

THIRD MILLENNIUM SYSTEMS LIMITED

CONDITIONS OF SALE

VERSION 100-01353-C – EFFECTIVE 2017

CONTENTS

CLAUSE	TITLE	PAGE
01	DEFINITIONS AND INTERPRETATION	1
02	CONTRACT TERM, VARIATIONS AND REPRESENTATIONS	1
03	BUYER'S SPECIFICATION AND LIABILITY	3
04	CHANGES IN SPECIFICATION	3
05	PRICES	3
06	DELIVERY AND / OR COMPLETION OF SERVICE	4
07	PAYMENT	5
08	CANCELLATION / TERMINATION / RETURNS	5
09	LOSS OR DAMAGE IN TRANSIT	6
10	LIMITATION OF LIABILITY	6
11	PROPERTY IN GOODS	8
12	INSTALLATION AND OTHER SERVICES	9
13	TESTING	10
14	INFORMATION / TRADE MARKS / SAFETY	11
15	DESCRIPTIONS, DRAWNGS, DATA AND CONFIDENTIAL INFORMATION	11
16	PLANNING, PERMISSION, LICENSES, REGULATIONS AND BYLAWS	12
17	IMPORT LICENSES	12
18	GOVERING LAW	12
19	HEADINGS	12
20	WAIVER	12
21	NOTICES	13

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THIRD MILLENNIUM SYSTEMS LIMITED

CONDITIONS OF SALE

VERSION 100-01353-C – EFFECTIVE 2017

01. DEFINITIONS AND INTERPRETATION

01. In these conditions “The Company” means Third Millennium Systems Limited., and “the buyer” means the individual, firm, company or other party with whom the Company contracts. “Supply” includes (but is not limited to) any supply under a contract of sale. “International Supply Contract” means such a contract as is described in section 26(3) of the Unfair Contract Terms Act 1977.

END CLAUSE - 01.

02. CONTRACT TERM, VARIATIONS AND REPRESENTATIONS

01. No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. *Quotations may be subject to a site survey being made by one of the Company's technical staff and the Company reserves the right to amend any designs following a site survey.* Any extra costs or expenses arising from such amendments shall be the responsibility of and paid for by the Buyer and shall be added to the Contract price . Any contract made between the Company and the Buyer (herein called the “Contract”) shall be subject to these conditions and save as aftermentioned no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them; any such term representation or contract will bind the Company only if in writing and signed by a director.
02. Unless otherwise agreed in writing by the Company these conditions shall override any terms and conditions stipulated referred to or implied by the Buyer in his order or pre-contract negotiations or any inconsistent terms implied by trade customs, practice or course of dealing.
03. Any description contained in the Company's catalogues, samples, price lists or advertising material is intended merely to present a picture of the Company's products and services and shall not form a representation or be part of the Contract.
04. In the event that the Company has not given a written acknowledgement of the Buyer's order these conditions, provided the Buyer shall have had prior notice of them, shall nonetheless apply to the Contract.
05. The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.
06. In the case of goods not manufactured or designed by the Company the Company gives no assurance or guarantee whatsoever that the sale or use of the goods will not infringe patent copyright or other industrial or intellectual property rights of any third party.

END CLAUSE – 02.

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CONDITIONS OF SALE

VERSION 100-01353-C – EFFECTIVE 2017

03. BUYER'S SPECIFICATION AND LIABILITY

01. Where goods are made to the Buyer's specification, instruction or design, the Buyer undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and undertakes to indemnify the Company against any infringement of any patent, registered design, trade mark, trade name copyright or other intellectual property right and loss, damage or expense which it may incur by reason of such infringement in any country and the Buyer undertakes further to indemnify the Company for any loss damage or expense in respect of any liability arising under or by reason of the provisions of the Consumer Protection Act 1987 or any similar legislation in any country ("the Consumer Protection Acts") in relation to the specification or design of such goods.

END CLAUSE – 03.

04. CHANGES IN SPECIFICATION

01. The Company reserves the right to make any changes in the specification if the goods (including some or all of the component parts thereof and the material dimensions and design) or services (including goods supplied or services carried out to the Buyer's specification) which do not materially affect the quality or performance of the goods and/or services.

