

STANDARD CONDITIONS OF SALE – HARDWARE: ISSUE 10 – AUGUST 2010

1. **DEFINITIONS**
- 1.1 In these conditions:-
 "the Company" means General Dynamics Itronix Europe Ltd, its holding company or any subsidiary (as defined in section 736 Companies Act 1985) of its ultimate holding company.

 "Customer" means any person, firm or company receiving a quotation from and/or placing an order with the Company.

 "Contract" means the contract for the supply of Equipment (and if applicable Applications Support) by the Company to the Customer incorporating the quotation, these conditions, the Software User Licence any Hardware Maintenance Contract Software Maintenance Contract and any other document or documents expressly incorporated.

 "Equipment" means all and every item of equipment or part thereof supplied by the Company to the Customer under a Contract.

 "Connected Equipment" means equipment not supplied by the Company but connected (directly or indirectly) to or used in conjunction with the Equipment.

 "Consumable Supplies" means any consumable supplies to be used on or in conjunction with the Equipment.

 "Applications Support" means any works and services provided by the Company, its employees or agents in conjunction with the supply of Equipment to the Customer.

 "Additional Items" means the following (where incurred):
 (i) the cost of packaging
 (ii) any taxes, duties or other charges levied by any Governmental or other authority in respect of or by reason of the sale, delivery, export or import of the Equipment or the provision of Application Support excluding however, taxes assessed on profits or gains
 (iii) transportation costs (including costs of carriage, insurance, handling, storage prior to or during or after transit, demurrage, landing charges and port or airport dues)
 (iv) the cost of Consumable Supplies
 (v) the charge for installation and commissioning
 (vi) the charge for training personnel
 (vii) the charge for any modification or alteration required by British Telecom or any other body to whose transmission facilities the equipment is linked
 (viii) the charge for applications of Software

