

## **PROLEC LTD TERMS AND CONDITIONS FOR SALE, HIRE AND SUPPLY**

### **1. Interpretation**

#### **1.1** In these Conditions:

'CLIENT' means the person named on the Specification Sheet for whom the Supplier has agreed to provide the Specified Service, Goods and/or Hire Equipment in accordance with these Conditions

'CLIENT'S EQUIPMENT' means the materials, instruments, equipment, access to utilities and/or services to be provided to the Supplier by the Client in order to facilitate the provision of the Specified Service as agreed and set out in the Specification Sheet

'CONDITIONS' means the standard terms and conditions of sale, hire and supply of services set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Client and the Supplier

'CONTRACT' means the contract for the provision of the Specified Service, sale of Goods or supply of Hire Equipment or any combination thereof incorporating these Conditions.

'DOCUMENT' includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape, disc or other device embodying visual images and any disc, tape or other device embodying any other data

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

'HIRE EQUIPMENT' means the equipment, plant, machinery, tools, parts and accessories, including any instalment, part or combination of the same, which the Supplier is to hire to the Client in accordance with these Conditions

'HIRE PERIOD' means the period from the time the Hire Equipment is dispatched by the Supplier to the Client or collected by the Client or its agents or representatives from the Supplier's address until the time the Equipment is received back at the Supplier's address or such other address as may be agreed in Writing.

'INPUT MATERIAL' means any Documents or other materials, and any data or other information provided by the Client relating to the Specified Service

'OUTPUT MATERIAL' means any Documents or other materials, and any data or other information provided by the Supplier relating to the Specified Service

'SITE' means the location at which the Specified Service is to be provided as set out in the Specification Sheet.

'SPECIFICATION SHEET' means the sheet to which these Conditions are appended

'SPECIFIED SERVICE' means the service to be provided by the Supplier for the Client and referred to in the Specification Sheet

'SUPPLIER' means Prolec Limited (registered in England and Wales under number 1689109)

'SUPPLIER'S STANDARD CHARGES' means the charges shown in the Specification Sheet relating to the Specified Service

'WRITING' includes telex, cable, facsimile transmission and comparable means of communication

1.2 The headings in the Conditions in 1.1 above are for convenience only and shall not affect their interpretation.

1.3 Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.

1.4 Any reference in these Conditions to any statute or statutory provision shall be construed as a reference to that statute or statutory provision as amended, re-enacted or extended at the relevant time.

1.5 References to sterling (or to any unit thereof) shall upon the United Kingdom becoming a participating member in a single currency ("the Euro" or "Euros") be deemed to include references to the Euro (or to any unit thereof) converted at the fixed conversion rate into Euros for sterling as determined by the Council of Ministers and upon sterling ceasing to be legal tender within the European Community, the Euro (or any unit thereof) shall be deemed to be substituted in its place calculated at the said fixed conversion rate

### **PROVISIONS APPLICABLE TO THE SPECIFIED SERVICE**

#### **2. Supply of the Specified Service**

2.1 The Supplier shall provide the Specified Service to the Client subject to these Conditions. Any changes or additions to the Specified Service must be agreed in writing by the Supplier and the Client.

2.2 The Client shall at its own expense supply the Supplier with all necessary Documents or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable the Supplier to provide the Specified Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.

2.3 The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to or to the order of the Client.

2.4 The Specified Service shall be provided in accordance with the Specification Sheet and otherwise in accordance with the Supplier's current brochure or other published literature relating to the Specified Service from time to time, subject to these Conditions.

