

**TERMS AND CONDITIONS FOR THE SALE AND SUPPLY OF GOODS AND SERVICES****1. INTERPRETATION**

1.1. In the Conditions the following words and expressions shall have the following meanings unless inconsistent with the context:

"Additional Charges" means the costs of carriage where this is not included in the Price and any other additional charges payable by the Buyer in addition to the Price;

"Buyer" means the person firm or company who buys or agrees to buy the Goods or Services from the Seller;

"Buyer's Premises" means the Buyer's premises detailed in the Order Confirmation or otherwise agreed between the parties in writing;

"Conditions" means these terms and conditions;

"Contract" means each contract for the sale and supply of Goods and/or Services by the Seller to the Buyer incorporating these Conditions;

"Delivery Date" means the date specified by the Seller in the Order Confirmation or otherwise in writing when the Goods and/or Services are to be delivered or performed;

"Goods" means all goods (including any instalment of the Goods or any parts for them) supplied by the Seller to the Buyer pursuant to the Contract;

"Operations Guide" means the Seller's operation manual supplied with the Goods at the time of delivery;

"Order Confirmation" means the Seller's acknowledgement in writing of the Buyer's order detailing the specific details of the Contract

"Price" means the price of the Goods or Services as referred to in Condition 8 of these Conditions;

"Quotation" means any proposal, tender, estimate or quotation submitted to the Buyer by the Seller prior to the Contract being made;

"Seller" means A L Dalton Limited, a company registered in England and Wales with Company Number 00148767 and whose registered office is at Crossgate Drive, Queen's Drive Industrial Estate, Nottingham NG2 1LW;

"Services" means any or all of the following as detailed in the Order Confirmation or as otherwise agreed by the Seller and the Buyer:

- the installation of the Goods;
- the commissioning of the Goods;
- certificated operator training;
- planned preventative maintenance servicing, breakdown call outs, repairs, upgrades and machine assessments;
- transport services.

For the avoidance of doubt "Services" does not include any of the following (unless otherwise agreed in writing)

- a) site wiring or the supply of necessary electrical cable or electrical power;
- b) manoeuvring of the Goods after unloading the Goods at the Buyer's Premises other than placing the Goods at ground floor level; or
- c) the testing of any floor, wall, ceiling or other structure for the purpose of establishing any load bearing.

"Working Days" means any day from Monday to Friday excluding public and statutory holidays in England;

"Working Hours" means 8.00 am to 5.00 pm on Working Days;

"writing" includes facsimile transmission and email but excludes text messages.

1.2. In these Conditions (unless the context otherwise requires):

1.2.1. any reference to a Condition is to the relevant clause of these Conditions and any reference to a sub-Condition is to the relevant sub-Condition of the Condition in which it appears;

1.2.2. the Condition headings are included for convenience only and shall not affect the interpretation of these Conditions;

1.2.3. use of the singular includes the plural and vice versa; and

1.2.4. use of any gender includes the other genders.

**2. BASIS OF SALE AND SUPPLY**

2.1. These Conditions shall apply to the sale and supply by the Seller of:

2.1.1. all Goods or Services specified in the Order Confirmation; or

2.1.2. if no Order Confirmation is issued all Goods or Services specified in the Quotation; or

2.1.3. if no Order Confirmation or Quotation is issued all Goods or Services delivered by the Seller to the Buyer

and these Conditions shall, subject to Condition 2.2, 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. In the event of a variation being agreed, any Delivery Date previously indicated may no longer apply and the Seller shall be entitled to deliver the Goods and/or perform the Services at a later date.

2.3. Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.

2.4. Any Quotation will not constitute an offer and each order or acceptance of a Quotation for Goods or Services by the Buyer shall be deemed to be an offer by the Buyer to buy the Goods or Services subject to these Conditions and the Contract shall be made:

2.4.1. when the Seller issues an Order Confirmation; or

2.4.2. if no Order Confirmation is issued:

2.4.2.1. when the Goods are delivered; or

2.4.2.2. when the Buyer returns the Quotation or otherwise indicates it wishes to proceed with a Quotation; or

2.4.2.3. when the Services are provided

2.5. Subject to the other Conditions, any Quotation given by the Seller shall remain valid for the period stated in it, but if no period is specified such Quotation shall be valid for 30 days from its date.

2.6. The Buyer shall be under a duty to bring any discrepancies in the Confirmation Order to the Seller's notice immediately, and if the Buyer fails to do so, the Buyer shall if the Seller so elects, be bound by the details contained, mentioned or referred to in the Order Confirmation.

2.7. Unless any Quotation from the Seller specifies otherwise, the Buyer shall be responsible for obtaining all necessary consents licenses permissions and insurance cover in respect of the installation of the Goods.

