

# DURBIN METAL INDUSTRIES LIMITED

## CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1 In these Conditions:

##### 1.1.1 The following expressions have the following meanings:

**Buyer** means the person who purchases Goods from the Seller under the Contract in accordance with these Conditions;

**Goods** means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply under the Contract in accordance with these Conditions;

**Seller** means Durbin Metal Industries Limited (a private company registered in England with limited liability under company number 1631973 whose registered office is at 25 High Street, Cobham, Surrey KT11 3DH;

**Conditions** means the standard terms and conditions of sale set out in this document;

**Contract** means the contract formed in accordance with these conditions for the purchase and sale of the Goods which shall comprise these Conditions and any documents referred to in them and any special terms and conditions agreed in Writing between the parties;

**Defect** means any defect in the Goods which causes the Goods to not conform to the warranty set out in clause 8.1;

**Delivery Location** means the Seller's premises or, where the Seller has agreed in Writing to deliver the Goods to a location other than the Seller's premises, that alternative location;

**Force Majeure Event** means any event beyond the Seller's reasonable control;

**Incoterms** means the International Commercial Terms published by the International Chamber of Commerce, 2010 edition or any successor thereto;

**Intellectual Property Rights** means patents, rights to inventions, copyright, trademarks, rights in confidential information, domain names, goodwill, database rights and all other registered or unregistered intellectual property rights and similar or equivalent rights which subsist or will subsist now or in future in any part of the world;

**Order** means an order by the Buyer for the Goods, as set out in the Buyer's order form or written acceptance of the Quotation;

**Quotation** means any formal quotation which is issued by the Seller and which the Buyer seeks to accept via its Order;

**Specification** means any specification for the Goods which is provided by the Seller in Writing or approved by the Seller in Writing; and

**Writing** includes telex, cable, e-mail, facsimile transmission and comparable means of communication.

- 1.1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.
- 1.1.4 A person includes a natural person, corporate or unincorporated body.
- 1.1.5 A reference to the "parties" is to the Buyer and the Seller and to a "party" is to either of them.
- 1.1.6 A phrase preceded by the words "including", "include", "in particular" or any similar words or expressions shall be construed as illustrative and shall not limit the sense of the preceding words.
- 1.1.7 "Holding company" and "subsidiary" have the meanings assigned to them in the Companies Act 2006.
- 1.1.8 In relation to a company "group" means that company, any company of which it is a subsidiary (its holding company) and any other subsidiary of such holding company.
- 1.1.9 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

## **2. BASIS OF SALE**

- 2.1 The Order constitutes an offer by the Buyer to purchase Goods in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Seller accepts the Order in Writing, at which point the Contract will come into existence. Where the price payable in respect of an Order exceeds £15,000, the Seller's written acceptance will only be valid for the purposes of this clause if issued by a manager of the Seller.
- 2.3 Once the Contract has come into existence in accordance with these Conditions, the Buyer cannot cancel or amend the Order except with the agreement in Writing of the Seller. Any such agreement shall be subject to the Buyer indemnifying the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation or amendment.
- 2.4 The Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate or which are implied by trade, practice or a course of dealing.
- 2.5 The Contract shall constitute the entire agreement between the parties to the exclusion of any other terms and conditions or any other agreement, arrangement or understanding which is made or purported to be made between the Seller and the Buyer whether written or oral, relating to its subject matter.
- 2.6 The Buyer acknowledges that it has not relied on, and shall have no rights or remedies in relation to, any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract. The Buyer's only rights and

remedies in relation to any representation or warranty set out in the Contract are limited to damages for breach of contract.

- 2.7 Any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller is provided solely to give an approximate idea of the Goods, and shall not form part of the Contract. Any typographical, clerical or other error or omission in any such document is subject to correction without any liability on the part of the Seller.
- 2.8 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller's acceptance of the Buyer's Order.

