

TERMS AND CONDITIONS OF SALE

INTRODUCTION:

1. IN these Conditions "the Company" shall mean Arbil Limited and any Associate or Subsidiary Company by which the goods are sold or the services performed, "the Buyer" shall mean the person, firm or Company to whom the Company agrees to sell or supply the goods or to perform services as agreed. "the Goods" shall mean the article or things or any of them described in the contract between the Company and the Buyer for the sale or supply of goods or for the provision of services rendered. "services" shall mean any work or labour done or service rendered by the Company for or on behalf of the Buyer.

2. ALL contracts of sale of Goods and contracts for the supply of services incorporate these Conditions so far as such Conditions are not varied by any special terms or Conditions agreed in writing between the parties, and any term or Condition of the Buyer which are inconsistent with these Conditions shall have no effect. Any variation of the contract will become binding only if confirmed in writing by the Company.

3. THE rights of the Company or the Buyer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

RISK:

4. THE risk in the goods shall pass to the Buyer on delivery.

RESERVATION OF TITLE:

5. UNTIL full payment has been received by the Company for all goods whatsoever supplied (and all services rendered) at any time by the Company to the Buyer:-

- (a) Property in the goods shall remain in the Company.
- (b) Should the goods (or any of them) be converted into a new product, whether or not such conversion involves the admixture of any other goods or thing whatsoever and in whatever proportions, the conversion shall be deemed to have been effected on behalf of the Company and the Company shall have the full legal and beneficial ownership of the new products, but without accepting any liability whatsoever in respect of such converted goods in relation to any third party, and the Buyer hereby indemnifies the Company in relation thereto.
- (c) Subject to (d) and (e) below, the Buyer shall be at liberty to sell the goods and the new products referred to in (b) above, in the ordinary course of business on the basis that the proceeds of sale shall belong to the Company to whom the Buyer shall account.
- (d) the Company may at any time revoke the Buyer's power of sale by notice to the Buyer, if the Buyer is in default in the payment of any sum whatsoever due to the Company (whether in respect of the goods or any other goods supplied) or service rendered at any time by the Company to the Buyer or for any other reason whatsoever or if the Company has bona fide doubts as to the solvency of the Buyer.
- (e) the Buyer's power of sale shall automatically cease if a Receiver is appointed over any of the assets, or the undertaking of the Buyer or a winding up order is made against the Buyer, or the Buyer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or cause a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy or allows execution to be levied against its or his goods:
- (f) upon determination of the Buyer's power of sale under (d) or (e) above, the Buyer shall place the goods and the new products at the disposal of the Company who shall be entitled using such force as is reasonably necessary, to enter upon any premises of the Buyer for the purpose of removing such goods and new products and to remove such goods and new products from the premises (including severance from the realty where necessary).

DELIVERY:

6. DATES or periods for delivery stated in the contract are only approximate and not essential terms unless and subject to Para 7 hereof in the circumstances of a particular case the parties specifically agree in writing guaranteed delivery dates.

7. SHOULD the manufacture or delivery of any of the goods or the provisions of services at any of the Company's or its parent Company's works, or the delivery thereof to the Buyer elsewhere, whether by the Company or its parent Company or an independent contractor, be prevented or hindered directly or indirectly by fire, the elements, war, civil commotion, strikes or lock outs, industrial dispute, shortage of raw materials or fuel, shortage of labour, failure or partial failure of plant or machinery, late receipt of the Buyers specifications or other necessary information, Acts, Order or Regulations of Government or Local Authority, delay on the part of any independent sub contractor or supplier, or any other cause whatsoever beyond the reasonable control of the Company or for delivery of the goods or the provision of the services shall be extended for a reasonable period having regard to the effect of the delaying cause on the manufacture or delivery of the goods or the services to be rendered.

8. WHERE the contract provides for delivery of the goods at such place as the Buyer shall nominate being elsewhere that the Company's works, the Company will entertain a claim by the Buyer in respect only of loss or damage in transit only if the Buyer:-

- (a) Gives written notice to the Company within 21 days after the date of the Company's Advice Note or other notification of the despatch of the goods in case of non delivery, or within 7 days after delivery of the goods in any other case; and
- (b) (where the goods are transported by an independent carrier) complied with the conditions of carriage of the Road Haulage Association.

SEPARATE CONTRACTS:

9. EACH part delivery or instalment of the goods or services shall be deemed to be sold or provided under a separate contract.

CONSEQUENTIAL LOSS:

10. THE Company shall not be liable for loss of profit, damage to plant, or for any expenditure incurred on goods supplied or on goods upon which services have been rendered or for any consequential or special loss or damage sustained by the Buyer by reason of any breach of the contract by the Company.

11. THE Buyer will indemnify the Company against such loss or damage arising from any unclear or indistinct or ambiguous instructions given by the Buyer.

SERVICES:

12. WHERE in the case of services to be rendered by the Company upon goods belonging to the Buyer, the Buyer undertakes and warrants:-

- (a) that the Buyer has a good title to the Goods and that the Buyer will indemnify the Company against all claims whatsoever by any other person claiming an interest in such goods and
- (b) that the goods are free from any defect which would or could cause the services to be performed by the Company to be dangerous or harmful.