**3. ORDERS AND SPECIFICATIONS**

3.1. The Buyer shall be under a duty to provide the Seller with all the relevant information as requested by the Seller from time to time or which is necessary to enable the Seller to perform the Contract.

3.2. The Seller reserves the right to make any changes to the Goods:

3.2.1. which are required so that the Goods conform with any applicable statutory or EU requirement; or

3.2.2. where such changes to the Goods do not materially affect the quality or performance of the Goods.

3.3. No order from the Buyer which has been received by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and subject always to the terms that the Buyer shall indemnify the Seller in full against all losses (including but without limitation loss of profit), costs (including but without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation. Any deposit paid shall be non-refundable in the event of cancellation and the Seller shall be entitled to claim any excess from the Buyer.

3.4. The Seller shall be entitled to cancel any order if there is a substantial adverse impact on the Seller's ability to supply the Goods or Services or the price of the Goods or Services is increased due to the UK ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union.

**4. DELIVERY**

4.1. The Goods shall be delivered:

4.1.1. where the Goods are to be delivered in the United Kingdom when they are delivered to the Buyer's Premises; or

4.1.2. where the Goods are to be delivered outside of the United Kingdom when the Goods are collected from the Seller; or

4.1.3. as otherwise agreed between the parties in writing

and where the Seller is responsible for delivery the Seller shall be entitled to charge the Buyer for the costs of delivery as an Additional Charge.

4.2. The Seller shall reasonably endeavour to deliver the Goods to the Buyer's Premises or such other address as may be agreed between the parties in writing on the Delivery Date or any other date agreed between the parties, but the time of delivery or performance shall not be of the essence. Upon delivery the Buyer will sign a delivery note which will be conclusive evidence that delivery was made and of the quantity of Goods received by the Buyer. The Seller shall not be liable for any delay in delivery of any Goods that is caused by a force majeure event referred to in condition 9.15 or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.3. If the Seller fails to deliver the Goods 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 and/or services to replace those not delivered or performed over the Price of the Goods and/or Services.

4.4. The Buyer shall provide the Seller with clear delivery instructions in the event that the Seller agrees to deliver the Goods to any point other than or including the Buyer's Premises.

4.5. The Seller shall notify the Buyer when the Goods are ready for delivery. In the event that the Buyer either fails to give the Seller adequate instructions for delivery or provide the Seller with all documents, licences or authorisations as may be required for delivery to take place, or is not able to take delivery within 10 Working Days of said notification or fails to take delivery of the Goods for any reason:

4.5.1. risk in the Goods shall pass to the Buyer;

4.5.2. the Goods shall be deemed to have been delivered;

4.5.3. the Seller may store the Goods until delivery and shall be entitled to charge the Buyer for all related costs and expenses as an Additional Charge (including but without limitation storage and insurance); and

4.5.4. the Seller may sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the Price and the price obtained in the sale.

4.6. In the event that the Seller agrees to deliver the Goods by making the Goods available for collection at its premises, the Buyer shall be responsible for and shall bear the risk of loading and transporting the Goods to the required destination.

4.7. Where the Seller is responsible for delivery the Buyer shall be ready to accept delivery and unless the Seller agrees otherwise, the Seller shall unload the Goods. The Buyer shall ensure that at least one representative is available to assist the Seller during the unloading of the Goods and the Buyer shall be charged as an Additional Charge at the Seller's standard rates for wasted time and any other expenses incurred by the Seller for:

4.7.1. any delay;

4.7.2. each repeat delivery where the Seller or Seller's carrier leaves the delivery point and subsequently returns to the delivery point with the Goods;

as a result of the Buyer's inability or unwillingness to accept delivery and/or delay in unloading the Goods and/or the Buyer's failure to provide a representative to assist the Seller in the unloading of the Goods.

4.8. The Buyer shall solely be responsible for ensuring that the Buyer's Premises, (or any other place for delivery as agreed between the parties) are adequate to accept delivery of the Goods and the Seller reserves the right to refuse delivery of the Goods if upon arrival such premises are not adequate and/or suitable for delivery.

4.9. If the Seller decides pursuant to Condition 4.10 that the Buyer's Premises (or any other place for delivery as agreed between the parties) are not adequate to accept delivery, the provisions of Condition 4.7 shall apply.

4.10. In the event that the Goods, or any part thereof, are to be installed on any floor of the Buyer's Premises (or any other place for delivery as agreed between the parties) other than the ground floor the Buyer will:

4.10.1. make all arrangements for relocating the Goods from the ground floor to the other floor, including but not limited to, arranging for all necessary machinery to assist the relocation;

4.10.2. bear responsibility for all costs arising from the relocation; and

4.10.3. procure that the Goods are insured against all risks associated with such relocation.