- 2.5 Further details about the Specified Service, and advice or recommendations about its provision or utilisation, which are not given in the Supplier's brochure or other promotional literature, may be made available on written request.
- 2.6 The Supplier may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the Specified Service without any liability to the Client.
- 2.7 The Supplier may at any time without notifying the Client make any changes to the Specified Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.
- 3. Obligations of the Client**
- 3.1 The Client shall comply in all respects with all applicable laws and regulations (whether of the United Kingdom or elsewhere) at the Site. Without prejudice to the generality of the foregoing, the Client shall provide a safe environment in which the Supplier's personnel may provide the Specified Service and shall establish procedures under, and comply with, all requirements from time to time in force under the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1992 and the Workplaces (Health, Safety and Welfare) Regulations 1992.
- 3.2 The Client shall afford the Supplier's personnel such access to the Site as may be required to provide the Specified Service. Further, the Client shall:
- 3.2.1 advise the Supplier and its personnel of any rules and regulations which are then in force at the Site (including without limitation, any Site operating code or policies from time to time in force);
- 3.2.2 makes available such working space and facilities at the Site as the Supplier's personnel may reasonably require;
- 3.2.3 Make available appropriate personnel to liaise with the Supplier's personnel; and
- 3.2.4 Secure and otherwise keep safe all and any property of the Supplier.
- 3.3 The Client shall provide the Client's Equipment free of charge at such times and locations as may be reasonably requested by the Supplier or its personnel.
- 4. Rights in Input Material and Output Material**
- 4.1 The property and any copyright or other intellectual property rights in:
- 4.1.1 Any Input Material shall belong to the Client
- 4.1.2 Any Output Material shall, unless otherwise agreed in writing between the Client and the Supplier, belong to the Supplier, subject only to the right of the Client to use the Output Material for the purposes of utilising the Specified Service.
- 4.2 Any Input Material or other information provided by the Client which is so designated by the Client and any Output Material shall be kept confidential by the Supplier, and all Output Material or other information provided by the Supplier which is so designated by the Supplier shall be kept confidential by the Client; but the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- 4.3 The Client warrants that any Input Material and its use by the Supplier for the purpose of providing the Specified Service will not infringe the copyright or other rights of any third party and the Client shall indemnify the Supplier against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 4.4 Subject to paragraph 4.3, the Supplier warrants that any Output Material and its use by the Client for the purposes of utilising the Specified Service will not infringe the copyright or other rights of any third party and the Supplier shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement.

### **PROVISIONS APPLICABLE TO THE GOODS**

- 5. Basis of the sale**
- 5.1 The Supplier shall sell and the Client shall purchase the Goods in accordance with any written quotation of the Supplier which is accepted by the Client, or any written order of the Client which is accepted by the Supplier, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Client.
- 5.2 The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Supplier in Writing. In entering into the Contract the Client acknowledges that it does not rely on any such representations which are not so confirmed.
- 5.3 Any advice or recommendation given by the Supplier or its employees or agents to the Client or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Client's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 5.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document issued by the Supplier relating to the Goods shall be subject to correction without any liability on the part of the Supplier.
- 5.5 The Client shall contact Supplier for suitable storage and maintenance instructions if Goods remain in, or are expected to remain in storage for a period exceeding four (4) weeks from delivery date pursuant to Section 7 below.
- 5.6 If Client fails to request storage instructions from Supplier within seven (7) days of the end of this four (4) week period and the Goods have yet to be commissioned regardless of reason; or fails to follow the Supplier's instructions wholly

or in part for the Goods in storage or installed and for the period prior to commissioning, then the warranty (described in Section 13 below) shall immediately become void. In the event Client requires Supplier to visit site on matters relating to storage or maintenance of the Goods, Supplier shall provide authorised personnel at its published day rates.

## **6. Orders and specifications**

- 6.1 No order for Goods submitted by the Client shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier's authorised representative.
- 6.2 The Client shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Client, and for giving the Supplier any necessary information relating to the Goods within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.
- 6.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Supplier's quotation (if accepted by the Client) or the Client's order (if accepted by the Supplier).
- 6.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a specification submitted by the Client, the Client shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim arising out of:-
- (i) infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Supplier's use of the Client's specification; or
  - (ii) any impracticality, inefficiency or lack of safety or other defect in the Goods where such defect is due (whether in whole or in part) to faults or omissions in information, drawings, designs, instructions, or specifications of the Client.
- 6.5 The Supplier reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.
- 6.6 The Supplier shall have no liability in the case where parts or components to be supplied by its sub-suppliers become unavailable.
- 6.7 No order which has been accepted by the Supplier may be cancelled by the Client except with the agreement in Writing of the Supplier and on terms that the Client shall indemnify the Supplier 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 Supplier as a result of cancellation.