### **3. ORDERS AND SPECIFICATIONS**

- 3.1 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.
- 3.2 Subject to clause 3.5, the quantity, quality and description of and any specification for the Goods shall be those set out in the Order.
- 3.3 If the Goods are to be manufactured, designed, built or configured or any process is to be applied to the Goods by the Seller in accordance with a Specification submitted by the Buyer, the Buyer shall hold the Seller harmless and shall fully and promptly indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any Intellectual Property Rights which results from the Seller's use of the Specification.
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which:
- 3.4.1 are required to conform to any applicable statutory or EU requirements; or
  - 3.4.2 which do not materially affect their quality or performance.
- 3.5 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 10% more or less than the quantity of the Goods ordered (whether in terms of the weight of the Goods or otherwise) or if the Goods delivered differ in their dimensions from the Goods ordered by up to and including 10% and the Buyer shall pay for the Goods delivered at the rate provided in the Contract.
- 3.6 If the Seller delivers more than 10% more or less than the Goods ordered or if the Goods delivered differ by more than 10% in their dimensions from the Goods ordered, the Buyer may accept the Order and pay for any excess at the rate set out in the Contract or reject any excess Goods, provided that any rejected Goods are returned to the Seller in the same condition as on delivery to the Buyer no later than 14 days from the date of delivery.

### **4. PRICE OF THE GOODS**

- 4.1 The price of the Goods shall be the price set out in the Quotation or, if none is quoted, the price set out in the Seller's published price list as at the date of delivery. The price in the Quotation

shall only be valid for 7 days from the date of the Quotation, after which time it can be altered by the Seller without giving notice to the Buyer.

- 4.2 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:
- 4.2.1 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);
- 4.2.2 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 or accurate information or instructions.
- 4.3 Unless otherwise agreed in Writing between the parties, 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 additional charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 The cost of returnable pallets and containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

## **5. TERMS OF PAYMENT**

- 5.1 Subject to any special terms agreed 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 completion of delivery of the Goods in accordance with these Conditions.
- 5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled) within 30 days after the end of the month in which the Goods are delivered, and the Seller shall be entitled to recover the price, notwithstanding that 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 request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 5 per cent per annum above the Bank of England's base lending rate from time to time calculated on a daily basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

- 5.4 In the event that the Seller owes money to the Buyer under any contract or other arrangement entered into between the Seller and the Buyer the Seller shall be entitled to set off such sums owed by the Seller to the Buyer against any sums which the Buyer shall owe to the Seller whether under the Contract or otherwise.
- 5.5 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law.

## **6. DELIVERY**

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods from the Delivery Location or, if the Delivery Location is not Seller's premises, by the Seller delivering the Goods to the Delivery Location.
- 6.2 If the Delivery Location is the Seller's premises, the Buyer shall collect the Goods from the Delivery Location on the date agreed in Writing or, where no date has been agreed, within 3 working days of the Seller notifying the Buyer that the Goods are ready for collection.
- 6.3 If the Delivery Location is a place other than the Seller's premises, the Seller shall deliver the Goods to the Delivery Location on the date agreed in Writing (subject to clause 6.4) or, where none is agreed, at any time after the Seller notifies the Buyer that the Goods are ready.
- 6.4 Dates for delivery of the Goods by the Seller are approximate only and time for delivery shall not be of the essence of the Contract. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.5 The Seller shall have no liability for failure to deliver or delay in delivering the Goods which is caused by a Force Majeure Event or the Buyer's failure to provide adequate or accurate information or instructions. If the Seller fails to deliver the Goods or any instalment of them for any other reason, then, subject to clause 6.6, its liability shall be limited 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.
- 6.6 Only delays in delivery of the Goods by the Seller that exceed 6 months will entitle the Buyer to terminate the Contract and claim the excess cost of replacement or similar Goods in accordance with clause 6.5.
- 6.7 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Delivery Location or, where the Delivery Location is not Seller's premises, upon the Goods' arrival at the Delivery Location.
- 6.8 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract governed by these Conditions. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 6.9 If the Buyer fails to collect the Goods on the date or within the period described in clause 6.2 or, if the Delivery Location is a location other than the Seller's premises, to accept delivery of them when the Seller first attempts delivery then:
- 6.9.1 delivery of the Goods shall be deemed to have been completed upon such date or at the end of such period or, as applicable, upon such first attempt; and

- 6.9.2 the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.9.3 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.
- 6.10 Failure to notify the Seller of the non-delivery of the Goods, or any of them, within 7 days of the due date for delivery will release the Seller from liability for claims for non-delivery.

