

TERMS AND CONDITIONS OF SALE

Thomas Dudley Ltd

1 DEFINITIONS

- 1.1 The **Company** means Thomas Dudley Limited
- 1.2 The **Buyer** means the person, firm or company who purchases the Goods from the Company.
- 1.3 **Contract** means any contract between the Company and the Buyer for the sale of goods or services from the Company to the Buyer.
- 1.4 **Delivery Point** : the place where delivery of the Goods is to take place under condition 6.1 or 6.7.
- 1.5 **Goods** : any goods or services agreed in the Contract to be supplied to the Buyer by the Company on any goods supplied in substitution of the original Goods, (including any parts or part of them) pursuant to Clause 10 and Clause 13.2 and Clause 14.1 of this Contract;
- 1.6 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to one gender includes a reference to the other gender.
- 1.8 Condition headings do not affect the interpretation of these conditions.

2 APPLICATION

- 2.1 These Conditions apply to all Contracts for the sale of goods and/or supply of services by the Company to any Buyer and prevail over and extinguish all terms and conditions of contract imposed by the Buyer or implied by trade, custom, practice or course of dealing in so far as such terms and conditions are inconsistent therewith or additional thereto.
- 2.2 No alteration, exclusion or waiver of any of these conditions shall be effective or binding unless made in writing by a Director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in this Contract and neither party has a remedy against the other party for any representations, statements or promises not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

3 QUOTATION, ORDER AND ACCEPTANCE

- 3.1 Any quotation by the Company does not constitute an offer and is given on the basis that no Contract shall come into existence until the Company despatches an acceptance of the order to the Buyer. Any quotation given by the Company is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it and may be revised or withdrawn at any time prior to the Company's acceptance of the Buyer's order.
- 3.2 Each order or acceptance of a quotation for Goods by the Buyer shall be deemed to be an offer by the Buyer to buy the Goods subject to these conditions.
- 3.3 The Buyer's order, whether verbal or written, shall not be deemed to have been accepted until the Company has issued its written acknowledgement form and the Buyer's credit has been approved by the Company or satisfactory security for payment has been given.

- 3.4 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate. No order which has been accepted by the Company may be cancelled or varied by the Buyer except with the written agreement of the Company and on such terms that the Buyer shall indemnify the Company in full against all loss (including loss of profits), costs (including costs of labour, materials ordered or used, tooling and all manufacturing costs), damages, charges and expenses incurred by the Company as a result of such cancellation or variation.
- 3.5 The Company shall be entitled to suspend or end the provision of all or any part of the Goods or services to be provided to the Buyer under this Contract at any time where there is a monetary amount outstanding from the Buyer to the Company under any other Contract made between the Buyer and the Company for the provision by the Company of Goods or services.

4 DESCRIPTION

- 4.1 The quantity and description of the Goods shall be as set out in the Company's acknowledgement of order
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

5 PRICES

- 5.1 The price payable by the Buyer for each Delivery of the Goods shall be the Company's price ruling at date of despatch. The Company may at any time revise prices to take into account any increase in the Company's costs (including, but not limited to the cost of raw materials, labour, energy, transport or other overheads, any tax due or other levy and variation in exchange rates).
- 5.2 Unless otherwise specified, VAT and any other tax or duties payable by the Company shall be added to the price payable by the Buyer.

DELIVERY AND COLLECTION

- 6.1 Delivery shall take place on a safe hard road, as near as legally permitted to the Buyer's specified Delivery point as provided on the Buyer's order form. The Buyer will be responsible for the costs and provision of safe offloading facilities and manual labour ensuring that Delivery is completed without undue delay or the Buyer will be liable to indemnify the Company for the Company's costs incurred as a result of such delay.
- 6.2 Unless otherwise stated, all quotations assume Delivery in full loads by any method of transport at the Company's option.

- 6.3 Any time or date for Delivery is given and intended as an estimate only and time for delivery shall not be made of the essence by notice. If a date for Delivery is specified, Delivery shall be without reasonable time. The Company shall not be liable for any direct or indirect loss or damage (including, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss) costs, damages charges or expenses caused directly or indirectly by any delay in the Delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days from the original estimated Delivery date.
- 6.4 Signature on the Company's delivery note by an employee, representative or agent of the Buyer shall be conclusive proof of the quantity received by the Buyer and of Delivery to the Buyer.
- 6.5 If the Company delivers a quantity of goods in excess of or up to 5% more or less than the order accepted by the Company, the Buyer shall not be entitled to object or reject the Goods or any of them by reason of the surplus or shortfall and the Buyer shall pay for such goods at the pro rata Contract rate.

- 6.6 The Company may make deliveries partially or by instalment. Each separate instalment shall be invoiced and paid for in accordance with the provisions of this Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 6.7 When the Buyer arranges transport of the Goods from the Company's place of business, Delivery shall take place at the Company's place of business and the Buyer shall take Delivery of the Goods within 3 days of being given notice by the Company that the Goods are ready for delivery.
- 6.8 If for any reason the Buyer fails to accept Delivery in accordance with Clause 6.1 or 6.7, or the Company is unable to deliver the Goods on time because the Buyer has not provided adequate or appropriate instructions, documents licences or authorisations:

- 6.8.1 The Goods shall be deemed to have been delivered at the Buyer's premises if the delivery is arranged pursuant to Clause 6.1. If delivery is arranged pursuant to Clause 6.7, Delivery will be deemed to have taken place at the expiry of 3 working days of the Company giving notice that the goods are ready for delivery.
- 6.8.2 Risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 6.8.3 If the Buyer fails to take, or refuses to accept Delivery of any of the Goods the Company may charge for the refused delivery and any associated costs and may store the Goods until collection by the Buyer from the Company's premises and charge the Buyer reasonable costs of storage, insurance and re-delivery or without affecting the continuation of the Contract, sell the Goods.
- 6.9 The Company shall not be liable for any damage, discrepancy non-Delivery or short Delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would have been received.
- 6.10 Any liability of the Company for non-Delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7 RETURNABLE PACKAGING

- 7.1 Pallets, stailages and special containers are returnable to the Company, and remain the property of the Company, they or equivalent like items shall be returned in good condition to the Company following delivery.

8 TECHNICAL DATA

- 8.1 All Company drawings, descriptive matter, price lists, brochures or advertisements whether or not supplied with a quotation or tender are approximate only and intended merely to give a general idea of the goods described therein and shall not form part of the Contract. Any tools, patterns and samples, unless paid for in full, and drawings, specifications or other information provided remains the Company's property and all technical information, patentable or unpatentable copyright and registered designs arising from the execution of any orders are the property of the Company. They must not be copied, disclosed or given to any third party or otherwise used without written permission of the Company. Any research studies, quality enhancement or cost reduction measures shall remain the property of the Company and such information shall be kept confidential by the Buyer.