END CLAUSE – 04.

05. PRICES

01. All prices quoted are for goods EX WORKS unless the quotation states that the prices are for goods DELIVERED. The Company's quotations are provisional and may be altered to take account of any changes taking place between the date of quotation and the Company's acceptance of the Buyer's order in the price of raw materials, rates of wages and other costs of production or in the Buyer's specification, instructions or design or in the event that the Buyer orders part of the quantity referred to in any quotation.
02. The Company shall be entitled to increase its price at any time to take account of any increase in the cost to the Company of purchasing goods or materials or manufacturing working on or supplying any goods or services (including any such increase arising from any error or inadequacy in any specification, instructions or design provided by the Buyer or any modification carried out by the Company at the Buyer's request) or for work to be carried out other than during normal working hours of the Company and such increased prices ruling at the date of despatch by the Company or completion of services (as the case may be) shall be substituted for the previous Contract price.
03. All accessories and extra parts ordered by the Buyer and all costs of test, alterations and other work undertaken at the Buyer's request and not specified in the quotation shall be charged for on the invoice, issued in respect of the goods, at the rate then current. The Buyer may at any time request a quotation of these items.
04. All prices quoted are exclusive of VAT and the Buyer shall pay any and all taxes duties or other government charges payable in respect of the goods and/or services.

END CLAUSE – 05.

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06. DELIVERY AND / OR COMPLETION OF SERVICE

01. Unless otherwise agreed in writing by the Company where the goods are sold EX WORKS the Buyer shall take delivery of the goods or any instalments thereof at the Company's premises within 7 days after receiving notification from the Company that such goods are ready. The goods shall be the Buyer's risk from the time of loading at the Company's premises. The Company shall be entitled to add to the Contract Price a reasonable charge for packaging where this is required.
02. If the Contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between Incoterms and any express term of the Contract the latter shall prevail. The Company shall be under no obligation to give the Buyer the notice specified in section 32(3) of the Sale of Goods Act 1979. The Buyer shall if so requested by the Company provide a letter of credit in a form approved by the Company prior to the goods being dispatched by the Company.
03. The risk in goods which the Company agrees to supply shall pass to the Buyer on delivery as defined in clauses 06.01., or 06.02., hereof or on the date the Buyer defaults in his obligations under clause 06., or the date (if earlier) on which, the goods being ready for delivery is postponed at the Buyer's request.
04. The Company shall not be liable for any loss of or damage sustained by any goods left with the Company howsoever caused and whether or not attributable to negligence on the part of the Company or negligence or wilful default on the part of any servant or agent of the Company.
05. Should the Company be delayed in or prevented from making delivery of the goods or carrying out the services due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of the goods, breakdown of machinery, shortage of labour or of raw materials or Act of God or due to any other cause whatsoever beyond the control of the Company the Company shall be at liberty to cancel or suspend the order placed by the Buyer without incurring any liability for any loss or damage arising therefrom.
06. While the Company will endeavour to deliver the goods or complete the services by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the Company will not be liable for any failure to deliver or complete by such a date or within such a period. Moreover, the Company shall be entitled to effect delivery in advance of any agreed date upon giving reasonable notice to the Buyer or to defer delivery until any monies due from the Buyer have been received. Dates quoted for delivery of orders not requiring installation by the Company refer to dates upon which goods are ready for dispatch but dates for delivery of orders requiring installation refer to dates on which goods will arrive on site.
07. The Company will try to comply with reasonable requests by the Buyer for postponement of delivery but shall not be under any obligation to do so.

END CLAUSE – 06.

