



and will not use them for any purpose not connected with the Contract.

#### 11. INSPECTION/SHORTAGES

11.1 The Buyer will be deemed to have accepted the Goods as being in accordance with the Contract unless:

(a) within seven days after the Buyer has taken delivery or collected the Goods as the case may be (but in any event prior to any use or modification of the Goods), the Buyer has notified the Company in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within seven days); or  
(b) the Buyer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time where the effect or failure would not be so apparent within seven days of the date of delivery or collection, failing which the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

11.2 In all cases where defects or shortages are complained of the Company shall be under no liability in respect thereof unless an opportunity to inspect the Goods is afforded to the Company (including when relevant by the Goods being returned to the Company at the Buyer's cost) before any use is made thereof or any alteration or modification is made thereto by the Buyer.

11.3 The Company shall only be liable for any non-delivery of Goods (even if caused by the Company's negligence) if the Buyer gives written notice to the Company within seven days of the date when the Goods would, in the ordinary course of events have been delivered.

11.4 If the Buyer gives notice to the Company in accordance with Condition 11.3 the liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

#### 12. WARRANTY

12.1 The Company undertakes to replace or repair any Goods or part of them or repeat any Services or parts of them or refund that proportion of the price attributable to any Services or Goods or parts of them as the Company shall in its sole discretion decide which shall be proved to the Company's satisfaction to be defective and not in accordance with the Contract due to a default in workmanship or materials or failure to provide the Services with reasonable skill and care on the part of the Company within the lesser of six months from the provision of the Services or the delivery of such Goods or the shelf life of the Goods advised by the Company on the product datasheet or otherwise. The Company will notify the Buyer by email, or post if this period is to be less than six months.

12.2 The liability of the Company under this Condition 12 shall in no event exceed the purchase price of the defective Goods or Services and performance of any one of the options referred to in Condition 12.1 shall constitute an entire discharge of the Company's liability under Condition 12.1

12.3 The Company shall be under no liability under Condition 12.1 unless the Buyer:

12.3.1 notifies the Company in writing of the alleged defect within seven days of the time when the Buyer discovers or ought to have discovered the defect; and

12.3.2 affords the Company a reasonable opportunity to inspect the relevant Goods or location at which the Services were performed and, if so requested by the Company and where it is reasonable to do so, promptly returns to the Company or such other person nominated by the Company a sample of the Goods or materials relating to the Services within fourteen days, carriage paid by the Buyer, for inspection, examination and testing and otherwise permits the Company to have access to the Goods or such materials at the Buyer's premises or other location where they may be or the Services were performed for such purposes.

12.4 If the Company elects to replace the Goods or reperform the Services pursuant to Condition 12.1 the Company shall deliver the replacement Goods to or reperform the Services for the Buyer at the Company's own expense at the address to which the defective Goods were delivered or defective Services performed and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Buyer) re-vest in the Company and the Buyer shall make any arrangements as may be necessary to deliver up to the Company the defective Goods which are being replaced or materials relating to the previously performed Services.

12.5 The Company shall be under no liability under Condition 12.1:

12.5.1 In respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal storage or working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of Goods without the Company's approval;

12.5.2 if the total price due for the Goods or Services has not been paid;

12.5.3 for parts, materials or equipment not manufactured by the Company, 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 Company and which the Company is able to validly enforce against any such manufacturer;

12.5.4 for any Goods or Services supplied in accordance with, or where the defect has arisen due to any drawing, design, specification, instruction, information or recommendation provided by the Buyer; or

12.5.5 for any Goods or Services supplied where the defect has arisen because the Buyer has failed to provide information, which if provided would have allowed the Company to ensure the Goods or Services would not have been defective.

12.6 Subject as expressly provided in these conditions, all warranties, conditions, guarantees or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.7 The Company shall have the right to make any changes to the Goods or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods or Services.

#### 13. LIMITATION OF LIABILITY

13.1 The Company does not in any manner whatsoever exclude or limit its liability for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation or any liability which cannot legally be excluded or limited.

13.2 The Buyer accepts that the provisions of Conditions 11, 12 and 13 set out the entire liability of the Company to the Buyer and the exclusive remedies of the Buyer against the Company under or in relation to the Contract. Accordingly, save as set out below, the Company shall have no liability of any nature whatsoever for (without limitation) any breach of its contractual obligations arising under the Contract, any representation (unless fraudulent), statement or tortious act or omission, including negligence and breach of statutory duty, arising under or in connection with the Contract or in relation to other matter or thing whatsoever under or in relation to the Contract.

13.3 The Company shall not be liable for any economic loss of whatever nature (direct or indirect) including without limitation loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business howsoever arising.

13.4 The Company shall not be liable for any indirect, special or consequential loss or damage howsoever arising.

13.5 If the Company fails to deliver the Goods (or any instalment) in accordance with its obligations under the Contract for any reason other than as set out in Condition 14 or the Buyer's default, and the Company is accordingly liable to the Buyer, the Company's 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 not delivered.

