

**ROTORK GROUP**  
**GENERAL CONDITIONS FOR THE SALE OF GOODS**

These terms and conditions shall apply to any purchase order for Goods issued by the Customer to the Supplier or written quotation of the Supplier for Goods issued to the Customer, whether or not these terms and conditions are expressly referenced in the purchase order, unless the parties expressly agree in writing that the terms and conditions shall not apply to a specific purchase order. In the event of a conflict between the pre-printed terms provided in any purchase order and these terms and conditions, these terms and conditions shall prevail. All inconsistent or additional terms or conditions in any Customer acknowledgement, packaging, invoice or other sales forms are expressly objected to and rejected by the Supplier and shall not be applicable to any purchase orders issued to the Supplier.

**1. INTERPRETATION**

1.1. In these Conditions:

- 1.1.1. **'Customer'** means the person who accepts a quotation of the Supplier for the sale of the Goods whose order for the Goods is accepted by the Supplier.
- 1.1.2. **'Computer Systems'** means integrated configurations of computer equipment and software programmes which are customised for specific Customer requirements as defined in the Supplier's quotation.
- 1.1.3. **'Conditions'** means the general conditions for the sale of goods set out herein (unless the context otherwise requires) as amended from time to time and any special terms and conditions agreed in Writing between the Customer and the Supplier.
- 1.1.4. **'Contract'** means the contract for the purchase and sale of the Goods, comprising these Conditions, and any quotations, acceptance, purchase orders, specifications, schedules or any other connected documentation, in each case agreed in Writing by the Supplier.
- 1.1.5. **'Goods'** means the goods including any System, and including any instalment of the Goods or any parts for them which the Supplier is to supply in accordance with the Contract.
- 1.1.6. **'Intellectual Property'** means any (i) patent, patent applications, patent disclosures and inventions, and any reissue, continuation, extension or re-examination thereof, (ii) trademarks, service marks, trade dress, logos, trade names and corporate names, together with all derivations and/or combinations thereof, and any and all goodwill associated therewith, (iii) copyrights, registered or unregistered copyrightable works, (iv) domain names, registered design rights, unregistered design rights, or other industrial or intellectual property owned or used by the Supplier or any of its affiliates, together with all registrations, applications and renewals of any of the foregoing.
- 1.1.7. **'Manufactured Systems'** means integrated configurations of Resale Products or Standard Products which are assembled for specific Customer requirements as defined in the Supplier's quotation.
- 1.1.8. **'Resale Products'** means products not manufactured by the Supplier or any of Supplier's parent or subsidiary companies or for which the Supplier has no engineering and/or manufacturing responsibility.
- 1.1.9. **'Supplier'** means the supplying party named in the Contract.
- 1.1.10. **'Standard Products'** means standard assemblies, accessories and similar products which are contained in the Supplier's product range and which are furnished in accordance with the Supplier's standard general specifications.
- 1.1.11. **'Supplied Systems'** means systems supplied to the Customer incorporating Standard Products or Resale Products, or Manufactured Systems or Computer Systems.
- 1.1.12. **"System"** means any Computer System, Manufactured System or Supplied System.
- 1.1.13. **'Writing'** a reference to writing or written includes faxes and e-mails.

- 1.2. A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted whether before or after the date of this agreement and, in the case of a statute, includes any subordinate legislation made under that statute from time to time.
- 1.3. The clause and paragraph headings shall not affect the interpretation of these Conditions.
- 1.4. A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of these Conditions) at any time.

## **2. BASIS OF THIS SALE**

- 2.1. The Supplier shall sell and the Customer shall purchase the Goods in accordance with any written quotation of the Supplier which is accepted by the Customer in Writing, or any written order of the Customer which is accepted in Writing by the Supplier ("Order"), 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 Customer.
- 2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specifications are complete and accurate. For the avoidance of doubt, a quotation from the Supplier shall not constitute an offer and shall not form a Contract until the Customer's acceptance of a quotation is agreed in Writing by the Supplier.
- 2.3. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of Customer and Supplier.
- 2.4. The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Supplier in Writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.5. Any advice or recommendation given by the Supplier or its employees or agents to the Customer 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 Customer's own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