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CONDITIONS OF SALE

VERSION 100-01353-C – EFFECTIVE 2017

07. PAYMENT

01. For the purpose of this clause the goods shall mean the whole or any instalment of the goods which the Company has agreed to supply or to which the Company has agreed to carry out work and the relevant date shall be the date on which (i) the Buyer takes delivery of the goods at the Company's premises or (ii) the Company dispatches the goods or (iii) the Buyer defaults in his obligations under clauses 06.01., or 06.02., hereof whichever shall first occur or (iv) (in the case of services) the services or any part thereof are carried out.
02. Unless otherwise specified in writing by the Company payment shall be made by the Buyer net cash not later than 30 days after the relevant date. In the case of contracts for the supply of goods and/or services exceeding £10,000 in the case of standard stock item products and £1,000 in the case of non-standard item products the Company reserves the right to call for payments by instalments on demand comprising interim progress payments and a final payment in accordance with schedules previously agreed with the Buyer and such payments shall be made by the Buyer forthwith on the dates or at the stage specified in such schedules. Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company interest will be payable on all overdue accounts at Barclays Bank PLC base rate plus 5% and for the purpose of clauses 08 and 11 hereof the full purchase price for the goods and/or service shall include any interest payable hereunder.
03. If the Company issues a monthly statement of account to the Buyer then disputes in payments arising therefrom will not be considered unless details are submitted in writing to the Credit Controller of the Company within 14 days of the date of issue.

END CLAUSE – 07.

08. CANCELLATION / TERMINATION / RETURNS

01. If the Buyer shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated company shall have an administrative receiver or administrator appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the Buyer of any of the terms and conditions hereof the Company may defer or cancel any further deliveries and treat the Contract as determined but without prejudice to its right to the full purchase price for goods delivered and services provided and damages for any loss suffered in consequence of such determination.
02. Cancellation of orders will only be accepted if previously agreed in writing and the following will apply: Cancellation of orders over £5000 – 60% cancellation charge. Cancellation of orders under £5000 – 15% cancellation charge. Cancellation of orders for non-standard products to be paid in full.
03. A charge will be made for any costs incurred by the Company due to suspension or deferment of any order by the Buyer or in the event that the Buyer defaults in collecting or giving instructions for the delivery of any goods or the carrying out of any services.

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CONDITIONS OF SALE

VERSION 100-01353-C – EFFECTIVE 2017

04. Subject to the provisions of clause 10., goods returned by the Buyer will only be accepted at the discretion of the Company given in writing and provided that a re-stocking charge (details of which are available on request) is paid by the Buyer to the Company forthwith.

END CLAUSE – 08.

09. LOSS OR DAMAGE IN TRANSIT

01. The Buyer will carefully examine the goods on receipt and notify the carrier immediately of any damage, loss or shortage. No claim for damage in transit, shortage of delivery or loss of goods will be entertained unless the Buyer shall have given to the Company written notice of such damage, shortage or loss with reasonable particulars thereof within the following limits:
- 01. Goods by rail: in the case of damaged goods or shortages within 3 days after receipt and in the case of total loss within 21 days after the date of notification of dispatch;
 - 02. Goods by road: in the case of damaged goods or shortages within 3 days after receipt and in the case of total loss with 7 days after the date of notification of dispatch;
 - 03. Goods by air: in the case of damaged goods or shortages within 3 days after receipt and in the case of total loss within 30 days after the date of notification of dispatch;
 - 04. Goods by sea: in the case of damaged goods or shortages within 3 days after receipt and in the case of total loss within 42 days after the date of notification.
02. The Company's liability, if any, shall be limited to replacing or (in its discretion) either repairing such goods or crediting the purchase price of such goods and it shall be a condition precedent to any such liability that the Buyer shall if so requested have returned damaged goods at the Company's expense to the Company within 14 days of such request. The Company shall have no liability for any consequential loss arising out of such damage shortage or loss as aforesaid.

END CLAUSE – 09.

10. LIMITATION OF LIABILITY

01. The Company's liability in respect of any defect in or failure of goods supplied or work done (which expression shall, without prejudice to its generality, include all work done in or in connection with the design, manufacture testing, erection, installation repair or servicing of any goods) is limited to replacing or repairing of goods within the WARRANTY period, see clause 10.09., of delivery to the Buyer which are found to be defective by reason of faulty or incorrect design workmanship parts or materials and carrying out again any services which the Company has failed properly to perform in accordance with the contract which within the WARRANTY period, see clause 10.09., of completion are found not to have been properly performed.

