

## 1. Definitions

In these Conditions of Supply all references to (a) 'the Company' are to Aquilar Limited (b) 'the Customer' are to the person firm or company by whom the order is given to the Company (c) 'goods' are to the goods which are the subject of the order (d) 'services' are to the services which are the subject of the order (e) 'supply' are to the supply of such goods and/or services.

## 2. Entire Agreement

(a) All contracts for supply shall be deemed to incorporate these Conditions which represent the complete agreement of the Company and Customer with regard to the supply except as otherwise specifically agreed in writing by the Company ("the contract for supply"). These Conditions shall override any terms and conditions stipulated, incorporated, or referred to by the Customer in any order, correspondence, negotiations or any other way.

(b) Catalogues, price lists, advertisements and other published information are only indications of the type of products and services available and shall not form part of the contract for supply or any other contract with the Customer nor be considered a collateral warranty or a representation inducing the same.

## 3. Acceptance

(a) The Company's catalogues, price lists and quotations do not constitute offers made by the Company.

(b) No order is binding on the Company until officially accepted by the Company.

(c) Accepted orders are not subject to cancellation except upon (i) the written approval of the Company and (ii) the payment of a fair and equitable charge to the Company based upon the actual cost incurred by the Company in respect of the order to the date cancellation is received and approved.

## 4. Specifications etc.

(a) Where the Company sells goods or performs services which are not to its standard specification, in preparing and submitting a specification and/or written acceptance of the Customer's order the Company relies upon the Customer supplying all necessary relevant and accurate particulars and information. Any errors or omissions contained in such particulars and information supplied at any time resulting in any loss or damage to the Customer shall be the Customer's sole responsibility.

(b) Any drawings, illustrations, specifications or other material submitted by the Company to the Customer remain the property of the Company and must not be communicated to a third party without the written permission of the Company. A prospective Customer has no right to disclose any information contained therein to a third party without the written consent of the Company.

## 5. Prices

Prices exclude Value Added Tax which will be charged at the rate ruling at the tax point. Prices are subject to alteration without notice and will be invoiced at those ruling at the date of despatch of goods.

## 6. Customs Duties and Taxes

All Customs and Excise duties import and/or export duties and all other taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the supply shall be borne by the Customer and except as stated in the Quotation are additional to the prices therein stated.

## 7. Exchange Fluctuations

The selling price of imported goods is based on exchange rates in effect at the date of the Quotation and may, without prejudice to the provisions of Clause 5 above, at the Company's discretion be increased to compensate for currency fluctuations.

## 8. Payment Terms

(a) Except as otherwise specified in writing by the Company or this Condition payment for the supply shall be due in full in pounds sterling within thirty days nett monthly from the issue of the Company's invoice.

(b) The Company reserves the right to suspend further deliveries or performance and/or to cancel allowance of further credit in the event of any payment not being made when due or if the Company at its discretion at any time considers the financial circumstances of the Customer have ceased to justify the terms allowed.

(c) If the Customer disputes invoice pricing he must record his dispute in writing to the Company within 14 days of receipt of the relevant invoice. Payment shall not be delayed by Customers own inspection arrangements or any other internal procedures of the Customer or other third parties and where goods are delivered in instalments payment for one instalment is not to be withheld by reason of any query on any other instalment.

(d) Interest shall be payable at the discretion of the Company on all overdue sums at the rate of interest for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 of 8 per cent per annum over the official dealing rate in force on the 30th June (in respect of interest which starts to run between 1st July and 31st December) or the 31st December (in respect of interest which starts to run between 1st January and 30th June) immediately before the day on which statutory interest starts to run. The Customer must pay, by the relevant due date(s), all amounts not in dispute (disputes having been advised within the prescribed time limits). Non payment of the undisputed balance of an invoice is not acceptable and will be treated as any other overdue debt.

## 9. Delivery

Unless otherwise expressly provided in writing in the Quotation, all sales are ex works Horsham England and delivery of the goods to the carrier shall constitute delivery thereof to the Customer, and thereafter such goods shall be at the Customer's risk. Any claim for shortage or damage occurring after such delivery or for transportation overcharges should be notified to the Company in writing within 72 hours. Any period or date for delivery or for the performance of services stated in the contract for supply or elsewhere is the Company's best estimate when stated but is not a contractual statement.

## 10. Invoicing

The Company may invoice the Customer in respect of the supply of goods at the earlier of the following dates: the date the goods are shipped or the date the goods are ready for shipment if they are held at the Company's factory by instructions of the Customer or for lack of shipping instructions from the Customer. The Company may invoice the Customer for the supply of services at the earlier of the following dates: the date of the commencement of performance thereof or the date indicated in the

Quotation if performance is delayed by the instructions of the Customer or by some other reason beyond the control of the Company.