9 INDEMNITY

- 9.1 The Buyer shall indemnify the Company against all damages, costs, penalties and expenses arising out of or loss suffered as a result of any work carried out in accordance with the Buyers specification(s) as agreed in writing or any resultant infringement of a patent, design whether registered or unregistered, trade mark, copyright or any other industrial property right. If the Buyer uses, sells, causes to be sited or installed the Goods in such a manner as to infringe such rights the Company shall not be responsible for such infringement and the Buyer agrees to indemnify the Company from and against all liability arising there from.

10 VARIATIONS TO SPECIFICATION

- 10.1 The Company reserves the right to substitute goods of equivalent strength and quality without prior reference to the Buyer.

11 TERMS OF PAYMENT

- 11.1 Payment shall be received in full by the Company by the end of the month following the date of the Company's invoice.
- 11.2 Time of payment shall be the date of payment.
- 11.3 In the event of late or non-payment the Company shall be entitled to charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. In such circumstance any settlement discount will cease to apply and the full price shall be due and payable immediately by the Buyer to the Company.
- 11.4 The Company shall be entitled, at its discretion, to withdraw credit facilities and suspend deliveries at any time in which unpaid sums outstanding from the Buyer to the Company shall become due and payable immediately.
- 11.5 In the event of termination of the Contract for any reason whatsoever, all sums outstanding from the Buyer to the Company shall become due and payable immediately.
- 11.6 The Buyer shall not be entitled to withhold or delay payment or exercise any right to set off howsoever arising or arisen which might otherwise be available to it.

12 TITLE AND RISK

- 12.1 Goods supplied shall remain the property of Thomas Dudley Limited until all money due has been paid in cleared funds. Risk passes to the Buyer on Delivery.
- 12.2 Until payment of all money due to Thomas Dudley Limited the Buyer undertakes to:-
 - 12.2.1 Hold the Goods on a fiduciary basis as the Company's bailee; and
 - 12.2.2 Keep the Goods stored separately (at no cost to the Company) and in such a manner as to make the Goods readily identifiable separate from all other and easily and clearly identifiable upon examination; and
 - 12.2.3 Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 12.2.4 Maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 12.3 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:-
 - 12.3.1 Any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 12.3.2 Any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and

- 12.3.3 Any of the proceeds from the sale of the Company's Goods shall be retained in a separate account by the Buyer.

- 12.4 The Buyer's right to possession of the Goods shall terminate immediately if:
 - 12.4.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its Directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - 12.4.2 The Buyer suffers or allows an execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other Contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 12.4.3 The Buyer encumbers or purports to in any way charges any of the Goods.

- 12.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company;

- 12.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 12.7 Where the Company is unable to determine whether any Goods are the Goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer;
- 12.8 On termination of the Contract, howsoever caused the Company's (but not the Buyer's) rights contained in this condition shall remain in effect.

13 WARRANTY

- 13.1 The Company warrants all Goods which have been supplied by the Company against any defect of materials or workmanship arising within a period of 12 months of Delivery which can be proved to the Company's satisfaction to have been caused before Delivery. The above warranty is given subject to the following conditions:
 - 13.1.1 Full details of any such defect are notified to the Company in writing within 14 days of its first discovery.
 - 13.1.2 The Goods have been properly used for their normal purpose, handled, maintained, stored and installed in accordance with the Company's installation instructions and good practice.

- 13.1.3 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

- 13.1.4 The Goods in which the defect arises are returned undamaged and adequately packed at the Buyer's expense to the Company.
- 13.2 The liability of the Company shall be limited to its option either to supplying replacement Goods, which will be supplied subject to these terms, or refunding the price of the Goods.

- 13.3 The Company shall be under no liability under the said warranty if:

- 13.3.1 the Buyer has not paid in full for the Goods; or
- 13.3.2 the Buyer or his customer has executed or attempted to execute repairs or alterations to the Goods which are not authorised in writing by the Company or has failed in any other respect to adhere strictly to the terms hereof; or
- 13.3.3 the Company has not been notified of any defect within 14 days of the discovery of the defect; or
- 13.3.4 the Goods are returned to the Company inadequately packaged, in which event any damage to the Goods will be deemed to have resulted from the Buyer's inadequate packaging and not from any defect in materials or workmanship; or
- 13.3.5 if the Buyer has used the Goods without first having carried out all the inspections and tests which the design and use necessitate,

- 13.3.6 when any fault is attributable to the whole unit in which the Goods are incorporated or to any modification carried out after Delivery.

- 13.4 Except for the express warranties set out above, the Company grants no other warranties relating to defects in design, workmanship, or materials of the Goods and all other conditions, warranties, stipulations, or other statements whatsoever whether express or implied, by statute at common law or otherwise howsoever, relating to such defects in the Goods and services are hereby excluded

- 13.5 Where the Buyer notified the Company as aforesaid and the Company performs its obligations under these conditions the Buyer shall not be entitled to any claim in respect of the Goods, or for work done thereon, or any other costs or losses, direct or indirect or consequential and loss of profits whatsoever (save where death or personal injury has been caused by the Company's negligence) nor shall the Buyer be entitled to repudiate the Contract or to pay for the Goods or cancel deliveries. The Buyer shall indemnify the Company against all costs of dismantling, digging out, replacement and reassembly.

- 13.6 Nothing in these conditions excludes or limits the liability of the Company:

- 13.6.1 for death or personal injury caused by the Company's negligence; or
- 13.6.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 13.6.3 for fraud or fraudulent misrepresentation;

- 13.7 Subject to the above condition:

- 13.7.1 the Company shall be liable in connection with the contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price;
- 13.7.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14 LIABILITY

- 14.1 The above warranty is limited to the supply to the Buyer free at his premises of the new Goods or parts in exchange for any exchanged parts of the same description. The decision of the Company on all claims and all questions as to defects and as to the exchange of the Goods shall be final and conclusive.

- 14.2 The warranty above shall also apply to any replaced goods provided hereunder during the unexpired period applicable to the Goods for which the replacement has been performed.

- 14.3 Other than stated above, the Company undertakes no liability whatsoever in respect of the Goods sold by it and shall in no circumstances be liable in respect of loss, damage or delay, injury or expense, direct or consequential suffered at any time whether before or after the Goods may have been repaired or replaced, and howsoever caused, even if caused by negligence or breach of duty by the Company, its servants or agents, or the terms set out herein are conclusive of the relationship between the Company and the Buyer and the Company shall be under no liability whatsoever by reason of any representation, statement or warranty, nor shall there be implied in any Contract of sale any term, condition or warranty statutory or otherwise. Nothing in these conditions shall affect the statutory liability of the Company for death or personal injury caused by negligence.

- 14.4 The Company undertakes no liability whatsoever in respect of operations subsequently carried out on products before their use, nor for cost of assembly, disassembly and withdrawal from service.

15 PATTERNS, TOOLS & DIES

- 15.1 Any patterns, tool boxes, tools or dies (the Equipment) manufactured by or on behalf of the Company remain the property of the Company even though the Buyer may have been charged for part of the cost. Except for loss or damage caused directly by the Company's negligence (for which the Company's liability shall be limited to the direct cost of replacements or repair), the Company accepts no liability for loss or damage to the Equipment which is in the Company's possession nor can it guarantee productive life.

- 15.2 Where the Equipment has not been used for a period of two years the Company may, after giving the Buyer one month's notice in writing, dispose of it. In the event that the Equipment needs repair or replacement it will be undertaken by the Company only upon the basis that the Buyer contributes to the cost.

- 15.3 Where Equipment is provided by the Buyer he is responsible for ensuring that it matches the drawings and required specifications. If the Company carries out dimensional checks as requested by the Buyer it reserves the right to invoice the cost to the Buyer. In all cases if the Equipment received by the Company does not conform to the specifications the initially agreed price of the Goods may be revised.

- 15.4 All money due must be paid to the Company before Equipment is released to the Buyer or a third party.

- 15.5 Once manufacture of Equipment has commenced, cancellation cannot be accepted in any circumstances and any costs incurred must be paid by the Buyer in full. Equipment must be paid for in the month of delivery of samples even though subsequent modification may be required or the project is abandoned.

16 ASSIGNMENT

- 16.1 The Buyer shall not assign the Contract of which these Conditions form part or any part of it without the prior written consent of the Company. The Company reserves the right to subcontract the performance of the Contract or any part of it.

17 FORCE MAJEURE

- 17.1 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in delivery or any delay in performing or any failure to perform any of the Company's obligations if the delay or failure arises directly or indirectly from any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: Act of God, explosion, epidemic, flood, storm, fire or accident; war or threat of war, terrorism, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations by laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or a third party); difficulty or increased expense in obtaining materials, labour, transport, fuel, parts or machinery; power failure or breakdown in machinery and equipment.

18 FREE ISSUE COMPONENTS

- 18.1 It is the Buyer's responsibility to ensure that all components supplied by them for use in the products manufactured are fit for purpose and comply fully with the required specification. The Buyer will supply free issue in sufficient and timely quantities to allow for the Company's production programme. The Company accepts no liability for failure of components supplied by the Buyer.

19 NOTICES

- 19.1 Any notice or communication given hereunder must be in writing and may be effected by personal delivery, facsimile, e-mail or by registered mail. If effected by personal delivery notices shall be deemed to be received on the date of such delivery, if by facsimile or email on the day of sending and if by post 48 hours after the date of posting.

20 LIEN

- 20.1 The Company shall in respect of all unpaid debts due from the Buyer have a general lien on all goods and property of the Buyer in its possession (although such goods or some of them may have been paid for) and upon 14 days written notice to the Buyer may dispose of such goods and property and apply the proceeds towards the satisfaction of the sums due to the Company.

21 INDULGENCE OR FORBEARANCE

- 21.1 The rights of the parties shall not be prejudiced or restricted by any indulgence or forbearance extended to them by the other party and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

22 DEFAULT OF BUYER (TERMINATION)

- 22.1 If the Buyer defaults in or commits any breach of any of its obligations to the Company, or ceases to carry out its business or a substantial part thereof, or if any distress or execution is levied on any of the Buyer's property or the Buyer makes or offers to make any arrangement with its creditors or commits any act of bankruptcy, or if any resolution or petition to wind up the Buyer's business is passed or presented or a receiver, liquidator or similar official is appointed of the Buyer's undertaking, or any payment of the whole or any part of the purchase price of the Goods is dishonoured by the Buyer's bank, then the Company shall be entitled forthwith to terminate this and any other Contract with the Buyer in writing to the Buyer's last known address.

23 SEVERANCE

- 23.1 If any condition herein shall be deemed void for any reason whatsoever, but would be valid if part of the wording were deleted, any such condition shall apply with such modifications as may be necessary to make it valid and effective.

24 ENGLISH LAW

- 24.1 The Contract and these Conditions shall be governed by English Law and the Buyer shall submit to the sole jurisdiction of the English Courts.

TERMS AND CONDITIONS OF SALE

Waterfit Ltd

1 DEFINITIONS

- 1.1 The Company means Waterfit Limited
- 1.2 The Buyer means the person, firm or company who purchases the Goods from the Company.
- 1.3 Contract means any contract between the Company and the Buyer for the sale of goods or services from the Company to the Buyer.
- 1.4 Delivery Point : the place where delivery of the Goods is to take place under condition 6.1 or 6.7.
- 1.5 Goods : any goods or services agreed in the Contract to be supplied to the Buyer by the Company on any goods supplied in substitution of the original Goods, (including any parts or part of them) pursuant to Clause 10 and Clause 13.2 and Clause 14.1 of this Contract;
- 1.6 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to one gender includes a reference to the other gender.
- 1.8 Condition headings do not affect the interpretation of these conditions.

2 APPLICATION

- 2.1 These Conditions apply to all Contracts for the sale of goods and/or supply of services by the Company to any Buyer and prevail over and extinguish all terms and conditions of contract imposed by the Buyer or implied by trade, custom, practice or course of dealing in so far as such terms and conditions are inconsistent therewith or additional thereto.
- 2.2 No alteration, exclusion or waiver of any of these conditions shall be effective or binding unless made in writing by a Director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in this Contract and neither party has a remedy against the other party for any representations, statements or promises not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

3 QUOTATION, ORDER AND ACCEPTANCE

- 3.1 Any quotation by the Company does not constitute an offer and is given on the basis that no Contract shall come into existence until the Company despatches an acceptance of the order to the Buyer. Any quotation given by the Company is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it and may be revised or withdrawn at any time prior to the Company's acceptance of the Buyer's order.
- 3.2 Each order or acceptance of a quotation for Goods by the Buyer shall be deemed to be an offer by the Buyer to buy the Goods subject to these conditions.
- 3.3 The Buyer's order, whether verbal or written, shall not be deemed to have been accepted until the Company has issued its written acknowledgement form and the Buyer's credit has been approved by the Company or satisfactory security for payment has been given.

- 3.4 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate. No order which has been accepted by the Company may be cancelled or varied by the Buyer except with the written agreement of the Company and on such terms that the Buyer shall indemnify the Company in full against all loss (including loss of profits), costs (including costs of labour, materials ordered or used, tooling and all manufacturing costs), damages, charges and expenses incurred by the Company as a result of such cancellation or variation.
- 3.5 The Company shall be entitled to suspend or end the provision of all or any part of the Goods or services to be provided to the Buyer under this Contract at any time where there is a monetary amount outstanding from the Buyer to the Company under any other Contract made between the Buyer and the Company for the provision by the Company of Goods or services.

4 DESCRIPTION

- 4.1 The quantity and description of the Goods shall be as set out in the Company's acknowledgement of order
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

5 PRICES

- 5.1 The price payable by the Buyer for each Delivery of the Goods shall be the Company's price ruling at date of despatch. The Company may at any time revise prices to take into account any increase in the Company's costs (including, but not limited to the cost of raw materials, labour, energy, transport or other overheads, any tax due or other levy and variation in exchange rates).
- 5.2 Unless otherwise specified, VAT and any other tax or duties payable by the Company shall be added to the price payable by the Buyer.

DELIVERY AND COLLECTION

- 6.1 Delivery shall take place on a safe hard road, as near as legally permitted to the Buyer's specified Delivery point as provided on the Buyer's order form. The Buyer will be responsible for the costs and provision of safe offloading facilities and manual labour ensuring that Delivery is completed without undue delay or the Buyer will be liable to indemnify the Company for the Company's costs incurred as a result of such delay.
- 6.2 Unless otherwise stated, all quotations assume Delivery in full loads by any method of transport at the Company's option.

- 6.3 Any time or date for Delivery is given and intended as an estimate only and time for delivery shall not be made of the essence by notice. If a date for Delivery is specified, Delivery shall be without reasonable time. The Company shall not be liable for any direct or indirect loss or damage (including, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss) costs, damages charges or expenses caused directly or indirectly by any delay in the Delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days from the original estimated Delivery date.
- 6.4 Signature on the Company's delivery note by an employee, representative or agent of the Buyer shall be conclusive proof of the quantity received by the Buyer and of Delivery to the Buyer.
- 6.5 If the Company is required to deliver to the Buyer a quantity of goods up to 5% more or less than the order accepted by the Company, the Buyer shall not be entitled to object or reject the Goods or any of them by reason of the surplus or shortfall and the Buyer shall pay for such goods at the pro rata Contract rate.

- 6.6 The Company may make deliveries partially or by instalment. Each separate instalment shall be invoiced and paid for in accordance with the provisions of this Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 6.7 When the Buyer arranges transport of the Goods from the Company's place of business, Delivery shall take place at the Company's place of business and the Buyer shall take Delivery of the Goods within 3 days of being given notice by the Company that the Goods are ready for delivery.
- 6.8 If for any reason the Buyer fails to accept Delivery in accordance with Clause 6.1 or 6.7, or the Company is unable to deliver the Goods on time because the Buyer has not provided adequate or appropriate instructions, documents licences or authorisations:

- 6.8.1 The Goods shall be deemed to have been delivered at the Buyer's premises if the delivery is arranged pursuant to Clause 6.1. If delivery is arranged pursuant to Clause 6.7, Delivery will be deemed to have taken place at the expiry of 3 working days of the Company giving notice that the goods are ready for delivery.
- 6.8.2 Risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 6.8.3 If the Buyer fails to take, or refuses to accept Delivery of any of the Goods the Company may charge for the refused delivery and any associated costs and may store the Goods until collection by the Buyer from the Company's premises and charge the Buyer reasonable costs of storage, insurance and re-delivery or without affecting the continuation of the Contract, sell the Goods.
- 6.9 The Company shall not be liable for any damage, discrepancy non-Delivery or short Delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would have been received.
- 6.10 Any liability of the Company for non-Delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7 RETURNABLE PACKAGING

- 7.1 Pallets, stailages and special containers are returnable to the Company, and remain the property of the Company, they or equivalent like items shall be returned in good condition to the Company following delivery.

8 TECHNICAL DATA

- 8.1 All Company drawings, descriptive matter, price lists, brochures or advertisements whether or not supplied with a quotation or tender are approximate only and intended merely to give a general idea of the goods described therein and shall not form part of the Contract. Any tools, patterns and samples, unless paid for in full, and drawings, specifications or other information provided remains the Company's property and all technical information, patentable or unpatentable copyright and registered designs arising from the execution of any orders are the property of the Company. They must not be copied, disclosed or given to any third party or otherwise used without written permission of the Company. Any research studies, quality enhancement or cost reduction measures shall remain the property of the Company and such information shall be kept confidential by the Buyer.

9 INDEMNITY

- 9.1 The Buyer shall indemnify the Company against all damages, costs, penalties and expenses arising out of or loss suffered as a result of any work carried out in accordance with the Buyers specification(s) as agreed in writing or any resultant infringement of a patent, design whether registered or unregistered, trade mark, copyright or any other industrial property right. If the Buyer uses, sells, causes to be sited or installed the Goods in such a manner as to infringe such rights the Company shall not be responsible for such infringement and the Buyer agrees to indemnify the Company from and against all liability arising there from.

10 VARIATIONS TO SPECIFICATION

- 10.1 The Company reserves the right to substitute goods of equivalent strength and quality without prior reference to the Buyer.

11 TERMS OF PAYMENT

- 11.1 Payment shall be received in full by the Company by the end of the month following the date of the Company's invoice.
- 11.2 Time of payment shall be of the essence.
- 11.3 In the event of late or non-payment the Company shall be entitled to charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. In such circumstance any settlement discount will cease to apply and the full price shall be due and payable immediately by the Buyer to the Company.
- 11.4 The Company shall be entitled, at its discretion, to withdraw credit facilities and suspend deliveries at any time in which equal sums outstanding from the Buyer to the Company shall become due and payable immediately.
- 11.5 In the event of termination of the Contract for any reason whatsoever, all sums outstanding from the Buyer to the Company shall become due and payable immediately.
- 11.6 The Buyer shall not be entitled to withhold or delay payment or exercise any right to set off howsoever arising or arisen which might otherwise be available to it.

12 TITLE AND RISK

- 12.1 Goods supplied shall remain the property of Waterfit Limited until all money due has been paid in cleared funds. Risk passes to the Buyer on Delivery.
- 12.2 Until payment of all money due to Waterfit Limited the Buyer undertakes to:-
 - 12.2.1 Hold the Goods on a fiduciary basis as the Company's bailee; and
 - 12.2.2 Keep the Goods stored separately (at no cost to the Company) and in such a manner as to make the Goods readily identifiable separate from all other and easily and clearly identifiable upon examination; and
 - 12.2.3 Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 12.2.4 Maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 12.3 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:-
 - 12.3.1 Any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 12.3.2 Any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and

- 12.3.3 Any of the proceeds from the sale of the Company's Goods shall be retained in a separate account by the Buyer.