QUALITY:

14. THE Company shall not be liable for:-

- (a) Any defects in the quality or state of the goods (except for discrepancy in weight) or services rendered which would be apparent on a reasonable examination of for the goods being otherwise not in accordance with the Contract unless the Buyer shall have given to the Company within 14 days after the receipt of the goods a written notice specifying the matters complained of and the Company admitting such complaints after the Buyer has afforded to the Company a reasonable opportunity of inspecting the goods before they have been used, worked or sold;
- (b) any defects in the quality or state of the goods, which would not be apparent on a reasonable examination unless such defects shall have been discovered within 30 days after the receipt of the goods and the Buyer shall have given to the Company forthwith upon such discovery a written notice specifying the matters complained of and the Company admitting such complaints after the Buyer has afforded to the Company a reasonable opportunity of inspecting the goods in their alleged defective state: or
- (c) Any discrepancies in weight unless the Buyer shall have given to the Company a written notice thereof within 14 days after the receipt of the goods and the Company admitting such discrepancies after the Buyer has afforded to the Company a reasonable opportunity of witnessing a re-weigh thereof before such goods have been used, worked or sold.

15. PROVIDED that the Buyer has complied with the requirements as to notice in condition 8 or 14 (whichever may be applicable) if the goods or any part thereof are defective in quality or state or (save for discrepancy in weight) otherwise not in accordance with the contract then if the Company and the Buyer do not agree that the Buyer should accept the goods at an agreed value, or that the goods should be made good at the Company's expense, the Company undertakes to accept a return of the relevant goods and at the Company's option either to:-

- (a) Repay or allow the Buyer the invoice price thereof and any transport costs between the place of delivery and such place of return as shall be nominated by the Company borne by the Buyer; or

This undertaking is given and shall be accepted by the Buyer in full and final settlement and discharge of all damages and losses howsoever, whatsoever and whensoever sustained by the Buyer and in lieu of any other legal remedy whatsoever.

16. ANY condition, warranty or statement as to the quality of the goods or their fitness for any purpose, whether expressed or implied by statute, custom of the trade or otherwise, is hereby excluded unless expressed in writing by the Company signed by their authorized executive.

TERMINATION:

17. THE Company shall be entitled, without prejudice to its other rights and remedies, either to terminate wholly or in part any or every contract between itself and the Buyer, or to suspend any further deliveries under any or every such contract in any of the following events:-

- (a) If any unpaid debt is payable by the Buyer to the Company.
- (b) If the Buyer has failed to provide any letter of credit, Bill of Exchange or any other security required by the contract provided that in such an event, the aforesaid rights of termination or suspension shall apply only in regard to the particular contract in respect of which the Buyer shall have so failed;
- (c) If the Buyer has failed to take delivery of any goods under any contract between them and the Company otherwise than in accordance with the Buyer's contractual rights;
- (d) If the Buyer becomes insolvent or being a body corporate has passed a resolution for voluntary winding up (except where solely for the purpose of reconstruction or amalgamation) or has suffered an Order of Court for their winding up to be made, or have had a Receiver appointed or have suspended payment of his or their debts in whole or in part or have proposed or entered into any composition or arrangement with his or their creditors or have a Receiving Order in bankruptcy made against him or them or allow distress to be levied against its, his or their goods and
- (e) If the Buyer is in breach of these conditions.

The Company shall be entitled to exercise its aforesaid rights of termination or suspension at any time during which the event or default giving rise thereto has not ceased or been remedied and in the event of any such suspension the Company shall be entitled as a condition of resuming delivery and any Contract between it and the Buyer to require pre-payment of or such security as it may require to the payment of the price of any further delivery and to require the price for such goods to be upward revised if they consider necessary.

PAYMENT:

18. UNLESS the contract provides expressly otherwise, the price payable by the Buyer for each delivery shall be the Company's ruling price at date of despatch. Unless otherwise expressly stated in the contract, the price of such delivery shall be paid in full and received by the Company by the last day of the month following the month in which the goods or services were invoiced. The Company shall be entitled to charge interest at the rate of 1% above current Bank of England minimum lending rate (payable monthly) on any sums not so paid.

INSPECTION & TEST:

19. CUSTOMERS property in our possession for whatever reason including inspection repair and test will be held at customers risk. We shall be under no liability for any loss or damage however arising, resulting from the use, processing or conversion of the goods whether they be tested or not and the Buyer will indemnify us in respect of any claim by a third party for loss or damage resulting aforesaid.

20. No servant or agent of Arbil Limited or its subsidiaries is authorised to make any representation or agreement or give any warranty inconsistent with anything set out in the foregoing paragraphs and no such agreement, representation or warranty, whether such agreement, representation or warranty is in writing or otherwise, shall be binding upon Arbil Limited or its subsidiaries.

LAW OF THE CONTRACT JURISDICTION AND ARBITRATION:

21. THESE Conditions and the Contract shall be subject to and construed in accordance with English Law and the Company and the Buyer hereby submit to the exclusive jurisdiction of the English Court and all disputes which may arise under, out of or in connection with or in relation to the Contract (other than relating to the payment of any money due from the Buyer to the Company) and which the Company and the Buyer cannot settle amicably shall be submitted to the arbitration of the London Court of Arbitration under and in accordance with its rules from time to time in force. The Heading to each above-numbered Condition is intended only to be of some practical assistance to the Buyer as to the subject matter of the Condition to which it related and is not to be construed as part of the Contract.