

Standard Terms and Conditions of Trade

Rotherham Engine Supplies Ltd

1. INTERPRETATION

1.1 In these conditions ("these Conditions") the following words shall have the following meanings:-

"the Company" means Rotherham Engine Supplies Limited, or any authorised sub-contractor;

"Contract" means any contract between the Company and the Purchaser for the sale and purchase of the Goods and/or the Services incorporating these Conditions;

"Insolvency Event" means if any distress or execution shall be levied on any of the Purchaser's goods or if the Purchaser offers to enter into any voluntary arrangement, deed of arrangement, scheme of arrangement or composition with its creditors or if any trustee in bankruptcy is appointed in respect of the Purchaser or the Purchaser is unable to pay its debts as they fall due or if being a limited company any resolution or a provisional liquidator is appointed for winding up the Purchaser (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or if an order for the appointment of an administrator is passed or if a receiver, administrator or manager shall be appointed over the whole or any part of the Purchaser's business or assets or if being a partnership if an administration order or winding up order is made against the Purchaser or if the Purchaser suffers any other insolvency event or if the Purchaser shall suffer any analogous proceedings under foreign law;

"the Goods" means any goods or services manufactured, sold or supplied by the Company to the Purchaser;

"the Purchaser" means any person or party, which has agreed to buy the Goods and/or Services from the Company;

"the Services" means any work, labour or services carried out by the Company for the Purchaser;

1.2 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.3 In these Conditions headings will not affect the construction of these Conditions.

1.4 This Contract shall be governed by the laws of England and Wales and construed as a Contract in England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

1.5 The Purchaser hereby acknowledges that in entering into this Contract it has not been induced by nor has it relied on any representation whether oral or in writing made by or on behalf of the Company.

2. TERMS AND CONDITIONS

2.1 All business is transacted and Contracts are deemed to be concluded upon these Conditions to the exclusion of all other terms and conditions, subject only to any written variation agreed by an authorised person of the Company. Any standard terms and conditions provided by the Purchaser or on any of the

Purchaser's documentation shall not apply and these Conditions supersede any other communication used whether oral or written in any order or acceptance by the Purchaser.

2.2 Contracts are deemed to be concluded when the Purchaser's offer to purchase the Goods and/or the Services is accepted by the Company, whether verbally or in writing.

2.3 Each order for Goods by the Purchaser from the Company shall be deemed to be an offer by the Purchaser to purchase Goods and/or Services and are subject to these Conditions.

3. SPECIAL ORDERS

3.1 Where the Purchaser orders Special Orders (being goods or quantities not normally stocked by the Company), the Company will not be obliged to accept them back for exchange or refund unless they are faulty.

3.2 In cases of alleged faulty special orders the Purchaser must follow the procedure set out at clause 11.

3.3 The Company reserves the right to require pre-payment when an order is placed or in advance of delivery.

4. PRICES

Prices are based on prices current at the time that the estimate, quotation or Contract is given or concluded as the case may be but the Company reserves the right to raise the price in the event of any increase in the Company's costs that may take place between the conclusion of the Contract and the date such Goods and/or Services are delivered.

5. VAT

All Goods sold by the Company may be subject to VAT, which will be charged at the applicable rate at the date of the invoice.

6. PAYMENT

6.1 Time for payment is of the essence of the Contract.

6.2 Unless the Purchaser has a credit account authorised by the Company, payment in full is required when the Goods are ready for delivery or the Services have been completed.

6.3 If the Purchaser has a credit account, payment in full is required no later than the end of the month following the date of the invoice relating to the Goods and/or Services supplied or such other date as agreed by the Company in writing.

6.4 If payment is in arrears the Company has the right to withhold any further deliveries of Goods and/or Services and/or to charge interest on all overdue balances, at the rate of 4% above the base rate of Barclays Bank from time to time and including the due date, but excluding the date of payment.