- 12.4 The Buyer's right to possession of the Goods shall terminate immediately if:
 - 12.4.1 The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its Directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the Buyer or its possible insolvency or the Buyer;
 - 12.4.2 The Buyer suffers or allows an execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other Contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 12.4.3 The Buyer encumbers or purports to in any way charges any of the Goods.

- 12.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company;

- 12.6 The Buyer grants to the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 12.7 Where the Company is unable to determine whether any Goods are the Goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer;
- 12.8 On termination of the Contract, howsoever caused the Company's (but not the Buyer's) rights contained in this condition shall remain in effect.

13 WARRANTY

- 13.1 The Company warrants all Goods which have been supplied by the Company against any defect of materials or workmanship arising within a period of 12 months of Delivery which can be proved to the Company's satisfaction to have been caused before Delivery. The above warranty is given subject to the following conditions:
 - 13.1.1 Full details of any such defect are notified to the Company in writing within 14 days of its first discovery.
 - 13.1.2 The Goods have been properly used for their normal purpose, handled, maintained, stored and installed in accordance with the Company's installation instructions and good practice.

- 13.1.3 The Buyer grants to the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

- 13.1.4 The Goods in which the defect arises are returned undamaged and adequately packed at the Buyer's expense to the Company.
- 13.2 The liability of the Company shall be limited to its option either to supplying replacement Goods, which will be supplied subject to these terms, or refunding the price of the Goods.

- 13.3 The Company shall be under no liability under the said warranty if:

- 13.3.1 the Buyer has not paid in full for the Goods, or
- 13.3.2 the Buyer or his customer has executed or attempted to execute repairs or alterations to the Goods which are not authorised in writing by the Company or has failed in any other respect to adhere strictly to the terms hereof, or
- 13.3.3 the Company has not been notified of any defect within 14 days of the discovery of the defect, or
- 13.3.4 the Goods are returned to the Company inadequately packaged, in which event any damage to the Goods will be deemed to have resulted from the Buyer's inadequate packaging and not from any defect in materials or workmanship; or
- 13.3.5 if the Buyer has used the Goods without first having carried out all the inspections and tests which the design and use necessitate,

- 13.3.6 when any fault is attributable to the whole unit in which the Goods are incorporated or to any modification carried out after Delivery.

- 13.4 Except for the express warranties set out above, the Company grants no other warranties relating to defects in design, workmanship, or materials of the Goods and all other conditions, warranties, stipulations, or other statements whatsoever whether express or implied, by statute at common law or otherwise howsoever, relating to such defects in the Goods and services are hereby excluded

- 13.5 Where the Buyer notified the Company as aforesaid and the Company performs its obligations under these conditions the Buyer shall not be entitled to any claim in respect of the Goods, or for work done thereon, or any other costs or losses, direct or indirect or consequential and loss of profits whatsoever (save where death or personal injury has been caused by the Company's negligence) nor shall the Buyer be entitled to repudiate the Contract or to pay for the Goods or cancel deliveries. The Buyer shall indemnify the Company against all costs of dismantling, digging out, replacement and reassembly.

- 13.6 Nothing in these conditions excludes or limits the liability of the Company:

- 13.6.1 for death or personal injury caused by the Company's negligence; or
- 13.6.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 13.6.3 for fraud or fraudulent misrepresentation;

- 13.7 Subject to the above condition:

- 13.7.1 the Company shall be liable to the Contractor, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price;
- 13.7.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14 LIABILITY

- 14.1 The above warranty is limited to the supply to the Buyer free at his premises of the new Goods or parts in exchange for any exchanged parts or components of the same type. The decision of the Company on all claims and all questions as to defects and as to the exchange of the Goods shall be final and conclusive.

- 14.2 The warranty above shall also apply to any replaced goods provided hereunder during the unexpired period applicable to the Goods for which the replacement has been performed.

- 14.3 Other than stated above, the Company undertakes no liability whatsoever in respect of the Goods sold by it and shall in no circumstances be liable in respect of loss, damage or delay, injury or expense, direct or consequential suffered at any time whether before or after the Goods may have been repaired or replaced, and howsoever caused, even if caused by negligence or breach of duty by the Company, its servants or agents, or the terms set out herein are conclusive of the relationship between the Company and the Buyer and the Company shall be under no liability whatsoever by reason of any representation, statement or warranty, nor shall there be implied in any Contract of sale any term, condition or warranty statutory or otherwise. Nothing in these conditions shall affect the statutory liability of the Company for death or personal injury caused by negligence.

- 14.4 The Company undertakes no liability whatsoever in respect of operations subsequently carried out on products before their use, nor for cost of assembly, disassembly and withdrawal from service.

15 PATTERNS, TOOLS & DIES

- 15.1 Any patterns, tool boxes, tools or dies (the Equipment) manufactured by or on behalf of the Company remain the property of the Company even though the Buyer may have been charged for part of the cost. Except for loss or damage caused directly by the Company's negligence (for which the Company's liability shall be limited to the direct cost of replacements or repair), the Company accepts no liability for loss or damage to the Equipment which is in the Company's possession nor can it guarantee productive life.
- 15.2 Where the Equipment has not been used for a period of two years the Company may, after giving the Buyer one month's notice in writing, dispose of it. In the event that the Equipment needs repair or replacement it will be undertaken by the Company only upon the basis that the Buyer contributes to the cost.

- 15.3 Where Equipment is provided by the Buyer he is responsible for ensuring that it matches the drawings and required specifications. If the Company carries out dimensional checks as requested by the Buyer it reserves the right to invoice the cost to the Buyer. In all cases if the Equipment received by the Company does not conform to the specifications the initially agreed price of the Goods may be revised.

- 15.4 All money due must be paid to the Company before Equipment is released to the Buyer or a third party.

- 15.5 Once manufacture of Equipment has commenced, cancellation cannot be accepted in any circumstances and any costs incurred must be paid by the Buyer in full. Equipment must be paid for in the month of delivery of samples even though subsequent modification may be required or the project is abandoned.

16 ASSIGNMENT

- 16.1 The Buyer shall not assign the Contract of which these Conditions form part or any part of it without the prior written consent of the Company. The Company reserves the right to subcontract the performance of the Contract or any part of it.

17 FORCE MAJEURE

- 17.1 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in delivery or any delay in performing or any failure to perform any of the Company's obligations if the delay or failure arises directly or indirectly from any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: Act of God, explosion, epidemic, flood, storm, fire or accident; war or threat of war, terrorism, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations by laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or a third party); difficulty or increased expense in obtaining materials, labour, transport, fuel, parts or machinery; power failure or breakdown in machinery and equipment.