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CONDITIONS OF SALE

VERSION 100-01353-C – EFFECTIVE 2017

02. In the event of any error notwithstanding those normative tolerances of design and manufacture in any weight, dimension, capacity, performance or other description or information which has formed a representation or is part of a contract the Company's liability in respect of any direct loss or damage sustained by the Buyer as a result of such error shall not exceed the price of the goods or services in respect of which the description or information is incorrect.
03. Conditions precedent to the Company's liability under sub clauses 10.02 and 10.03 shall be that:
 01. The goods have not (without the Company's written consent) been altered or repaired or fitted with incompatible accessories;
 02. The defect is not attributable to improper or negligent use of the goods other than by the Company;
 03. As soon as reasonably practical the Buyer shall have given to the Company reasonable notice of the defect, failure or error together with full particulars of the alleged defect, serial number of the goods (where applicable) and the original invoice number;
 04. As soon as reasonably practicable the Buyer shall have either returned goods to the Company subject to the WARRANTY period, see clause 10.09., or as agreed between the Buyer and the Company or provided authority for the Company's servants or agents to inspect them, as the Company may request;
 05. The goods are not moved from the position in which they have been installed. The Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the buyer arising from or in any connection with such defect failure or error as aforesaid.
04. In the event that the goods are found to be defective as specified in clause 10.01., and the defective part was not manufactured by the Company the Buyer undertakes to co-operate with the Company in any steps the Company may take to obtain reimbursement or redress from the seller or manufacturer of such part.
05. Where the Company agrees to repair or replace goods or carry out any services in accordance with the foregoing provisions of this clause any time specified for delivery under the contract shall be extended for such period as the Company may reasonably require and the Company shall deliver such goods free of charge.
06. Save for such terms as may be implied in the contract by section 12 of the sale of goods act 1979 or section 2 of the supply of goods and services act 1982, all conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing provided that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this clause will not apply to any such terms.

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CONDITIONS OF SALE

VERSION 100-01353-C – EFFECTIVE 2017

07. Save as hereinbefore provided and subject to the provisions of section 2(1) of the Unfair Contract Terms Act 1977 the Company shall not be liable to the Buyer for any damage or for the direct or consequential loss incurred by the Buyer in consequence of any negligence on the part of the Company or negligence or wilful default on the part of its servants or agents in or in connection with the supply of any goods or the design or manufacture thereof or in the carrying out of any work or the provision of any information.
08. The Buyer undertakes to indemnify the Company in respect of any liability whatsoever in respect of death or injury to any person or any damage to any property attributable to the Buyer's improper or negligent use of the goods.
09. WARRANTY
01. Such goods as may be defined by representation of sale or contract which are subject to this clause shall be warranted under the terms and conditions of the GENERAL WARRANTY POLICY of the Company.
02. RETURN OF GOODS: Conditions precedent to the Company's liability under sub clauses 10.03; 10.03.01; 10.03.02; 10.03.03; 10.03.04; 10.03.05; shall be made subject to the Buyer obtaining a valid RETURNS AUTHORISATION NUMBER in accordance with the terms and conditions of the RETURN OF GOODS POLICY of the Company.

END CLAUSE – 10.

11. PROPERTY IN GOODS

01. The following provisions shall apply to all Contracts relating to goods which under the Contract (other than an International Supply Contract) the Company agrees to supply to the Buyer. No termination of the Contract shall prejudice limit or extinguish the Company's rights under this clause. Payment shall mean payment in cash such that the Company's acceptance of a cheque shall constitute conditional payment only until such cheque has been cleared and cash received;
01. Upon delivery of the goods the Buyer shall hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such time the Buyer shall have paid to the Company the full purchase price of all goods or services supplied under the contract or any other contract. Until such time the Company shall be entitled to recover the goods or part thereof and for the purpose of exercising such right the Company its employees and agents with appropriate transport may enter upon the Buyer's premises and any other location where the goods are situated;