## **7. RISK AND PROPERTY**

- 7.1 Subject to clause 11, risk of damage to or loss of the Goods shall pass to the Buyer upon completion of delivery in accordance with clause 6.
- 7.2 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 earlier of:
- 7.2.1 the Seller receiving in cash or cleared funds, payment in full of:
    - 7.2.1.1 the price of the Goods; and
    - 7.2.1.2 any other debts owed by the Buyer to the Seller
  - 7.2.2 in which case title shall pass at the time of payment of all such sums; and
  - 7.2.3 the Buyer reselling the Goods, in which title shall pass to the Buyer in accordance with clause 7.4.
- 7.3 Until property in the Goods passes to the Buyer, the Buyer shall:
- 7.3.1 store the Goods separately from any goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
  - 7.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.3.3 maintain the Goods in satisfactory condition, keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller and, upon the Seller's request, produce the policy of insurance to the Seller;
  - 7.3.4 notify the Seller immediately if it becomes subject to any of the events listed in clauses 10.1.2 to 10.1.8 inclusive;
  - 7.3.5 give the Seller such information as it requires from time to time in relation to the Goods; and
  - 7.3.6 not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.4 Subject to clause 7.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- 7.4.1 it does so as principal and not as the Seller's agent; and

7.4.2 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

7.5 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time:

7.5.1 to terminate the Buyer's right to resell the Goods in accordance with clause 7.4 by giving written notice to the Buyer; and

7.5.2 to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored or otherwise located, but in any event, and without limitation, hereby undertakes to secure full rights of access at any time to any such premises for the Seller, its agents and employees to recover the Goods and to undertake any work required to remove them, notwithstanding that the Goods may be affixed or attached to any other goods or property.

## 8. WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out below the Seller warrants that the Goods will:

8.1.1 correspond with the Specification at the time of delivery; and

8.1.2 be free from material defects in material and workmanship for a period of 6 months from the date of delivery (the **warranty period**).

8.2 Subject to clause 8.4, if:

8.2.1 the Buyer gives the Seller written notice of a Defect within 7 days of the date of delivery or, if later, within 7 days on which the Defect became apparent or would have become apparent on inspection or testing of the Goods;

8.2.2 the Seller is given a reasonable opportunity of examining the Goods;

8.2.3 the Buyer returns the Goods to the Seller, if asked to do so by the Buyer; and

8.2.4 the Seller agrees, or it is established under clause 8.3, that the Goods are Defective;

8.2.5 then the Seller will, at its option, replace or repair any Defective Goods or refund the price of those Goods in full.

8.3 If the Seller disagrees with the Buyer that there is a Defect in the Goods, the dispute shall be referred to an independent third party appointed jointly by the Seller and the Buyer or, failing agreement within 7 days, by a party appointed, on the application of either the Seller or the Buyer, by the President for the time being of Institute of Chartered Accountants. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne equally by, the Seller and the Buyer.

8.4 The Seller shall not be liable in respect of any Defect if:

8.4.1 the Buyer fails to follow the procedures set out in these Conditions in relation to Defects;

- 8.4.2 the price of the Goods has not been paid;
  - 8.4.3 the Buyer makes any further use of such Goods after giving a notice in accordance clause 8.2;
  - 8.4.4 the Defect arises because of installation, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Goods;
  - 8.4.5 the Defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
  - 8.4.6 the Buyer alters or repairs such Goods without the written consent of the Seller;
  - 8.4.7 the Defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - 8.4.8 the Seller has obtained written confirmation from the Buyer that the Goods were delivered in conformity to the warranty at clause 8.1; or
  - 8.4.9 the Defect arises as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 8.5 The warranties set out in these Conditions do not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.6 Except as provided in this clause 8, the Seller shall have no liability to the Buyer in respect of any Defect.
- 8.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller under clause 8.2.

