

1. Interpretation

In these Conditions:

'Buyer' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller

'Goods' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions

'Seller' means Cypex Limited (registered in Scotland under number 190620)

'Contract' means the contract for the purchase and sale of the Goods

'Conditions' means the standard terms and conditions of sale as set out in this document

2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or the Services unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 Goods supplied by the Seller may be harmful if misused. By ordering any Goods from the Seller, the Buyer agrees not to use the Goods for any purpose other than the intended use specified on the information sheet which accompanies the Goods when delivered. It is the responsibility of the Buyer to ensure that Goods supplied to the Buyer by the Seller are used safely and, in particular, that the Goods do not come into direct human contact.

3.5 If any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, 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 patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.6 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.7 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 loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the goods

4.1 The price of the Goods shall be the Seller's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 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 cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.5 All payments for Goods shall be made by the Buyer to the Seller in the UK in pounds sterling, the Buyer being responsible for any banking charges incurred in making payment to the Seller pursuant to the Contract.

5. Terms of payment

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 charge the Buyer interest (both before and after any decree or judgement) on the amount unpaid, at the rate of five per cent per annum above Bank of Scotland base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery of Goods

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with the Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods (or any instalment) 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 to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Risk and property in Goods

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property 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 the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's trustee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the 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 the 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 the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to grant security over or otherwise encumber any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Warranties and liabilities

8.1 The Seller undertakes that all Goods shall conform to the specification agreed with the Buyer or as quoted by the Seller and appearing on the information sheet which accompanies the Goods when delivered. In the event that Goods supplied by the Seller fail to meet such specification, the Seller will supply replacement Goods to the Buyer free of charge provided that the Buyer has returned the defective Goods to the Seller within a reasonable time of delivery to the Buyer (the Seller will reimburse reasonable costs incurred in returning defective Goods) and the Buyer agrees that this shall be the only remedy available to the Buyer in respect of the supply of any defective Goods.

8.2 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or any direct, indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.

8.5 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.5.1 act of God, explosion, flood, tempest, fire or accident;

8.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.5.4 import or export regulations or embargoes;

8.5.5 strikes, lock-outs or other industrial actions or disputes (whether involving employees of the Seller or a third party);

8.5.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.5.7 power failure or breakdown in machinery.

9. Insolvency of Buyer

9.1 This Clause applies if:

9.1.1 the Buyer is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or if any voluntary arrangement is proposed in relation to it under section 1 of that Act, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the Buyer under the Contract);

9.1.2 the Buyer has a receiver (which expression shall include an administration order within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;

9.1.3 the Buyer has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;

9.1.4 the Buyer passes any resolution for winding up;

9.1.5 the Buyer becomes subject to an order for winding up by a court of competent jurisdiction;

9.1.6 anything analogous to clauses 9.1.1 to 9.1.5 (inclusive) occurs in any jurisdiction to which the Buyer is subject; or

9.1.7 the Buyer ceases or threatens to cease to carry on the business.

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. General

10.1 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.

10.2 If any provision of these Conditions is to be held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

10.3 The Contract shall be governed by the law of Scotland, and the Buyer agrees to submit to the non-exclusive jurisdiction of the Scottish courts.