

# Stuart Wells Limited

Stuart House, Hargham Road, Shropham, Norfolk NR17 1DT  
Telephone: 01953 454540 Fax: 01953 451451 www.stuartwells.co.uk

## Standard Terms & Conditions of Hire or Sale

### A. Terms & Conditions of Hire

#### 1. DEFINITIONS

- 1.1 The 'Owner' is Stuart Wells Limited and/or Stuart Group Limited, and includes its successors, assigns or personal representatives. The 'Hirer' is the Company, firm, person, corporation, or public authority taking the Owner's plant on hire and includes their successors or personal representatives. 'Plant' covers all classes of plant, machinery, equipment, and accessories that the Owner agrees to hire to the Hirer. A 'day' shall be 8 hours unless otherwise specified in the Contract. A 'week' shall be 7 consecutive days. 'Working week' covers the period from starting time on Monday to finishing time on Friday.
- 1.2 The hire period shall commence from the time when the plant leaves the Owner's depot or place where last employed and shall continue until the plant is received back at the Owner's named depot or equal.

#### 2. EXTENT OF CONTRACT

- 2.1 No conditions other than specifically set forth in the Offer and Acceptance and herein shall be deemed to be incorporated in or to form part of the Contract.

#### 3. ACCEPTANCE OF PLANT

- 3.1 Acceptance of the plant on site implies acceptance of all terms and conditions herein unless otherwise agreed.

#### 4. UNLOADING OF PLANT

- 4.1 The Hirer shall be responsible for unloading and loading the plant at site, and any personnel supplied by the Owner shall be deemed to be under the Hirer's control and shall comply with all directions of the Hirer.

#### 5. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

- 5.1 Unless notification in writing to the contrary is received by the Owner from the Hirer, in the case of plant supplied with an operator within four working days, and in the case of plant supplied without an operator within three working days, of the plant being delivered to the site, the plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with the terms of the Contract and to the Hirer's satisfaction, provided that where plant requires to be erected on site, the period above stated shall be calculated from date of completed erection of plant. The Hirer shall be responsible for its safekeeping, use in a workmanlike manner within the Manufacturer's rated capacity, and return on the completion of the hire in equal good order (fair wear and tear).
- 5.2 The Hirer shall when hiring plant without Owner's operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the plant. If such plant be continued at work or in use in an unsafe and unsatisfactory state, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising there from.
- 5.3 The current Inspection Report required under the relevant legislation or a copy thereof, shall be supplied by the Owner if requested by the Hirer and returned on completion of hire.

#### 6. SERVICING AND INSPECTION

- 6.1 The Hirer shall at all reasonable times allow the Owner, his Agents or his Insurers to have access to the plant to inspect, test, adjust, repair or replace the same. So far as reasonably possible, such work will be carried out at times to suit the convenience of the Hirer.

#### 7. TIMBER MATS OR EQUIVALENTS

- 7.1 If the ground is soft or unsuitable for the plant to work on or travel over without timbers or equivalents, the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the plant to travel over or work on.

#### 8. HANDLING OF PLANT

- 8.1 When a driver or operator is supplied by the Owner with the plant, the Owner shall supply a person competent in operating the plant, and such person shall be under the direction and control of the Hirer. Such drivers or operators shall for all purposes in connection with their employment in the working of the plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of Clause 13) who alone shall be responsible for all claims arising in connection with the operation of the plant by the said drivers or operators. The Hirer shall not allow any other person to operate such plant without the Owner's previous consent to be confirmed in writing.

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## 9. BREAKDOWN, REPAIRS AND ADJUSTMENT

- 9.1 When the plant is hired without the Owner's driver or operator any breakdown or the unsatisfactory working of any part of the plant must be notified immediately to the Owner. Any claim for breakdown time will only be considered from the time and date of notification.
- 9.2 Full allowance will be made to the Hirer for any stoppage due to breakdown of plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear, and for all stoppages for normal running repairs in accordance with the terms of the Contract.
- 9.3 The Hirer shall not except for punctures, repair the plant without the written authority of the Owner. Punctures are, however, the responsibility of the Hirer. Allowance for hire charges and for the reasonable cost of repairs will be made by the Owner to the Hirer where repairs have been authorised.
- 9.4 The Hirer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner due to the Hirer's negligence, misdirection or misuse of the plant, whether by the Hirer or their servants, and for the payment of hire at the appropriate idle time rate during the period the plant is necessarily idle due to such breakdown or damage. The Owner will be responsible for the cost of repairs to the plant involved in breakdowns from all other causes and will bear the cost of providing spare parts.