## **9. LIABILITY**

- 9.1 Except as set out in these Conditions, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non-supply or delay in supplying the Goods are excluded to the extent permitted by law.
- 9.2 Nothing in these Conditions is intended to exclude or limit the liability of the Seller to the Buyer for the following matters:
- 9.2.1 death or personal injury caused by the Seller's negligence;
  - 9.2.2 failure to give good title to the Goods; or
  - 9.2.3 fraudulent misrepresentation.
- 9.3 Subject to clause 9.2:
- 9.3.1 the Seller shall have no liability to the Buyer in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, whether direct or indirect, arising out of, or in connection with, the supply, non-supply or delay in supplying the Goods or otherwise in connection with the Contract:
    - 9.3.1.1 loss or damage incurred by the Buyer as a result of third party claims;
    - 9.3.1.2 loss of actual or anticipated profits;



- 9.3.1.3 loss of business opportunity;
  - 9.3.1.4 loss of anticipated savings;
  - 9.3.1.5 loss of goodwill;
  - 9.3.1.6 injury to reputation; or
  - 9.3.1.7 any indirect, special or consequential loss or damage howsoever caused even if the Seller was advised of the possibility of them in advance; and
- 9.3.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed 100% of the price paid for the Goods supplied under the Contract or, where the Buyer's claim against the Seller concerns some, but not all of the Goods supplied under the Contract, 100% of the price paid for those Goods with which the claim is concerned.
- 9.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any Force Majeure Event. Force Majeure Events shall be deemed to include, but not be limited to:
- 9.4.1 act of God, explosion, flood, tempest, fire or accident;
  - 9.4.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 9.4.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 9.4.4 import or export regulations or embargoes;
  - 9.4.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 9.4.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 9.4.7 power failure or breakdown in machinery.
- 9.5 These Conditions do not create any right enforceable by any person not a party to it except that person who is the permitted successor to or assignee of the Seller is deemed to have the benefit of all rights of the Seller.

## **10. TERMINATION**

- 10.1 Without prejudice to its other rights and remedies, the Seller may terminate the Contract and/or suspend any further deliveries under the Contract without any liability to the Buyer if:
- 10.1.1 the Buyer commits a material breach of the Contract which is irremediable or which it fails to remedy within 7 days of being notified in writing of the breach by the Buyer;
  - 10.1.2 a winding-up order or bankruptcy order is made against the Buyer; or
  - 10.1.3 the Buyer passes a resolution or makes a determination for it to be wound up without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or

- 10.1.4 the Buyer has appointed to it an administrator or an administrative receiver; or
  - 10.1.5 being a partnership, in addition to the above, the Buyer suffers bankruptcy orders being made against all of its partners; or
  - 10.1.6 an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the Buyer's assets;
  - 10.1.7 the Buyer ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 10.1.8 any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into by the Buyer; or
  - 10.1.9 any event analogous to those described in clause 10 occurs in relation to the Buyer in any jurisdiction in which that other party is incorporated, resident or carries on business;
  - 10.1.10 the Buyer suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business;
  - 10.1.11 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 10.1.12 the Buyer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 10.2 On termination of the Contract for any reason:
- 10.2.1 the accrued rights and remedies of each party shall be unaffected;
  - 10.2.2 clauses of these Conditions which are expressly or by implication intended to survive to termination shall continue in full force and effect;
  - 10.2.3 the price of any Goods which have been delivered but not paid for shall become immediately due and payable.