6.5 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

6.6 Any fees or charges, which may be incurred in the collection of overdue accounts, or bank charges associated with payment for the Goods and/or Services, will be chargeable to and payable by the Purchaser.

6.7 The Purchaser may not withhold or delay payment of any invoice or other amount due to the Company, or make any deduction by way of set off, counterclaim, discount, abatement or otherwise for any reason whatever.

6.8 All prices for Goods quoted are in sterling unless otherwise agreed. Conversion of prices into any other currency shall be calculated using the Bank of England exchange rate prevailing at the date of quotation or invoice as the Company shall determine.

6.9 No payment shall be deemed to be received until the Company has received cleared funds.

- 6.10 Where delivery of the Goods and/or Services is made by instalments the Company may invoice the Purchaser for each instalment separately.
- 6.11 If any sum is unpaid by the Purchaser 30 days after it has fallen due to the Company or such other date as agreed by the Company in writing, then all sums owing to the Company by the Purchaser will immediately become due and payable.
- 6.12 If the Purchaser is in breach of any of its obligations under this Contract all sums owing to the Company by the Purchaser will immediately become due and payable.
- 7. DELIVERY**
- 7.1 Goods delivered on the company's own vehicles are delivered free of charge unless agreed otherwise; goods delivered by external carrier are delivered free of charge if the value of the goods exceed the company's minimum order value; charges are made for premium deliveries by external carrier e.g. timed deliveries OR Saturday deliveries OR Highlands & Islands OR bulky deliveries, etc. Any such charges are the responsibility of the Purchaser. The Purchaser will be updated accordingly at the time an order is placed.
- 7.2 Unless otherwise agreed by the Company, delivery of the Goods shall take place at the Company's premises.
- 7.3 Where Goods are to be delivered other than at the Company's premises, the Company may effect delivery by whatever means the Company thinks most appropriate and such Goods shall be deemed to have been delivered at the time of unloading.
- 7.4 The Purchaser shall be responsible for all costs of delivery and if the Purchaser should fail to give all necessary instructions for delivery of the Goods or should otherwise cause or request delay in the delivery of the Goods the Purchaser shall in addition pay all storage and other costs incurred by the Company as a result.
- 7.5 Any increase in delivery charges incurred by the Company after the date the order is placed for the purchase of Goods by the Purchaser shall be charged to and be payable by the Purchaser.
- 7.6 Any date for despatch or delivery of the Goods specified by the Company (whether orally or in writing) is given as an estimate only and it is hereby expressly agreed that such date and time shall not be of the essence of the contract.
- 7.7 Notwithstanding that the Company may have delayed or failed to deliver the Goods (or any of them) promptly the Purchaser shall be bound to accept delivery and to pay for the Goods in full.
- 7.8 The Company shall not incur any liability whatsoever for any loss or damage resulting from delay in delivery however caused.
- 7.9 Unless otherwise stated in writing the Company shall be entitled to make partial delivery of the Goods or delivery of the Goods by instalment and these Conditions shall apply to each such partial delivery and the Company may demand payment of the Goods comprised in each such instalment as if the Goods were the subject of a separate contract between the Company and the Purchaser.
- 7.10 Where Services are to be supplied the Services shall be deemed to have been delivered at the time such Services are completed in accordance with the Contract.
- 7.11 If for any reason the Purchaser will not accept delivery of the Goods, or the Company is unable to deliver the Goods and/or Services at the time agreed because the Purchaser has not provided appropriate instructions, documents, licences or authorisations:
- 7.11.1 risk in the Goods shall pass to the Purchaser;
- 7.11.2 the Goods will be deemed to have been delivered and payment due; and

7.11.3 if Goods are delivered to the Purchaser for collection by the Purchaser and are not subsequently collected, within 14 days of delivery, the Company will restock the Goods then provide a credit or refund to the Purchaser minus a handling charge (charged at the discretion of the Company).

7.12 **It is the responsibility of the Purchaser to ensure that all Goods are examined by a competent person and deemed fit for purpose prior to fitment. Where measurements are present on any Goods they must be checked by item and not by label or packaging.**

8. LOSS OR DAMAGE IN TRANSIT

8.1 In the event of loss or damage in transit from any cause whatsoever (including causes which might be held to involve fundamental breach of contract) the liability of the Company shall be **limited (at the Company's option) to replacing or repairing the Goods or refunding the cost of the Goods so damaged.**

8.2 In no circumstances shall the Company be liable for consequential loss (which includes without limitation, loss of profits, loss of business, depletion of goodwill and like loss) arising from loss or damage in transit.

8.3 The Company shall not be liable for any such damage as is referred to above unless the Company and the carriers are notified of such damage or loss within 24 hours of delivery.

8.4 It is the responsibility of the Purchaser to examine the Goods immediately on receipt and the Purchaser shall be deemed to have done so.

8.5 The Purchaser's signature or signature on the Purchaser's behalf, on acceptance of delivery of the Goods shall be conclusive evidence that the Goods have been examined and accepted by the Purchaser.

9. PARTS

All manufacturers names, numbers, symbols and descriptions are used for reference purposes only and do not imply that any Goods and/or Services or part listed is the product of these manufacturers.

10. TITLE

10.1 All risk in Goods shall pass to the Purchaser on delivery.

10.2 Goods shall remain the property of the Company until the price for them has been paid in full, meaning cleared funds has been received by the Company and all other sums due to the Company in respect of the Contract.

10.3 Title shall pass from the Company to the Purchaser on full payment of the Goods and/or Services by the Purchaser.

10.4 Until such time as title in the Goods has passed to the Purchaser:-

10.4.1 the Goods shall remain the sole and absolute property of the Company as legal and equitable owner and the Purchaser shall hold the goods as the Company's bailee;

10.4.2 the Purchaser shall only be at liberty to sell the Goods or any product made from or with the Goods on the express condition that such agreement to sell shall be made by the Purchaser on its own behalf dealing as principal and any such sale shall be effected in the ordinary course of the Purchaser's business and at the full market value; and

10.4.3 the entire proceeds of selling, disposing or dealing the Goods shall belong to the Company and be paid to the Company forthwith to the extent that the said price for the Goods has not previously been paid and pending discharge of this obligation such monies shall be held by the Purchaser in the same fiduciary capacity in a separate account as trustee of the Company and without prejudicing the Company's trading rights.

10.5 The Company shall be entitled at any time to require the Purchaser to deliver the Goods to the Company and if the Purchaser fails to do so within the time required by the Company, the Company may forthwith enter any premises of the Purchaser or any third party where the Goods are stored and repossess the same making good any unreasonable damage caused by doing so;