 "Software" means all programs supplied by the Company.
2. **GENERAL**
- 2.1 All quotations, offers and tenders are made and all orders for the sale of Equipment by the Company are accepted subject to these conditions. All other terms, representations, conditions or warranties are excluded from any Contract between the Company and the Customer unless expressly accepted in writing by a director of the Company.
- 2.2 Quotations may be withdrawn by the Company by written or oral notice to the Customer as any time prior to the Customer's acceptance. Acceptance will only be effective when it is made on the Company's order acceptance form.
- 2.3 In the event of any inconsistency between these Conditions and any other document forming part of the Contract, these conditions shall (subject to Clause 10.2) take precedence unless agreed in writing by the Company.
- 2.4 The Customer shall be responsible for complying with all legislation or regulations (of the United Kingdom or any other country) governing the export and import of the Equipment into the country of destination (and any other country through which the Equipment passes in transit) and for the payment of any duties thereon. The Customer shall fully indemnify, defend and hold harmless the Company against any fines, penalties, costs, claims, damages, losses and expenses, including attorneys fees, arising in any manner from the Customer failing to comply with this Clause 2.4.
3. **PRICE AND PAYMENT TERMS**
- 3.1 Unless otherwise agreed in writing all prices are quoted strictly net Ex-Works - Coventry (Incoterms 2000) . Any Additional Items shall be added to the price.
- 3.2 Payment in full (without any deduction by way of set-off or counterclaim or otherwise) for the Equipment and Applications Support shall be due and payable on the terms specified in the Contract. The time for payment shall be of the essence of the Contract.
- 3.3 If the Customer shall default in payment the Company shall be entitled to suspend any further deliveries and to charge interest on any amount outstanding at the rate of 4% per annum above the base rate of Lloyds TSB Bank, or the highest amount allowable by law, whichever is greater; such interest being charged as a separate, continuing obligation not merging with any judgment.
- 3.4 No disputes arising under the Contract nor delays, otherwise than due to default by the Company, shall interfere with prompt payment in full by the Customer.
4. **DELIVERY**
- 4.1 The Customer shall give a minimum of 30 days notification of the site to which delivery is required and the delivery date which shall be agreed in writing by the Company.
- 4.2 Where delivery of the Equipment (or any part of it) depends upon the supply by the Customer to the Company of any component or Connected Equipment and that component or Connected Equipment (or any part of it) has not been received by the Company at least 28 working days before the agreed date of delivery of the Equipment the Company shall be entitled to demand payment for the Equipment in full in accordance with clause 3.2 notwithstanding that the Equipment has not been delivered to the Customer. The Customer shall pay the amount due in full within 30 days of such demand. In this event the Company shall deliver the Equipment to the Customer as soon as commercially reasonably after the Company has received all of the components and/or Connected Equipment.
- 4.3 The Company is under no obligation to accept requests by the Customer for postponement of delivery of the Equipment. If the Company accepts such a postponement then the Customer shall, without prejudice to any right or remedy available to the Company, pay all costs and expenses incurred as a result by the Company.
- 4.4 The Company reserves the right to deliver Equipment in more than one shipment.
5. **TITLE**
- 5.1 Title to the Equipment shall only pass to the Customer upon the Customer having paid to the Company all sums (including any default interest) due from it to the Company under the Contract and all other contracts between the Customer and the Company.
- 5.2 The Company may recover Equipment in respect of which title has not passed to the Customer at any time and the Customer irrevocably licences the Company, its officers, employees and agents to enter upon the premises of the Customer, with or without vehicles, for the purpose either of satisfying itself that condition 5.3 below is being complied with by the Customer or of recovering any Equipment in respect of which title has not passed to the Customer.
- 5.3 Until title to the Equipment has passed to the Customer under these conditions it shall possess the Equipment as fiduciary agent and bailee of the Company. The Customer shall store the Equipment separately from other goods and shall ensure that the Equipment is clearly identifiable as belonging to the Company. During such time as the Customer possesses the Equipment with the Company's consent, the Customer may in the normal course of its business sell or hire the Equipment as principal but without committing the Company to any liability to the person dealing with the Equipment.
6. **PERFORMANCE AND FORCE MAJEURE**
- 6.1 The Company takes all reasonable steps to perform its obligations and deliver within the time specified but such times are estimates only. The Company shall not be liable for late performance or delivery and delays shall not entitle the Customer to rescind the Contract.
- 6.2 Without prejudice to the generality of Clause 6.1, the Company shall have no liability for any failure to perform any of its obligations under the Contract if caused directly or indirectly by breakdown or unavailability of plant or machinery, failure of raw material or supply of raw material, inability to obtain sufficient labour or sufficient skilled labour, act of God, governmental restriction, condition or control or by any other matter (whether or not similar to the foregoing) outside the control of the Company. If such cause or causes prevent delivery for six months or more beyond due date for delivery, either party may cancel the Contract on written notice.
7. **RISK, INSURANCE AND CARRIAGE**
- 7.1 Except in so far as the Company may have agreed otherwise in writing:-
 7.1.1 where Equipment is to be delivered within the United Kingdom up to the time when it arrives at the Customer's premises the risk of any loss, damage to or deterioration of the Equipment shall remain with the Company, subject to limits provided within the Company's applicable insurance policy from time to time.
 7.1.2 where Equipment is to be delivered outside the United Kingdom, it will be sold for delivery in accordance with the applicable Incoterms 2000 heading as specified in the Contract (as defined by the English text of the said Incoterms 2000).
