

Terms and Conditions of Sale

1 Interpretation

1.1 In these conditions:

'CLIENT' means the person who accepts a quotation of the Company for the sale of the Goods and/or Services or whose order for such is accepted by the Company.

'COMPANY' means Drurys Engineering Ltd.

'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 set out in writing by the Company (including a Quotation).

'CONTRACT' means 'the Contract' for the supply of Goods and/or Services and the terms and conditions hereto.

'GOODS' means the goods (including any instalment of them or any parts for them) which the Company is to supply in accordance with these Conditions.

'PRICE' means the sum as set out in the Quotation as amended in accordance with the Conditions.

'SERVICES' means the services which the Company is to supply in accordance with these Conditions.

'QUOTATION' means the quotation given by the Company or the order requirements requested by the Client and accepted by the Company as from time to time amended in accordance with these Conditions.

'SPECIFICATION' the specification (if any) referred to in the Quotation from time to time amended in accordance with these Conditions.

'WRITING' includes facsimile transmission provided that confirmation by letter posted first class is followed within 24 hours.

1.2 Any reference in these Conditions to any provision of a statute shall be constructed as a reference to that provision as amended, re enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of Sale

2.1 The Company shall sell and the Client shall purchase the Goods and/or Services in accordance with these Conditions, which shall govern the Contract to the exclusion of all other terms.

2.2 No variation to these conditions shall be binding unless agreed in Writing between the authorised representatives of the Client and the Company.

2.3 Any advice or recommendation given by the Company or its employees or agents to the Client as to the provision of the Goods and/or Services (or any part thereof) which is not confirmed in Writing by the Company is followed or acted upon entirely at the Client's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any typographical, clerical or other error or omission in any documentation or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3 Orders and specifications

3.1 No order submitted by the Client shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative or the Company carries out the said order in accordance with these Conditions (whichever shall be sooner).

3.2 The Client shall be responsible to the Company for ensuring the accuracy of the information given to the Company (including the tolerance levels required and the quality composition and specification to which the Goods and Services are to be provided) and for giving the Company any necessary or requested information relating to the Goods and/or Services within a sufficient time to enable the Company to perform the Contract.

3.3 The quantity, quality and description of and any Specification for the Goods or Services shall be those set out or referred to in the Quotation.

3.4 No order which has been accepted by the Company may be cancelled (in whole or part) or varied by the Client except with the agreement in Writing of the Company and on terms that the Client shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation or variation including (without limitation) any cancellation and/or penalty charges imposed on the Company by any third party or

3.5 If the Goods are to be manufactured designed modified (or the provision of the Services requires any process to be applied to Goods or materials supplied by the Client) by the Company in accordance with a Specification submitted by the Client (including the tolerance levels required the quality composition and specification to which the Goods and Services are to be provided), the Client shall indemnify the Company against all loss, damages, costs and expenses incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement or any patent, copyright, design, trade mark or other industrial or intellectual property right of any other person which results from the Company's use of the Client's Specification.

3.6 The Company reserves the right to make any changes in the Specification which are required to conform with any applicable statutory or E.C. requirements (in whole or part).

3.7 Where the Client supplies the Company (or procures the supply to the Company) of materials, components or equipment in order for the Company to provide and supply the Goods and/or Services in accordance with the Conditions the Client warrants that the said materials components or equipment are of the quality composition and specification referred to in the Quotation and are its absolute property and not subject to any lien or third party rights and do not infringe any third parties rights and the Client shall fully indemnify the Company against any costs claims and expenses incurred as a result of the Company using such materials etc.

4 Price

4.1 Subject to the remaining provisions of this clause 4 the price of the Goods and/or Services are based on a time and materials basis an estimate of such price may be provided in the Quotation.

4.2 Subject to the other provision of these Conditions all prices set out or referred to in the Quotation are unless stated to the contrary in the Quotation or otherwise valid for 30 days or in cases where raw materials will need to be purchased for as long as the price to be paid by the Company for the said raw material remains unchanged (whichever is the sooner).

