

M J Maillis (UK) Ltd
("The Seller")

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TERMS AND CONDITIONS OF SALE OF GOODS AND SUPPLY OF SERVICES

1. INTERPRETATION

- (a) "Buyer" the person who accepts a quotation given by the Seller for the supply of the Goods and/or Services or whose order for the Goods and/or Services is accepted by the Supplier;
- (b) "Conditions" means these terms and conditions of sale and supply of Goods and/or Services;
- (c) "Contract" means the Contract for the sale and supply of Goods and/or Services and includes any International Contract unless the context or these Conditions otherwise provide;
- (d) "Goods" includes Machinery (unless the context or these Conditions otherwise provide) and any other Goods supplied by the Seller to the Buyer;
- (e) "International Contract" means the Contract for the sale and purchase of the Goods:-
 where the principal place of business of the Buyer is in a country other than Great Britain notwithstanding the fact that the Goods may be despatched and delivered in different countries or in the same country; or
 where the Goods are to be delivered to or the Services are to be performed at any place outside of mainland Great Britain;
- (f) "Machinery" means machinery and/or equipment and/or tools supplied and sold to the Buyer by the Seller, as set out in any order confirmation of the Seller;
- (g) "Price" means the price of the Goods and/or Services;
- (g) "Services" means any or all of the following:-
- the installation of Machinery;
 - the commissioning of Machinery;
 - the repair and/or maintenance and/or servicing of Machinery
- for the avoidance of doubt "Services" does not include any of the following:-
- (i) site wiring or the supply of necessary cable;
- (ii) supply of tubing for an air supply line to any pneumatic equipment and the mains supply;
- (iii) supply of air compressor if no mains supply available;
- (iv) building or civil work, preparation of floors, the making of holes in walls, floors or ceilings or other structure, for equipment access or installation otherwise;
- (v) the testing of any floor, wall, ceiling or other structure for the purpose of establishing the load bearing capacities thereof.
- (h) "writing" includes facsimile transmission, email and comparable means of communication.

2. BASIS OF SALE AND SUPPLY

- 2.1 These Conditions shall apply to the sale and supply by the Seller of all Goods and/or Services purchased by the Buyer and these Conditions shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documentation or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.4 Any tenders or quotations submitted to the Buyer shall remain valid for the period stated therein, but if no period is specified such tenders and quotations shall be valid for 30 days from the date thereof.

3. ORDERS AND SPECIFICATIONS

- 3.1 Where the Seller confirms the details of the Contract in writing, the Buyer shall be under a duty to bring any discrepancies to the Seller's notice immediately, and if the Buyer fails to do so, the Buyer shall be bound by the details contained mentioned or referred to in the written confirmation of the Contract.
- 3.2 The Seller reserves the right to make any changes to the specification of the Goods which are required so that the Goods conform with any applicable statutory or European Community requirement, PROVIDED THAT any such changes shall not materially affect the performance of the Goods.

- 3.3 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including, without limitation, loss of profit), costs (including, without limitation, the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. DELIVERY

- 4.1 The Seller shall reasonably endeavour to deliver the Goods to and/or perform the Services at the Buyer's premises or such other address as may be agreed between the parties on the date indicated by the Seller or the date agreed between the parties, but the time of delivery or performance shall not be of the essence and if despite those endeavours, the Seller is unable for any reason to fulfil any delivery of the Goods or perform the Services on the date so indicated, the Seller shall not be deemed to be in breach of Contract or have any liability to the Buyer.
- 4.2 The Seller shall have the right to deliver any Goods ordered in instalments.
- 4.3 Failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of the Goods delivered in any one or more instalments shall not entitle the Buyer either to treat the Contract as a whole as repudiated or to reject or refuse to take delivery of any of the Goods delivered in any other instalment.
- 4.4 If the Seller fails to deliver the Goods (or any instalment thereof) or perform the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods or Services to replace those not delivered or performed over the Price of the Goods or Services.
- 4.5 If the Buyer fails to take delivery of the Goods (otherwise than by reason of the Seller's fault) or fails to give the Seller adequate instructions for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:-
- 4.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 4.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the Price under the Contract.
- 4.6 Proof of delivery documentation shall only be available for the Buyer to request copies of for a period of thirty (30) days following the date of invoice for the relevant Goods and/or Services.

