal injury caused by its negligence;

b) fraud or fraudulent misrepresentation;

c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

d) any other liability which cannot be excluded or limited at law.

15.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979) are excluded from the Contract. Furthermore, other than as stated in these Terms, it is not a warranty, condition or other term of the Contract that either the Products or Services or any use or dealings therewith will not infringe any Intellectual Property Rights of any third party.

15.3 Notwithstanding any other provisions in this condition 15, the Supplier's total aggregate liability to the Customer whether in contract, tort (including negligence), breach of statutory duty, or otherwise in connection with its performance or anticipated performance of the Contract shall in no circumstances exceed the Fees.

15.4 The Supplier shall not be liable to the Customer in whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any:

a) Excluded Losses;

b) Losses suffered or incurred by the Customer arising from or in connection with any delay or failure of the Supplier to perform any of its obligations under the Contract where such failure or

delay is caused by a Customer Default.

- c) delay in supply of the Products or supply of the Services that is caused by a Force Majeure Event or Customer Default;
- d) Defect in the Products caused by any third party which the Supplier does not discover, and could not have discovered upon Inspection, before delivery to the Customer unless the defect is the inevitable result of negligent instructions issued by the Supplier.

15.5 The Supplier has given commitments as to compliance of the Products and Services with relevant standards in condition 6 (Services) and condition 8 (Products) In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3,4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

15.6 The Customer shall notify Supplier of any Defect in the Products within 2 Business Days of:

- a) (where the Defect would be reasonably apparent to the Customer upon Inspection) the date delivery is completed; or
- b) (where the Defect would not be reasonably apparent to the Customer upon Inspection) the date when the Customer knew or ought reasonably to have known of the applicable Defect in the Products.

15.7 The Supplier shall not be liable for any Defect in the Products if:

- a) the Defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, use or maintenance of the Products or (if there is none), good trade practice in the country where the Customer conducts the majority of its trading activity; or
- b) the Customer alters or repairs such Products without the prior written consent of the Supplier;
- c) the Defect arises from the Supplier adhering to any drawings, design, Specification or sample supplied or approved by the Customer;
- d) the Defect arises more than 24 months after the date of completion of delivery of the Products.

15.8 If the Customer makes a valid claim against the Supplier for a Defect in the Products the Customer acknowledges and agrees that its sole and exclusive remedy for such breach shall be for the Supplier to repair or replace such Products (or the defective part thereof) or reimburse the Customer for the Fees for such Products.

## 16. Termination

16.1 Without prejudice to any other rights or remedies of it, the Supplier may terminate the Contract with immediate effect on giving notice to the Customer if:

- a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 Business Days

after being notified in writing to make such payment;

- b) the Customer commits a material breach of any other term of these Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 5 days after being notified in writing to do so;
- c) the Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- d) the Customer is affected by an Insolvency Event.

16.2 Without prejudice to its other rights and remedies under the Contract or at law, the Supplier may terminate the Contract on giving the Customer as much reasonable notice as possible and in the circumstance if the Supplier is unable to supply the Products and/or the Services due to one or more of the Supplier's contracts with one or more third parties being terminated for whatever reason or expiring, and upon expiry of such notice period the Contract shall terminate.

16.3 Termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Customer or the Supplier accrued prior to termination.

16.4 Any provision of the Contract that expressly or by implication is intended to have effect after termination will continue in full force and effect.

16.5 On termination of the Contract howsoever arising:

- a) if any supply of the Products and/or the Services remains outstanding, the Supplier shall immediately cease such supply;
- b) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Products and/or Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- c) each party shall, at the other party's option, return or destroy all the other party's confidential (including all copies, reductions to writing or records thereof) information within its possession and/or control save to the extent it needs to retain such confidential information to comply with any applicable law or regulatory requirement.

## **17. Force Majeure**

17.1 Neither party will be liable to the other, nor be in breach of the Contract, because of any delay in performing or any failure to perform any of its obligations under the Contract if the delay or failure is due to a Force Majeure Event. In such circumstances the affected party will be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this Agreement by giving 3 days' written notice to the

affected party.

## 18. General

18.1 Confidentiality. Each party (**Receiving Party**) undertakes that it shall not at any time during the Contract and for a period of 5 years after termination of the Contract, disclose directly or indirectly any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, save that a Receiving Party is permitted to disclose any such confidential information to;

a) its employees, officers, representatives or advisers who need to know such information for the purposes of exercising that party's rights or carrying out its obligations under the Contract. A Receiving Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this condition 18.1 and shall be fully liable for the acts and omission of such employees, officers, representatives or advisers in relation to such confidential information as if they were the acts or omissions of that Receiving Party; or

b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority save that the Receiving Party shall give the other party as much prior notice of the disclosure as possible and shall comply with that other party's reasonable requests into the nature of such disclosure,

and a Receiving Party shall not use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

18.2 Notices. Any notice given to a party under or in connection with this Agreement will be in writing and will be sent by e-mail to the Supplier E-mail Address (in the case of notice given to the Supplier) or delivered by pre-paid first-class post at a party's registered office address given in the Quotation and/or the Contract.

Any notice given under the Contract will be deemed to have been received and shall take effect:

- a) if sent by pre-paid first-class post at 9.00 am on the second Business Day after posting; and
- b) if sent by email, at the time of transmission as shown on a readout obtained by the sender or, if this time falls outside Business Hours in the place of receipt, when business hours resume. In this condition b) **Business Hours** means 9.00am to 5.00pm each Business Day.

Condition 18.2 does not apply do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.3 Severance. Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) will 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 will not be affected.

18.4 Waiver. Failure by a party to enforce wholly or partially any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

18.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18.6 Assignment and other dealings. The Supplier may assign, license or delegate all or any or any parts of its rights and obligations under the Contract. The Contract is personal to the Customer, who may not assign, license or delegate all or any or any parts of its rights or obligations under the Contract without the Supplier's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

18.7 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18.8 Third party rights. No one other than a party to this Contract shall have any right to enforce any of its terms.

18.9 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, statements, assurances, warranties, representation, discussions and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of England and Wales.

18.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation