1 INTERPRETATION

1.1 In these Conditions:

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

1.1.2 'Goods' means the goods (including any instalment of the goods or any part of them) which the Seller is to supply in accordance with these Conditions (provided always that where the Contract is for or includes the provision of services the words "the Goods" shall be construed as meaning the services which the Seller has contracted to provide).

1.1.3 ' Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

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

1.1.5 'Input Material' means any specification, documents, data, designs or other information provided by or on behalf of the Buyer to the Seller.

1.1.6 'Output Material' means any specification, documents, reports, designs or other material and any data or information provided by the Seller to the Buyer whether as a result of the Seller carrying out its obligations under the Contract or otherwise.

1.1.7 'Seller' means Smiths Metal Centres Limited (registered in England and Wales under number 3485838).

1.1.8 'Writing' includes telex, cable, facsimile transmission and comparable means of communication and 'written' shall be construed accordingly.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extented at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

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 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 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.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 The Buyer shall be responsible for and shall promptly obtain all necessary import licences, clearances and other consents necessary for the purchase or use of the Goods.

2.7 Any quotation of the Seller may be withdrawn at any time before it is accepted by the Buyer.

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 All descriptions, illustrations, drawings and estimates of performance, weights and measures provided by the Seller are, unless otherwise stipulated, approximate only. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of the order (including any applicable specification whether provided by the Seller or the Buyer and any other Input Material) 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 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification or any other Input Material 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.

3.5 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.

3.6 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 such cancellation.

3.7 Any drawings, specifications or other documents supplied by the Buyer shall become the property of the Seller.

4 PRICE OF THE GOODS

4.1 The price of the Goods shall be the Seller's quoted price. All prices quoted may be altered by the Seller at any time without giving notice to the Buyer unless such quoted price has been accepted immediately by the Buyer at the time that the quotation is made or given by the Seller.

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 foreign exchange fluctuation, currency regulation, alteration of duties, significant increases 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 and unless otherwise agreed in writing between the Buyer and the Seller, all prices (including where Goods are to be exported from the United Kingdom) 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 handling.

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

4.5 The cost of pallets and returnable containers may, at the sole option of the Seller, be charged to the Buyer in addition to the price of the Goods.

5 TOOLING AND DIES

5.1 If the Seller has agreed to create, manufacture or produce any dies or other tooling ('Tooling') for the Buyer then unless agreed otherwise the Seller shall produce such Tooling upon receipt of an appropriate drawing or sample from the Buyer. The price (if any) of producing such Tooling and the terms of payment for it will (unless otherwise agreed in writing) be as stated on or in the quotation. A die print shall be supplied by the Seller and approved by the Buyer (such approval not to be unreasonably withheld) prior to the manufacture of any goods by the Seller using the Tooling.

5.2 The supply by the Seller of a sample from any Tooling or any other dies or tooling does not deem the Contract to be one of sale by sample for the purposes of Section 15 of the Sale of Goods Act 1979 (as amended) and the Seller hereby excludes Section 15 of the Sale of Goods Act 1979 (as amended).

5.3 The legal and beneficial ownership of the Tooling (or any other dies or tooling which the Seller has agreed to supply to the Buyer) shall not vest in the Buyer unless and until the price of such Tooling or other dies or tooling has been paid in full by the Buyer.

5.4 For the avoidance of doubt the intellectual property rights in or connected to any:
5.4.1 Tooling which has been created, manufactured or produced by the Seller using its own or a third party's designs, drawings or samples; or
5.4.2 existing dies or tooling owned or used by the Seller which are to be used in connection with the Contract shall remain the property of the Seller (subject to any applicable third party rights) notwithstanding that the actual die or tooling has passed into the possession of the Buyer.

5.5 The Buyer hereby acknowledges that any intellectual property rights that it may have in any Input Materials supplied to the Seller for the purposes of the Contract and/or any other contract with the Seller shall not prohibit the Seller from:
5.5.1 manufacturing and/or using dies or tooling for the benefit of any third party and/or the Seller which are similar to any die or tooling created by the Seller using such Input Material; or
5.5.2 using or manufacturing any die or tooling for the benefit of any third party and/or the Seller which is similar or identical to any die or tooling which is or may be created using any design or specification in the Input Material where the Buyer's intellectual property rights in such Input Material does not prohibit the production by persons other than the Buyer of dies or tooling using such design or specification.

5.6 The Seller reserves the right to dispose of any Tooling and shall give notice of its intention to do so and a time period within which the Buyer may collect such Tooling from the Seller subject to payment in full of the price of such Tooling by the Buyer. Should the Buyer fail to collect such Tooling from the Seller within such period the Seller shall be free to dispose of such Tooling as it deems appropriate and shall not be liable to the Buyer for any damages claims and/or costs of any kind whatsoever in respect of such disposal.

5.7 For the avoidance of doubt the Seller shall have the right to dispose of any Tooling referred to in Condition 5.4.1 or any dies or tooling referred to in Condition 5.4.2 without reference or liability to the Buyer.

5.8 Any die or tooling that is manufactured by the Seller is manufactured for use on the Seller's own machinery and as such, the Seller gives no warranty as to the compatibility of any such die or tooling with another's machinery.

6 TERMS OF PAYMENT

6.1 Unless credit terms have been agreed in writing between the Buyer and the Seller, the Seller shall not be bound to deliver the Goods until the Buyer has paid for them in full and without deduction. Payment shall be due before delivery of the Goods to the Buyer.

6.2 If credit terms have been agreed in writing between the Buyer and the Seller, subject to any special terms agreed in writing between them, the Seller shall be entitled to invoice the Buyer for the price of the Goods on 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.

6.3 Subject to Condition 6.1 the Buyer shall pay the price of the Goods without any deduction on the last working day of the month following the month in which the Seller submits its invoice for the Goods unless otherwise agreed in writing 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.

6.4 The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request

6.5 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:

6.5.1 cancel the Contract or suspend any further deliveries to the Buyer;

6.5.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

6.5.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid in accordance with the prevailing Statutory Interest provisions relating to Late Payments of Commercial Debts, which as from 7th August 2002 is 8% above Bank of England base rate, or as otherwise agreed in writing, in advance.

7 DELIVERY

7.1 Delivery of the Goods (including Goods which are to be exported from the United Kingdom) 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 where the Buyer warrants that any necessary unloading facilities will be available.

7.2 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 howsoever caused. Time for delivery shall not be of the essence 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.

7.3 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 these 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.

7.4 Without prejudice to Conditions 9.4 and 9.5 the Buyer shall notify the Seller and, if the carrier is an independent contractor, also the carrier, in writing of any damage in transit to, or mis-delivery or shortfall in the quantity of the Goods as soon as is practicable and in any event within 7 days from the date of delivery or (where the damage, mis-delivery or shortfall was not apparent on reasonable inspection) within a reasonable time after discovery of the defect, failure or shortage. The Buyer shall similarly notify the Seller, and, if applicable the carrier, if the Goods are not received at all by the Seller within 5 days where delivery is effected by the Seller's own vehicles,6 days where delivery is effected through the post or 10 days where delivery is effected by road or rail transport (other than by the Seller's vehicles), the time in each case running from the date of despatch as notified in writing by the Seller to the Buyer.

7.5 The Seller reserves the right without liability to deliver Goods made specially for the Buyer or to the Buyer's pattern or specification within + or -10% of the quantity or weight specified in the Buyer's order or the Seller's quotation, and payment shall be made for the actual quantity delivered pro rata.

7.6 If the Seller fails to deliver the Goods 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 the Goods not delivered over the price of the Goods.

7.7 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:

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

7.7.2 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.

8 RISK AND PROPERTY

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

8.1.1 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

8.1.2 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.

8.2 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.

8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, 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. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in case of tangible proceeds, properly stored, protected and insured.