## 10. OTHER STOPPAGES

- 10.1 No claims will be admitted (other than those allowed for under 'Breakdown' or for 'Idle Time', as herein provided), for stoppages through causes outside the Owners control, including bad weather or ground conditions, nor shall the Owner be responsible for the cost or expense of recovering any plant from soft ground.

## 11. LOSS OF USE OF OTHER PLANT DUE TO BREAKDOWN

- 11.1 Each item of plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of plant working in conjunction therewith, provided that where two or more items of plant are hired together as a unit, such items shall be deemed a unit for the purpose of breakdown.

## 12. CONSEQUENTIAL LOSSES

- 12.1 Save in respect of the Owner's liability if any under Clauses 5, 8 and 9, the Owner accepts no liability nor responsibility for any consequential loss or damage due to or arising through any cause beyond his control.

## 13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

- 13.1 For the avoidance of doubt, it is hereby declared and agreed that nothing in this Clause effects the operation of Clauses 5, 8 and 9 of this Agreement.
- 13.2 During the continuance of the hire period, the Hirer shall subject to the provisions referred to in sub paragraph a) make good to the Owner all loss of or damage to the plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in Clause 9 herein, and shall also fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the use of the plant and in respect of all costs and charges in connection therewith whether arising under statute or common law. In the event of loss of or damage to the plant, hire charges shall be continued to idle time rates until settlement has been affected. It is the responsibility of the hirer to hold adequate insurance cover for the equipment supplied throughout the term of hire and to provide evidence to the Owner of this cover on request.
- 13.3 Notwithstanding the above the Owner shall accept liability for damage, loss or injury due to or arising:
- 13.3.1 Prior to delivery of any plant to the site of the Hirer where the plant is in transit by transport of the Owner or as otherwise arranged by the Owner.
- 13.3.2 During the erection of plant, where such plant requires to be completely erected on the site, always provided that such erection is under the exclusive control of the Owner or his Agent.
- 13.3.3 During the dismantling of any plant, where plant requires to be dismantled after use prior to removal from site, always provided that such dismantling is under the exclusive control of the Owner or his Agent.
- 13.3.4 After the plant has been removed from the site and is in transit on to the Owner by transport of the Owner or as otherwise arranged by the Owner.
- 13.3.5 Where plant is travelling to or from a site under its own power with a driver supplied by the Owner.

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## 14. NOTICE OF ACCIDENTS

14.1 If the plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Owner by telephone and confirmed in writing to the Owner's office, and in respect of any claim not within the Hirer's agreement for indemnity, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's consent in writing.

## 15 RE-HIRING, ETC.

15.1 The plant or any part thereof shall not be re-hired, sub-let, or lent to any third party without the written permission of the Owner.

## 16 CHANGE OF SITE

16.1 The plant shall not be moved from the site to which it was delivered or consigned without the authority of the Owner, such authority to be confirmed in writing.

## 17 RETURN OF PLANT FOR REPAIRS

17.1 If during the hire period, the Owner decided that urgent repairs to the plant are necessary they may arrange for such repairs to be carried out on site or at any location of his nomination. In the event the Owner shall be obliged to replace the plant with similar plant if available, the Owner paying all transport charges involved. In the event of the Owner being unable to replace the plant they shall be entitled to determine the Contract forthwith by giving written notice to the Hirer. If such determination occurs:

- 17.1.1 Within three months from the commencement of hire the Owner shall pay all transport charges involved, or
- 17.1.2 more than three months but less than six months from the commencement of hire the Owner shall be liable only for the cost of reloading and return transport.

## 18 BASIS OF CHARGING

- 18.1 The Hirer shall render to the Owner for each working week an accurate statement of the number of hours the plant has worked each day. Where the plant is accompanied by the Owner's driver or operator, the Hirer shall sign the Employee's Time Record Sheets daily or weekly. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the Time Record Sheets.
- 18.2 Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of driver or operator supplied by the Owner except where breakdown is due to the Hirer's misuse, misdirection or negligence, subject however to the provisions of Clause 8 of this Agreement.
- 18.3 Breakdown time shall be allowed for not exceeding 8 hours each day on Monday to Sunday less actual daily hours worked.
- 18.4 Plant shall be hired out at 'per day' or 'per week' or 'per hour' for a minimum period, for a day of 8 hours or for a week of 56 hours or such other period as may be mutually agreed between the Owner and the Hirer. In the case of plant hired 'per week' for a minimum period, odd days at the beginning and end of the hire period shall be charged pro rata.
- 18.5 Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one stoppage and any excess will be treated as breakdown time.
- 18.6 In the case of plant which requires to be dismantled for the purpose of transportation, if the Owner agrees to a modification of the hire charge for the period required for assembling on site and dismantling upon completion of hire, such modification of the hire charge and the period for which it shall apply shall be stated on the Hire Contract.