18 FREE ISSUE COMPONENTS

- 18.1 It is the Buyer's responsibility to ensure that all components supplied by them for use in the products manufactured are fit for purpose and comply fully with the required specification. The Buyer will supply free issue in sufficient and timely quantities to allow for the Company's production programme. The Company accepts no liability for failures of components supplied by the Buyer.

19 NOTICES

- 19.1 Any notice or communication given hereunder must be in writing and may be effected by personal delivery, facsimile, e-mail or by registered mail. If effected by personal delivery notices shall be deemed to be received on the date of such delivery, if by facsimile or email on the day of sending and if by post 48 hours after the date of posting.

20 LIEN

- 20.1 The Company shall in respect of all unpaid debts due from the Buyer have a general lien on all goods and property of the Buyer in its possession (although such goods or some of them may have been paid for) and upon 14 days written notice to the Buyer may dispose of such goods and property and apply the proceeds towards the satisfaction of the sums due to the Company.

21 INDULGENCE OR FORBEARANCE

- 21.1 The rights of the parties shall not be prejudiced or restricted by any indulgence or forbearance extended to them by the other party and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

22 DEFAULT OF BUYER (TERMINATION)

- 22.1 If the Buyer defaults in or commits any breach of any of its obligations to the Company, or ceases to carry out its business or a substantial part thereof, or if any distress or execution is levied on any of the Buyer's property or the Buyer makes or offers to make any arrangement with its creditors or commits any act of bankruptcy, or if any resolution or petition to wind up the Buyer's business is passed or presented or a receiver, liquidator or similar official is appointed of the Buyer's undertaking, or any payment of the whole or any part of the purchase price of the Goods is dishonoured by the Buyer's bank, then the Company shall be entitled forthwith to terminate this and any other Contract with the Buyer in writing to the Buyer's last known address.

23 SEVERANCE

- 23.1 Any condition herein shall be deemed void for any reason whatsoever, but would be valid if part of the wording were deleted, any such condition shall apply with such modifications as may be necessary to make it valid and effective.

24 ENGLISH LAW

- 24.1 The Contract and these Conditions shall be governed by English Law and the Buyer shall submit to the sole jurisdiction of the English Courts.

TERMS AND CONDITIONS OF SALE

Masefield Epon

1 DEFINITIONS

- 1.1 The **Company** means Masefield Epon Ltd
- 1.2 The **Buyer** means the person, firm or company who purchases the Goods from the Company.
- 1.3 **Contract** means any contract between the Company and the Buyer for the sale of goods or services from the Company to the Buyer.
- 1.4 **Delivery Point** : the place where delivery of the Goods is to take place under condition 6.1 or 6.7.
- 1.5 **Goods** : any goods or services agreed in the Contract to be supplied to the Buyer by the Company on any goods supplied in substitution of the original Goods, (including any parts or part of them) pursuant to Clause 10 and Clause 13.2 and Clause 14.1 of this Contract;
- 1.6 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to one gender includes a reference to the other gender.
- 1.8 Condition headings do not affect the interpretation of these conditions.

2 APPLICATION

- 2.1 These Conditions apply to all Contracts for the sale of goods and/or supply of services by the Company to any Buyer and prevail over and extinguish all terms and conditions of contract imposed by the Buyer or implied by trade, custom, practice or course of dealing in so far as such terms and conditions are inconsistent therewith or additional thereto.
- 2.2 No alteration, exclusion or waiver of any of these conditions shall be effective or binding unless made in writing by a Director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in this Contract and neither party has a remedy against the other party for any representations, statements or promises not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

3 QUOTATION, ORDER AND ACCEPTANCE

- 3.1 Any quotation by the Company does not constitute an offer and is given on the basis that no Contract shall come into existence until the Company despatches an acceptance of the order to the Buyer. Any quotation given by the Company is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it and may be revised or withdrawn at any time prior to the Company's acceptance of the Buyer's order.
- 3.2 Each order or acceptance of a quotation for Goods by the Buyer shall be deemed to be an offer by the Buyer to buy the Goods subject to these conditions.
- 3.3 The Buyer's order, whether verbal or written, shall not be deemed to have been accepted until the Company has issued its written acknowledgement form and the Buyer's credit has been approved by the Company or satisfactory security for payment has been given.

- 3.4 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate. No order which has been accepted by the Company may be cancelled or varied by the Buyer except with the written agreement of the Company and on such terms that the Buyer shall indemnify the Company in full against all loss (including loss of profits), costs (including costs of labour, materials ordered or used, tooling and all manufacturing costs), damages, charges and expenses incurred by the Company as a result of such cancellation or variation.
- 3.5 The Company shall be entitled to suspend or end the provision of all or any part of the Goods or services to be provided to the Buyer under this Contract at any time where there is a monetary amount outstanding from the Buyer to the Company under any other Contract made between the Buyer and the Company for the provision by the Company of Goods or services.

4 DESCRIPTION

- 4.1 The quantity and description of the Goods shall be as set out in the Company's acknowledgement of order
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

5 PRICES

- 5.1 The price payable by the Buyer for each Delivery of the Goods shall be the Company's price ruling at date of despatch. The Company may at any time revise prices to take into account any increase in the Company's costs (including, but not limited to the cost of raw materials, labour, energy, transport or other overheads, any tax due or other levy and variation in exchange rates).
- 5.2 Unless otherwise specified, VAT and any other tax or duties payable by the Company shall be added to the price payable by the Buyer.

DELIVERY AND COLLECTION

- 6.1 Delivery shall take place on a safe hard road, as near as legally permitted to the Buyer's specified Delivery point as provided on the Buyer's order form. The Buyer will be responsible for the costs and provision of safe offloading facilities and manual labour ensuring that Delivery is completed without undue delay or the Buyer will be liable to indemnify the Company for the Company's costs incurred as a result of such delay.
- 6.2 Unless otherwise stated, all quotations assume Delivery in full loads by any method of transport at the Company's option.

- 6.3 Any time or date for Delivery is given and intended as an estimate only and time for delivery shall not be made of the essence by notice. If a date for Delivery is specified, Delivery shall be without reasonable time. The Company shall not be liable for any direct or indirect loss or damage (including, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss) costs, damages charges or expenses caused directly or indirectly by any delay in the Delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days from the original estimated Delivery date.

- 6.4 Signature on the Company's delivery note by an employee, representative or agent of the Buyer shall be conclusive proof of the quantity received by the Buyer and of Delivery to the Buyer.

- 6.5 If the Company is required to deliver to the Buyer a quantity of goods up to 5% more or less than the order accepted by the Company, the Buyer shall not be entitled to object or reject the Goods or any of them by reason of the surplus or shortfall and the Buyer shall pay for such goods at the pro rata Contract rate.