- 10.6 The Company shall not be responsible for and the Purchaser will indemnify the Company against all liability in respect of damage caused to such of the Purchaser's vehicles or premises in such repossession and removal of the Company's Goods provided it was not reasonably practicable to avoid such damage;
- 10.7 The Company shall have a general lien over any Goods for any monies whatsoever due from the Purchaser to the Company and whether arising under contract to which these Conditions apply or not. If the lien is not satisfied within a reasonable time the Company may, at its absolute discretion, re-sell the Goods as agents for the Purchaser and apply the proceeds towards the monies due in expenses of the sale and in the discharge of the monies due to the Company and shall upon accounting to the Purchaser for the balance remaining (if any) be discharged from any liability whatsoever in respect of the Goods;
- 10.8 The Purchaser shall cease to be entitled to possession of the Goods if an Insolvency Event occurs in relation to the Purchaser;
- 10.9 The Purchaser shall not without the express written authority of the Company deal with the Goods in any way which might result in the Goods becoming fitted, incorporated in or mixed with other goods of the Purchaser or of a third party and such other goods shall be stored separately from the Goods which shall be clearly marked and identified as the Company's property.
- 11. WARRANTY**
- 11.1 Subject to the provisions of clause 7.2 to clause 7.12 The Company provides the Goods subject to the benefit of a twelve (12) month warranty from the date of delivery of the Goods. Warranty is in respect of faulty materials and for the benefit of the Purchaser, such warranties are none transferable.
- 11.2 The Goods shall:
- 11.2.1 conform in all material respects to any sample, their description and to the Specification in any order catalogue or website as the case may be;
 - 11.2.2 be free from material defects in design, material and workmanship;
 - 11.2.3 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - 11.2.4 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13; and
 - 11.2.5 be fit for purpose and any purpose held out by the Company and set out in the Order.
- 11.3 The Purchaser warrants that it has provided the Company with all relevant, full and accurate information as to the Purchaser's business and needs.
- 11.4 The Company shall, at its option, correct, repair, remedy, re-perform, exchange any Goods or refund the price of the faulty Goods in full, that do not comply with clause 11.2, provided that the Purchaser:
- 11.4.1 serves a written notice on Company not later than seven (7) Business Days from delivery or performance in the case of faults discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
 - 11.4.2 such notice specifies that some or all of the Goods do not comply with clause 11.2 and identifying in sufficient detail the nature and extent of the defects; and
- 11.5 gives the Company a reasonable opportunity to examine the claim of the faulty Goods.
- 11.6 The provisions of these Conditions shall apply to any Goods that are corrected, repaired, remedied or re-performed with effect from delivery or performance of the Services.
- 11.7 Except as set out in this clause 11:
- 11.7.1 the Company gives no warranty and makes no representations in relation to the Goods and/or Services; and
 - 11.7.2 shall have no liability for their failure to comply with the warranty in clause 11.1,

and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

11.8 The Company shall not be liable to provide a warranty as set out in clause 11.1 in any of the following circumstances:

- 11.8.1 the Purchaser makes any further use of such Goods after giving notice in accordance with clause 12.1;
- 11.8.2 the fault arises because the Purchaser failed to follow the manufacturer's and/or Company's oral or written instructions in respect of the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 11.8.3 the Purchaser misuses, improper application, installation or operation, alters, repairs, reassembles or modifies any supplied Goods whether repaired or reconditioned by the Company or its authorised sub-contractor including without limitation by welding or drilling machine without the Company's approval ('Unauthorised Work');
- 11.8.4 the fault arises as a result of fair wear and tear, reassembly, wilful or malicious damage, misuse, corrosion, negligence or abnormal storage or working conditions, tampering of the Goods, incorrect fitting of the Goods by the Purchaser and/or a third party, abnormal working conditions.

11.9 The Purchaser must ensure the Goods are used only for the purpose for which it was designed and correctly maintained during its working life. Any interference with the product will invalidate the warranty.

11.10 The Company aims to process all warranty claims within a thirty (30) day period. Please be aware that Goods subject to the warranty may be returned to the original manufacturer at the Company's discretion. If this happens, the Company cannot be held responsible for any delay in their processing of the item(s) and providing replacement Goods.

12. WARRANTY CLAIM

12.1 In order to initiate a warranty claim, the Purchaser must give notice to the Company either by telephone, email or fax within seven (7) days of discovering that some or all of the Goods are faulty and that they consider them subject to the warranty provided in clause 11.1.

12.2 Where the Purchaser notifies the Company of alleged faulty Goods and/or Services, the Company if it so requests must be given the opportunity to inspect the alleged faulty Goods. The Company will confirm to the Purchaser if the alleged faulty Goods are to be returned to the Company, at the expense of the Purchaser in the first instance, or be inspected at the location the Goods and/or Services were provided.

12.3 If the alleged faulty Goods are to be returned to the Company, the Purchaser must firstly complete the Company's warranty claim form that is sent to the Purchaser by email and return the same to the Company within seven (7) days of receipt of the claim form. It is the Purchaser's responsibility to ensure that all financial claims are added to the claim form. Documentation submitted at a later date cannot be considered as part of the claim.

12.4 Failure to complete all sections or failure to return the claim form to the Company may lead to a delay in processing the claim, or render any claim incomplete and null and void.