## 11. Passing of Property

(a) On delivery of the goods to the Customer or carrier, whichever is the earliest the risk shall pass to the Customer.

(b) The title to the goods shall remain vested in the Company and shall not pass to the Customer until the Company has received payment in full of the purchase price and any related fees, costs, duties, levies, taxes and interest.

(c) So long as the title to the goods remain vested in the Company, the Company shall be at liberty at any time to retake possession thereof and for that purpose to enter upon any premises of the Customer.

(d) Notwithstanding that the property has not passed to the Customer, the Customer shall be at liberty to resell the goods but any such resale shall be deemed to be for the account of the Company and any proceeds thereof whether received from a sub-customer or from any assignee of the debt due from a sub-customer, shall be held by the Customer on behalf of the Company until such time as the purchase price has been received in full by the Company and the Customer shall store the goods separately from its own goods and in such a fashion as to be readily identifiable as the Company's property.

(e) If prior to the passing of property therein the Customer shall process the goods or mix them with other goods, ownership of the processed or mixed goods shall forthwith vest in the Company and shall remain so vested until such time as the purchase price is received in full by the Company.

## 12. Cancellation & Return

Contracts and orders may only be cancelled with the Company's written consent and to charges for recovery of costs. The carriage paid return of undamaged current standard products is normally accepted subject to a restocking charge of 20%. No credit will be given for returned goods which are obsolete or non-standard. The Company reserves the right to dispose of such goods within four weeks from the date of receipt at its premises.

## 13. Statutory Liability

(a) The Company does not exclude or restrict any legal liability it may have for death or personal injury resulting from the negligence of the Company its employees, agents or sub-contractors.

(b) The Company does not exclude or restrict any of its legal obligations arising under Section 12 of the Sale of Goods Act 1979 and Section 2 of the Sale of Goods and Services Act 1982 and Part 1 of the Consumer Protection Act 1987.

## 14. Warranty

(a) The Company warrants the goods against defects in design, materials and workmanship which become apparent within 12 months of the date of delivery of the goods to the Customer.

(b) The Company warrants that it will perform services with reasonable care and skill but this warranty shall not apply to any deficiency in such performance unless it becomes apparent within 12 months of the date of performance by the Company.

(c) The periods referred to in paragraphs (a) and (b) of this Clause shall hereinafter be called "the warranty period".

(d) The Company's obligation under this warranty is limited:- (i) In the case of goods: to repairing or at its option supplying on an exchange basis replacements for any defective goods or part or parts thereof and making good any defect or defects in the goods which may develop under normal and proper use within the warranty period. (ii) In the case of services: to the re-performance of the services or part or parts thereof shown to be deficient hereunder within the warranty period.

(e) In the event of the Customer becoming aware of a defect in goods or of a deficiency in the performance of services during the warranty period the Customer shall promptly supply the Company with written particulars of such defect or deficiency, use its best endeavours to provide all information and particulars necessary to enable the Company or its agents to verify the notified particulars and to ascertain the nature and cause of the defect or deficiency claimed and shall afford the Company and/or its agents full and proper access and facilities therefore and for making good the defect or deficiency.

(f) The above warranty shall not apply to any defect in the goods or deficiency in the services where such defect or deficiency is caused in whole or in part by: (i) The installation, storage, use, maintenance or repair of the goods in a manner reasonably considered by the Company to be improper; (ii) The Customer and/or any user of the goods or of products incorporating the goods and/or any third party called in by the Customer and/or such user as aforesaid changing or adding to the goods without the express permission in writing of the Company; (iii) Any other act of the Customer or any third party

(g) The Company shall be under no liability whatsoever for any loss or damage which results from or is caused by erroneous information or lack of information supplied by the Customer as to the Customer's requirements in relation to the specifications or use of the goods or services.

(h) The Company shall be under no liability whatsoever to repair, replace or make good any loss which results from defects or depreciation caused by damage in transit in circumstances outside the Company's control, wear and tear, accidents, neglect, misuse, dampness, abnormal temperature or other conditions or circumstances beyond the Company's control as stipulated in Clause 19 below.

(i) When any defective goods are replaced upon an exchange basis or defective goods are repaired or services are re-performed the provisions of this warranty clause shall apply to the re-performed services or replacement or repaired goods for the unexpired balance of the warranty period or the period of six months from the date of re-performance replacement or repair as the case may be whichever is the longer.

(j) The above warranty provisions do not apply to any goods or services where it is impracticable or unsafe for the Company to comply with the same.

(k) All liability under the warranty provisions ceases at the expiration of the warranty period.

## 15. Exclusions

(a) The Customer shall be entitled to the benefit of the aforementioned warranty which is given in lieu of and replaces, excludes and extinguishes all and every condition or warranty whatsoever whether express or implied by statute, common law, trade usage, custom or otherwise.