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CONDITIONS OF SALE

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02. Before payment in full is made the Buyer shall be entitled to use the goods in the normal course of its business but on the condition that the property in the goods or any articles manufactured from or incorporating the goods shall vest in the Company and the Buyer shall notify any sub-customer of the fact that the Buyer is not in a position to pass the title to the goods until such times as the conditions herein contained may have been satisfied by payment.
 03. Before payment in full is made the Buyer shall have power to resell the goods or any articles manufactured from or incorporating the goods as provided in clause 11.01.02., hereof (as principle towards the sub-customer but as agent and fiduciary between the Buyer and the Company) the proceeds of the sale thereby arising belonging to the Company. The Buyer shall immediately upon receipt of the proceeds of the sale, and whether or not payment has become due under clause 7 remit the Company the full purchase price of the goods sold on less any part thereof which has been paid and until such amount has been so remitted shall hold such proceeds of sub-sale as trustee and agent for the Company in a separate designated account in trust for the Company.
 04. The Buyer shall maintain all appropriate insurance in respect of the goods from the date or dates on which the risk therein passes to it. In the event of any loss or damage occurring while the goods remain the property of the Company the Buyer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the goods lost or damaged less part thereof which has already been paid and until such amount has been remitted shall hold such amount as trustee for the Company in the separate designated account referred to in clause 11.01.03., hereof;
 05. The licenses granted under clauses 11.01.02., and 11.01.03., above shall be terminable forthwith at any time upon notice by the Company to the Buyer.
02. In the case of International Supply Contracts property in the goods shall pass to the Customer upon delivery.

END CLAUSE – 11.

12. INSTALLATION AND OTHER SERVICES

01. If under the Contract the installation, testing or servicing of the goods or any other goods is to be carried out by or under the supervision of the Company, the Buyer warrants that it will make all necessary preparations to the site which the Company deems necessary by such date as may be specified in the Contract or as may be reasonably required by the Company; the Buyer further warrants that it will provide suitable access to and possession of the site and all information equipment and facilities required to enable the Company to perform its obligations. The Buyer warrants that such equipment or facilities are in a safe condition and in good working order. The Buyer agrees to indemnify the Company against any loss, damage, expense or liability it may incur as a result of a breach of the foregoing warranty by the Buyer.

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CONDITIONS OF SALE

VERSION 100-01353-C – EFFECTIVE 2017

02. The Buyer will ensure that the Company's employees and agents are able to carry out their work with continuity and without hindrance and any expense incurred by the Company as a result of the Buyer's failure to ensure will be charged extra.
03. The Company will indemnify the Buyer in respect of any direct damage to property caused in the course of installation, testing, servicing or repair by the negligence of the Company or the negligence of wilful default of its servants or agents provided that the Company's liability hereunder shall not exceed the price payable under the Contract.
04. The Company reserves the right to sub-contract the installation of the goods or the performance of any other services required under the Contract.
05. The Buyer warrants that it will at all times provide a safe working environment for the Company's employees, agents and sub-contractors and will comply with all statutory or other regulations and codes of practice in connection therewith and will indemnify the Company in respect of any loss incurred by the Company due to the Buyer's breach of such warranty.
06. The Buyer shall insure to the full value thereof and provide adequate protection for all machinery and equipment of the Company and all plant, machinery, materials and the goods on the site during the course of installation and until removal against all loss or damage howsoever caused otherwise than by reason of the neglect or default of the Company its employees or agents.
07. Any persons provided by the Buyer to assist in the performance or the erection or other work shall be deemed to be an employee of the Buyer and the Buyer shall indemnify the Company against all and any claim, demand, costs, charges and expenses in respect of claims arising in respect of such persons or due to the act or default of such persons save where the same is due to the negligence of the Company or its agents.
08. The Buyer will indemnify the Company against any claim arising out of any instruction given by the Buyer save where the claim arises due to the negligence of the Company or its agent.

END CLAUSE – 12.

13. TESTING

01. If the Company agrees that any tests shall be carried out in the presence of the Buyer or his representative the Company shall notify the Buyer of the date on which it is or will be ready to carry out such tests and the Buyer undertakes that it or its representative will attend at the premises where the goods are situated on the date specified by the Company for the purpose of witnessing the tests and agrees that in default of such attendance the Company may proceed with the tests in his absence and the Buyer shall be bound by the results thereof.