8.4 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.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for indebtedness any of the Goods which remain the property of the Seller, but if the Buyer shall do so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) immediately become due and payable.

9 WARRANTIES AND LIABILITIES

9.1 Subject to the Conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship at the date of their delivery provided that the warranty in this Condition 9.1 is given by the Seller subject to the following conditions:

9.1.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification or other Input Material supplied by the Buyer;

9.1.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

9.1.3 the Seller shall be under no liability under the warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

9.1.4 the warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

9.2 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 Contracts Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.3 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

9.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods, their failure to correspond with specification or shortage in quantity delivered shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect, failure or shortage was not apparent on reasonable inspection) within a reasonable time after discovery of the defect, failure or shortage. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect, failure or shortage, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

9.5 Any claim by the Buyer which is based on a complete failure to deliver the Goods to the Seller on the agreed or notified delivery date shall be notified to the Seller within the time periods specified in Condition 7.4. If the Buyer does not notify the Seller accordingly, the Seller shall have no liability for failure to deliver and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

9.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the goods, their failure to meet specification, shortage in quantity or complete failure to deliver the Goods is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace or re-supply the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund the Buyer the price of the affected Goods (or a proportionate part of the price) which has been paid by the Buyer at the date of its notification, but the Seller shall have no further liability to the Buyer.

9.7 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, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and 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, except as expressly provided in these Conditions.

9.8 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 reasonable control of the Seller or its sub-contractors or suppliers. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the reasonable control of the Seller or its sub-contractors or suppliers:

- 9.8.1 Act of God, explosion, flood, tempest, fire, accident or epidemic;
- 9.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.8.4 import or export regulations, embargoes or blockades;
- 9.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 9.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery; and
- 9.8.7 power failure or breakdown in machinery.

9.9 The Seller does not accept responsibility for damage or loss in respect of all or part of the Goods during carriage arranged by the Buyer.

10 INDEMNITY

10.1 If any claim is made against the Buyer that the goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

- 10.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 10.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 10.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

10.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

10.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim;

10.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this Condition;

10.1.7 the Seller shall have no liability to the Buyer in respect of any claim if the same results from any breach of the Buyer's obligations under the Contract, or any other default of the Buyer.

10.1.8 the Seller shall be entitled at its own expense and option either to:

10.1.8.1 procure the right for the Buyer to continue using or enjoying the benefit of any affected Goods;

10.1.8.2 make such alterations modifications or adjustments to the Goods that they become non-infringing without incurring a material diminution in performance or function; or

10.1.8.3 replace the Goods with non-infringing substitutes in a manner provided that such substitute does not entail a material diminution in performance or function.

11 TERMINATION AND SUSPENSION OF THE CONTRACT

11.1 Without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled at its option to immediately terminate the Contract or suspend any further deliveries under the Contract if:

11.1.1 if the Buyer has a bankruptcy petition presented against him, or a bankruptcy order is made;

11.1.2 if the Buyer makes or seeks to make any composition or arrangement with his creditors;

11.1.3 if the Buyer makes a proposal to his creditors for a voluntary arrangement or applies for an interim order (within the meaning of Section 286 Insolvency Act 1986);

11.1.4 if an encumbrancer takes possession of any of the Buyer's assets, or any of the Buyer's property is taken in execution or process of law;

11.1.5 if a petition is presented or an order is made or a resolution is passed for the winding-up of the Buyer;

11.1.6 if a petition is presented or an order is made for an administration order to be made in relation to the Buyer;

11.1.7 if the Buyer's directors make a proposal for a voluntary arrangement with the Buyer's creditors;

11.1.8 if the Buyer is unable to pay its debts (within the meaning of Section 123 Insolvency Act 1986);

11.1.9 if a receiver or administrative receiver is appointed over any of the Buyer's assets.

11.1.10 If the Buyer has committed or permitted any employee, subcontractor, agent or commit any breach of the Contract or these Conditions.