(b) It shall be the responsibility of the Customer to determine the suitability of the goods and of any services for their intended purpose and for actual application and their

compliance with applicable laws, regulation codes and standards and the Customer assumes all risks pertaining thereto.

(c) Notwithstanding the exclusion of any warranty as to fitness for purpose contained in these Conditions, as a separate Condition the Customer agrees that in circumstances where the Company relies on the skill of the Customer to judge whether goods or services are fit for the purpose for which they are purchased or provided the Company shall accept no liability whatsoever with regard to that judgment or any matter arising from that judgment and the Customer will indemnify the Company against any loss, damage, costs, claims or expenses arising therefrom.

#### **16. Rights and Remedies of the Customer**

(a) If and insofar as the Company may be held to be legally liable to the Customer the sole right of redress of the Customer against the Company shall be as expressly provided for in these Conditions or any other conditions expressly agreed to in writing by the Company and the Customer shall have no other remedies of any kind whatsoever against the Company.

(b) For the purposes of the contract for supply the expression 'legal liability' shall include the legal liability of the Company, its employees, agents or sub-contractors as found by any court or competent authority and, without prejudice to the generality of the foregoing, shall include: (i) breach of any contractual obligation by virtue of the express or implied terms of the contract for supply and any fundamental breach and/or breach of fundamental term; (ii) negligence arising by virtue of any act or omission which amounts to a failure to take reasonable care or exercise reasonable skill; (iii) any misrepresentation or mis-statement made by or on behalf of the Company; (iv) any other breach of duty. and the expression 'legally liable' shall bear a corresponding meaning.

(c) This clause shall not confer any rights or remedies on the Customer to which the Customer would not otherwise be entitled.

#### **17. Limit of Damages for Breach of Warranty**

If notwithstanding the Company's attempts to comply with the warranty the Company is unable to do so the Company shall pay monetary damages to the Customer not exceeding the amount received by the Company for the defective goods, or as the case may be, the deficient services.

#### **18. Damage to Physical Property**

The Company shall not be liable in respect of any loss or damage of whatsoever kind or howsoever caused whether by reason of the negligence of the Company or otherwise, to premises, plant or other physical property. In the event of legal liability being established the Company shall not be liable to pay damages arising from the aforesaid loss or damage.

#### **19. Economic, Other Consequential Loss and Claims by Third Parties**

Save as expressly provided for in the contract for supply the Company shall in no circumstances be liable for the following loss or damage howsoever caused and howsoever arising whether by reason of the Company's negligence or otherwise, even if such loss or damage was, or ought reasonably to have been, in the contemplation of the parties at the date of the contract for supply as being likely to occur: (i) economic loss, which shall include, without limitation, loss of profits, reputation, goodwill, business, use, use of interest, services of employee or agent, anticipated savings, expenses rendered futile by the breach and expenses caused by the breach; (ii) any other consequential or indirect loss or damages; (iii) any claim made against the Customer by any other party.

In the event of legal liability being established the Company shall not be liable to pay damages arising from the aforesaid loss or damage.

#### **20. Events beyond the control of the Company**

(a) The Company does not accept any liability incurred under the contract for supply wherever and to the extent to which the fulfilment of the Company's obligations is prevented frustrated impeded and/or delayed as a consequence of any 'force' and/or any occurrence whatever beyond the control of the Company, such to include, without prejudice to the generality of the foregoing: (i) act of God, fires, floods or other casualties; (ii) wars, riots, civil commotion, embargoes, governmental regulations or inability to obtain necessary materials from the Company's usual sources of supply; (iii) shortage of transport facilities or delays in transit; (iv) existing or future strikes or other labour troubles affecting the performance thereof whether involving the Company's employees or employees of others and regardless of the responsibility or fault on the part of the employers; (v) failure in whole or in part of power supplies.

(b) The Company undertakes however to make every reasonable endeavour within its power to overcome difficulties arising in connection therewith but reserves the right to cancel suspend or vary its obligations under the contract for supply and in the event of shortages of goods or of available resources for their production storage or delivery or continued difficulty in rendering services arising from any of the events or circumstances referred to in paragraph (a) of this clause, the Company reserves the right to allocate as it may think fit its available goods and resources and performance of services between customers and whom it has contractual obligations in respect thereof and shall not be obliged to purchase goods from third parties or sub-contract services to make good such shortages, or performance.

#### **21. Maximum Limit of Damages**

If, notwithstanding the provisions of Clauses 13 to 19 inclusive and Clauses 21 and 22, the Company shall in any circumstances whatsoever be held legally liable to the Customer then: (i) the Customer's sole rights of redress against the Company shall be limited to damages; (ii) the Company's total liability in respect of any goods and/or services notwithstanding the number of incidents for which the Company is found legally liable shall in no circumstances exceed the amount received by the Company for the goods or services as the case may be.