- 6.6 The Company may make deliveries partially or by instalment. Each separate instalment shall be invoiced and paid for in accordance with the provisions of this Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

- 6.7 When the Buyer arranges transport of the Goods from the Company's place of business, Delivery shall take place at the Company's place of business and the Buyer shall take Delivery of the Goods within 3 days of being given notice by the Company that the Goods are ready for delivery.

- 6.8 If for any reason the Buyer fails to accept Delivery in accordance with Clause 6.1 or 6.7, or the Company is unable to deliver the Goods on time because the Buyer has not provided adequate or appropriate instructions, documents licences or authorisations:

- 6.8.1 The Goods shall be deemed to have been delivered at the Buyer's premises if the delivery is arranged pursuant to Clause 6.1. If delivery is arranged pursuant to Clause 6.7, Delivery will be deemed to have taken place at the expiry of 3 working days of the Company giving notice that the goods are ready for delivery.

- 6.8.2 Risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

- 6.8.3 If the Buyer fails to take, or refuses to accept Delivery of any of the Goods the Company may charge for the refused delivery and any associated costs and may store the Goods until collection by the Buyer from the Company's premises and charge the Buyer reasonable costs of storage, insurance and re-delivery or without affecting the continuation of the Contract, sell the Goods.

- 6.9 The Company shall not be liable for any damage, discrepancy non-Delivery or short Delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would have been received.

- 6.10 Any liability of the Company for non-Delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7 RETURNABLE PACKAGING

- 7.1 Pallets, stailages and special containers are returnable to the Company, and remain the property of the Company, they or equivalent like items shall be returned in good condition to the Company following delivery.

8 TECHNICAL DATA

- 8.1 All Company drawings, descriptive matter, price lists, brochures or advertisements whether or not supplied with a quotation or tender are approximate only and intended merely to give a general idea of the goods described therein and shall not form part of the Contract. Any tools, patterns and samples, unless paid for in full, and drawings, specifications or other information provided remains the Company's property and all technical information, patentable or unpatentable copyright and registered designs arising from the execution of any orders are the property of the Company. They must not be copied, disclosed or given to any third party or otherwise used without written permission of the Company. Any research studies, quality enhancement or cost reduction measures shall remain the property of the Company and such information shall be kept confidential by the Buyer.

9 INDEMNITY

- 9.1 The Buyer shall indemnify the Company against all damages, costs, penalties and expenses arising out of or loss suffered as a result of any work carried out in accordance with the Buyers specification(s) as agreed in writing or any resultant infringement of a patent, design whether registered or unregistered, trade mark, copyright or any other industrial property right. If the Buyer uses, sells, causes to be sited or installed the Goods in such a manner as to infringe such rights the Company shall not be responsible for such infringement and the Buyer agrees to indemnify the Company from and against all liability arising there from.

10 VARIATIONS TO SPECIFICATION

- 10.1 The Company reserves the right to substitute goods of equivalent strength and quality without prior reference to the Buyer.

11 TERMS OF PAYMENT

- 11.1 Payment shall be received in full by the Company by the end of the month following the date of the Company's invoice.
- 11.2 Time of payment shall be the essence of the Contract.
- 11.3 In the event of late or non-payment the Company shall be entitled to charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. In such circumstance any settlement discount will cease to apply and the full price shall be due and payable immediately by the Buyer to the Company.
- 11.4 The Company shall be entitled, at its discretion, to withdraw credit facilities and suspend deliveries at any time in which equivalent sums outstanding from the Buyer to the Company shall become due and payable immediately.
- 11.5 In the event of termination of the Contract for any reason whatsoever, all sums outstanding from the Buyer to the Company shall become due and payable immediately.
- 11.6 The Buyer shall not be entitled to withhold or delay payment or exercise any right to set off howsoever arising or arisen which might otherwise be available to it.

12 TITLE AND RISK

- 12.1 Goods supplied shall remain the property of Masefield Epon Ltd until all money due has been paid in cleared funds. Risk passes to the Buyer on Delivery.
- 12.2 Until payment of all money due to Masefield Epon Ltd the Buyer undertakes to:-
 - 12.2.1 Hold the Goods on a fiduciary basis as the Company's bailee; and
 - 12.2.2 Keep the Goods stored separately (at no cost to the Company) and in such a manner as to make the Goods readily identifiable separate from all other and easily and clearly identifiable upon examination; and
 - 12.2.3 Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 12.2.4 Maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 12.3 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:-
 - 12.3.1 Any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 12.3.2 Any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and

- 12.3.3 Any of the proceeds from the sale of the Company's Goods shall be retained in a separate account by the Buyer.

12.4

- 12.4.1 The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its Directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 12.4.2 The Buyer suffers or allows an execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other Contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 12.4.3 The Buyer encumbers or purports to in any way charges any of the Goods.

- 12.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company;

- 12.6 The Buyer grants to the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

- 12.7 Where the Company is unable to determine whether any Goods are the Goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer;

- 12.8 On termination of the Contract, howsoever caused the Company's (but not the Buyer's) rights contained in this condition shall remain in effect.

13 WARRANTY

- 13.1 The Company warrants all Goods which have been supplied by the Company against any defect of materials or workmanship arising within a period of 12 months of Delivery which can be proved to the Company's satisfaction to have been caused before Delivery. The above warranty is given subject to the following conditions:

- 13.1.1 Full details of any such defect are notified to the Company in writing within 14 days of its first discovery.
- 13.1.2 The Goods have been properly used for their normal purpose, handled, maintained, stored and installed in accordance with the Company's installation instructions and good practice;

- 13.1.3 The Buyer grants to the Company, its agents and employees in respect of any defect arising from any fair wear or tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions, whether oral or in writing, misuse or repair of the Goods without the Company's approval; and

- 13.1.4 The Goods in which the defect arises are returned undamaged and adequately packed at the Buyer's expense to the Company.

- 13.2 The liability of the Company shall be limited to its option either to supplying replacement Goods, which will be supplied subject to these terms, or refunding the price of the Goods.

- 13.3 The Company shall be under no liability under the said warranty if:

- 13.3.1 the Buyer has not paid in full for the Goods; or
- 13.3.2 the Buyer or his customer has executed or attempted to execute repairs or alterations to the Goods which are not authorised in writing by the Company or has failed in any other respect to adhere strictly to the terms hereof; or

- 13.3.3 the Company has not been notified of any defect within 14 days of the discovery of the defect; or

- 13.3.4 the Goods are returned to the Company inadequately packaged, in which event any damage to the Goods will be deemed to have resulted from the Buyer's inadequate packaging and not from any defect in materials or workmanship; or

- 13.3.5 if the Buyer has used the Goods without first having carried out all the inspections and tests which the design and use necessitate,

- 13.3.6 when any fault is attributable to the whole unit in which the Goods are incorporated or to any modification carried out after Delivery.