11.2 If the Goods or any part of them have been delivered but not paid for at the date if such termination or suspension then the price shall become immediately due and payable

11.3 In the event of a suspension of performance of the Contract the Seller shall be entitled as a condition of resuming performance, to require pre-payment, or such security, as it may deem appropriate.

12 EXPORT

12.1 Where the Goods are supplied for export from the United Kingdom the following shall apply:

12.1.1 the Buyer shall be responsible at its own cost, for the timely obtaining of any required authorisation (including without limitation any Export Licence, Import Licence, Exchange Permit or any other governmental authorisation) even though any such authorisation may be applied for by the Seller. The Seller and the Buyer shall assist each other in every reasonable manner to secure such authorisation as may be required but the Seller shall not be liable if any such authorisation is delayed, denied, revoked, restricted or not renewed and the Buyer shall not thereby be relieved of its obligations under the Contract.

12.1.2 the provisions of this Condition 12 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

12.1.3 the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

12.1.4 unless otherwise agreed in writing between the Buyer and the Seller and subject to Condition 7.1, the Goods shall be delivered in accordance with Condition 7.1 and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

12.1.5 the Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

12.1.6 payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in the UK acceptable to the Seller or, if the Seller has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of HSBC Bank plc in England as may be specified in the bill of exchange.

13 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

13.1 The Buyer acknowledges that any and all intellectual property rights in any:

13.1.1 Goods (including any accompanying user or operating documentation) supplied by the Seller to the Buyer; and

13.1.2 in any Output Material

13.2 shall belong to or shall vest in and remain the sole property of the Seller (save to the extent that such Goods are produced or manufactured to the Buyer's design and subject always to the rights of any third party in such Goods or Output Material). The Buyer shall not during or at any time in any way question or dispute the ownership by the Seller of any such rights and to the extent that it is necessary the Buyer hereby assigns such intellectual property rights to the Seller and if required by the Seller shall execute any necessary documents to vest title in and to such rights in the Seller. If any new inventions, designs or processes or intellectual property rights evolve as a result of:

13.2.1 the supply of Goods and/or Output Material by the Seller to the Buyer;

13.2.2 the use of Goods and/or Output Material by the Buyer; and/or

13.2.3 the carrying out by the Seller of its obligations under the Contract then the Buyer acknowledges that the same shall be the property of the Seller (save to the extent that such Goods are produced or manufactured to the Buyer's design and subject always to the rights of any third party in such Goods or Output Material) unless otherwise agreed in writing by the Seller and to the extent that it is necessary the Buyer hereby assigns such intellectual property rights to the Seller and if required by the Seller shall execute any necessary documents to vest title in and to such rights in the Seller.

13.3 If the Seller supplies Goods or Output Material to the Buyer in which the intellectual property rights are owned by a third party then the Buyer will comply with all and any licence terms imposed by such third party in respect of such Goods and Output Material.

13.4 Unless otherwise agreed by the Seller all Output Material may only by used by the Buyer for its own internal business use in accordance with the Contract and unless agreed otherwise by the Seller in writing the Buyer shall not be entitled to copy any Output Material.

13.5 The Buyer shall and shall procure and ensure that its agents or employees shall to keep confidential and not disclose to third parties or make use of in any way except in relation to the Goods supplied or to be supplied any information or data (written or oral) which is confidential to Seller save that which is:

13.5.1 trivial or obvious;

13.5.2 already in its possession other than as a result of a breach of this Condition; or

13.5.3 in the public domain other than as a result of a breach of this Condition.

13.6 The Buyer undertakes to the Seller to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Condition 13.5 by its employees, agents and contractors.

13.7 The Buyer further undertakes to the Seller to keep confidential all Output Material save that which falls within Conditions 13.5.1 to 13.5.3.

14 GENERAL

14.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission by any such member shall be deemed to be the act or omission of the Seller.

14.2 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 its registered of fice 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 notice.

14.3 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.

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

14.5 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators.