## **7. Delivery**

- 7.1 Delivery of the Goods shall be made by the Client collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Client that the Goods are ready for collection or, if some other place for delivery is agreed in Writing by the Supplier, by the Supplier delivering the Goods to that place. Where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Supplier shall be under no obligation under Section 32(2) of the Sale of Goods Act 1979.
- 7.2 Any dates quoted for delivery of the Goods are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Supplier in Writing. The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Client.
- 7.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier 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.
- 7.4 If the Supplier fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Supplier's reasonable control or the Client's fault, and the Supplier is accordingly liable to the Client, the Supplier's liability shall be limited to the excess (if any) of the cost to the Client (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 7.5 If the Client fails to take delivery of the Goods or fails to give the Supplier 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 Supplier's fault) then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:
- 7.5.1 Store the Goods until actual delivery and charge the Client for the reasonable costs (including insurance) of storage; or
  - 7.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Client for the excess over the price under the Contract or charge the Client for any shortfall below the price under the Contract.
- 7.6 Save for return of Goods pursuant to Section 13 (Warranties and Liabilities) Goods shall not be returned to Supplier unless in the case of Supplier's standard Goods which Supplier has approved the return of in advance. All approved returns must be packaged to prevent damage, insured and returned prepaid. Returned Goods shall be subject to a 25% restocking charge.

## **8. Risk and property**

- 8.1 Risk of damage to or loss of the Goods shall pass to the Client:
- 8.1.1 In the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Client that the Goods are available for collection; or

- 8.1.2 In the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.
- 8.2 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 Client until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and Specified Service to be provided under the Contract and all other goods agreed to be sold and services agreed to be provided by the Supplier to the Client for which payment is then due.
- 8.3 Until such time as the property in the Goods passes to the Client, the Client shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Client and third parties and properly stored, protected and insured and identified as the Supplier's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.
- 8.4 Until such time as the property in the Goods passes to the Client (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Client to deliver up the Goods to the Supplier and, if the Client fails to do so forthwith, to enter upon any premises of the Client or any third party where the Goods are stored and repossess the Goods.
- 8.5 The Client shall 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 Supplier, but if the Client does so all monies owing by the Client to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

## **9. Indemnity**

- 9.1 If any claim is made against the Client that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any information, drawing, design, instruction or specification supplied by the Client, the Supplier shall indemnify the Client against all loss, damages, costs and expenses awarded against or incurred by the Client in connection with the claim, or paid or agreed to be paid by the Client in settlement of the claim, provided that:
- 9.1.1 The Supplier is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.2 The Client shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations;
- 9.1.3 except pursuant to a final award, the Client shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier (which shall not be unreasonably withheld);
- 9.1.4 the Client shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Client may have in relation to such infringement, and this indemnity shall not apply to the extent that the Client recovers any sums under any such policy or cover (which the Client shall use its best endeavours to do);
- 9.1.5 the Supplier shall be entitled to the benefit of, and the Client shall accordingly account to the Supplier for, all damages and costs (if any) awarded in favour of the Client which are payable by, or agreed with the consent of the Client (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 9.1.6 Without prejudice to any duty of the Client at common law, the Supplier shall be entitled to require the Client to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Supplier is liable to indemnify the Client under this clause.

## **10. Export terms**

- 10.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. 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.
- 10.2 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 Client and the Supplier) apply notwithstanding any other provision of these Conditions.
- 10.3 The Client 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.
- 10.4 Unless otherwise agreed in Writing between the Client and the Supplier, the Goods shall be delivered FCA and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 10.5 The Client shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier 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 shipment, or in respect of any damage during transit.
- 10.6 Payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Client in favour of the Supplier and confirmed by a bank acceptable to the Supplier or, if the Supplier has agreed in Writing on or before acceptance of the Client's order to waive this requirement, by acceptance by the Client and delivery to the Supplier of a bill of exchange drawn on the Client payable at sight to the order of the Supplier at such branch of the Supplier's nominated bank in England as may be specified in the bill of exchange.