- 7.2 Any insurance costs incurred by the Company in this clause 7 may be recharged to the Customer.
8. **TERMS AND REPRESENTATIONS**
- 8.1 THESE CLAUSES DEFINE CUSTOMER'S RIGHTS IN RESPECT OF ANY LOSS OR DAMAGE CAUSED BY THE EQUIPMENT OR THE APPLICATIONS SUPPORT-CUSTOMERS ARE ADVISED TO READ THESE PROVISIONS CAREFULLY.
- 8.1 The Customers are experts in their own specialised fields and utilise the Equipment for a multiple of novel applications specific to their business. To the best of the Company's knowledge, the Equipment is of the highest quality but the Equipment is supplied on the understanding that the Customer will use its own specialised skill and judgment in assessing the fitness of the Equipment and the Application Support provided by the Company for the intended uses and the results and level of performance which will be derived therefrom. ACCORDINGLY THE CUSTOMER IS ADVISED TO CHECK THAT IT IS COVERED BY INSURANCE AGAINST ANY LOSS OR DAMAGE IT MAY SUSTAIN.
- 8.2 The Company agrees to repair or replace:
 8.2.1 All computers on the then current price list, found to be defective within a period of 12 months following delivery to the Customer;
 8.2.2 Equipment other than computers and Consumable Supplies found to be defective within a period of 90 days of delivery to the Customer (except where such Equipment is subject to another manufacturer's warranty);
 provided that each of the following are satisfied:
 (a) notification in writing of any defect being given to the Company immediately upon it becoming apparent;
 (b) the Equipment having been operated under normal operating conditions using suitable programs, materials, power supply and lubricants (where necessary);
 (c) the part being shown to have been defective at the date of despatch ex the Company's premises and due to faulty workmanship by or defective materials incorporated by the Company;
 (d) the Equipment being returned to the Company's premises at the Customer's expense;
 (e) any defective parts replaced being the property of the Company;
 (f) the Company accepts no liability for defect or damage caused by reports or replacements made other than by the Company or for any defect or damage attributable to the Customer in any respect.
- 8.3 Subject to Clause 8.2 any defect in the Equipment or loss, damage, nuisance or interference whatsoever consequential or otherwise or wastage of material resulting from or caused by or to the Equipment, the Connected Equipment or the Applications Support shall from the date of despatch ex the Company's works be the responsibility of the Customer and the Company excludes all liability for the same.
- 8.4 It is the responsibility of the Customer to satisfy itself as to the workability, reliability, accuracy and suitability of the Equipment. No condition, warranty or other term, express or implied (by statute or otherwise) is given by the Company that the Equipment, the Connected Equipment (whether or not the Company or its employees or agents have recommended its use) or the Applications Support, either separately or in conjunction, will enable the Customer to attain any particular performance or result or will be suitable for any particular purpose or use under specific conditions or will provide any particular capacity.
- 8.5 The Company's liability whether in respect of one claim or the aggregate of various claims, shall not exceed the value of the Contract subject to a maximum aggregate liability of ONE MILLION POUNDS.
- 8.6 Further, under no circumstances whatever shall the Company be liable for losses special to the particular circumstances of the Customer, consequential losses, indirect losses, work required in connection with the removal of defective Equipment and the installation of repaired or substituted Equipment, loss of profits, damage to property or wasted expenditure.
9. **CONFIDENTIAL AND COPYRIGHT**
- 9.1 All drawings, documents (including user manuals), confidential records, computer software and other information supplied by the Company, whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to the Company (or the third party) and that the Customer will not, without the written consent of the Company, give away, loan, exhibit or sell any drawings, documents, records, software or other information or extracts from them or copies of them or use them in any way except in connection with the Equipment in respect of which they are issued. The Customer will not use any such material except as necessary in connection with the installation, test, operation and maintenance of the Equipment.
- 9.2 All claims for alleged infringement of patents, trade marks, registered designs, design right or copyright received by the Customer relating to the Equipment must be notified immediately to the Company.
10. **APPLICATIONS SOFTWARE AND/OR RELATED SERVICES**
- 10.1 It shall be a condition of any contract entered into by the Company where the Equipment includes Software and/or related services that the Customer shall immediately upon becoming bound by the Contract accept the Software or related service on the terms specified in the Company's Terms & Conditions for the supply of Software and Related Services.
- 10.2 Where the Customer contracts for the Company to supply third party Software, then the Customer shall abide by the licence agreements issued by the third party software vendor. The Company accepts no liability whatsoever relating to the suitability, fitness for purpose, performance and accuracy of third party Software.
- 10.3 These Conditions shall (save where inconsistent with Clause 10.1) apply to the supply of Software provided that in the event of any inconsistency between these Conditions as they relate to the supply of Software and
- the provisions of the User Licence or Conditions of Sale of Software, the User Licence or Conditions of Sale of Software shall prevail.
11. **TERMINATION**
- 11.1 The Company shall be entitled to terminate all or any of its Contracts with the Customer forthwith and recover all losses or damage resulting to the Company (including but without limitation to loss of profit or other consequential loss) if:
 11.1.1 the Customer shall become bankrupt or shall be deemed unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986 or shall compound with its creditors or if a resolution shall be passed or proceedings shall be commenced for the administration or liquidation of the Customer (other than for a voluntary solvent winding up for the purposes of reconstruction or amalgamation), or if a receiver or manager shall be appointed over all or any part of its assets or undertaking; or