## 19 PLANT HIRED ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS

19.1 The fully day rate will be charged on a daily basis irrespective of the hours worked except in the case of breakdown for which the Owner is responsible, when the actual hours worked will be charged pro rata to the average working day. No hire charge shall be made for Saturday and/or Sunday unless the plant is actually worked.

## 20 PLANT HIRED BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS

20.1 The weekly or monthly rate shall be charged irrespective of the number of hours worked, except in the case of breakdown for which the Owner is responsible when an allowance at the rate of one-fifth of the agreed weekly rate or one-twentieth of the agreed monthly rate will be made for each full working day broken down calculated to the nearest half working day. No allowance will be made for breakdowns on Saturdays or Sundays.

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## **21 PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 56 HOURS PER WEEK OR A DAY OF 8 HOURS**

21.1 If no breakdown occurs, the full hire for the minimum period in the Contract will be charged and an additional pro rata charge will be made for hours worked in excess of such minimum period. The stipulated minimum number of hours can be worked at any time during the minimum period of a week. Allowance will be made for breakdowns up to 8 hours providing always that where the actual hours worked are in excess of the minimum period less breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. The minimum week of 56 hours shall be reduced by 8 hours Monday to Sunday for each day's statutory holiday occurring in such weeks, provided that the plant does not work on the holiday.

## **22 'ALL-IN' RATES**

22.1 Where 'All-In' rates are charged by agreement the minimum period shall be as defined in the Contract and in accordance with the hire rates and terms contained therein, subject to the provisions of Clause 26.

## **23 COMMENCEMENT AND TERMINATION OF HIRE (Transport of Plant)**

23.1 The hire period shall commence from the time when the plant leaves the Owner's depot or place where last employed and shall continue until the plant is received back at the Owner's named depot or equal, but an allowance shall be made of not more than one day's hire charge each way for travelling time. If the plant be used on day of travelling, full hire rates shall be paid for the period of use on that day. If more than one day be properly and unavoidably occupied in transporting the plant, a hire charge at idle time rates shall be payable for such extra time, provided that where plant is hired for a total period of less than one week, the full hire rates shall be paid from the date of des- patch to the date of return to the Owners named depot or equal.

23.2 An allowance of not more than one day's travelling time shall be allowed when the plant is travelling to a site other than that specified in the Contract provided that:

23.2.1 Consent to such transfer has been given by the Owner under Clause 16, and,

23.2.2 The plant is moved by means other than under its own power, and,

23.2.3 The plant shall have been on the site specified in the Contract or on any other site to which consent to trans- fer has been given under Clause 16 for a period of at least 14 days.

## **24 NOTICE OF TERMINATION OF CONTRACT**

24.1 Where the period of hire is indeterminate or having been defined becomes indeterminate the Contract shall be determinable by seven days' notice in writing given by either party to the other (except in cases where the plant has been lost or damaged). In the event of the Hirer desiring to terminate the Contract and failing to give such notice, hire for the period of the seven days' notice shall be chargeable at the idle time rates in lieu. Notice given by the Hirer to the Owner's driver or operator shall not be deemed to constitute compliance with the provisions of this Clause.

## **25 IDLE TIME**

25.1 When plant works for any time during a guaranteed minimum period, then the whole of that guaranteed minimum period shall be charged as working time. If plant is idle for the whole of a guaranteed minimum period, the charge shall be two thirds of the hire rate. In any case no period less than one day shall be reckoned as idle time. Where an 'All-In' rate is charged, idle time is charged on the machine element only. Full rate will be charged for the operator.

## **26 WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT**

26.1 All chargeable items shall be paid by the Hirer at the rates contracted save that any subsequent increase before and/or during the hire period arising from awards under national wage agreements and/or from increase in the Employer's statutory contribution shall be charged, as additions at cost by the Owner, and shall be admitted and paid by the Hirer.

