

CONDITIONS OF CONTRACT governing all contracts for the sale or supply of goods by Thames Valley Controls Ltd (the Company) TVC in these conditions:-

"Buyer" means any person at whose request goods are supplied by the Company and "goods" means any goods (or replacements) supplied to the Buyer under the contract or sale. These conditions shall apply to every contract entered into with the Company except as varied by express agreement in writing signed by an authorised person on behalf of the Company. The headings are for convenience only and shall not affect construction of these Conditions

1. FORMATION AND PARTIES

(a) The Buyer's order to the Company is an offer to enter into a contract upon these conditions. Acceptance occurs and the contract is formed only upon the Company despatching to the Buyer its Acknowledgement of Order. Any terms or conditions proffered at any time by the Buyer are hereby excluded. A quotation by the Company does not constitute an offer.

(b) The Buyer shall not assign the benefit of the contract without the Company's prior written consent.
(c) The contract is not cancellable by the Buyer without express written consent of an authorised person on behalf of the Company.

2. If the Company agrees cancellation by the Buyer then the buyer shall pay a minimum of 5% of the contract value or a higher percentage dependent upon the progression of project and costs incurred.

3. PRICE

(a) Prices quoted are in accordance with the Company's current price list and exclusive of Value Added Tax and any other taxes, duties or charges.

(b) The Company reserves the right to vary the price of goods by any amount attributable to a change in or insufficiency of the Buyer.

4. DELIVERY

(a) Delivery dates are estimates only. Unless otherwise stated delivery periods commence from date of Acknowledgement of Order. Time of delivery is not of the essence of the contract. The Company shall use its reasonable endeavors to deliver the goods by the stated delivery date but may suspend or delay delivery and shall not be liable for any loss in the event of late delivery or non-delivery of goods or of any instalment owing to any occurrence beyond its control. The Buyer shall not be entitled to refuse to accept late delivery as a breach of contract.

(b) The Company may as its option deliver by instalments; each instalment shall constitute a separate contract on these conditions.

(c) Delivery shall take place and risk shall pass upon the earliest of the following:-

- (i) The company handling the goods to the Buyer or its agent at the Company's premises; or
- (ii) The goods leaving the Company's premises; or
- (iii) On the eighth day following notification that the goods are ready for despatch.

(d) The cost of any packaging, insurance and delivery of all goods for inland orders will be charged to the Buyer in addition to the price.

(e) Unless otherwise agreed in writing all export orders will be delivered c.i.f at a foreign port to be notified by the Company.

(f) If the Buyer had failed to collect the goods on the expiry of the seventh day following notification of readiness for despatch, the Company shall be entitled to treat the contract as repudiated by the Buyer. Until the contract is so terminated the Company may, at its option, either store the goods itself or have them stored by third parties on such terms as it in its absolute discretion thinks fit. The cost of storage and any additional transportation will be added to and form part of the price. If the Company elects to treat the contract as repudiated in accordance with this Condition it shall (without prejudice to its rights and remedies in respect of such repudiation) be entitled to sell the goods and retain the proceeds of the sale.

(g) In respect of export orders subject to payment by letter or credit stated delivery periods shall commence only upon receipt of letter of credit complying in all respects with the Company's requirements.

5. LOSS OR DAMAGE IN TRANSIT

(a) The company shall not be liable for loss or damage to goods in transit unless:-

- (i) The Company has agreed to effect delivery to a place other than the Company's premises, and
- (ii) The loss or damage occurs prior to arrival at delivery point; and either
- (iv) Damage or shortage is reported within 7 days or arrival at delivery point, or
- (v) In the case of total loss, non-arrival is notified to the Company within 14 days after the estimated delivery date.

(b) The Company's liability for goods lost or damaged in transit shall in all circumstances be limited (at the Company's option) to repair or replacement or crediting the Buyer with the invoice value of the goods in question and is subject to the Buyer returning the damaged goods carriage paid to the Company.

6. INSPECTION

(a) The Buyer shall inspect the goods immediately upon receipt and shall (unless such inspection cannot be carried out and the delivery note is marked "not examined") subject to paragraph (b) below deemed to have accepted the goods as delivered.

(b) The Company shall not be liable for defects or shortages discoverable on reasonable inspection unless the Buyer notifies the Company before the expiry of 7 days after delivery of any alleged defect of lack of conformity with the contract.