 11.1.2 the Customer fails to make any payment owed to the Company on the due date; or
 11.1.3 the Customer is in breach of any contract with the Company (including the Contract) and fails to remedy the same within twenty-one days of notice so to do or immediately if the breach shall be unremediable.
- 11.2 The Customer shall not be entitled to terminate any Contract with the Company, without the Company's written consent. Should this be given, where an order has been placed on the Company and the delivery subsequently amended or cancelled by the Customer, the Company reserves the right to charge the Customer any costs incurred by the Company as a result, including but not limited to costs for Customer specific parts, storage, reworking. The Customer shall pay the amount due in full within 30 days of such demand.
12. **TRAINING**
- 12.1 Where the Customer contracts for the Company to carry out training for the correct use of the Equipment in full for the training must be made to the Company at least 4 weeks prior to the date of the training. The Company reserves the right to cancel any training where such payment is not made.
- 12.2 The Company reserves the right at its absolute discretion to alter the date and venue of the training or to cancel any training. Should the Company cancel any training the Company shall refund any payments made for training but shall not be liable for any losses, costs or expenses (including consequential loss and loss of profit) arising from such cancellation.
- 12.3 The Company does not warrant that the Customer's personnel will be able to operate the Equipment under any particular operating condition, or will be able to attain any particular performance or result from the Equipment after receiving the training.
- 12.4 In the event of the Customer cancelling the training the Company reserves the right to refuse to refund payment for training received where the Company does not receive notice of cancellation in writing at least 3 weeks prior to the date of training.
13. **ATTENDANCE ON SITE**
- 13.1 If the Company attends the Customers premises or the premises of any third party for any reason connected with the Contract, the Customer shall indemnify the Company in respect of all claims made or proceedings taken against the Company by any person, firm or company, including employees of the Company, or of the Customer or of any contractor employed by the Customer, whether in respect of death, personal injury or damage to property arising directly or indirectly from the attendance at such premises.
14. **CONSUMER PROTECTION ACT 1987 ("THE ACT")**
- 14.1 In circumstances in which the Company supplies Equipment to the Customer for incorporation with, or use ancillary to, any composite or other products to be produced, manufactured, processed or supplied by the Customer or a third party then:-
 14.1.1 the Customer shall immediately on demand produce for inspection by the Company copies of all written instructions, information and warnings to be supplied by the Customer in relation to the composite or other products, provided that such inspection or right to inspect shall not of itself constitute acceptance or approval on the part of the Company of such instructions, information or warnings; and
 14.1.2 the Customer shall indemnify, reimburse and compensate the Company for all losses and damages (including costs, expenses and charges for legal actions in which the Company may be involved) which the Company may incur, or have to bear, if any claim or claims shall be made against the Company, pursuant to the Act or otherwise, relating to the composite or other products in circumstances in which the goods supplied by the Company are either (i) not the defective part of the composite or other product, or (ii) are only rendered the defective part or became a defective product by reason of acts or omissions of the Customer or a third party (including without limitation the supply of defective free issue materials), or (iii) are only rendered the defective part or became a defective product by reason of instructions or warnings given by the Customer or other supplier of the composite or other products or (iv) are supplied in accordance with a specification or drawings furnished by, or on behalf of, the Customer.
- 14.2 For the purposes of Condition 14 only, the word "defective" shall be interpreted in accordance with the definition of "defect" contained in Part 1 of the Act.
- 14.3 The Customer acknowledges that it is under a duty to pass on to its customers all instructions, information and warnings supplied to it by the Company with the Equipment.
15. **VARIATIONS**
- 15.1 No variation shall be binding on the Company unless expressly agreed in writing by the Company.
16. **ASSIGNMENT**
- 16.1 The Customer shall not be entitled to assign the benefit or burden of the Contract or of any interest in it without the prior written consent of the Company. The operating software and manuals shall not be assigned, copied, sub-licensed or transferred by the Customer. The Company shall be entitled to sub-contract the whole or part of its obligations under the Contract and to assign its interest in the Contract.
17. **WAIVER**
- 17.1 No relaxation or delay by the Company in enforcing any of its rights shall restrict its rights nor shall any waiver by the Company of any breach operate as a waiver of any subsequent or continuing breach.
18. **SEVERABILITY**
- 18.1 If these conditions shall be or become void in whole or in part, the other provisions shall remain valid and enforceable.
19. **NOTICES**
- 19.1 Any notice required under the Contract shall be deemed served if sent by registered or recorded delivery post addressed to the party for whom it is intended at such party's registered or main office or last known address and shall be deemed to have been served 48 hours after the date of posting.
20. **EUROPEAN MONETARY UNION**
- 20.1 Unless otherwise agreed in writing, the occurrence or non-occurrence of an event associated with the European Monetary Union will not of itself discharge the Contract, or entitle one party unilaterally to vary or terminate it.
21. **THIRD PARTY RIGHT**
- 21.1 A person who is not a party to the Contract ("a third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any of these conditions. Any right or remedy of a third party which exists or is available apart from the Act is not affected.
22. **LEGAL CONSTRUCTION AND LAW.**
- 22.1 The contract shall be governed and interpreted according to the laws of England and in the case of proceedings issued against the Company shall be subject to the jurisdiction of the English courts only.