- 13.4 Except for the express warranties set out above, the Company grants no other warranties relating to defects in design, workmanship, or materials of the Goods and all other conditions, warranties, stipulations, or other statements whatsoever whether express or implied, by statute at common law or otherwise howsoever, relating to such defects in the Goods and services are hereby excluded

- 13.5 Where the Buyer notified the Company as aforesaid and the Company performs its obligations under these conditions the Buyer shall not be entitled to any claim in respect of the Goods, or for work done thereon, or any other costs or losses, direct or indirect or consequential and loss of profits whatsoever (save where death or personal injury has been caused by the Company's negligence) nor shall the Buyer be entitled to repudiate the Contract or to pay for the Goods or cancel deliveries. The Buyer shall indemnify the Company against all costs of dismantling, digging out, replacement and reassembly.

- 13.6 Nothing in these conditions excludes or limits the liability of the Company:

- 13.6.1 for death or personal injury caused by the Company's negligence; or
- 13.6.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

- 13.6.3 for fraud or fraudulent misrepresentation;

- 13.7 Subject to the above condition:

- 13.7.1 the Company shall be liable in the Contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price;

- 13.7.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14 LIABILITY

- 14.1 The above warranty is limited to the supply to the Buyer free at his premises of the new Goods or parts in exchange for any exchanged parts of the same description. The decision of the Company on all claims and all questions as to defects and as to the exchange of the Goods shall be final and conclusive.

- 14.2 The warranty above shall also apply to any replaced goods provided hereunder during the unexpired period applicable to the Goods for which the replacement has been performed.

- 14.3 Other than stated above, the Company undertakes no liability whatsoever in respect of the Goods sold by it and shall in no circumstances be liable in respect of loss, damage or delay, injury or expense, direct or consequential suffered at any time whether before or after the Goods may have been repaired or replaced, and howsoever caused, even if caused by negligence or breach of duty by the Company, its servants or agents, or the terms set out herein are conclusive of the relationship between the Company and the Buyer and the Company shall be under no liability whatsoever by reason of any representation, statement or warranty, nor shall there be implied in any Contract of sale any term, condition or warranty statutory or otherwise. Nothing in these conditions shall affect the statutory liability of the Company for death or personal injury caused by negligence.

- 14.4 The Company undertakes no liability whatsoever in respect of operations subsequently carried out on products before their use, nor for cost of assembly, disassembly and withdrawal from service.

15 PATTERNS, TOOLS & DIES

- 15.1 Any patterns, tool boxes, tools or dies (the Equipment) manufactured by or on behalf of the Company remain the property of the Company even though the Buyer may have been charged for part of the cost. Except for loss or damage caused directly by the Company's negligence (for which the Company's liability shall be limited to the direct cost of replacements or repair), the Company accepts no liability for loss or damage to the Equipment which is in the Company's possession nor can it guarantee productive life.

- 15.2 Where the Equipment has not been used for a period of two years the Company may, after giving the Buyer one month's notice in writing, dispose of it. In the event that the Equipment needs repair or replacement it will be undertaken by the Company only upon the basis that the Buyer contributes to the cost.

- 15.3 Where Equipment is provided by the Buyer he is responsible for ensuring that it matches the drawings and required specifications. If the Company carries out dimensional checks as requested by the Buyer it reserves the right to invoice the cost to the Buyer. In all cases if the Equipment received by the Company does not conform to the specifications the initially agreed price of the Goods may be revised.

- 15.4 All money due must be paid to the Company before Equipment is released to the Buyer or a third party.

- 15.5 Once manufacture of Equipment has commenced, cancellation cannot be accepted in any circumstances and any costs incurred must be paid by the Buyer in full. Equipment must be paid for in the month of delivery of samples even though subsequent modification may be required or the project is abandoned.

16 ASSIGNMENT

- 16.1 The Buyer shall not assign the Contract of which these Conditions form part or any part of it without the prior written consent of the Company. The Company reserves the right to subcontract the performance of the Contract or any part of it.

17 FORCE MAJEURE

- 17.1 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in delivery or any delay in performing or any failure to perform any of the Company's obligations if the delay or failure arises directly or indirectly from any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: Act of God, explosion, epidemic, flood, storm, fire or accident; war or threat of war, terrorism, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations by laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or a third party); difficulty or increased expense in obtaining materials, labour, transport, fuel, parts or machinery; power failure or breakdown in machinery and equipment.

18 FREE ISSUE COMPONENTS

- 18.1 It is the Buyer's responsibility to ensure that all components supplied by them for use in the products manufactured are fit for purpose and comply fully with the required specification. The Buyer will supply free issue in sufficient and timely quantities to allow for the Company's production programme. The Company accepts no liability for failures of components supplied by the Buyer.

19 NOTICES

- 19.1 Any notice or communication given hereunder must be in writing and may be effected by personal delivery, facsimile, e-mail or by registered mail. If effected by personal delivery notices shall be deemed to be received on the date of such delivery, if by facsimile or email on the day of sending and if by post 48 hours after the date of posting.

20 LIEN

- 20.1 The Company shall in respect of all unpaid debts due from the Buyer have a general lien on all goods and property of the Buyer in its possession (although such goods or some of them may have been paid for) and upon 14 days written notice to the Buyer may dispose of such goods and property and apply the proceeds towards the satisfaction of the sums due to the Company.

21 INDULGENCE OR FORBEARANCE

- 21.1 The rights of the parties shall not be prejudiced or restricted by any indulgence or forbearance extended to them by the other party and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

22 DEFAULT OF BUYER (TERMINATION)

- 22.1 If the Buyer defaults in or commits any breach of any of its obligations to the Company, or ceases to carry out its business or a substantial part thereof, or if any distress or execution is levied on any of the Buyer's property or the Buyer makes or offers to make any arrangement with its creditors or commits any act of bankruptcy, or if any resolution or petition to wind up the Buyer's business is passed or presented or a receiver, liquidator or similar official is appointed of the Buyer's undertaking, or any payment of the whole or any part of the purchase price of the Goods is dishonoured by the Buyer's bank, then the Company shall be entitled forthwith to terminate this and any other Contract with the Buyer in writing to the Buyer's last known address.

23 SEVERANCE

- 23.1 If any condition herein shall be deemed void for any reason whatsoever, but would be valid if part of the wording were deleted, any such condition shall apply with such modifications as may be necessary to make it valid and effective.

24 ENGLISH LAW

- 24.1 The Contract and these Conditions shall be governed by English Law and the Buyer shall submit to the sole jurisdiction of the English Courts.