### **PROVISIONS APPLICABLE TO THE HIRE EQUIPMENT**

#### **10A. Delivery of the Hire Equipment**

- 10A.1 unless otherwise agreed in Writing, delivery of the Hire Equipment shall take place at the Supplier's address.
- 10A.2 The Supplier will use its reasonable efforts to ensure delivery of the Hire Equipment on or around the date of delivery. However, any dates specified by the Supplier for delivery of the Hire Equipment are intended to be an estimate only

and subject to availability of Hire Equipment. Time for delivery shall not be made of the essence of the Contract, and if no dates are so specified, delivery will be within a reasonable time.

- 10A.3 The Client shall pay the cost of and, if required by the Supplier, make all arrangements for delivery of the Hire Equipment from the Supplier's address to the intended place of operation at the beginning of the Hire Period and from the place of operation to the Supplier's address, or such other address as may be agreed in Writing, at the end of the Hire Period.
- 10A.4 When the Hire Equipment is to be dispatched from, and returned to, the Supplier's address the Supplier shall be responsible for loading the Hire Equipment onto the delivery vehicle at the beginning of the Hire Period and unloading the Hire Equipment from the delivery vehicle at the end of the Hire Period. The Client shall be responsible for all other loading and unloading throughout the Hire Period.
- 10A.5 The Client shall at its expense provide free and suitable access to the intended place of operation, including removal and reinstatement of local obstructions, for the delivery, servicing and collection of the Hire Equipment.
- 10A.6 The Client shall ensure that the intended place of operation is suitable for the positioning and operating of the Hire Equipment and shall protect, cover or reinforce as necessary any surface or other parts of the intended place of operation liable to be damaged in the course of moving or operating the Hire Equipment. The Client shall be solely responsible for and shall indemnify the Supplier in full against all claims for damage to the place of operation or surrounding area.
- 10A.7 The Hire Equipment shall be deemed to have been received in good order unless written notice to the contrary is received by the Supplier within three (3) days of delivery of the Hire Equipment.

#### **10B. Operators**

- 10B.1 When a qualified operator is supplied by the Supplier with the Hire Equipment:
  - 10B.1.1 the Supplier shall supply a person who it considers to be competent in operating the Hire Equipment;
  - 10B.1.2 the Client shall not permit any other person to operate the Hire Equipment without obtaining prior consent in Writing from the Supplier.
- 10B.2 Any operator of the Hire Equipment supplied by the Supplier shall be under the exclusive control of the Client and the Client shall not be entitled to make any claim against and shall indemnify and hold the Supplier harmless against all claims arising out of any such operator's act, accident, negligence, default or omission whilst under the Supplier's exclusive control.
- 10B.3 The Supplier's costs, charges and expenses relevant to the provision of a qualified operator shall be specified separately for each Contract.

#### **10C. Client's Obligations**

- 10C.1 During the Hire Period the Client shall, at its own expense:
  - 10C.1.1 comply with all laws and regulations relating to the use of the Hire Equipment including health and safety requirements and shall use or permit the use of the Hire Equipment only in accordance with relevant operating and safety instructions, including without limitation, any supplied with the Hire Equipment. Any typographical, clerical or other error or omission in such instructions shall be subject to correction without any liability on the part of the Supplier;
  - 10C.1.2 ensure that the Hire Equipment is operated properly and safely with due care and skill at all times by suitably competent, qualified, experienced and instructed personnel;
  - 10C.1.3 fully acquaint itself with the appropriate manufacturers' guidelines and not use or permit the use of the Hire Equipment for any purpose beyond its capacity or in a manner likely to result in excessive wear in accordance with such guidelines;
  - 10C.1.4 ensure that the Hire Equipment remains safe, serviceable and clean;
  - 10C.1.5 ensure that the Hire Equipment undergoes daily routine maintenance, including, but not limited to, maintenance of the correct levels of all lubricants and other fluids;
  - 10C.1.6 ensure that all fuel and lubricants used in respect of the Hire Equipment shall be of suitable grade and quality for use with the Hire Equipment.
- 10C.2 Additionally the Client shall:
  - 10C.2.1 not make any alterations or modifications to the Hire Equipment;
  - 10C.2.2 take all reasonable steps to keep itself acquainted with the state and condition of the Hire Equipment;
  - 10C.2.3 not operate the Hire Equipment in an unsafe or unsatisfactory state;
  - 10C.2.4 ensure that when the Hire Equipment requires the fitting or re-fitting of any accessory (which term includes but is not limited to drills, wheels, discs and blades), that only accessories supplied by the Supplier are utilised and that any such accessory is correctly fitted or re-fitted in a manner so as not to damage the Hire Equipment or render it unsafe;
  - 10C.2.5 immediately notify the Supplier of any malfunctioning of the Hire Equipment and the Client shall not carry out any repair to the Hire Equipment without obtaining authorisation from the Supplier in Writing;
  - 10C.2.6 immediately notify the Supplier if the Hire Equipment is involved in any incident or accident resulting in damage to the Hire Equipment or to other property or injury to any person and immediately cease using the Hire Equipment if there is any possibility that it or a defect with it was responsible for such incident or accident;
  - 10C.2.7 ensure that the Supplier, and any person authorised by it, shall at all reasonable times have full access to the Hire Equipment and facilities for inspecting, testing, adjusting, repairing and replacing same.
  - 10C.2.8 not remove, deface or cover up any name-plate or identification mark or number on the Hire Equipment nor put any mark on the Hire Equipment which might indicate or suggest that the Hire Equipment is not the property of the Supplier;
  - 10C.2.9 not sell, mortgage, charge, pledge, part with possession of, or otherwise deal with the Hire Equipment except with the written consent of the Supplier;