TERMS AND CONDITIONS OF PURCHASE – Issue 6: November 2010

23. **DEFINITIONS**
In these conditions:
- 23.1 "the Company" means General Dynamics Itronix Europe Limited, its holding company or any Subsidiary (as defined in section 736 Companies Act 1985) of its ultimate holding company.
- 23.2 "the Supplier" means the person, firm, or company to whom the Order is issued and any assignee permitted under clause 40.
- 23.3 "Goods" means all or any of the goods which are the subject of the Order (provided always that where the Order is for the provision of services, the words "the Goods" shall be construed as meaning the services which the Supplier has contracted to provide).
- 23.4 "the Order" means the order or orders placed by the Company.
24. **CONTRACT**
- 24.1 All the terms of the contract for the supply of the Goods between the Company and the Supplier are set out on the face of the Order and in these conditions, and all other terms are hereby excluded.
- 24.2 In the event of any conflict between any of these conditions and any specific term or condition referred to on the face of the Order, the latter shall prevail.
- 24.3 Written acceptance of the Order or delivery of the Goods shall be deemed unconditional acceptance of these conditions.
- 24.4 The Order constitutes an offer to contract with the Supplier and may be withdrawn at any time before the Supplier's acceptance has been received by the Company.
25. **DELIVERY AND PACKAGING**
- 25.1 The Supplier shall comply with the Company's instructions for delivery of the Goods (if no time is stated, delivery must be during normal working hours). The Company reserves the right to adjust the specified programme or date of delivery at any time without additional cost.
- 25.2 All Goods must be delivered and off loaded carriage and packaging paid at the Supplier's risk to such destination as the Company may direct and clearly bearing the Company's order number. Any third party carrier shall be deemed to be an agent of the Supplier and not of the Company. The Company reserves the right to make alternative delivery arrangements and to claim an allowance equal to any carriage charge. The Company will not pay for packing materials unless previously agreed in writing.
- 25.3 Delivery shall be completed when the Goods have been unloaded at the point of delivery specified in the Order and the delivery has been accepted by a duly authorised agent, employee or site representative of the Company.
- 25.4 The Supplier warrants that the packaging materials will be such that the Goods will resist pilferage, distortion, corrosion, leakage, or contamination and reach the destination in good condition.
- 25.5 The Company may by notice in writing cancel the Order without liability if the Supplier fails to deliver any or all of the Goods by the specified dates. The right of cancellation is without prejudice to any other remedy the Company may have and the Company may, at its option in respect of Goods already delivered comprising an instalment of an Order:
- 25.5.1 choose to make payment in full or in part; or
- 25.5.2 return such Goods or require the Supplier to collect such Goods both at the Suppliers risk and expense without any liability to make any payment either in respect of such Goods or in respect of any further instalment of the Order. If the Company exercises its right of cancellation, the Company may recover from the Supplier any expenditure incurred by the Company (whether directly or indirectly) in obtaining goods in substitution for those which have not been delivered or accepted.
26. **INSTALLMENTS**
- 26.1 Where the Goods are to be delivered by instalments:-
- 26.1.1 the Company shall have the right to treat any breach by the Supplier of its obligations relating to one or more instalments as a repudiation entitling the Company itself to repudiate further performance and to recover damages for breach;
- 26.1.2 the acceptance by the Company of one or more instalments not withstanding a breach of its obligations by the Supplier shall not prejudice or restrict any of the Company's rights in respect of any other breach by the Supplier.
27. **TIME**
- 27.1 Time for delivery shall be of the essence of the contract.
- 27.2 Failure by the Supplier to adhere to any provision as to time contained in the Order shall entitle the Company at its option to treat the contract as repudiated in whole or in part. The Company shall be entitled to exercise its option at any time notwithstanding that it has acquiesced in any delay unless a written extension of time has been given to the Supplier by a director of the Company and the time extension has not elapsed.
- 27.3 Unless an extension of time has been agreed by the Company in accordance with condition 27.2 the Supplier's failure to effect delivery on the date or dates specified shall entitle the Company to purchase substitute Goods and to hold the Supplier accountable for all loss and additional costs incurred as a result.
28. **DOCUMENTATION**
The Supplier shall without delay provide the Company with such invoices, advice notes, delivery notes and other documents as the Company shall have specified from time to time.
29. **PRICE AND PAYMENT**
- 29.1 Unless agreed by the Company in writing all prices are fixed inclusive of delivery, packing, VAT and any other applicable duties and taxes and are not subject to escalation.
- 29.2 No price increase will be accepted by the Company without prior written agreement.
- 29.3 Unless otherwise agreed in writing the Company shall pay for the Goods at the end of sixty days following the month in which the Goods are received or a valid invoice for such Goods is received whichever is the later.
- 29.4 The Company shall have the right to set off against any sums due to the Supplier the amount of any monies due to the Company from the Supplier.
- 29.5 No payment shall constitute any admission by the Company as to proper performance by the Supplier of its obligations.
30. **WARRANTIES AND REPRESENTATIONS**
- 30.1 The Goods shall be of first class quality and shall:
- 30.1.1 Conform in every respect to the specifications, designs, drawings, samples, instructions or descriptions furnished or adopted by the Company and conform to all relevant UK and EC standards, specifications, and conditions and any applicable British Standard Specification; and
- 30.1.2 be of satisfactory quality; and
- 30.1.3 be fit for the purpose; and
- 30.1.4 be free from defect in tolerance, performance, safety, materials, and workmanship.
- 30.2 The Supplier warrants that the Goods will be as safe as persons are generally entitled to expect in all circumstances and that therefore appropriate quality and testing will have been carried out on the Goods.
- 30.3 The Supplier warrants that the design, construction, quality, packaging and labelling of the Goods comply in all respects with the relevant requirements of any statute, statutory rule, instrument or order.
- 30.4 The Company shall be entitled to rely on any representations made to the Company by or on behalf of the Supplier concerning the Supplier or any aspect of the Goods.
- 30.5 The Supplier warrants that neither the Goods nor the use thereof by the Company or its assignees will infringe any copyright, patent, trademark, registered design, or other proprietary right and the Supplier