#### **22. Insurance**

(a) The precise limits of any appropriate insurance cover are primarily within the Customer's knowledge thereby enabling the Customer to effect his own insurance cover at more economic rates than the Company. The Customer agrees that insofar as the Customer may require any insurance cover the Customer shall effect the same, such to include without prejudice to the generality of the foregoing: (i) damage to physical property of any kind; (ii) economic and other consequential or indirect loss or damage; therefore the Customer acknowledges and accepts that it is reasonable for the Company to limit its legal liability and its liability to pay damages as set out in these Conditions.

(b) The Customer hereby agrees and acknowledges that it will procure that the Customer's insurers shall in no circumstances whatsoever have any rights or remedies against the Company additional to those of the Customer.

#### **23. Indemnity**

The Customer agrees to indemnify the Company against any loss, damage, costs, claims or expenses incurred by the Company in respect of any liability established against the Company by a third party arising out of or in connection with the contract for supply.

#### **24. Change in Customer's Financial Circumstances**

If the Customer makes any composition or arrangement with creditors or, being a company, goes into liquidation whether voluntary or compulsory or, being an individual or firm, if he or any partner commits any act of bankruptcy or if a Receiver is appointed in respect of any assets of the Customer or if the Customer fails duly to pay for any goods or services or to comply with any other requirement under any contract for supply or if the Company considers in its absolute discretion that the financial circumstances of the Customer do not justify any payment or credit terms or arrangement previously agreed the Company may at its option either require payment in cash before despatch of goods remaining to be delivered or performance of services remaining to be performed or may cancel further deliveries or work without prejudice to any other rights or remedies of the Company and the Customer shall remain liable for completed and partially completed deliveries and work to the same extent as required under Condition 3(c) of these Conditions in the event of cancellation.

#### **25. Health and Safety**

(a) The Customer agrees only to use the goods and obtain services for uses specified in the Company's current sales literature or for other uses which the Company has specifically notified in writing to the Customer as being in the Company's opinion free from risk to health and safety.

(b) The Customer agrees to pay due regard to any information or advice relating to the use of the goods or product of the services which the Company may at any time furnish to it and agrees that before the goods are used it will, if requested by the Company, furnish the Company with a written undertaking to take any steps which the Company may specify with a view to ensuring that the goods will be safe and without risk to health when used.

(c) Any written undertaking given pursuant to paragraph (b) above shall be deemed to have effect as if it formed part of the contract for supply.

#### **26. Delivery by Instalments**

Each delivery or part delivery of any order shall be deemed to be sold under a separate contract. Neither failure on the Company's part to make any delivery or part delivery in accordance with the contract for supply nor any claim by the Customer in respect of such delivery or part delivery shall entitle the Customer to reject the balance of the order.

#### **27. Patent Indemnity**

When goods are made or adapted by the Company in accordance with the Customer's specifications, the Customer shall indemnify the Company against all costs, claims and expenses incurred by the Company in respect of the infringement or alleged infringement by such goods of any patents, registered designs, trade marks or other rights belonging to third parties.

#### **28. Engineering Charges**

The Company reserves the right to charge the Customer for engineering charges and expenses (whether internal or to third parties) incurred by the Company in relation to the design or manufacture of the goods, such to include (without limitation) design costs and the cost of tools. Such charges and expenses shall be payable by the Customer in addition to the purchase price for the goods. The Company shall remain the owner of tools and designs and all copyright and other rights relating thereto whether or not such charges are paid by the Customer.

#### **29. Customer's Property**

Any material or property of the Customer or material or property supplied to the Company by or on behalf of the Customer is supplied entirely at the Customer's risk and the Company will not be liable or held responsible for any loss or damage to such material or property whether or not attributable to the acts, defaults or negligence of the Company or any of the Company's employees or agents.

#### **30. Export Contracts**

All export contracts for supply by the Company are subject to any necessary licenses and Exchange Control authorisations being obtained.

#### **31. Assignment**

The Customer shall not assign or otherwise transfer any contract for supply or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the Company. Any such attempted assignment or transfer by the Customer without the written consent of the Company is void.

#### **32. Waiver**

The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver of any breach shall operate as a waiver of any subsequent breach and shall only apply to the individual contract for supply in relation to which it is made.

#### **33. Severability**

If any term or condition herein or part thereof is held to be invalid for any reason by any court or competent authority it is to that extent to be deemed removed from the contract for supply without prejudice to the validity or other effectiveness of the remaining terms and conditions thereof.

#### **34. English Law**

English Law shall govern the formation, construction and performance of all contracts for supply in all respects. The Customer and the Company hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

#### **35. Headings**

The headings of these Conditions do not form part of the Conditions and shall not affect the interpretation thereof.