END CLAUSE – 13.

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14. INFORMATION / TRADE MARKS / SAFETY

01. The Buyer warrants that it will pass on to all third parties to whom it may supply the goods or to whom the goods are supplied all information as to the use and safe handling of the goods as may have been passed on to the Buyer by the Company.
02. The Company when applicable has set out in its design manuals and assembly instructions detailed information on the safe use and design application of the goods and the Buyer covenants that it will strictly adhere to the same and will not use or install the goods where the design for the application of the goods is not one which the Company has approved in writing. FAILURE TO ADHERE TO SUCH INSTRUCTIONS COULD RENDER THE USE OF THE GOODS UNSAFE. ANY MODIFICATION BY THE CUSTOMER TO THE GOODS WILL CHANGE THE ESSENTIAL CHARACTERISTICS THEREOF within the terms of the Consumer Protection Acts and the Buyer will become the manufacturer thereof for the purpose of the Consumer Protection Acts.
03. The Buyer warrants that any system supplied by the Company incorporating moving parts will be kept in good condition and working order and maintained as required by the Company's specification. FAILURE TO DO SO COULD AFFECT PERFORMANCE AND SAFETY.
04. The Customer will indemnify and keep indemnified the Company against any loss, damage, claims, expenses or liabilities arising as a consequence of the Customer's failure to comply with its obligations in clauses 14.01., or 14.02., or 14.03., or arising out of any claims made against the Company pursuant to the Consumer Protection Acts which arise wholly or in part from the Buyer's failure to comply with obligations on its part to be performed whether pursuant to the Contract or the general law.
05. The Buyer shall not erase, remove or replace without the Company's prior consent any trademark, label or name affixed to the goods.

END CLAUSE – 14.

15. DESCRIPTIONS, DRAWNGS, DATA AND CONFIDENTIAL INFORMATION

01. Notwithstanding third party copyrights or trademarks or intellectual property, the Company reserves the copyright and all other intellectual property rights in all its product, prototypes, software, drawings, sketches, plans, prints and other documents or data. No reproduction thereof shall be made without permission of the Company and the Buyer shall not transfer or part with possession, to a third party, of any of the above without the written permission of the Company.

END CLAUSE – 15.

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16. PLANNING, PERMISSION, LICENSES, REGULATIONS AND BYLAWS

01. The Company accepts no responsibility for failure to comply with any building regulations, statutory or other regulation or local bylaw affecting the siting, use, operation or construction of the goods. The Buyer shall obtain all consents and approvals required unless the Company agrees in writing to obtain the same on behalf of the Buyer. If the Buyer instructs the Company to proceed prior to obtaining the necessary consents or approval the Buyer will accept full responsibility for the Company proceeding and will indemnify the Company against any liability, claim, loss, penalty, costs or damage it may suffer as a result thereof.
02. The Buyer will pay all fees and charges made by any person or authority in connection with regulations or the passing of plans.

END CLAUSE – 16.

17. IMPORT LICENSES

01. Where applicable the Buyer shall obtain an import licence and shall comply with all regulations governing the admission of goods into the country of delivery. The Buyer shall indemnify the Company against any liability it suffers as a result of the failure by the Buyer to comply with this clause.

END CLAUSE – 17.

18. GOVERNING LAW

01. The proper law of all contracts with the Company shall be English Law which shall govern in all respect the construction and effect of such contracts and of these Conditions. The Buyer agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.

END CLAUSE – 18.

19. HEADINGS

01. The headings in these conditions are for convenience only and are not for the purpose of reference or interpretation.

END CLAUSE – 19.

20. WAIVER

01. No failure by the Company to enforce strict compliance by the Buyer with any of these provisions shall constitute a waiver thereof or in any way prejudice the rights of the Company.

END CLAUSE – 20.

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21. NOTICES

01. Any notice required to be served by either party must be served in writing and sent to the Company at its registered office and to the Buyer at the address given by the Buyer in his order. Where in these conditions a period is specified within which notice is to be given such notice must reach the party within that period.

END CLAUSE - 21.

END OF DOCUMENT

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