12.5 On receiving the completed claim form from the Purchaser in respect of allegedly faulty Goods, the Company will acknowledge receipt of the claim in writing.

12.6 The Purchaser shall return the allegedly faulty Goods to the Company within fourteen (14) days of notification of the claim to the Company. The Purchaser is responsible for carriage and Goods must be labelled to show the warranty claim reference number. If it is agreed that the allegedly faulty Goods are to be collected from the Purchaser by the Company's carrier, the Purchaser will receive a receipt from the carrier giving a consignment note number.

- 12.7 All Goods being returned should be clearly marked with the warranty claim reference number. The Goods must be well packaged to avoid damage or loss in transit, sent to the address listed above and clearly marked as a warranty return. The Company cannot be held liable for Goods lost or damaged in transit.
- 12.8 Warranty claims are deemed not to have been received by the Company unless and until the Purchaser has received a written acknowledgement, or receipt, confirming Goods have been received by the company.
- 12.9 As a requirement for a warranty claim, evidence must be provided by the Purchaser that installed parts have been fitted by trained staff in a professional workshop using the special tools intended for this purpose and in accordance with the installation and servicing regulations of the respective vehicle manufacturer. Installation instructions included with the product must be observed. If the installation does not meet the generally acknowledged latest technical standards, the guarantee shall not apply, regardless of the respective underlying causes.
- 12.10 Installed products must have undergone regular servicing and/or inspections as prescribed or recommended by the vehicle manufacturer. Evidence of this must be provided at the Company's request by means of corresponding documents.
- 12.11 In certain circumstances, at the discretion of the Company, the Company may request an inspection and report from an independent expert. The Company reserves the right to require payment by the Purchaser in advance of any such inspection. If the results of the expert report conclude that the warranty claim is successful the Company shall reimburse the cost of the expert report to the Purchaser.
- 12.12 If on receipt of a warranty claim the Company considers a report from an independent expert is necessary, the Purchaser is still liable to pay for the Goods pending inspection of the Goods and production of the independent expert's report.
- 12.13 The findings of the Company, the Company's supplier, or the independent expert (as appropriate) in respect of any warranty claim shall be final.
- 12.14 Photographic and test results records produced in the course of obtaining a report from an independent expert are kept by the Company - copies of these can be sent via e-mail upon request.
- 12.15 If the warranty claim is accepted or verified by the Company the Company will exercise their rights in accordance with clause 11.4. Where appropriate credit the Purchaser's account and/or reimburse any monies paid by the Purchaser in relation to the faulty Goods and, if appropriate, the cost of the expert's report.
- 12.16 Where alleged faulty Goods are inspected by the Company or an independent expert on behalf of the Company and the Company finds that the Goods are not faulty or that it is faulty due to Unauthorised Work, fair wear and tear, neglect, malicious damage, misuse, improper storage, corrosion, failure to follow the Company's instructions, or the instructions of the Company's authorised sub-contractor or any other reason by an act or omission of the Purchaser the Company reserves the right to make a charge to the Purchaser for labour. If payment of this charge is not made the Goods will be returned to the Purchaser by the Company in a disassembled condition (this applies usually to engines or gear boxes).
- 12.17 If the warranty claim is rejected by the Company the Purchaser will be notified and will be responsible for collecting the Goods from the Company. If such Goods are not collected by the Purchaser within thirty (30) days of the Company notifying the Purchaser of the warranty claim being rejected, the Goods will be destroyed.
- 12.18 The Company shall not be liable in any way whatsoever for any Goods destroyed in accordance with this clause.
- 12.19 Rejected claims will only be returned to the Purchaser if indicated that the Purchaser requires the part back on the warranty form. All unreturned parts will be destroyed.