- undertakes to indemnify the Company against all action, claims, demands and costs arising from or by reason of any actual or alleged infringement of any such right.
31. **INDEMNITIES – IMPORTANT: THE SUPPLIER IS ADVISED TO READ THIS CLAUSE**
- 31.1 The Supplier shall fully and effectively indemnify the Company against all losses (including loss of profit and consequential loss), costs, claims, demands, expenses, interest, damage or injury directly or indirectly suffered by the Company (or claims in respect thereof made against the Company by third parties) which result from failure to comply with or being in breach of any terms of the Order, of the Supplier's performance of the Order (whether negligent or otherwise) and in particular but without prejudice to the generality of the foregoing which result in a defect in the Goods or their material construction, workmanship or design (where the design is the Supplier's responsibility) and from the expense of obtaining replacement goods in respect of Goods which have been rejected or have not been delivered.
- 31.2 The Supplier shall fully and effectively indemnify the Company against all losses (including loss of profit and other consequential loss), costs, claims, demands, expenses (legal or otherwise), interest, damage or injury which may, (directly or indirectly) be suffered by the Company as a result of:
- 31.2.1 any claims for infringement of any letters patent or registered design trademark or trade name by reason of the use of sale of the Goods including such costs, claims, demands, expenses and interest which the Company may incur in any action for such infringement or for which the Company may become liable in such action; and
- 31.2.2 any royalties payable by the Supplier or the Company; and
- 31.2.3 the Goods being (whether in whole or in part and directly or indirectly) involved in a claim under the Consumer Protection Act 1987 except to the extent that the alleged defect in the product the subject of the claim was directly caused by an act or omission of the Company.
- 31.3 The Supplier will at all times insure and keep itself insured with a reputable insurance company against all insurable liability under the contract. The Company has contracted with the Supplier on the basis that the Supplier will bear the cost of insuring against such liabilities. The Supplier will provide all facilities, assistance and advice required by the Company and the Supplier's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance of the contract.
- 31.4 The Company shall not be liable for any consequential or indirect loss and the total liability of the Company (except in respect of personal injury or death) shall be limited in total to the contract price of the Goods under the Order.
32. **TITLE AND RISK**
- 32.1 Unless otherwise agreed in writing title and risk in the Goods shall pass to the Company on the latest of delivery at the Company's premises and the Company's acceptance thereof after any inspection the Company may require (but without prejudice to the Company's right of rejection).
- 32.2 The title and risk in any rejected Goods passes to the Supplier immediately on written notice of rejection being served on the Supplier.
- 32.3 The Supplier warrants to the Company that there is no restriction on or impediment against such passing of the title to the Company.
33. **SUPPLIER'S BREACH – IMPORTANT: THE SUPPLIER IS ADVISED TO READ THIS CLAUSE**
- 33.1 If the Supplier has failed to comply with the Order (in whole or in part) or with any contract with the Company, the Company shall at its option be entitled (whether or not the Goods or any part of the Goods have been accepted by the Company) to any of the following remedies:-
- 33.1.1 to rescind the Contract without any liability to the Supplier;
- 33.1.2 to reject and return the Goods or require the Supplier to collect them or any part thereof, at the risk and cost of the Supplier. The Company shall be repaid in full for any Goods returned.
- 33.1.3 to give the Supplier the opportunity to repair or replace the Goods at the Supplier's expense so that they comply with the terms of the Order;
- 33.1.4 to refuse to accept any further deliveries or instalments of the Goods or any part thereof without any liability to the Supplier;
- 33.1.5 to carry out at the Supplier's expense and risk such work as may be necessary to make the Goods or any part thereof comply with the Order;
- 33.1.6 to claim such damage as the Company may have sustained in consequence of any breach of Contract including loss of profit and the expenses of:

- (a) obtaining Goods to replace those which have been rejected or have not been delivered; and
- (b) carrying out any further work or the Goods or any items of which the Goods comprise part or to which the Goods relate.

- 33.2 These rights shall be without prejudice to any other rights or remedies of the Company.
34. **TERMINATION**
- 34.1 Without prejudice to any other rights or remedies to which it may be entitled, the Company may terminate the Order forthwith and without liability:-
- 34.1.1 at any time upon the option of the Company if the Company shall pay to the Supplier the contract price of the Goods delivered and accepted by the Company and not already paid for at such date; or
- 34.1.2 the Supplier shall commit any breach of its obligations under the contract and fails to rectify such breach within 5 days of notice from the Company requiring it to be remedied; or
- 34.1.3 the Supplier shall become bankrupt or, under section 123 of the Insolvency Act 1986, be deemed to be unable to pay its debts or shall compound with its creditors or if a resolution shall be passed or proceedings commenced for the administration or liquidation of the Supplier (other than for a voluntary solvent winding up for the purpose of reconstruction or amalgamation) or if a receiver or manager shall be appointed over all or any part of its assets or undertaking; or
- 34.1.4 there is a change in control of the Supplier (within the meaning of Section 840 Income and Corporation Taxes Act 1986);
- 34.2 the Supplier shall, if so required, complete all Goods partially manufactured at the date of such notice and the Company shall pay the contract price of all such Goods as are accepted by the Company.
35. **CONFIDENTIALITY**
- 35.1 The Supplier shall hold as confidential all equipment, samples, designs, artwork, photographs, negatives, information, details, specifications, drawings, toolings, dies, moulds, patterns, software and any other items or matters relating to the Goods or the business of the Company ("the Confidential Items"). If the Company shall pay for the Confidential Items they shall be the absolute property of the Company from such date of payment.
- 35.2 The Supplier shall not disclose any Confidential Items to any other person except such of its employees and sub-contractors as may be necessary for the performance of its obligations under the contract and the Supplier shall ensure that any person to whom Confidential Items are disclosed undertakes to hold them as confidential.
- 35.3 All Confidential Items and any copies thereof shall on demand, or upon completion of the Order, or its termination for any reason, be returned or delivered to the Company whose property such Confidential Items shall become or remain (as the case may be) and the Company reserves the right to enter the Suppliers premises or the premises of any sub-contractors to remove any or all Confidential Items.
- 35.4 Neither the contract nor the Company's name shall be used by the Supplier for advertisement or publicity or be disclosed to a third party without the Company's prior written consent.