## **27 TRAVELLING TIME AND FARES**

27.1 Travelling time and fares for operators, similar expenses incurred at the beginning and end of the hire period, and where appropriate the operator's return fare to his home at periods in accordance with the appropriate national agreement will be chargeable at cost. No charge shall be made by the Owner for any such expenses incurred by other employees of the Owner for the purpose of servicing, repair or maintenance of plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the plant.

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## 28 FUEL, OIL AND GREASE

28.1 Fuel, oil and grease shall, when supplied by the Owner, be charged at net cost or an agreed estimate of net cost and when supplied by the Hirer, shall be of grade or type specified by the Owner.

## 29 OWNER'S NAME PLATES

29.1 The Hirer shall not remove, deface or cover up the Owner's name plate or mark on the plant indicating that it is his property.

## 30. TRANSPORT

30.1 The Hirer shall pay the cost of and, if required, by the Owner, arrange transport of the plant from the Owner's depot or equal to the site and return to named depot or equal on completion of the hire period.

## 31. GOVERNMENT REGULATIONS

31.1 The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including Regulations under the Factories Acts, Health and Safety at Work etc. Act and observance of the Road Traffic Acts should apply, including the cost of Road Fund Licences and any insurances made necessary thereby, save that if and during such time, as the plant is travelling, whether for full or part journey from Owner to site, and site to Owner under its own power with driver supplied by the Owner, the Owner and not the Hirer shall be responsible as aforesaid.

## 32. PROTECTION OF OWNER'S RIGHT

32.1 The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the plant except as provided under Clause 15 and shall protect the same against distress, execution or seizure and shall indemnify the Owner against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition.

32.2 If the Hirer make default in punctual payment of all sums due to the Owner for hire of plant or other charges or shall fail to observe and perform the terms and conditions of this Contract, or if the Hirer shall suffer any distress or execution to be levied against him or make or propose to make any arrangement with his creditors or being a Company, shall go into liquidation (other than a member's voluntary liquidation) or shall do or shall cause to be done or permit or suffer any act or thing whereby the Owner's rights in the plant may be prejudiced or put into jeopardy, this Agreement shall forthwith be terminated (without any notice or other act on the part of the Owner and notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature), and it shall thereupon be lawful for the Owner to retake possession of the said plant and for that purpose enter into or upon any premises where the same may be and the determination of the hiring under this Condition shall not affect the right of the Owner to recover from the Hirer any monies due to the Owner under the Contract or damages for breach thereof.

## 33. CHANGES IN NORMAL WORKING WEEK

33.1 The foregoing provisions have been framed upon the basis of the Hirer working a 7-day week of 56 hours; it is hereby agreed that in the event of:

- 33.1.1 There being any change in the normal weekly hours in the industry in which the Hirer is engaged, or
- 33.1.2 The Contract being made with reference to a 7-day week being worked by the Hirer (either of 56 hours or of such number of hours as may constitute the normal working week in the said industry), or
- 33.1.3 Clauses 1, 18.3, 18.4, 20 and (in regard to breakdown allowance and reduction for statutory holidays) 21 shall be deemed to be modified conformably and in the event of an alteration in the normal weekly working hours in the said industry the 'Hire Rates and Terms' of plant hired for minimum weekly or daily period shall be varied pro rata.

## 34. ENFORCED TRANSFERENCE OF CONTRACT

34.1 In the event of any item of the plant comprised in this Hire Contract being used by the Hirer on or in connection with a Contract for the construction of works or buildings and of a forfeiture of such Contract being made by the Employer there under, the Owner will upon request in writing made by the Employer within seven days after the date, when such forfeiture has become effective and on such Employer undertaking to pay all hire charges therefore from such last mentioned date, hire such item or items to the Hirer upon the same terms in all respects, as are herein contained save that notwithstanding the provisions of Clause 33 hereof such Employer shall be entitled to permit the use thereof by any other Contractor employed by him for purpose of completing the works or buildings comprising in such Contract.

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## 35. ARBITRATION

35.1 If during the continuance of the Contract or at any time thereafter any dispute, difference or question shall arise between the Owner and the Hirer in regard to the Contract or the construction of these Conditions, or anything therein contained or the rights or liabilities of the Owner or the Hirer such dispute, difference or question shall be referred pursuant to the Arbitration Act 1996, or the Arbitration (Scotland) Act 2010, as the case may be or any Statutory modification thereof, to a Sole Arbitrator to be agreed upon by the Owner and the Hirer and failing agreement to be appointed at the request of either the Owner or the Hirer by the President for the time being of the Institution of Mechanical Engineers.