## **3. ORDERS AND SPECIFICATIONS**

- 3.1. No order unless submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier's authorised representative.
- 3.2. The Customer shall be responsible to the Supplier for ensuring the accuracy of any terms of any Order (including any applicable specification) submitted by the Customer and for giving the Supplier any necessary information relating to the Goods within sufficient time to enable the Supplier to perform the Contract in accordance with the terms.
- 3.3. The quantity, quality and description of any specification for the Goods shall be those sent out in the Supplier's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Supplier).
- 3.4. If the Goods are to be manufactured or any process to be applied to the Goods by the Supplier in accordance with the specification submitted by the Customer, the Customer shall indemnify the

Supplier against all losses, 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 for infringement of any patent, copyright, designs, trademark or other industrial or intellectual property rights of any other person which results in the Supplier's use of the Customer's specification.

- 3.5. The Supplier reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.
- 3.6. No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all losses (including loss of profit), costs (including all the costs of all labour and materials used), damages, charges, and expenses incurred by the Supplier as a result of cancellation.

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

- 4.1. The price of the Goods 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. Where the Goods are supplied for export from the United Kingdom, the Supplier's published export price list shall apply.
- 4.2. The Supplier reserves the right, by giving notice to the Customer at any time before despatch, to increase the price of the Goods 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 cost of labour, materials or other costs of manufacture), or any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 4.3. 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 Customer and Supplier, all prices are given by the Supplier on an ex-works basis, and where the Supplier agrees to despatch the Goods otherwise than to the Supplier's premises, the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance.
- 4.4. The price is exclusive of any applicable Value Added Tax, which the Customer shall be additionally liable to pay to the Supplier.
- 4.5. The cost of pallets and returnable containers will be charged to the Customer in addition to the price of the Goods, but full credit will be given to the Customer provided they are returned to the Supplier by the due payment date.

#### **5. TERMS OF PAYMENT**

- 5.1. Subject to any special terms agreed in Writing between the Customer and the Supplier, the Supplier shall be entitled to invoice the Customer for the price of Goods on or at any time after the despatch of the Goods, unless the Goods are to be collected by the Customer, in which event the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Goods are ready for collection.
- 5.2. The Customer shall pay the price of the Goods (less any discount to which the Customer is entitled, but without any other deduction) within 30 days of the end of the month in which the despatch takes place, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

- 5.3. If the Customer 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:
  - 5.3.1. cancel the Contract or suspend any further deliveries to the Customer;
  - 5.3.2. appropriate any payment made to Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and
  - 5.3.3. Charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above the Barclays Bank PLC base rate from time to time, until payment in full is made.

## **6. DELIVERY**

- 6.1. Delivery of the Goods shall be made by the Customer collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier despatching the Goods to that place.
- 6.2. Any dates quoted for despatch of the Goods are approximate only and the Supplier shall not be liable for any delay in despatch of the Goods howsoever caused. Time for despatch shall not be of the essence unless previously agreed by the Supplier in Writing. The Goods may be despatched by the Supplier in advance of the quoted despatch date upon giving reasonable notice to the Customer.
- 6.3. Where the Goods are to be despatched in instalments, each despatch shall constitute a separate Contract and failure by the Supplier to despatch any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.4. If the Supplier fails to despatch the Goods for any reason other than any cause beyond the Supplier's reasonable control or the Customer's fault, and if the Supplier is accordingly liable to the Customer, the Supplier's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods to replace those not despatched over the price of the Goods.
- 6.5. If the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for the delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then, without prejudice to any other right or remedy to the Supplier, the Supplier may:
  - 6.5.1. store the Goods until actual delivery and charge the Customer for the reasonable cost (including insurance) of storage; or
  - 6.5.2. sell the Goods at the best price readily available and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the Contract.
- 6.6. Without prejudice to the provisions of clauses 6.1 to 6.5, in respect of Systems the Supplier shall provide the Customer with a system specification and production and delivery schedule and where relevant site installation drawings after receipt of an Order to supply the System. Approval time shall be incorporated into the production schedule. Delays by the Customer in providing approvals and/or supplying complete information may extend the production schedule and delivery of the relevant System.
- 6.7. The Customer shall give both the Supplier and the carrier written notice of any damage or loss to the Goods within 3 days of receipt of the Goods followed by detailed particulars not more than two days thereafter time to be of the essence.
- 6.8. The Customer shall be responsible for accepting delivery of, starting up and maintaining the Goods unless otherwise specified by the Supplier in the Supplier's quotation.