13.6 Subject to Conditions 13.1-13.5 (inclusive) above the total aggregate liability of the Company arising out of, or in connection with the performance or contemplated performance of the Contract whether for negligence or breach of contract or any case whatsoever shall in no event exceed 120% of the price paid or payable by the Buyer under the Contract.

#### 14. FORCE MAJEURE

14.1 The Company shall not be in breach of the Contract or otherwise liable for any failure or delay to deliver the Goods and/or supply the Services arising from circumstances outside the Company's reasonable control (including without limitation act of God, war, riot, act of terrorism, explosion, abnormal weather conditions, fire, flood, lightning, strikes, lockouts, Government action or regulations (UK or otherwise), delay by suppliers, accidents and shortages of materials, labour or manufacturing facilities).

14.2 Should the Company be prevented from delivering in the above circumstances, it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.

14.3 If the circumstances preventing delivery are still continuing three months after the Buyer receives the Company's notice, then either party may give written notice to the other cancelling the Contract.

14.4 If the Contract is cancelled in this way, the Company will refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the Buyer including under Condition 5.1 which the Company cannot use to fulfil another equivalent order) but the Company will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

#### 15. INDEMNITY

The Buyer agrees upon demand to indemnify the Company and its Affiliates against all actions, losses, damages, injury, costs (including legal costs), claims and expenses of whatever nature suffered by the Company and its Affiliates to the extent that the same are caused by or related to:

15.1 any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Buyer's instructions whether express or implied;

15.2 design, drawings or specifications given to the Company by the Buyer in respect of Goods provided by the Company for the Buyer; or

15.3 defective materials or products supplied by the Buyer to the Company and incorporated by the Company in Goods provided by the Company for the Buyer; or

15.4 the improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer; or

15.5 any breach by the Buyer of its contractual obligations arising under the Contract, any representation, statement or tortious act or omission, including negligence and breach of statutory duty, arising under or in connection with the Contract; or

15.6 the employment or termination of employment of any employee(s) of the Buyer or its Affiliates or persons providing services similar to the Services whose employment may transfer to the Company or one of its Affiliates in connection with the commencement or termination of the Contract or who claim that their employment or such claims so transfer; or

15.7 the termination of employment of any employee(s) of the Company or its Affiliates arising from the termination of the Contract.

#### 16. SALES PROMOTION INFORMATION

Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other information provided in any media, it is hereby agreed that any such publications and information are for the Buyer's general guidance only and

the particulars contained therein shall not constitute any representation or warranty by the Company and the Company shall not be bound thereby.

#### 17. NOTICES

17.1 Any notice to be given hereunder shall be in writing and may be delivered or sent by personal delivery or prepaid first class letter post and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 48 (forty eight) hours after posting.

#### 18. ASSIGNMENT

The Buyer shall not assign or transfer or purport to assign or transfer the Contract or the benefits thereof to any other person without the prior written consent of the Company. The benefit of the Contract is freely assignable by the Company and, in the event of any such assignment, all references in the Contract to the Company are deemed to include its assigns. The Company may at any time subcontract, transfer, mortgage, charge or deal with in any manner any or all of its rights and obligations under the Contract to any third party.

#### 19. LAW

The Contract and any issues, disputes or claim arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of Brazil

#### 20. JURISDICTION

All disputes or claims arising out of or relating to the Contract between Brazilian contractors shall be subject to the jurisdiction of the Brazilian Courts to which the parties irrevocably submit. Notwithstanding the foregoing, any dispute or claim arising out of or in connection with the Contract between one or more international contractors shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules. Such arbitration shall take place in the Portuguese language in the City of São Paulo, São Paulo, Brazil. If a court action has been initiated by the Buyer at the time that the Company chooses to submit the matter to arbitration, then it is agreed that such court action is to be discontinued, unless the arbitrator finds that the Company has waived such right by substantially participating in the court action without having raised its right under this Condition.

#### 21. HEADINGS

The headings of these conditions are for convenience only and shall have no effect upon the interpretation thereof.

#### 22. HEALTH AND SAFETY

The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Company (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that, as far as reasonably practicable, the Goods will be safe and without risk to health at all times as mentioned above and shall procure that any of its Affiliates and any subsequent possessor of the Goods is so advised and follows such steps in accordance with this Condition. For these purposes, the Buyer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

#### 23. GENERAL

23.1 The Company's Affiliates may enforce the provisions of the Contract. A person who is not party to the Contract who is not an Affiliate of the Company shall have no right to enforce any term of the Contract. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. The rights of the parties to the Contract to terminate, rescind, or agree any variation, waiver or settlement under the Contract are not subject to the consent of any person that is not a party to the Contract.

23.2 The Contract sets out the entire agreement and understanding between the Buyer and the Company in connection with the sale of the Goods and provision of the Services and shall supersede and replace all documentation previously issued by the Company purporting to set out its terms and conditions of sale of Goods/Services. The Buyer acknowledges that the Contract has not been entered into wholly or partly in reliance on, nor has the Buyer been given, any warranty, statement, promise, or representation by the Company or on its behalf other than as expressly set out in the Contract. The Buyer agrees that the only rights or remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had.