## **5. SERVICES**

5.1. Where the Goods have been delivered, but the Services have not been performed or where the supply is for Services only, the parties shall arrange a mutually convenient date and time for the Services to be performed. The Buyer must not attempt to use the Goods until all of the Services have been performed and the Seller's form of commissioning or acceptance document has been signed and dated by both parties certifying that the Goods have been satisfactorily installed and commissioned and the training completed.

5.2. The Buyer shall ensure that a suitably qualified employee is or employees are in attendance on the date of delivery and on such other days as the Seller deems necessary for the purposes of observing installation and commissioning of the Goods and undergoing familiarisation training for up to 4 operators on the use of the Goods, but excluding training on the safe operation of the Goods. The duration of the training shall vary depending on the Goods. Unless the Seller agrees otherwise, where training takes place over more than 1 day the Buyer shall ensure that the same qualified employee is or the same employees are in attendance on all such days.

5.3. In the event that the Buyer requests training additional to that referred to in Condition 5.2 the Seller reserves the right to provide such further training separately at a location and at a cost to be agreed by the parties in writing.

5.4. Where the Services comprise training, then unless otherwise specified in an Order Confirmation or Quotation:

5.4.1. Cancellation charges are calculated from the date training services are to be supplied as follows:

5.4.1.1. over 7 days – no charge;

5.4.1.2. less than 7 days – 100% of the total cost.

5.4.2. the standard staff training day is up to six hours on-site with a break for lunch. Additional hours will be at the discretion of the Seller for which there may be an additional charge;

5.4.3. the Buyer must ensure that all health & safety requirements relating to their equipment and premises where training is to be carried out are in compliance with current regulations. The Seller is entitled to refuse to train on equipment or within environments that fall short of current standards and in such circumstances the full charges will still apply;

5.4.4. the Buyer shall ensure that all candidates undergoing training are required to provide and wear their own suitable personal protection equipment including where applicable cut resistant gloves;

5.4.5. all paperwork, including training records and certificates will remain the property of the Seller, until the Buyer settles the account in full;

5.4.6. the Seller's trainer(s) will require onsite non-chargeable parking for the duration of the course. Any other arrangements must be agreed in writing prior to course commencement.

5.5. Where the Seller has agreed in an Order Confirmation to provide telephone and remote NET support for specified machines, such Services:

5.5.1. are subject to the Buyer ensuring there is a suitable internet connection;

5.5.2. are limited to 6 hours of support in any year;

5.5.3. are personal to the Buyer and not capable of being assigned to any third party who may purchase the machine.

## **6. RISK AND TITLE**

6.1. 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.

6.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of these

Conditions, 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 or Services and any Additional Charges.

6.3. Until title to the Goods has passed to the Buyer, the Buyer shall:

6.3.1. store the Goods separately from all other Goods held by the Buyer so that they remain readily identifiable as the Seller's property;

6.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery;

6.3.4. notify the Seller immediately if it becomes subject to any of the events listed in Condition 11.1; and

6.3.5. give the Seller such information relating to the Goods as the Seller may require from time to time.

6.4. Subject to Condition 6.5 the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

6.4.1. it does so as principal and not as the Seller's agent; and

6.4.2. title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

6.5. If before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in Condition 11.1, then, without limiting any other right or remedy the Seller may have:

6.5.1. the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

6.5.2. the Seller may at any time require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

## **7. PRICE**

7.1. The price shall be:

7.1.1. the price specified by the Seller in the Order Confirmation; or

7.1.2. where no Order Confirmation is issued the Price specified by the Seller in the Quotation; or

7.1.3. where no Quotation is issued the price given in the Seller's price list current at the time the Contract is made; or

7.1.4. where a new machine is not held in stock by the Seller the manufacturer's price current at the time of despatch; or

7.1.5. as may otherwise be agreed in writing between the parties from time to time.

7.2. Unless otherwise stated, the Price shall be exclusive of:

7.2.1. value added tax (which the Buyer shall be additionally liable to pay to the Seller); and

7.2.2. carriage and insurance costs.

7.3. The Seller reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to:

7.3.1. any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

7.3.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification of the Goods;

7.3.3. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Seller adequate or accurate information or instructions in respect of the Goods.

## **8. PAYMENT TERMS**

8.1. The payment terms in this Condition apply to the extent that they are inconsistent with any specific payment terms set out in the Order Confirmation in which case the terms set out in the Order Confirmation shall prevail or as otherwise agreed in writing between the parties.

8.2. The Buyer shall pay to the Seller a deposit of 30% of the Price of the Goods or such other amount as detailed in the Order Confirmation following receipt of the Seller's Order Confirmation with the balance to be paid by the Buyer when the Seller has notified the Buyer that the Goods are ready for delivery.