4.3 The Company reserves the right, by giving notice to the Client at any time before delivery to increase the price of the Goods and Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company.

4.4 The prices for the Goods and Services are exclusive of any applicable value added tax, which the Client shall be additionally liable to pay the Company.

4.5 Except as otherwise stated under the terms of Quotation all

prices are given by the Company on an ex works basis and where the Company agrees to deliver the Goods or Services otherwise than at the Company's premises, the client shall be liable to pay the Company's charges for transport, packaging and insurance.

4.6 If additional documentation or certificate is required other than a delivery note, the client shall be liable for the Company's charges.

5 Terms of Payment

5.1 Subject as set out in the Quotation the Company shall be entitled to invoice the Client for the price of the Goods and Services on or at any time after delivery of them unless they are to be collected by the Client or the Client wrongfully fails to take delivery of them in which event the Company shall be entitled to invoice the Client unless otherwise agreed for the price at any time after the Company has notified the Client that they are ready for collection or (as the case may be) the Company has tendered delivery of them.

5.2 The Client shall pay the price of the Goods and Services within 30 days after receipt of the invoice, and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Client. The time of payment of the price shall be of the essence of the Contract.

5.3 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

5.3.1 cancel the Contract or suspend any further deliveries to the Client;

5.3.2 appropriate any payment made by the Client to such of the Goods and Services (or the Goods and Services supplied under any other contract between the Client and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Client); and

5.3.3 charge the Client interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per cent per annum above HSBC Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 The Company may if indicated in the Quotation require payments on account from the Client at any time towards the Goods and Services and if such sums are requested then the Client shall be required to pay such sums within 7 days of any such request and the remaining provisions of this clause 5 shall apply if no such payment is made.

6 Delivery

6.1 Unless otherwise stated in the Quotation the Client shall be responsible for all carriage/delivery charges incurred by the Company in complying with the remaining provisions of this clause 6.

6.2 Any dates quoted for delivery of the Goods and Services are approximate only and the Company shall not be liable for any delay in delivery of them however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods/Services may be delivered by the Company in advance of any quoted delivery date upon giving reasonable notice to the Client.

6.3 Where the Goods or Services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the Contract as a whole as repudiated.

6.4 If the Claim fails to take delivery of the Goods or Services or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Client's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

6.4.1 store the Goods until actual delivery and charge the Client for the reasonable costs (including insurance) of storage; or

6.4.2 sell the Goods at then current market price readily obtainable and, (after deducting all reasonable storage and selling expenses) charge the Client for any shortfall below the price under the Contract.

7 Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Client:

7.1.1 in the case of Goods to be delivered at the Company's premises, at the time of delivery or, if the client wrongfully fails to take delivery of them, the time when the Company has tendered delivery of the Goods.

7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Client wrongfully fails to take delivery of them, the time when the Company has tendered delivery of the Goods.

7.2 For the avoidance of doubt if the Client provides any materials equipment or components to the Company in order to enable it to provide the Goods/Services then the risk of damage to or loss of the said materials equipment or components shall remain with the Client until delivery has been accepted by the Company.

7.3 Notwithstanding delivery and the passing of risk in the Goods the property in the Goods shall not pass to the Client until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other Goods and Services agreed to be sold by the Company to the Client for which payment is then due.

7.4 The Client acknowledges that all materials equipment or components supplied by the Client to the Company shall be subject to a lien in favour of the Company to the extent of any unpaid charges for work done by the Company on behalf of the Client.

7.5 Until such time as the property in the Goods passes to the Client, the Client shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep them separate from those of the client and third parties and properly stores, protected and insured and identified as the Company's property, but the Client shall be entitled to use the Goods in the ordinary course of its business.

7.6 Without prejudice to the provisions of 7.1 above the Client is hereby given notice that when title to Goods to the Client in accordance with the above provisions any insurance which may have been maintained by the Company in respect of the same will automatically determine unless specifically agreed in Writing.

8 Warranties and liability

8.1 Subject to the remaining conditions set out in clause 8 the Company warrants that:

8.1.1 the Services will be provided with due skill and care.

8.1.2 the Goods will materially accord with the Specification on delivery.

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

8.2.1 the Company shall be under no liability in respect of any defect in the Goods or Services arising from any information, drawing, design or Specification supplied by the Client;

8.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods or the part in question) free of charge or, at the Company's sole discretions, refund to the

Client of the price of the Goods and/or Services materials provided pursuant of these Conditions;

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

8.2.4 the warranty contained in clause 8.1.2 does not extend to parts, materials or equipment not manufactured or produced by the Company, in respect of which the Client shall only be entitled to the benefit of any such warranty or guarantee as is given by the supplier or manufacturer to the Company insofar as the same is transferable provided that the Client has taken all necessary administrative steps required with respect to such third parties in order to obtain such protection;

8.2.5 no warranty is given in relation to the Goods or materials provided pursuant to these Conditions (and the materials used therein) and their use in conjunction with any other external equipment or that they are provided for specific or particular purpose save where it is agreed in the Quotation.

8.3 The Company's liability under these Conditions does not extend to any other equipment used in conjunctions with the Goods or Services.

8.4 Any claim by the Client under this Contract (whether or not delivery is refused by the Client) shall be notified to the Company within 14 days from the date of delivery of (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Client does not notify the Company accordingly, the Client shall not be entitled to reject the Goods or Services and the Company shall have no liability for such defect or failure, and the Client shall be bound to pay the price as if the Goods and/or Services had been delivered in accordance with the Contract.

8.5 In the event of any such claim the Client shall be responsible for returning the Goods, materials or the relevant part of them to the Company for inspection or returning the same to the Company or its agent (as the Company may require). If such Goods or materials are returned to the Company the risk of damage or loss in transit will be the responsibility of the Client.

8.6 Where any valid claim in respect of any of the Goods and/or Services which is based on any defect in the quality or condition of the Goods and/or Services in accordance with these Conditions, the Company's total liability arising out of any such claim shall be limited to the replacement of the Goods/Services (or (in the case of Goods and Services) (or a proportionate part of the price), but the

Company shall have no further liability to the Client. If Goods are replaced the items so replaced shall be or become the property of the Company.

8.7 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or Services or their use or resale by the Client, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of (where paid) for the relevant Goods or Services except as expressly provided in these Conditions.

8.8 The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods or Services, if the delay or failure was due to any cause beyond the Company's reasonable control.

8.9 Subject as expressly provided in these Conditions, and except where the Goods and Services are sold or provided (as appropriate) 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.

9 Insolvency of Client

9.1 This clause applies if:

9.1.1 the Client makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client; or

9.1.3 the Client ceases, or threatens to cease, to carry on business; or

9.1.4 the Company reasonably apprehends that any of the events

mentioned above is about to occur in relation to the Client and notifies the Client accordingly.

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Client, and if the Goods or Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10 General

10.1 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 the provision to the party giving the notice.

10.2 No waiver by the Company of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 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.

10.4 Save as expressly provided herein it is not intended that a third party shall have a right to receive notice or enforce a provision of this Agreement and Contracts (Rights of Third Parties) Act 1999 shall be modified accordingly.

10.5 In the event of a dispute the parties shall each undertake to use their reasonable efforts to reach an amicable settlement. If the dispute has not been resolved by negotiation the parties shall attempt to resolve the dispute by mediation through the Centre for Dispute Resolution. If the dispute has not been resolved within 90 days of referral to the Centre for Dispute Resolution it shall become subject to action in the courts save that it is hereby agreed that if the Company takes action for injunctive relief or for non-payment of monies it may in its sole discretion commence such an action in the courts immediately and without the need to first refer the matter to the Centre for Dispute Resolution.

10.6 This Agreement shall be governed by English law and the parties shall submit to the non-exclusive jurisdiction of the English Courts.