5. RISK

Subject to Condition 8.1, risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery, or if the Buyer wrongfully fails to take delivery, the time when the Seller has tendered delivery of the Goods.

6. PRICE

- 6.1 The Price for the Goods and Services shall be the price specified by the Seller, and which unless otherwise stated shall be:-
- 6.1.1 exclusive of Value Added Tax (which the Buyer shall be additionally liable to pay to the Seller); and
- 6.1.2 calculated on an Ex-Works basis (as 'Ex-Works' is defined in Incoterms 2010 published by the International Chamber of Commerce).
- 6.2 Where it is agreed between the parties that the Seller deliver the Goods on any basis other than Ex-Works, unless a specific fee or charge is agreed by the Buyer with the Seller, the Seller reserves the right to charge a reasonable fee to the Buyer for the cost of any carriage and/or other expenses incurred by the Seller in relation to the delivery of the Goods ("Additional Charges").
- 6.3 The Price of the Machinery is exclusive of any additional caging or guarding (over and above that supplied with the Machinery) which is either:-
- 6.3.1 required by the Buyer; or
- 6.3.2 required by law or recommended by the Seller as prudent in order to comply with the law.

- 6.4 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price of the Goods to reflect any increase in the costs to the Seller which is due to any factor beyond the control of the Seller.
- 7. PAYMENT TERMS**
- 7.1 The Seller shall be entitled to invoice the Buyer for the Price of the Goods and/or the Services on or at any time after the Seller has:-
- 7.1.1 despatched the Goods (or any instalment thereof); or
- 7.1.2 performed or tendered performance of the Services.
- 7.2 Subject to clause 7.3 of these Conditions the Buyer shall pay the Price of the Goods by the end of the calendar month following the month in which the Seller's invoice is issued.
- 7.3 Where the Contract for the sale and supply of Goods includes in whole or in part the sale and supply of Machinery, the payment terms detailed in clause 7.2 of these Conditions shall apply unless the Price for such Machinery is £5,000 or more in which case unless agreed otherwise in writing the Buyer shall pay the Price of such Machinery as follows:-
- 7.3.1 30% of the Price plus VAT within 7 days of order; and
- 7.3.2 60% of the Price plus VAT within 7 days of full delivery; and
- 7.3.3 10% of the Price plus VAT within 7 days of full sign off.
- 7.4 Notwithstanding the provisions of clauses 7.2 and 7.3 above, in the event that the Buyer fails to make payment for any Goods and/or Services together with any Additional Charges by the due date, all invoices issued to the Buyer by the Seller in respect of any Goods and/or Services sold or supplied pursuant to any other Contract shall immediately fall due for payment and any credit offered or extended by the Seller to the Buyer in respect of the same shall be cancelled forthwith.
- 7.5 The Seller shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and the property in the Goods may not have passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract.
- 7.6 If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Seller:-
- 7.6.1 the Seller shall be entitled to charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3% per annum above the Seller's bankers base rate current from time to time; and
- 7.6.2 the Seller shall be entitled to:-
- 7.6.2.1 withhold delivery of any Goods agreed to be sold by the Seller to the Buyer or any instalment thereof; and
- 7.6.2.2 suspend the performance of any Services or part thereof
- (being in either case the subject of the Contract or any other Contract) until payment in full is made.
- 7.7 Unless agreed otherwise in writing payment shall be made in sterling, and payment received in any other currency will not be deemed payment in full, notwithstanding the fact that any such currency other than sterling may, at the Seller's sole discretion, be accepted in part payment of the Goods and Services.
- 7.8 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part.
- 8. TITLE**
- 8.1 Notwithstanding the delivery of and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price of such Goods and all other Goods and Services agreed to be sold or provided by the Seller to the Buyer for which payment is then due.
- 8.2 Until such time as title in any Goods delivered by the Seller passes to the Buyer, the Buyer shall hold such Goods as the Seller's fiduciary agent and bailee, and shall keep such Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but shall be entitled to resell or use such Goods in the ordinary course of its business.
- 8.3 Until such time as title in any Goods which have been delivered by the Seller passes to the Buyer (and provided such Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up such Goods to the Seller and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where such Goods are stored and mark identify and repossess such Goods.
- 8.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to

any other right or remedy of the Seller) forthwith become due and payable.