(c) The Company shall make good shortages notified to it under paragraph (b) as soon as reasonable practicable but shall not be liable for any other loss whatsoever arising from such shortage.

(d) The Company's liability for defects and shortages notified to it under paragraph (b) above shall in all circumstances be limited (at the Company's option) to repair or replacement or crediting the Buyer with the invoice value of the goods in question.

7. WARRANTY

(a) If within 12 months from installation or 36 months of the TVC "No Quibble" guarantee or 15 months from date of despatch from our works whichever is the sooner (or such longer period as is agreed in writing by the Company) a material defect in the goods shall be discovered and

- (i) The Buyer notifies the Company within 14 days after discovery giving particulars and either
- (ii) Such defect has arisen from faulty materials employed or workmanship carried out by the Company existing but not discoverable upon inspection at time of delivery then the Company shall at its option repair, replace or credit the Buyer's account with the Company or refund to the Buyer the purchase price paid for and cost of returning the defective goods.

(b) The Company's liability for defective goods is limited in all circumstances to (at the Company's own option) repair or replacement of crediting or refunding to the Buyer invoice value and the Buyer shall accept such of the aforementioned remedies as the Company shall proffer as fulfillment of the Company's obligations under the contract.

(c) The Company's liability under this condition applies only to defects appearing whilst goods are being properly used or stored and in particular (but without limitation) the Company shall not be liable in the case of defects arising from normal deterioration or improper or faulty modification, alteration, handling or processing of the goods by the Buyer.

8. ITEMS SUPPLIED BY THE BUYER

The Buyer shall be liable for all drawings, specification, instructions and other technical data, issued to the Company with orders or pursuant to the contract and shall indemnify and keep indemnified the Company against all loss arising directly or indirectly out of any error or omission from such drawings, specifications and instructions, and against all costs, claims, demands and expenses whatsoever in respect of the infringement of any patent, copyright design or other third party arising out of the Company's use of such drawings, specifications or instructions.

9. LIMITS OF LIABILITY

(a) The goods are supplied strictly to the terms that the Buyer has satisfied itself of their suitability for its purpose. The Buyer acknowledges that all specifications and details in catalogues, quotations and acknowledgements or order or similar documents or by word of mouth and all forecasts of performance, howsoever given, are appropriate only and do not form part of the contract and that in respect of such specifications, details and forecasts the Company shall be under no liability nor shall the Buyer be entitled to any remedy under the provisions of the Misrepresentation Act 1967.

(b) The Company shall not be liable in any way (whether for negligence or otherwise) for any site survey conducted by the Company, its servants or agents prior to contract. The Buyer warrants to the Company that all information supplied during such site survey is complete and accurate and agrees to indemnify the Company against all losses, claims, costs and demands including expenses incurred as a result (whether directly or indirectly) of any inaccuracy or omission in such information.

(c) The Company's liability under Condition 5 & 6 shall be accepted by the Buyer in lieu of any warranty or condition, whether express or implied by law as to quality or fitness for any particular purpose of the goods and save as provided in these Conditions the Company shall not be under any liability to the Buyer (whether in contract or otherwise) for any defects in the goods, materials supplied or workmanship performed by the Company for any damage, loss, death or injury resulting from such defects and the Buyer shall indemnify the Company against any claims in respect thereof. For the purpose of this paragraph the Company contracts on its own behalf and on behalf of and as trustee for its sub-contractors, servants and agents.

(d) The company shall not (subject to paragraph (e) below) be liable, whether by way of indemnity or by reason of breach of contract, tort or breach of statutory duty or in any other manner for consequential or indirect loss of whatever use (whether complete or partial) of the goods, or loss of profit of any contract.

(e) Nothing in this condition shall be construed as limiting or excluding the Company's liability under the Consumer Protection Act 1987 or for death or personal injury caused by its negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977).

(f) The Buyer shall indemnify and keep indemnified the Company against all actions suits, claims, costs damages, demands and expenses or other loss arising out of a defect in the goods (including without limitation, all liabilities arising out of claims made under Part 1 of the Consumer Protection Act 1987) to the extent occasioned by or contributed to by any act or omission of the Buyer, its servants, agents or persons under its control.

10. RETENTION OF TITLE

(a) Title to the goods comprised in each invoice rendered under this or any other contract shall not pass to the Buyer before:-

- (i) The total amount due under such invoice is paid to the Company;
- (ii) Payment to the Company of all sums owing to it by the Buyer on any account.