Repairs and Replacements:

- 12.20 All repairs in respect of faulty Goods will be carried out by the Company or an authorised sub-contractor of the Company. In the event of repairs being undertaken by an authorised sub-contractor of the Company, a price for the authorised sub-contractor's work must be agreed in advance by the Company.
- 12.21 Any replacement parts required for such repairs will be supplied by the Company unless the Company agrees in advance that such parts may be supplied by a third party. In such case the Company will not be liable for any amount by which the cost of the parts supplied by a third party exceeds the Company's prices for such parts.
- 12.22 It should be noted that the Company recommends that the radiator should be replaced when an engine is fitted. It is the responsibility of the Purchaser to ensure that all ancillary parts and components are functioning correctly. The Company advises the Purchaser to pay particular attention to the viscous fan, radiator compressor and all the water lines and the Company does not accept any liability arising from the Purchaser's failure to follow the Company's advice.

Please note: Warranties will only be accepted when the cause of failure is due to a manufacturing defect.

- 12.23 **The terms of the warranty provided by the Company does not include labour charges for the removal of fittings or parts repaired or replaced under the warranty agreement or towing or recovery charges or the costs of carriage, customs and other duties, and these costs shall be the responsibility of the Purchaser.**
- 12.24 If any Goods are replaced or repaired under warranty, the replaced or repaired Goods will have the benefit of warranty for the balance of the warranty provided from the date of the original purchase of the Goods not from the date of the repair or replacement.
- 12.25 Except as provided in this clause 12, the Company shall have no liability to the Purchaser in respect of the Goods failure to comply with the warranty set out in clause 11.1:
 - 12.25.1 the terms implied by Sections 13 to 15 of the Sale of Goods Act 1979 are to the fullest extent permitted by law excluded from the Contract;
 - 12.25.2 these conditions will apply to any repaired or replacement Goods supplied by the Company.

13. EXTENT OF LIABILITY

- 13.1 Nothing in these conditions shall limit or exclude the Company's liability for:
 - 13.1.1 death or personal injury caused by its negligence or the negligence of its employees, agents of sub-contractors (as applicable);
 - 13.1.2 fraud or fraudulent misrepresentation;
 - 13.1.3 breach of the terms implied by Section 12 of the Sale of Goods Act 1979;
 - 13.1.4 defective products under the Consumer Protection Act 1987; or
 - 13.1.5 any matter in respect of which it will be unlawful for the Company to exclude or restrict liability.
- 13.2 Subject to clause 11.1:
 - 13.2.1 **the Company shall under no circumstances whatsoever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and**
 - 13.2.2 **the Company's total liability to the Purchaser 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, shall in no circumstances exceed the price of the Goods under the warranty claim.**

14. PURCHASER'S SPECIFICATION

- 14.1 Where the Company supplies Goods to the Purchaser's own design and/or instructions the Purchaser warrants that it has supplied the Company with sufficient and accurate information about its requirements to allow the Company to supply the Goods in accordance with these Conditions.
- 14.2 Where drawings, designs, specifications, part numbers, instructions or materials are to be supplied by the Purchaser or the Purchaser is to supply or do any other thing prior to delivery of the Goods the Purchaser shall supply or do the same as soon as practicable after the date the Contract is concluded and in any event in time to allow the performance of an order for the Goods within the period required by the Purchaser provided always that if the Purchaser should fail to supply or do the same as aforesaid then the Company shall be at liberty to cancel an order for the Goods or to charge interest to the Purchaser on the price of the Goods at the rate of 4% above base rate of Barclays Bank from time to time in force from the date of an order for the Goods until the date of the actual payment of the price of the Goods.
- 14.3 The Company shall have no liability for any loss or liability (howsoever arising) in whole or in part arising from the unsuitability, inaccuracy or inadequacy of the design, specification or instructions given by or on behalf of the Purchaser and the Purchaser shall bear all such costs.