## **7. RISK AND PROPERTY**

- 7.1. Risk of damage to or loss of the Goods shall pass to the Customer:
  - 7.1.1. in the case of Goods to be delivered to the Customer's premises at a time when the Supplier notifies the Customer that the Goods are available for despatch; or
  - 7.1.2. in the case of Goods to be despatched otherwise than to the Customer's premises, at the time of despatch.
- 7.2. Notwithstanding despatch 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 Customer until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Supplier to the Customer for which payment is then due.
- 7.3. Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, maintained in satisfactory condition, protected and insured and identified as the Supplier's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business (otherwise than by charging by way of security for indebtedness or by pledging any of the Goods), but shall account to the Supplier for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4. Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 7.5. The Customer 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 Customer does sell the Goods all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

## **8. INSPECTION AND MAINTENANCE**

- 8.1. The Supplier welcomes visual inspection of the completed Goods but reserves the right to charge for functional or special tests. If inspections (or tests) are called for in the order the Customer will be notified when the Goods are ready for inspection. If inspections (or tests) have not been carried out within 7 days of such notification the Goods will be despatched. The provision of installation, commissioning or maintenance services to the Customer shall be the subject of separate negotiation unless specifically offered in the Supplier's quotation.

## **9. WARRANTIES AND LIABILITY**

- 9.1. Subject to the conditions set out below the Supplier warrants that the Goods (always excluding the Systems) will correspond in all aspects with their specification at the time of despatch and will be free from all defects in material and workmanship for a period of 18 months from despatch or 12 months from commissioning, whichever is sooner.
- 9.2. The above warranty is given by the Supplier subject to the following conditions:
  - 9.2.1. the Supplier shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
  - 9.2.2. the Supplier shall be under no liability in respect of any defects arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions, misuse or alteration or repair of the Goods without Supplier's approval;

- 9.2.3. the Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the Goods has not been paid by the due date for payment;
- 9.2.4. the above warranty does not extend to parts, materials or equipment not manufactured by Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Supplier.
- 9.2.5. the Supplier shall be under no liability if the Customer makes any further use of the Goods after giving notice in accordance with 9.4.
- 9.3. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.4. Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Supplier within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 9.5. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods in their failure to meet specification is notified to the Supplier in accordance with these Conditions, the Supplier shall be entitled to replace the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund the Customer the price of the Goods (or a proportionate part of the price), but the Supplier shall have no further liability to the Customer. Any such replacement goods shall be warranted only for the remainder of the original warranty period.
- 9.6. All costs of diagnosing any defect in the Goods, except those incurred at the premises of the Supplier shall be borne and paid for by Customer.
- 9.7. Warranties specific to Systems. Subject to clause 9.9 the Supplier warrants that any System at delivery will be substantially in accordance with the Supplier's functional specification as provided to the Customer. Subject to clause 9.8., the Supplier agrees to correct any equipment in a Manufactured System or Supplied System which the Customer can demonstrate to the Supplier's satisfaction does not meet the applicable specifications and to correct any error or failure to perform in a Computer System which the Supplier accepts as materially affecting the functional performance of a System. The cost of diagnosing any such correction shall be for the account of the Customer. This warranty shall not be available to the Customer if deficiencies are caused by factors outside the Supplier's control including but not limited to input of poor signal quality, incomplete or inaccurate process data supplied to the Supplier by the Customer and unauthorised modification by the Customer. Any additional expenses of the Supplier which can be shown to the reasonable satisfaction of the Customer to have resulted from such deficiencies or inaccuracies shall be for the account of the Customer. No warranty is made or implied that any Computer System supplied will be compatible with future equipment and/or software programs.
- 9.8. Performance of poor computer systems. The Supplier warrants that any Computer System supplied will be free from clerical error and will perform the functions defined in the application specifications for use with the relevant systems as originally designed and shipped. The Supplier agrees to correct any equipment supplied by the Supplier Customer can demonstrate to the Supplier's satisfaction does not meet the application specifications and to correct any such error or failure to perform which the Supplier accepts as affecting the functional performance of the system in which the programme is used. The cost of diagnosing any such correction shall be for the account of the Customer. This warranty shall not be available to the Customer in the event of influencing deficiencies including but not limited to input signal of poor quality or incomplete or inaccurate process data supplied to the Supplier

by the Customer. Any additional expenses of the Supplier which can be shown to the reasonable satisfaction of the Customer to have resulted in such deficiencies or inaccuracies or from such modifications or improper loading shall be for the account of the Customer. No warranty is made or implied that any Computer system supplied will be compatible with future equipment and/or software programme generations or versions of the system as originally designed and shipped.