- 10C.2.10 protect the Hire Equipment against distress, execution or seizure.
- 10C.3 The Client shall indemnify the Supplier against any loss or damage to the Hire Equipment or otherwise which it may suffer as a result of the Client failing to comply with its obligations under this clause 10C.

**10D. Breakdown of Hire Equipment**

- 10D.1 In the event of a breakdown of the Hire Equipment otherwise than as a result of breach by the Client of its obligations under the Contract or these Conditions:
- (i) no hire charges will be payable by the Client from the time when the Client first notifies the Supplier in Writing that such breakdown has occurred;
  - (ii) the Supplier will use all reasonable endeavours to repair or replace the Hire Equipment; and
  - (iii) The Client will only be required to pay hire charges from the time when the Hire Equipment has been repaired or replaced.
- 10D.2 Notwithstanding clause 10D.1 above:
- (i) in relation to the suspension of hire charges, no allowance will be made for stoppages resulting from the Client's misuse, negligence or misdirection or other causes outside the Supplier's control; and
  - (ii) The Supplier will not be responsible for any loss suffered by the Client as a result of such breakdown.

**10E. Title and Risk**

- 10E.1 The Hire Equipment is deemed to be the Client's responsibility throughout the Hire Period and without limiting its responsibilities under the Contract, the Client shall insure against any damage, loss or injury which may arise from its possession or use of the Hire Equipment which may occur to any property including the Hire Equipment or any person for which it may be responsible or liable.
- 10E.2 Notwithstanding clause 10E.1 above, no title or right in the Hire Equipment shall pass to the Client at any time.
- 10E.3 The Client shall return the Hire Equipment to the Supplier on completion of the Hire Period in the same condition as at the commencement of the Hire Period, fair wear and tear excepted.
- 10E.4 During the Hire Period the Client shall make good to the Supplier all loss of or damage to the Hire Equipment from whatever cause the same may arise.
- 10E.5 In the event that the Hire Equipment is damaged during the Hire Period, hire charges shall continue during any repair period. If repair or rectification of damage is necessary at the place of operation, the charges for labour, materials, travel and shipping will be payable by the Client in full.
- 10E.6 In the event that the Hire Equipment is lost, stolen or damaged beyond economic repair during the Hire Period, the Client shall pay to the Supplier the full current new price of the Hire Equipment.

**PROVISIONS APPLICABLE TO THE SPECIFIED SERVICES, THE GOODS AND THE HIRE EQUIPMENT**

**11. Price**

- 11.1 Unless otherwise agreed between the parties in Writing the Client shall pay the aggregate of:
- (i) (if the Specified Service is being provided under the Contract) the Supplier's Standard Charges and any additional sums which are agreed between the Supplier and the Client for the provision of the Specified Service or which, in the Supplier's sole discretion are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client; and
  - (ii) (if Goods are being supplied under the Contract) the price of the Goods which shall be the Supplier's quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Supplier's published price list current at the date of acceptance of the order.
  - (iii) (if Hire Equipment is being supplied under the Contract) the price being the hire charges shall be calculated on a daily basis using seven (7) days to the week throughout the Hire Period. Subject to clause 10E above, the full contracted hire rate will be charged for the full Hire Period irrespective of the actual time during which the Hire Equipment was in operation.