36. **INSPECTION**
- 36.1 The Company or its employees or agents shall be entitled to inspect the Goods either complete or in the process of manufacture either at the Supplier's premises or at the premises of any sub-contractor and to require all defects or deficiencies to be made good and alterations made in the event of any failure in the opinion of the Company to comply with the terms of the Order, provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval of all or any part of the Goods.
37. **GOODS AND MATERIAL SUPPLIED**
- 37.1 Where the Company issues materials to the Supplier for use in connection with the Order such materials shall be and remain the property of the Company and the Supplier shall only use them in connection with the Order.
- 37.2 The Supplier shall maintain such materials in good order and condition and insured against all risks in the Company's name but at the expense of the Supplier.
- 37.3 The Supplier shall keep the Company fully indemnified against all losses and costs and expenses whatsoever which the Company may suffer as a result of any breach by the Supplier of such obligations not limited to the value of the said goods or materials.
- 37.4 The Supplier shall clearly identify the materials as belonging to the Company and shall at any time forthwith upon the Company's request deliver at the Suppliers expense and risk to the Company all materials issued by the Company.
38. **GUARANTEE**
- 38.1 Without prejudice to any other right or remedy of the Company or any other guarantee given by the Supplier or which the Company has the benefit of, the Supplier shall without delay repair or replace at its own risk and expense any Goods which are or become defective within 12 months from delivery (or such periods as may be specified in the Order or as is normally specified by the Supplier, whichever is the longer) where such defect arises under proper use from faulty design material or workmanship or the Suppliers incorrect instructions as to use or any other breach of any warranty express or implied. Such guarantee shall then apply to the repaired or replaced items for a further period of 12 months from the date of repair or replacement.
- 38.2 Any breach by the Supplier of its obligations under clause 38.1 shall entitle the Company after serving written notice of intent to proceed to remedy the defect at the Supplier's risk and expense without prejudice to the Company's other rights.
39. **ARIATION**
- 39.1 No variation or waiver of the conditions shall be binding on the Company unless agreed to in writing and signed by a director of the Company or the purchasing manager.
40. **ASSIGNMENT**
- 40.1 The contract or any part of it must not be assigned or sub-contracted by the Supplier without the Company's prior written consent. The Supplier shall ensure that any authorised sub-contractor is competent and that the work is properly done.
41. **TOOLING**
- 41.1 Where the Company agrees that the Supplier shall design, manufacture or operate any tools or toolmaking it is agreed that:
- 41.1.1 legal and beneficial ownership of the Tooling, any designs or drawings connected with the Tooling, and any materials which shall be acquired for or incorporated into the Tooling (and all copyright in respect thereof) shall be vested in the Company, free from any lien charge or encumbrance;
- 41.1.2 one complete set of design negatives shall be deposited with the Company; the Tooling shall be kept confidential, be used solely in connection with the Company;
- 41.1.3 contract or any other contract with the Company and shall not be used for any other person, firm or company without the prior written consent of the Company;
- 41.1.4 the Supplier shall ensure that the Tooling shall comply with all relevant requirements of any statute, statutory instrument, regulations or order (including such relating to servicing and maintenance);
- 41.1.5 the Supplier at its expense shall be responsible for servicing and maintaining the Tooling to a state of good working order;
- 41.1.6 samples from the Tooling must be supplied to the Company accompanied by such documentation specified by the Company.
42. **INTELLECTUAL PROPERTY**
- 42.1 All designs, inventions, patents, know how, new technology, improvements and all similar matters made, designed or developed by the Supplier in connection with the contract shall be the sole property of the Company and the Supplier will procure at no charge to the Company the execution of any and all acts to transfer ownership to the Company.
- 42.2 All material, drawings, patterns, gauges, samples, specifications and other technical data prepared by the Company in connection with the contract shall at all times remain the property of the Company and the Supplier shall not use any such data except in connection with the contract.
43. **FORCE MAJEURE**
- 43.1 The Company shall not be liable to the Supplier for any failure to fulfil obligations under the contract if such failure is attributable to inability to obtain sufficient labour, inability to obtain licences or consents for the import, export or use of the Goods or any item of which the Goods may comprise part, or any cause beyond the reasonable control of the Company and the Company shall have the right to defer delivery or performance by the Supplier or to cancel the Order without liability.
44. **WAIVER**
- 44.1 No extension of time or waiver granted by the Company shall in any way affect the Company's rights or the Supplier's obligations under the contract.
45. **SEVERABILITY**
- 45.1 If any provisions of these conditions is or shall become void in whole or in part the other provisions of these conditions shall remain fully valid and enforceable and the void provisions shall, where appropriate, be replaced in accordance with the meaning and purpose of these conditions.
46. **NOTICES**
- 46.1 Any notice may be served on the Supplier by posting in a first class envelope to the last known address of the Supplier and shall be deemed to be served at the time at which the notice so posted would have been delivered in the ordinary course of post or by facsimile transmission where it shall be deemed served at the time of transmission.
47. **EUROPEAN MONETARY UNION**
- 47.1 The occurrence or non-occurrence of an event associated with the European Monetary Union will not of itself discharge the contract, or entitle one party unilaterally to vary it.
48. **THIRD PARTY RIGHTS**
- 48.1 A person who is not a party to this contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any term of this contract. Any right or remedy of a third party which exists apart from the Act is not affected.
49. **LAW**
- 49.1 This contract shall be governed and interpreted according to the law of England and shall be subject to the jurisdiction of the English courts only except that the Company may seek injunctive relief outside such jurisdiction.