- 9.9. The warranties set out in Clauses 9.5 and 9.6 will be conditional upon the return of the defective equipment or part to the Supplier's works within one year of despatch ex the Supplier's works and adequately packed and insured with transportation charges prepaid by the Customer. Warranties in in clause 9.7 in respect of any System, except Computer Systems, will be conditional upon the giving by the Customer of written notice to the Supplier of the alleged error or failure to perform within one year of the date of despatch of the relevant equipment ex the Supplier's works. Warranties in respect of any Computer System will be conditional upon the giving by the Customer of written notice as aforesaid within three months of despatch of the relevant equipment ex the Supplier's works. **These warranties shall be of no effect if the defects are wholly or partially caused by any fault of the Customer or by any failure to comply with the Supplier's installation/operating maintenance instructions. The Supplier shall not be liable for any losses arising from any fault of the Customer or by any failure to comply with the Supplier's installation/operating maintenance instructions.** These warranties will not apply to Resale products, whether or not incorporated into systems, but the Supplier will as far as practicable (and on such indemnity for costs as the Supplier deems reasonable) exercise for the Customer his rights under any warranty of the manufacturer or supplier to the Supplier.

9.10. Limitations

**9.10.1.** The warranties set out in Clauses 9.5 to 9.8 inclusive do not extend to cover responsibility for the functioning of any equipment or software delivered in accordance with the Customer's Order, in combination with any other plant equipment or instrumentation. The functioning of such items of equipment or software in combination as aforesaid shall be the responsibility of the Customer notwithstanding any recommendations made by the Supplier.

**9.10.2.** Where materials are supplied by the Customer free of charge to the Supplier for integration within Systems, all work is accepted entirely at risk of the Customer and the warranty in Clause 9.7 shall not extend to such materials.

9.11. Limitation of liability

**9.11.1.** This clause sets out the entire financial liability of the Supplier (including any liability for the acts of omissions of their respective employees, agents and subcontractors) to the Customer in respect of: (i) any breach of this agreement however arising; (ii) any use made or resale of the Goods by the Customer, or of any product incorporating any of the Goods; and (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

**9.11.2.** Nothing in this Contract shall limit or exclude any liability for: (i) death or personal injury resulting from negligence; or (ii) fraud or fraudulent representation; or (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (iii) the indemnity in clause 10.

**9.11.3.** Without prejudice to clause 9.11.2, the Supplier shall not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any: (i) loss of profit; or (ii) loss of goodwill; or (iii) loss of business; or (iv) loss of business opportunity; or (v) loss of anticipated saving; or (vi) loss of or corruption of data or information; or (vii) special, indirect or consequential damage suffered by Customer that arises under or in connection with the Contract, even if the Supplier is advised in advance of the possibility of such losses or damages.

9.11.4. **Without prejudice to clause 9.11.2, the Supplier's total liability arising under or in connection with this Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the monetary value of the Order.**

9.12. Force Majeure

9.12.1. Neither party shall be liable to the other, or be deemed to be in breach of these Conditions, by reason of any delay in performing, or failure to perform, any of its obligations under these Conditions if the delay or failure was due to flood, fire, riot, act of God, war or any prohibition or restriction by any government or other legal authority which prevents performance of the Contract and which is not in force on the date of the Contract.

9.12.2. A party claiming to be unable to perform its obligations under these Conditions (either on time or at all) in any of the circumstances set out in clause 9.12.1 shall notify the other party of the nature and extent of the circumstances in question as soon as practicable.

9.12.3. This clause 9.12 shall cease to apply when such circumstances have ceased to have effect on the performance of the Contract and the party affected shall give notice to the other party that the circumstances have ceased.