## 36. PAYMENT

- 36.1 Application for Payment: unless otherwise agreed to comply with a payment schedule. Stuart Wells will submit an application for payment to the client on the last working day of each month. Unless we receive a payless notice or a dispute to our claim within 10 working days following submission of our application for payment, a VAT invoice for the full application value will be submitted. Payment strictly 30 days from the VAT invoice date.
- 36.2 VAT Invoice, unless otherwise agreed to comply with a payment schedule. Stuart Wells will submit a VAT invoice to the client on the last working day of the month, with payment strictly 30 days from the VAT invoice date.
- 36.3 We reserve the right to charge interest calculated on a weekly basis at 4% over Bank of England Base Lending Rates on all sums outstanding over and above the stipulated payment period.

## 37. COMMERICAL

- 37.1 Our Public Liability insurance is £10M for any one occurrence. If Stuart Wells are required to have additional cover or any further insurance cover or performance bonds. Stuart Wells are to be reimbursed the cost of the additional premium plus 15%, with the sum included in the first or next application/invoice.
- 37.2 Our Professional Indemnity Insurance is £1M.
- 37.3 All quotation is based against no discounts, deductions, or retention.
- 37.4 Liquidated damages, if any, for which Stuart Wells may become liable shall not exceed 5% of our sub-contract value.

## 38. PRICES

- 38.1 Prices quoted are exclusive of VAT.

## 39. ESTIMATIONS

- 39.1 Our quotation is based on costs for labour, plant and materials ruling at the date of this Tender. Where applicable, we shall require to be reimbursed for increases incurred in accordance with the Price Fluctuation Clause of the Main Contract for: Labour and Supervision, Plant and Non-Recoverable Element.

## 40. VALIDITY PERIOD

- 40.1 This quotation is open to acceptance for a maximum period of 3 months from the issue date.

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## B. Terms & Conditions of Sale

### 1. DEFINITIONS

- 1.1 The 'Seller' is Stuart Wells Limited and/or Stuart Group Limited, and includes its successors, assigns or personal representatives. who submits a quotation for the Goods to the Buyer or who accepts an order for the Goods from the Buyer. "Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller. "Goods" means the Goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions. "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 which shall together govern all sales of the Seller to the exclusion of any inconsistent term or terms proposed by the Buyer. "Writing" includes email, cable, facsimile transmission and comparable means of communication. "Contract" means the Contract for the purchase and sale of the Goods.
- 1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2. ORDERS AND SPECIFICATIONS

- 2.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller or the Seller's authorised representative.
- 2.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) 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.
- 2.3 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).
- 2.4 The Buyer acknowledges that the Seller is not a manufacturing company but merely acts as a wholesaler and is therefore not responsible for the manufacture of the Goods, however in any case where Goods are manufactured, processed or amended by the Seller clauses 2.4.1 and 2.4.2 shall apply. In the event of the goods being pre used, including old stock / pre-owned, the seller provides best information and is not responsible for accuracy. The purchaser must make his own inspection prior to purchase in every case.
- 2.4.1 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with the specifications submitted by the Buyer, the Buyer shall indemnify and keep indemnified fully and effectively 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 patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 2.4.2 In the event that the Buyer requires the Goods modified or have any process applied thereto then such modification or processing shall be entirely at the Buyer's risk and the Seller makes no warranties howsoever that the Goods after such modification or processing shall comply with the applicable safety obligations imposed by Statute or there under and the Buyer shall indemnify and keep fully and effectively indemnified the Seller against any claims costs demands or actions by any party should the Goods once modified or processed fail to conform as aforesaid.
- 2.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to 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. PRICE OF THE GOODS

- 3.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which they may be altered by the Seller without giving notice to the Buyer.
- 3.2 The Seller reserves the right by giving notice to the Buyer at any time before 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, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, 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.

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- 3.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 3.4 The Seller has a minimum invoice charge of £50.00 exclusive of carriage and VAT. Any order placed by the Buyer of less than this amount will be invoiced at £50.00 plus carriage and VAT.
- 3.5 The price is exclusive of any applicable value added tax, or any tax introduced of a similar nature in addition to or in substitution thereof which the Buyer shall be additionally liable to pay to the Seller.

## 4. TERMS OF PAYMENT

- 4.1 Subject to any special terms in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price 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.
- 4.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon written request.
- 4.3 If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries to the Buyer, 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 and charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above Lloyds Bank PLC base rate or any equivalent rate then current in substitution of the said base rate from time to time, until payment in full is made together with all reasonable and proper recovery costs.