15. EXCHANGE

- 15.1 The Purchaser may not withhold or delay payment in respect of any Goods which are returned to the Company for exchange, whether under the warranty set out within clause 11 of these Conditions or otherwise. Any such surcharge credit will be refunded to the Purchaser by the Company within a reasonable period after the Company has received the Goods returned.
- 15.2 Where Goods carry a surcharge value such shall be stipulated on the invoice for Goods purchased. In such instances it is the Purchaser's responsibility to ensure that they return the redundant Goods/ Old Core that have been replaced and are subject to a surcharge credit within one (1) years of receiving the replacement Goods purchased from the Company. Redundant Goods/Old Core returned after one (1) year will not qualify for surcharge credit.

16. RETURNED GOODS

- 16.1 Subject to clause 11 above, in the case of Goods which are not defective and which have been supplied in accordance with the Contract the Company will accept return of the Goods at the original invoice price or current price (whichever is the lower) provided that:
- 16.1.1 they are returned to the Company within seven (7) days of delivery; and
- 16.1.2 the Company is satisfied that the Goods at the time of such return have not been used and are in the same condition as when delivered to the Purchaser by the Company; and
- 16.1.3 the Goods have been returned in the same packaging as that in which the Company delivered them.
- 16.2 The costs of returning the Goods shall be the sole responsibility of the Purchaser and the Company reserves the right to charge a reasonable handling fee which shall be set off from any sums due to the Purchaser.
- 16.3 The Purchaser is not entitled to credit for any payments made in relation to the returned Goods unless and until the provisions of clause 12.1 regarding return of the Goods have been complied with.
- 16.4 Where the Purchaser has sold on (including export) Goods, it is the Purchaser's responsibility to check that the Goods are as ordered and fit for purpose prior to selling on and no such Goods are applicable for return.

17. INSURANCE

- 17.1 The Purchaser will be responsible for arranging insurance or extending their own insurance as appropriate to the full value of the Goods not paid in full and where the title has not passed under clause 10 above from the time that risk passes under clause 7.11 or clause 10 above.
- 17.2 The Purchaser shall indemnify the Company for and against any loss or damage to or destruction of any of the Goods or any loss or damage suffered by the Company where the title rests with the Company after risk in the Goods has passed to the Purchaser.
- 17.3 Any insurance monies received by the Purchaser in respect of the Goods shall be payable to the Company within thirty (30) days of the receipt of such monies by the Purchaser.

18. EXPORT CONTRACTS

Where the Goods are supplied for export from the United Kingdom the provisions of this clause 18 will apply (subject to any special terms agreed in writing between the Company and the Purchaser) notwithstanding any other provision of these Conditions.

- 18.1 Unless otherwise agreed in writing by the Company, the Goods shall be delivered Ex-works and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 18.2 In the case of an Ex-works transaction, risk in the Goods shall pass to the Purchaser when Goods are placed on board ship notwithstanding that title in the Goods may not have passed to the Purchaser.
- 18.3 The Purchaser shall be solely responsible for the payment of all import duties charges assessments and the obtaining of any necessary export and import licences in respect of the Goods and the Company shall be under no liability whatsoever in respect of the Goods exported without the necessary export licences.
- 18.4 Goods supplied for export from the United Kingdom are supplied in packaging suitable for road transportation only. If the Purchaser requires any other special packaging to be used, the Purchaser is responsible for informing the Company within a reasonable time before the Goods are ready for delivery and the Purchaser shall be liable for all costs in respect of any such special packaging requirements.

19. INTELLECTUAL PROPERTY

- 19.1 The specifications and designs of the Goods (including the copyright, design right or the intellectual property in them) shall as between the parties remain the exclusive property of the Company.
- 19.2 Where any designs or specifications have been supplied by the Purchaser for manufacture by or to the order of the Company then the Purchaser warrants that the use of those designs or specifications for the manufacture, processing, assembly, or supply of the Goods shall not infringe the rights of any third party.
- 19.3 The Purchaser will indemnify and keep indemnified the Company against any claim that the use of the designs or specifications supplied by the Purchaser contravenes any third party's intellectual property rights.
- 19.4 The Purchaser shall not without the Company's prior written consent allow any trade or service mark of the Company or other word or mark applied to the Goods to be obliterated, obscured or omitted and the Purchaser shall not use or apply any such word or mark without the Company's prior written consent.