(b) Until title passes to the Buyer the Buyer shall not deal with or dispose of the goods other than in its normal business. Any permission to deal with the goods ceases immediately on the winding up or bankruptcy petition or of a petition for the making of an administration order, the appointment of a liquidator, the giving of notice of any meeting to pass a winding up resolution or any other act of insolvency.

(c) If prior to making payments to the Company for the goods, the Buyer contracts to re-sell the goods to a third party in substantially the same form in which they were delivered to the Buyer or if the goods are used or incorporated in the production of my other product which is sold by the Buyer to a third party then in each case title to such goods shall pass directly from the Company to such third party pursuant to paragraph (a) above upon payment in full to the Company and Condition 10 shall apply in such circumstances.

(d) Until title passes the Buyer shall hold the goods as Bailee for the Company and shall be a fiduciary to the Company in respect of the goods, and were Condition 10 applies, in respect also of:-

- (i) the proceeds of sale, and any payment of
- (ii) the type described in Condition 10

(e) Until title passes the Company may at any time (regardless of any period of credit given to the Buyer) enter onto the premises of the Buyer or of its agents or customers to inspect or repossess all or part of the goods and on repossession the relevant contract shall terminate in respect of those goods without prejudice to any rights of the Company.

(f) Any fixings of goods that have been installed by the Company at the request of the Buyer are agreed to be temporary only pending payment under Paragraph (a) above and the parties agree that regardless of actual fact the goods will be deemed not to be annexed to any property prior to payment. After payment the Company will if it considers it necessary arrange for permanent fixing in place of such temporary fixing.

(g) Until title passes to the Buyer, the Buyer shall insure fully for the benefit of the Company and shall promptly indemnify the Company against loss of or damage to the goods in the event that such loss or damage occurs prior to the passing of title to the Buyer.

11. RESALE OF GOODS

(a) Where title to the goods has not passed from the Company and the Buyer wishes to re-sell the goods and Condition 9(b) applies, the Buyer shall invoice the goods to the third party purchaser at a price not less than that charged to the Buyer by the Company for the goods and shall notify the third party purchaser that the goods are the property of the Company. Such sale shall be made by the Buyer as principal but all proceeds of sale shall be held by the Buyer as agent for the Company and the Buyer shall be in fiduciary position to the Company in respect of such proceeds of sale.

(b) Any payment received by the Buyer in respect of any assignment of any debt in connection with any sale of the goods by the Buyer shall be held by the Buyer as agent for the Company and the Buyer shall be in a fiduciary position to the Company in respect of any such payment so received.

(c) The Buyer shall give the Company full particulars of persons to whom goods have been or are intended to be sold so as to enable the Company to recover goods.

12. PAYMENT

(a) Subject to satisfactory trade, banker's and other requisite references and, where no other terms of payment have been specifically agreed in writing the Company's terms are cash payment in full to be made on or before 30 days after the date of invoice. Unless otherwise specifically agreed in writing payment for export order shall be in sterling and shall be by irrevocable letter of credit confirmed by a London Clearing Bank and issued under the Incoterms then in force. No discount or allowance will be made unless stated by the Company in writing. Interest will be charged on all sums due under or by way of damages for breach of the contract at the rate 8% per annum above the base rate from time to time in force and shall be calculated and accrue on a day to day basis from the date of which payment fell due until payment (whether made before or after judgment has been obtained by the Company against the Buyer).

(b) Time for making payment shall be of the essence of the contract.

(c) The Company may at any time in its absolute discretion appropriate any payment made by the Buyer in respect of goods to such outstanding debt as the Company thinks fit notwithstanding any purported appropriation to the contrary by the Buyer.

(d) The Company shall be entitled to cancel the contract to postpone any delivery until payment has been received in the event that the Company has reasonable doubts about the Buyer's ability or willingness to pay on the due date.

(e) The Company reserves the right at any time at its discretion to demand security for payment before continuing with an order or delivery of goods or any instalment.

(f) VAT will be charged at the rate ruling at the time of despatch of the goods or, if different, the basic tax point (as defined in regulations governing VAT from time to time in force).

13. SET-OFF AND LIEN

(a) No payments may be withheld nor may any counterclaims of the Buyer be set-off against any payment due.