14.6 The Contract and these Conditions shall be governed by the laws of England.

14.7 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract or these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

Notice under the Data Protection Act 1998

Your information

Your information, includes any information which we now or at any time in the future may hold or use relating to you, or any person, company, partner or associate of yours (as defined in s.184 of the Consumer Credit Act 1974). This information may come from or relate to:

1. Application by you for the provision, and the supply to you of goods and services by us

2. What you may tell us either orally or in writing or by electronic means either directly or in documents submitted to us or information published by you or about you

3. Reports from third parties such as professionals, bankers brokers and agents with whom you may have had a business relationship, credit reference agencies, fraud prevention organisations, valuers and other responsible third parties employed by you or us

4. Your transactions with us, which may include the names of your staff with whom we liaise, your customers, their representatives, their contact details, your bank account and other financial and personal information such as your address and contact details and other related information that we shall obtain in the course of operating any services for you or your supplier/s or information that we may accumulate in assessing whether to commence or continue to operate such services

5. Recorded telephone messages which may be left by you outside normal office hours

What we may do with your information

We do not store credit card details nor do we share these details with any 3rd parties. We will use, analyse and assess your information to maintain and develop the relationships between us. This will include the following purposes:

1. Considering any applications made by you for, and helping us to make, credit related decisions about you and/or your business

2. Operating and administering the services currently and in the future provided by us

3. Financial risk assessment, money laundering checks, the exchanging of information with credit reference agencies and fraud prevention organisations to assist us in the making of credit decisions and preventing fraud

4. Helping us to assess how we can develop our business relationship in the future including market research, product and statistical analysis and the development of new products

5. Helping us to identify new products and services which may interest you (unless you have requested otherwise)

6. Improving business skills by the use of information in staff training For operational reasons in connection with the above we may link your information between your accounts and other accounts that we hold for other clients and/or the customers of those clients.

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Disclosure of your information

We will not disclose your information outside our business unless:

1. Where required to do so for the operational and administrative reasons referred to above

2. Where we have your consent. Your consent shall be given by your continuing your relationship with us following posting of this or subsequent notice/s to you and shall include consent to the disclosure of information to:-
    i. any other companies within our own group of companies for any of the purposes mentioned above
    ii. any professionals, bankers, agents, brokers or insurers for the purposes of their providing their services to you

3. Where we are required or permitted to do so by law

4. Where required for the provision of finance to us by any of our financiers who may process that information for any of the purposes referred to herein and who may use and transfer that data throughout their organisation, including abroad, and who may collect information about you for their own purposes in relation to the provision of finance;

5. To persons to whom we may transfer rights and obligations under the agreement/s between us

6. To any person who provides a service to us who agrees to keep your information confidential

7. To credit reference agencies and other agencies involved in the prevention of fraud and the tracing of debtors

If necessary to provide the services you have or may request from time to time your information may be transferred to other countries. We will ensure that anyone to whom we pass your information undertakes to treat your information confidentially, with respect to the private nature of your information and to use or process it solely for the business reasons for which it is provided. Some of these countries may not have a level of data protection equivalent to that of the United Kingdom.

Credit Reference agencies and Fraud Prevention Organisations

We use such agencies from time to time to assist us in taking decisions in regard to providing credit, including whether to do so as well as any applicable limits. They will supply us with credit information including information from the electoral register. They will record the enquiries we may make about you and details of your credit history with us. They may use this information for statistical analysis about credit, insurance and fraud. We may also pass information to financial and other organisations involved in fraud prevention to protect our clients and us from theft and fraud. If you give us false or inaccurate information and we suspect fraud, we will record this.

Your Rights

You have the right of access to your personal records held by us and details of the responsible third parties to whom we have supplied, and from whom we have received, information about you upon request and upon payment of a fee. You also have the right of access to personal data held by credit insurance agencies that we use. We can supply their name and address upon request.

All information in our data sheet is based on approximate testing and is stated to the best of our knowledge and belief. It is presented apart from contractual obligations and does not constitute any guarantee of properties or of processing or application possibilities in individual cases. Our warranties and liabilities are stated exclusively in our terms of trading.

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