The Supplier's Standard Charges and quoted prices are valid for 30 days only (or until earlier acceptance by the Client or earlier withdrawal by the Supplier before the Client's acceptance), after which time they may be altered by the Supplier without giving notice to the Client.

- 11.2 The Supplier reserves the right, by giving notice to the Client at any time before delivery, to increase the price of any Goods supplied under this Contract to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (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 Client, or any delay caused by any instructions of the Client or failure of the Client to give the Supplier adequate information or instructions.
- 11.3 Except as otherwise stated under the terms of any quotation or in any price list of the Supplier, and unless otherwise agreed in Writing between the Client and the Supplier, all prices for Goods are given by the Supplier on an ex works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Client shall be liable to pay the Supplier's charges for transport, packaging and insurance.
- 11.4 All charges quoted to the Client for the provision of the Specified Service, the price of the Goods or the supply of Hire Equipment are exclusive of any applicable value added tax for which the Client shall be additionally liable to pay the Supplier at the applicable rate from time to time.

**12. Terms of payment**

- 12.1 Goods

- 12.1.1 Subject to any special terms agreed in Writing between the Client and the Supplier and if a credit arrangement has been approved by the Supplier, the Supplier shall be entitled to invoice the Client 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 Client or the Client wrongfully fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Client for the price at any time after the Supplier has notified the Client that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods.
- 12.1.2 Provided that a credit arrangement has been approved by the Supplier, the Client shall pay the price of the Goods (together with any applicable Value Added Tax and less any discount to which the Buyer is entitled but without any set-off, counterclaim or any other deduction) within 30 days of the date of the Supplier's invoice, and the Supplier 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.
- 12.1.3 Where no credit arrangement has been approved by the Supplier prior to delivery the client will be required to make a proforma payment to the Supplier in the amount, form and currency specified by the Supplier.
- 12.2 **Specified Service**  
The Supplier shall be entitled to invoice the Client on or at any time after completion of the specified service, or following the end of each month in which the Specified Service is to be provided or at other times agreed with the Client. The Supplier's Standard Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off, counterclaim or other deduction) within 30 days of the date of the Supplier's invoice.
- 12.2A **Hire Equipment**  
Unless agreed otherwise, the Supplier shall be entitled to invoice the Client from time to time for the price in relation to provision of Hire Equipment and any additional sums payable by the Client. Such amount will be payable (together with any applicable Value Added Tax and without any set-off, counterclaim or other deduction) within 30 days of the date of the Supplier's invoice
- 12.3 Payment shall be in sterling. The time of payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 12.4 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 12.4.1 Cancel the Contract and suspend any further deliveries of the Goods or performance of the Specified Service to the Client and request the immediate return of any Hire Equipment provided by the Supplier;
- 12.4.2 the immediate payment of all payments outstanding in respect of Goods, Hire Equipment or Specified Service and of any other goods, works or services under any other contract notwithstanding the fact that the date for payment may not yet have fallen due;
- 12.4.3 Appropriate any payment made by the Client to such of the Goods, Hire Equipment or Specified Service (or the goods or services supplied under any other contract between the Client and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Client);
- 12.4.4 charge the Client interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above the Bank of Scotland Bank 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); and
- 12.4.5 Charge the Client the cost of recovery of any unpaid amount including any legal costs, disbursements and bank charges incurred.
- 13. Warranties and liability**
- 13.1 Subject to the conditions set out below the Supplier warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.
- 13.2 The above warranty is given by the Supplier subject to the following conditions:
- 13.2.1 Where the Goods fail due to faulty materials or workmanship (and the Goods remain within the warranty period specified in Clause 13.1. above), the Client shall (at the Client's expense) return the Goods to the Supplier's address as set out in the dispatch documentation. The Supplier shall inspect the Goods and acceptance of liability to replace or repair (the decision to replace or repair being at the Supplier's sole discretion) the Goods shall be subject to the Supplier discovering fault. If the Client requires on site repairs, the Client shall be responsible for all costs and expenses incurred by the Supplier (including subsistence expenses, travel expenses and travel time costs (travel time costs to be charged at the Supplier's standard rate), except where the Goods have been commissioned by one of the Supplier's Engineers in which case labour costs whilst carryout out the actual repair/inspection on site will not be charged.
- 13.2.2 The Supplier shall not be liable under the warranty in clause 13.1. above to carry out any repairs or to replace Goods where the Goods have suffered damage as a result of repairs carried out or modifications made to the Goods by the Client or any other third party.
- 13.2.3 The Supplier shall be under no liability in respect of any defect in the Goods arising from any information, drawing, design, instruction or specification supplied by the Client;
- 13.2.4 The Supplier 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 Supplier's instructions (whether oral or in Writing), improper installation (other than by the Supplier) misuse or alteration or repair of the Goods without the Supplier's approval;