## 5. DELIVERY

- 5.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 5.2 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. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 5.3 The Seller may at its discretion make partial delivery of orders and invoice for the same.
- 5.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claims by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat that Contract as a whole as repudiated.
- 5.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited only to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 5.6 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 (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 without prior notification to the Buyer:
- 5.6.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 5.6.2 sell the Goods at the best price readily obtainable and (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.
- 5.7 Where the Seller arranges for delivery of the Goods by an independent carrier and the Goods do not arrive within 14 days of the notified date of dispatch, the Buyer shall immediately give written notice of the non-arrival to the Seller and the carrier and if the Goods are damaged or broken in transit the Buyer shall notify the Seller of the particulars of such damage forthwith upon receipt by telephone and thereafter in writing within 5 days of receipt of the Goods and arrangements shall then be made by the Seller for inspection of the Goods.



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## 6. RISK AND PROPERTY

- 6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
  - 6.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - 6.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property 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 goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 6.3 Until such time as the property 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 third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 6.4 Until such time as the property in the Goods passes to the Buyer (and provided the 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 to the Seller and, if the Buyer fails to do so forthwith, the Seller is hereby authorised to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 6.5 Save for Sub-Clause 6.3 the Buyer shall not permit or suffer any lien, charge or encumbrance to arise in respect of the Goods prior to title thereto passing to the Buyer.

## 7. WARRANTIES AND LIABILITY

- 7.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery for a period of 12 months.
- 7.2 The above warranty is given by the Seller subject to the following conditions:
  - 7.2.1 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;
  - 7.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval, faulty installation (and the Buyer's attention is specifically drawn to any instructions made by the Seller with regard to installation);
  - 7.2.3 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;
  - 7.2.4 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 given by the manufacturer to the Seller.
- 7.3 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 7.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 or any re-enactment thereof) the statutory rights of the Buyer are not affected by these Conditions.
- 7.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification must (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days of the date of delivery or refusal of delivery as the case may be and in any event prior to the installation or use of the same or (where a defect was not apparent on reasonable and proper inspection) as soon as reasonably practical after discovery of the defect and in any event within 7 days thereof. Time shall be of the essence as regards the time for notification. For the avoidance of doubt the Seller will accept no claims whatsoever in respect of any alleged failure to correspond with specification following the installation or commencement of use of the Goods and the installation and/or use of the Goods shall be deemed to be acceptance of the specification thereof. If delivery is not refused and the Buyer does not notify the Seller in writing accordingly, the Buyer shall not be entitled to reject to 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.

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- 7.6 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 to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) 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 the Seller shall have no further liability to the
- 7.7 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 the Buyer, except as expressly provided in these Conditions.
- 7.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay or failure to carry out the Contract due wholly or in part of any act of God, action by any government whether British or Foreign, civil war, strikes and/or lock-outs wheresoever' s occurring, fire, trade disputes, floods or unfavourable weather or any material becoming unavailable or irreplaceable (whether at all or at commercially acceptable prices) or any other circumstances beyond the Seller's reasonable control.

## 8. INDEMNITY

- 8.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights or any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim (subject to Clause 2.4.1), provided that:
- 8.1.1 the Seller is given full control of any proceeding or negotiations in connection with any such claim, 8.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations and
- 8.1.3 without prejudice to any duty of the Buyer at common law the Seller shall be entitled to require 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 Clause.

## 9. INSOLVENCY OF BUYER

- 9.1 This Clause applies if:
- 9.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 9.1.2 an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this Clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 10. EXPORT TERMS

- 10.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause 10 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 10.2 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. The Buyer shall be responsible in all regards for taking such action as is necessary to ensure the Goods clearance through Customs and into the Country of destination.
- 10.3 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered f.o.b. the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 10.4 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 England acceptable to the Seller or, if the Seller has agreed in Writing upon such terms as the parties shall agree.

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## 11. GENERAL

- 11.1 The Seller reserves the right to sub-contract the fulfilment of any order or any part thereof but the Buyer cannot at any time assign their rights and duties hereunder without the prior written consent of the Seller.
- 11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that 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. Letters sent by first class post shall be deemed to have been received two clear days following postage and in the case of facsimile and email communications these shall be deemed to have been received immediately following transmission subject to a positive receipt of sending.
- 11.3 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.
- 11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 11.5 This Contract shall be governed by the laws of England and the parties agree to submit to the nonexclusive jurisdiction of the English Courts.