## 11. EXPORT TERMS

- 11.1 The provisions of this clause 11 shall apply in respect of any Goods supplied for export from the United Kingdom, and shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 11.2 Where the Delivery Location is a location other than the Seller's premises, unless otherwise agreed in Writing between the parties (whether by reference to Incoterms or otherwise):
  - 11.2.1 risk and responsibility for the Goods shall pass to the Buyer once they have been delivered to the carrier appointed to deliver the Goods to the Delivery Location (the **Carrier**);
  - 11.2.2 the Seller shall not be responsible for insuring the Goods during transit; and
  - 11.2.3 the Buyer shall insure the Goods for their full price and for the benefit of the Seller from the point at which they are delivered to the Carrier until such time as title to the Goods

passes to the Buyer in accordance with these Conditions and, upon the Seller's request, produce the policy of insurance to the Seller.

- 11.3 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 on them.
- 11.4 The Buyer is responsible for complying with all UK laws regarding UK military items exported from the UK regardless of destination.
- 11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before collection. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after collection, or in respect of any damage during transit.
- 11.6 Payment of all amounts due to the Seller shall be made:
- 11.6.1 by irrevocable letter of credit which shall:
    - 11.6.1.1 be in terms satisfactory to the Seller;
    - 11.6.1.2 be opened by the Buyer at Buyer's expense in favour of the Seller and confirmed by a recognised European Bank acceptable to the Seller within 7 days of formation of the Contract and, in any case, no later than 3 working days before the Goods are due to be collected or dispatched from the Seller's premises.
    - 11.6.1.3 be for the price of the Goods (together with any tax or duty payable on them and any delivery or packing charges);
    - 11.6.1.4 be valid for 6 months and the Seller shall be entitled to immediate payment on presentation of the letter of credit; or,
  - 11.6.2 if the Seller has agreed in Writing on or before acceptance of the Buyer's Order to waive this requirement, by acceptance by the Buyer and delivery to the Seller within 7 days of formation of the Contract and, in any case, no later than 3 working days before the Goods are due to be collected or dispatched from the Seller's premises of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of Lloyds Bank as may be specified in the bill of exchange.
- 11.7 If the Buyer fails to open and confirm a Letter of Credit or bill of exchange in accordance with clause 11.6, then without prejudice to the Seller's other rights and remedies, the Seller shall be entitled to require payment of the price of the Goods in full prior to delivery of the Goods.
- 11.8 The Buyer undertakes not to offer the Goods for resale in any country notified by the Seller to the Buyer at or before the time the Buyer's Order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

## **12. GENERAL**

- 12.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its Group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.

- 12.2 The Order is personal to the Buyer and the Buyer shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 12.3 No variation to these Conditions shall be binding unless agreed in Writing by the Seller.
- 12.4 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.
- 12.5 The Seller can only waive a breach of the contract expressly and in writing. Failure or delay by the Seller in enforcing any provision of any Contract shall not be construed as a waiver of any of its rights under the Contract. No waiver by the Seller of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.6 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.
- 12.7 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.
- 12.8 Except as expressly stated in these Conditions, neither the Seller nor the Buyer intends that any term of the Contract shall be enforceable by virtue of the contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.9 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of England.
- 12.10 Subject to clause 12.11, the Seller and the Buyer submit to the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- 12.11 The Seller shall be entitled, but not obliged, to refer any dispute arising between the parties under or in connection with the Contract to an arbitrator. Such arbitrator shall be agreed between the Seller and the Buyer or, if they fail to agree upon the appointment of an arbitrator within 14 days of the Seller's request, such arbitrator shall be nominated by the President of the Chartered Institute of Arbitrators from time to time upon the application of the Seller. Any reference to arbitration shall be conducted in accordance with the Rules of the London Court of International Arbitration and the arbitration shall be held in London, England. The arbitrator's award shall make provision for the cost of arbitration to be paid by the parties in such proportions as the arbitrator decides is appropriate. For the avoidance of doubt, the law applicable to any dispute to be determined in any such arbitration shall be the law of the Contract.