9. INTERNATIONAL CONTRACTS DISTINGUISHED

- 9.1 For the avoidance of doubt, when or where delivery shall take place and the time that risk shall pass from the Seller to the Buyer shall be determined, in the case of an International Contract, by the Incoterm (from 'Incoterms 2010' published by the International Chamber of Commerce) agreed between the parties. When or where delivery shall take place and the time that risk shall pass in respect of all other contracts shall be determined by clauses 4 and 5 of these Conditions.
- 9.2 Any provisions contained in these Conditions relating to delivery (save those provisions (or part thereof) which state when or where delivery shall take place) shall apply to both International Contracts and contracts.
- 9.3 For the avoidance of doubt and notwithstanding any presumptions raised by the use of any Incoterm, in the case of an International Contract, title in the Goods shall pass in accordance with clause 8 of these Conditions.
- 9.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Incoterm governing the International Contract shall be Ex-Works.
- 9.5 Unless otherwise agreed in writing, the Price of the Goods shall in the case of an International Contract, be calculated on an Ex-Works basis and the Seller shall be entitled to charge the cost of the carriage, insurance, freight, tax and duty incurred by the Seller in delivering the Goods to the Buyer irrespective of the Price for the total Goods ordered and the Buyer shall be liable to pay the same to the Seller.
- 9.6 Unless otherwise agreed in writing by the Seller, payment for the Goods shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller in a form acceptable to the Seller and confirmed by a first class London Bank.

10. WARRANTIES AND LIABILITY

- 10.1 Subject to the conditions set out below the Seller warrants that:-
- 10.1.1 the Goods will correspond with the specification and will be free from defects for a period of 3 months from the date of delivery;
- 10.1.2 the Machinery will correspond with the specification and will be free from defects for a period of 6 months from the date of delivery unless otherwise agreed between the parties;
- PROVIDED THAT the Seller shall be under no liability arising from failure to follow the Seller's or the manufacturer's instructions (whether oral or in writing), inappropriate storage, improper use, inadequate maintenance or misuse of the Goods.
- 10.2 The Seller warrants that the Services will be provided using reasonable care and skill.
- 10.3 Any warranty given in these Conditions shall not apply to any modification and/or repair carried out to the Machinery without the Seller's prior written approval.
- 10.4 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.
- 10.5 The Buyer may reject Goods damaged in transit, subject to notification of rejection of the damaged Goods (and the reasons why) within 7 days of receipt of the Goods by the Buyer. The Buyer shall not be entitled to reject the Goods where the alleged defect or breach of Contract is so slight that it would be unreasonable for the Buyer to reject the Goods.
- 10.6 Any claim for breach of warranty by the Buyer shall not be accepted by the Seller unless the Buyer notifies the Seller in writing of the nature of the claim within 9 months of the date of delivery of the Goods.
- 10.7 Where any valid claim in respect of the Goods or Services is made by the Buyer the Seller shall be entitled to replace or repair the Goods (or the part in question) or correct the Service free of charge or, at the Seller's sole discretion, refund to the Buyer the Price of the Goods and/or Services (or a proportionate part of the Price), and the Seller shall have no further liability to the Buyer.
- 10.8 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 10.8.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
- 10.8.2 fraud or fraudulent misrepresentation;
- 10.8.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
- 10.8.4 any other liability which by law cannot be excluded.
- 10.9 Subject to conditions 10.8 and 10.9:
- (a) The Seller's total liability whether in contract, tort negligence, breach of statutory duty misrepresentation, restitution or otherwise and howsoever arising in connection with the performance or contemplated performance of the Contract

shall be limited to the price paid for the Goods and/or Services under the Contract; and

- (b) The Seller shall not be liable to the Buyer whether in contract, tort, negligence, breach of statutory duty or otherwise and howsoever arising, for any loss of profit, loss of goodwill, loss of revenue, loss of reputation or any indirect or consequential loss or damage (whether for loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. BUYER'S WARRANTIES