20. TERMINATION

- 20.1 The Company is entitled to terminate the Contract forthwith and without giving prior notice to the Purchaser if the Purchaser is in breach of any of its obligations herein notwithstanding the fact that the Purchaser may have rectified the breach.
- 20.2 **The Company is entitled to terminate any trading account with a Purchaser for any reason whatsoever or for no reason at all on giving at least seven (7) days' notice in writing to the Purchaser.**
- 20.3 The right of the Company to terminate the Contract shall be without prejudice to all other rights of the Company under these Conditions which have accrued at the date of termination and in particular the

Company shall not incur any liability whatsoever to the Purchaser for any loss (whether consequential or otherwise) suffered by the Purchaser as a result of such termination.

20.4 Without prejudice to the generality of the foregoing, the termination shall not affect the right of the Company to full payment for the Goods.

20.5 The Purchaser has the right to terminate the Contract in instances of Force Majeure in accordance with clause 23.

21. PURCHASER'S INSOLVENCY

21.1 The Purchaser hereby acknowledges that before placing an order it has expressly represented and warranted to the Company that it is not insolvent and is not the subject of an Insolvency Event.

21.2 If the Purchaser is subject to an Insolvency Event then without prejudice to any other rights of the Company the Company shall be at liberty to terminate the Contract in accordance with clause 20 and may suspend further deliveries and cancel this and any other Contract between the Company and the Purchaser without any liability attaching to the Company in respect of such suspension, termination or cancellation.

22. INDEMNITY

22.1 The Purchaser agrees to indemnify and keep indemnified the Company against all loss, damage, actions, claims, expenses and costs whatsoever and however arising whether directly or indirectly out of or in connection with any breach, non-observance or non-performance by the Purchaser of any of its obligations under these Conditions.

22.2 The Purchaser shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Purchaser shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

23. FORCE MAJEURE

23.1 Whilst the Company intends to use all reasonable endeavours to perform each Contract promptly the Company may terminate, cancel, rescind and/or suspend for any period and/or reduce the quantities to be supplied under any Contract without any liability for resulting loss, injury or damage if the performance of its obligations under the Contract is adversely affected by circumstances of force majeure.

23.2 For the purposes of the Contract force majeure shall be deemed to include but is not limited to any act of God, war, riot, civil commotion, governmental actions, acts of terrorism, strike, lock-out, sit-in, industrial or trade dispute, fire, flood, adverse weather, explosions, disease, accident to plant or machinery or shortage of any material, labour, electricity or other supply or any other cause whatsoever beyond the reasonable control of the Company provided that if the event in question continues for a continuous period in excess of sixty (60) days', the Purchaser shall be entitled to give notice in writing to the Company to terminate the Contract.

24. SURVIVAL OF PROVISIONS

24.1 The expiration or determination of this Contract, howsoever arising, shall be without prejudice to any provisions of the Contract (including these Conditions) which are to have effect after the date of expiration or determination.

24.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

25. WAIVER

No waiver by the Company of any breach of obligation of the Purchaser pursuant to this Contract shall constitute a waiver of any other prior or subsequent breach of obligation and in no way shall effect the other terms of the Contract.

26. CONSUMERS

Nothing within these Conditions shall affect the statutory rights of a Consumer.

27. NOTICES

27.1 All notices required to be given by the Purchaser to the Company in respect of this Contract shall not be effective unless in writing and sent by fax, e-mail, by hand or by pre-paid first class post to the Company at its current address.

27.2 Notices shall be deemed to have been received:

27.2.1 if sent by pre-paid first class post, 2 clear days (excluding Saturdays, Sundays and public holidays) after posting;

27.2.2 if delivered by hand, on the day of delivery; and

27.2.3 if sent by fax or by e-mail at the time it is received and read by the Company.

28. THIRD PARTIES

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