(b) The Company shall have a general and particular lien on all money and property which the Buyer owns or is entitled to possess which is in the possession of the Company or its agent, which it may sell as the Buyer's agent to reduce the Buyer's debt to the Company

14. INSTALLATION

The Buyer shall, at the cost of the Buyer, ensure where goods are to be installed that the place of installation is cleared and ready in good time, that adequate supplies of power and light are available, that working conditions are proper and safe, and that suitable access and any necessary labour are available.

15. SITE ASSISTANCE

(a) The Company shall at the request of the Buyer and upon the following terms make available a company engineer ('the Engineer') for the purpose of assisting the Buyer in an advisory capacity in putting equipment purchased hereunder into operation following installation of such equipment by the Buyer.

(b) The Buyer will pay the Company amounts in accordance with the following rates for the provision of the Engineer:

- (i) A rate per hour at Charge Rate 'A' for each hour worked by the Engineer between the hours of 0700 and 1900 up to a maximum of 8 hours per day and 40 hours per week worked Monday to Friday and subject to a minimum charge of two hours for each visit made by the Engineer.
- (ii) A rate per hour at Charge Rate 'B' for each hour worked outside those hours covered by Charge Rate 'A'.
- (iii) Time spent travelling to the location of the equipment from the Company's offices will be charged for at the above rates.

(iv) The Engineer's travelling expenses will be charged to the Buyer. Documentary evidence of such expenses shall be proved upon request for at least 80% of the value of expenses invoiced to the Buyer. A charge of 10% of the expenses amount will be added to cover administration costs.

(v) The current rate of charge can be obtained from the Company's Customer Service Department. Rates are subject to change and the Company reserves the right to invoice the Buyer at the rates prevailing on the date of provision of the Engineer.

(vi) All charges payable by the Buyer under this clause shall be payable in accordance with Clause 11.

(c) The Company may at its sole discretion withdraw the Engineer from site or provide a substitute engineer.

(d) The Buyer shall provide the Engineer with such information concerning the equipment and its application use location and environment as the Engineer may reasonably request to enable him to carry out his duties.

(e) The Company does not by this Clause agree to undertake or to be liable to repair goods or equipment supplied to the Buyer or to pay the cost of any such work.

16. PROPERTY RIGHTS

All intellectual property rights in the goods or in any document, invention or information made or implied in connection with the goods or this contract shall remain vested in the Company or where applicable the original source.

17. TERMINATION BY THE COMPANY

If the Buyer commits any breach of or fails to comply with any term of the contract or becomes insolvent the Company shall have the right (without prejudice to its other rights or remedies) forthwith to terminate the contract or any part of it, to withhold delivery of goods and demand payment of all sums due by the Buyer to the Company.

18. FORCE MAJEURE

(a) The Company shall not be liable to the Buyer if unable to carry out any provision of the contract for any reason beyond its control (including (but without limitation) Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute or owing to any inability to procure parts or materials required for the performance of the contract.

(b) The Company shall notify the Buyer as soon as reasonably practicable after circumstances preventing performance arise. During the continuance of such a contingency the Company may, in its absolute discretion, withhold reduce or suspend performance of its contractual obligations so far as prevented or hindered by such contingency without liability to the Buyer for any loss or damage whatsoever suffered directly or indirectly by reason of any such withholding, reduction or suspension.

(c) Should such contingency continue for more than three months either party may (subject to (i) the Company repaying to the Buyer any advance payments made for undelivered goods, and (ii) the Buyer paying for goods delivered) cancel the contract without further liability to the other.

19. NO WAIVER

No waiver of any of the Company's rights under the contract shall be effective unless in writing signing by an authorised person on behalf of the Company. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Company's rights in relation to different circumstances or the recurrence of similar circumstances.

20. NOTICES

Any notice under these Conditions shall be properly given if in writing and sent by post or email to the address of the intended recipient a stated in the contract or to such address as the Company and the Buyer from time to time notify to each other as their respective address for service and shall be deemed served in the case of postal notice, on the expiry of 48 hours from time of posting, in the case of emailing on the expiry of 15 minutes from completion of sending.

21. CONSTRUCTION AND JURISDICTION

(a) English law shall govern construction and operation of the contract and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.

(b) Each of these conditions and each paragraph hereof shall be construed as a separate condition. Should any provision hereof be found to be invalid or unenforceable or an unreasonable restriction of the Company's liability then such provision shall apply with such modification as may be necessary to make it valid and effective.