- 13.2.5 The Supplier 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 or if the Client is otherwise in breach of this Contract or any other contract with the Supplier;
- 13.2.6 The above warranty does not extend to parts, materials or equipment (including Output Material) not manufactured by the Supplier, in respect of which the Client shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.
- 13.3 The Supplier warrants to the Client that the Specified Service will be provided using reasonable care and skill by suitably qualified personnel and, as far as reasonably possible, in accordance with the Specification and at the intervals and within the times referred to in the Specification Sheet.
- 13.4 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.
- 13.5 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Client are not affected by these Conditions.
- 13.6 The Supplier shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 13.7 Nothing in these terms shall be taken as excluding the Supplier's liability for death or personal injury arising as a result of its negligence. In no circumstances shall the Supplier 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, which arise out of or in connection with the supply of the Goods or their use or resale by the Client or the provision of the Specified Service or their use by the Client or the supply of Hire Equipment or its use by the Client for:
- 13.7.1 any increased costs or expenses
- 13.7.2 any loss of profit (whether of the Client or any other party);
- 13.7.3 for any loss of business, contracts, opportunity, revenues or savings;
- 13.7.4 for any anticipated loss of business, contracts, opportunity, revenues or savings;
- 13.7.5 losses, claims, liabilities, expenses, costs or damages which were not reasonably foreseeable by the parties or either of them at the date of this Contract; or
- 13.7.6 Any special, indirect or consequential damage of any nature whatsoever.
- Without prejudice to clause 13.7 the Suppliers liability to the Client with respect to any claims losses or damages arising from or in connection with the Contract (whether in contract, tort or otherwise) is limited to and shall not exceed for all such claims losses or damages 100% of the price of the Contract, except as expressly provided in these Conditions.
- 13.8 The Supplier 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 Supplier's obligations in relation to the Specified Service, Hire Equipment and/or the Goods, if the delay or failure was due to any cause beyond the Supplier's reasonable control and such failure or delay shall entitle either party to terminate the Contract if it persists for more than three months but the Client shall remain liable to pay for Goods delivered, Hire Equipment delivered and/or any provision of the Specified Service prior to the date of such cancellation. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:
- 13.8.1 Act of God, explosion, flood, tempest, fire or accident;
- 13.8.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 13.8.3 treaties, directives, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority or other body or competent authority;
- 13.8.4 Import or export regulations or embargoes;
- 13.8.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);
- 13.8.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 13.8.7 Power failure or breakdown in machinery.
- 14. Insolvency of client**
- 14.1 This clause applies if:
- 14.1.1 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
- 14.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client; or
- 14.1.3 The Client ceases, or threatens to cease, to carry on business; or
- 14.1.4 The Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly.
- 14.2 If this clause applies then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any

liability to the Client, and if the Goods or Hire Equipment have been delivered or the Specified Service provided (either in whole or in part) but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**15. General**

- 15.1 The Supplier 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 Supplier.
- 15.2 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.
- 15.3 No waiver by the Supplier 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.
- 15.4 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.
- 15.5 The Contract shall be governed by and construed in accordance with the laws of England and the Client agrees to submit to the exclusive jurisdiction of the English courts.
- 15.6 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Client and the Supplier.