9.12.4. If any circumstance relied on by the other party for the purposes of this clause 9.12 continues for more than six months, the other party shall be entitled to terminate the Contract by giving one month's notice.

## 10. INTELLECTUAL PROPERTY

10.1. The Customer acknowledges that the Intellectual Property in any Goods or System (save for any Resale Products or other third party product or software) is the Supplier's property and that nothing in the Contract shall be construed as conferring any license or granting any rights in favour of the Customer in relation to such Intellectual Property. Any Intellectual Property in Resale Products or other third party product or software is subject to the rights of the applicable third party owner of such rights.

10.2. The Customer shall not use (other than pursuant to the Contract) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Supplier or any associated company or Supplier owns or claims rights in anywhere in the world

10.3. If any claim is made against the Customer that the Goods (always excluding any Resale Products or other third party product or software) infringe or that their use infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, the Supplier shall indemnify the Customer against all loss, damages, costs and expenses awarded against the Customer in connection with the claim, provided that:

10.3.1. the Supplier is given full control of any proceedings or negotiations in connection with any such claim;

10.3.2. the Customer shall give the Supplier all reasonable assistance for the purpose of any such proceedings or negotiations;

10.3.3. the Customer 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);

10.3.4. the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);

10.3.5. the Supplier shall be entitled to the benefit of, and the Customer shall accordingly account to the Supplier for, all damages or costs (if any) awarded in favour of the Customer which are payable by or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and



10.3.6. without prejudice to any duty of the Customer at common law, the Supplier shall be entitled to require the Customer to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss or damages, costs or expenses for which the Supplier is liable to indemnify the Customer under this clause.

## **11. DESIGN AND MANUFACTURE RIGHTS**

11.1. The Supplier retains full ownership of all inventions, designs and processes and all Intellectual Property rights therein made or evolved by it in preparing its quotation or during the course of any work on any contract or order resulting therefrom.

## **12. CONFIDENTIALITY**

12.1. Customer undertakes to Supplier to keep confidential all information (written or oral) concerning the business and affairs of the other which it has obtained or received as a result of discussions leading up to entry into the Contract, or which it has obtained during the course of the Contract, except any information that is:

12.1.1. subject to an obligation to disclose under law, or that is required to be disclosed by any competent regulatory authority, by notice or otherwise; or

12.1.2. already in its possession other than as a result of a breach of this clause 12; or

12.1.3. in the public domain other than as a result of a breach of this clause 12.

12.2. Customer undertakes to Supplier to take all steps necessary from time to time to ensure compliance with the provisions of this clause 12 by its employees, agents and subcontractors.

12.3. This clause 12 shall survive termination of the Contract for a period of 5 years.

## **13. DEFAULT**

13.1. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure of the Customer to perform any relevant obligation ('Customer Default'):

13.1.1. the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Contract until the Customer remedies the Customer Default, any to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays the Supplier's performance of any of its obligations;

13.1.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 13; and

13.1.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default

## **14. CURRENCY FLUCTUATIONS**

14.1. Where quoted prices are stated to be based in whole or in part on a conversion into the customary currency of the Supplier, or any other currency the Customer shall, subject to any applicable law relating to the regulation of prices, indemnify and hold the Supplier harmless against any loss incurred by the Supplier which arises or results from any variation in the rate of exchange between the date of the quotation and the date upon which the Customer places his order.

## **15. INSOLVENCY OF CUSTOMER**

15.1. If the Customer becomes subject to any of the events listed in clause 15.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

15.2. For the purposes of clause 15.1, the relevant events are:

15.2.1. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable

- to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 15.2.2. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors
- 15.2.3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 15.2.4. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 15.2.5. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 15.2.6. a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 15.2.7. a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 15.2.8. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.1 to 15.2.7(inclusive);
- 15.2.9. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; and
- 15.2.10. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.3. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **16. EXPORT TERMS**