- 11.1 The Buyer warrants that it shall not remove or modify any safety devices on the Machinery without the Seller's prior written approval.
- 11.2 The Buyer warrants that the load bearing capacities of any floor, wall, ceiling or other structure on which the Machinery is to stand is adequate for the purposes of the Machinery and the Seller shall have no responsibility or liability in relation thereto.
- 11.3 The Buyer warrants that all facilities for the installation and operation of the Machinery such as electricity, gas, water and compressed air shall promptly be made available to the Seller upon request free of charge to enable the Seller to install the Machinery in one continuous operation. The Buyer further warrants that where the Seller is prevented from performing the Services due to any delay in the provision of the aforementioned facilities, the Buyer shall pay an additional reasonable sum to the Seller to reflect the increased costs in performing the Services.
- 11.4 The Buyer warrants that the site at which the Services are to be performed by the Seller and all equipment employed on it shall comply with all statutory and regulatory requirements relating to the health and safety of persons gaining entry to the site.
- 11.5 If for any reason, when the Seller attends the site to perform the Services the site or equipment employed on it do not, in the Seller's reasonable opinion, comply with the statutory and regulatory requirements referred to at clause 11.4 above the Seller at its option may:-
- 11.5.1 elect to carry out the Services but may charge the Buyer for any costs it incurs in preparing the site to satisfy such statutory and regulatory requirements; or
- 11.5.2 elect to remain on site whilst the Buyer takes the necessary steps so that the site complies with the statutory and regulatory requirements. The Seller shall charge for such waiting time at the rates specified in the quotation (or if none then its current rate) for waiting time; or
- 11.5.3 elect to leave the site and return at some time in the future on a date to be agreed to the parties by which time the Buyer will ensure that the site complies with the statutory and regulatory requirements. The Seller may charge for its wasted time in accordance with the rate specified in the quotation (or if none then its current rate) for wasted time.
- 11.6 Where the Seller has submitted a quotation prior to a site inspection, the Seller reserves the right to withdraw from any such quotation or other responsibility if, in the Seller's sole opinion, access to or the condition of the site is unsuitable or unsafe for the Services to be performed.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Where any writing or other mark or design is applied to the Goods either at the Buyer's request or to the Buyer's specification, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any intellectual property rights of any third party which results from the Seller's use of the Buyer's specification.
- 12.2 The Buyer acknowledges that any and all intellectual property rights (save those intellectual property rights referred to in clause 12.1 of these Conditions) subsisting in or used in connection with the Goods including all documentation literature and manuals relating thereto, are and shall remain the property of the Seller or such other third party as the case may be and the Buyer shall have no property rights therein, unless the same shall be granted in writing by the Seller or said third party.

13. INSOLVENCY OF BUYER

- 13.1 This clause applies if:-
- 13.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration

order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

- 13.1.2 an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer; or
- 13.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 13.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
- 13.1.5 suffers or causes any similar or analogous event to the events noted in conditions 13.1.1 to 13.1.4 in any jurisdiction
- 13.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel all contracts between the Seller and the Buyer and suspend any further deliveries or performance under all contracts without any liability to the Buyer, and if the Goods have been delivered or the Services have been performed but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. FORCE MAJEURE

- 14.1 The Seller will not be liable or responsible for any failure to perform, or delay in performance of any of its obligations under these Terms that is caused by any act, omission, non-occurrence, accident or event outside its reasonable control ("Force Majeure Event").

15. TERMINATION RIGHTS

- 15.1 The Seller has the right to terminate and/or suspend the provision of the Goods and/or any Services in the event that any sums due by the Buyer to the Seller under any Order are outstanding for any period of time.

16. GENERAL

- 16.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at his registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 16.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.
- 16.3 A person who is not a party to the Contract shall have no rights to enforce any of its terms under the Contracts (Rights of Third Parties) Act
- 16.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.4 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including, without limitation, non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.
- 16.5 These Conditions constitute the entire Contract between the parties and may only be varied or modified in writing under the hands of the parties or their authorised representatives.