- 16.1. Where the Goods are supplied for export from the United Kingdom the provisions of this Clause 16 shall (subject to any special terms agreed in Writing between the Customer and the Supplier) apply notwithstanding any other provision of these Conditions.
- 16.2. The Customer 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 thereon. For the avoidance of doubt, the Customer shall be solely responsible obtaining any and all relevant import licenses.
- 16.3. Unless otherwise agreed in Writing between the Customer and the Supplier, the Goods shall be delivered FOB the air or sea port of shipment and the Supplier shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979 (as amended and re-enacted from time to time). Customer shall be responsible for obtaining any relevant import licenses.
- 16.4. The Customer 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 which is made after shipment, or in respect of any damage during transit.
- 16.5. Payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Customer in favour of the Supplier and confirmed by a bank in England acceptable to the Supplier or, if the Supplier has agreed in Writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Supplier of a Bill of Exchange drawn on the Customer payable 60 days after sight to the order of the Supplier at such branch of Barclays Bank PLC in England as may be specified in the Bill of Exchange.

- 16.6. The Customer undertakes not to offer the Goods for resale in any country where export of the Goods is prohibited by the UK Government, the UN, the EU or other relevant organisation.
- 16.7. The Customer shall indemnify the Supplier for all liabilities, loss, damages, costs and expenses awarded against or incurred by the Supplier arising out of or in connection with any breach of the Customer's obligations contained in clause 16.6.

## **17. NUCLEAR INDEMNITY**

- 17.1. **This clause shall only apply in the event that the Goods are used on or as a component or part of a Nuclear Installation.**
- 17.2. **In this clause 'Nuclear Installation' shall have the same meaning in the Nuclear Installations Act 1965 but shall also include a nuclear reactor comprised in a means of transport**
- 17.3. **In this clause "Nuclear Liabilities" means any claim by a third party regardless of the jurisdiction in which any such claim arises or is brought for:**
- 17.3.1. **loss of life or personal injury;**
  - 17.3.2. **damage to, or destruction of, property;**
  - 17.3.3. **economic loss arising from the loss or damage referred to in 17.3.1 or 17.3.2 to the extent not included in those Paragraphs;**
  - 17.3.4. **the costs of any measures of reinstatement of impaired environment if such measures have been taken or are to be taken, and to the extent not included in 17.3.2;**
  - 17.3.5. **loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and to the extent not included in 17.3.2; and**
  - 17.3.6. **the cost of preventative measures, and further loss or damage caused by such measures**
- 17.4. **Except to the extent prohibited by law the Customer hereby indemnifies and holds harmless the Supplier against all liabilities, losses, costs and expenses incurred by the Supplier arising in respect of Nuclear Liabilities.**
- 17.5. **The Customer shall not use the Goods and shall procure that the Goods shall not be used at or enter onto a Nuclear Installation at any time unless prior consent in Writing has been provided by the Supplier.**

## **18. GENERAL**

- 18.1. The Supplier is a member of the group of companies whose holding company is Rotork p.l.c., and accordingly the Supplier may perform any of its obligations to 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.
- 18.2. 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 its 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.
- 18.3. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.4. 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 thereby.
- 18.5. A person who is not party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions or the Contract.
- 18.6. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 18.7. Nothing in these Conditions or the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 18.8. Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be submitted to the exclusive jurisdiction of the courts of England and Wales.

18.9. The Contract shall be governed by and construed in accordance with the laws of England and Wales. Notwithstanding the exclusive jurisdiction of the English Courts, the Supplier reserves the right, at its sole option, to commence proceedings in any jurisdiction it chooses.

## 19. BRIBERY AND CORRUPTION

19.1. The Customer shall:

- 19.1.1. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- 19.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 19.1.3. comply with the Supplier's Ethics and Values Statement (the latest version of which is available to download from <http://www.rotork.com/master-popup/4433>) (**Relevant Policy**).
- 19.1.4. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and clause 19.1.2, and will enforce them where appropriate;
- 19.1.5. promptly report to the Supplier any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of this agreement;

19.2. The Customer shall ensure that any person associated with the Customer who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this clause 19 (**Relevant Terms**). The Customer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Supplier for any breach by such persons of any of the Relevant Terms.

19.3. Breach of this clause 19 shall be deemed a material breach and the Supplier shall be entitled to immediately terminate the Contract without liability to the Customer.

19.4. For the purpose of this clause 19, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act) and section 8 of that Act respectively. For the purposes of this clause 19 a person associated with the Customer includes but is not limited to any subcontractor of the Customer.