8.3. The Seller shall be entitled to invoice the Buyer:

8.3.1. for the Price at any time after the Contract has been made; and

8.3.2. for any Additional Charges as and when they arise.

8.4. Payment for the Price for Goods is due when the Goods are ready for dispatch from the Seller or the manufacturer and any other invoices, including invoices for the supply of Services, shall be payable within 14 days of the date of issue subject to buyer account status.

8.5. Payment of the Price and any Additional Charges shall only be deemed to have been received if made in sterling and received in cleared funds in respect of the whole amount outstanding.

8.6. The time for payment of the Seller's invoices shall be of the essence of the Contract.

8.7. If the Buyer fails to make payment in accordance with this Condition 8, without prejudice to any other right or remedy available to the Seller:

8.7.1. all invoices issued to the Buyer by the Seller shall immediately fall due for payment and any credit offered or extended by the Seller to the Buyer shall be cancelled forthwith;

8.7.2. the Seller shall be entitled to withhold delivery of any Goods or Services (or any goods and/or services under any other contract which may exist between the parties) or any instalment thereof until the overdue payment is made in full;

8.7.3. decommission the Goods, until the overdue payment is made in full;

8.7.4. charge the Buyer in full for all and any losses, liabilities, compensation, costs, charges and expenses and any statutory interest and charges or compensation for late payment accruing thereon sustained or incurred by the Seller in connection with the recovery or attempted recovery of any such overdue payment (both before and after the issue of any proceedings and irrespective of whether awarded by the court); and

8.7.5. enter upon the premises of the Buyer or any third party where the Goods are stored and mark identify and repossess such Goods.

8.8. The Seller will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Seller.

## **9. WARRANTIES AND LIABILITY**

9.1. Unless otherwise stated and subject to Condition 9.2:

9.1.1. NEW machines are guaranteed in accordance with the terms of warranty issued by the manufacturers of the equipment in question;

9.1.2. USED machines supplied in CATEGORY (A) REBUILT are guaranteed for a period of twelve months and the Seller will correct free of charge any parts found to be defective as a result of faulty workmanship due of the Seller;

9.1.3. USED machines supplied in CATEGORY (B) PREMIUM SERVICE are guaranteed for a period of six months against electrical or mechanical breakdown only;

9.1.4. USED machines supplied in CATEGORY (C) STANDARD SERVICE do not incorporate a warranty but as with other used machine categories described above are supplied on free approval in UK in accordance with Conditions 10.3 to 10.5;

9.1.5. No warranties are provided on any sale of old and/or defective equipment which are being supplied for parts only.

9.1.6. In respect of all machines supplied under any of Conditions 9.1.1, 9.1.1., 9.1.3 or 9.1.4:

9.1.6.1. warranty periods are calculated from the date of invoice;

9.1.6.2. the Seller disclaims all liability for consequential damage or loss of production and parts alleged faulty must be returned carriage paid for inspection at the Seller's works.

9.1.6.3. correct installation on satisfactory foundations with suitable electrical connection to adequate power supply, suitable compressed air connection to adequate air supply, suitable dust extraction connection to adequate local exhaust ventilation (LEV) system are the Buyer's responsibility and failure to implement any of these procedures will automatically invalidate the warranty;

9.1.6.4. the Seller shall not be liable under any warranty for work carried out by the Buyer or any contractor other than as authorised by the Seller.

9.2. The warranties provided under Condition 9.1 shall only be valid if:

9.2.1. the Buyer gives notice in writing to the Seller during the warranty period referred to in Condition 9.1 that the Goods do not comply with their applicable warranties;

9.2.2. the Seller is given a reasonable opportunity of examining such Goods;

9.2.3. the Buyer does not make further use of such Goods after giving a notice in accordance with Condition 9.2.1;

9.2.4. the Buyer or any third party, uses the Goods in accordance with the Seller's instructions, the manufacturer's instructions (whether oral or in writing) and the Operations Guide;

9.2.5. the Buyer permits the Seller, on reasonable notice, to repair, maintain and service the Goods;

9.2.6. the Goods are not subject to inappropriate storage, improper use, inadequate maintenance or any other misuse, wilful damage or abnormal working conditions or where Goods have been used beyond the capacity or performance for which it was designed;

9.2.7. the Goods have only been used on a single shift working basis;

9.2.8. the defect was not caused in whole or in part by any event within the control of the Buyer;

9.2.9. the defect is not due to normal wear and tear;

9.2.10. dust extraction at the point of cut being provided which is in the opinion of the Seller is adequate for the process and materials involved;

9.2.11. no maintenance or repairs have been carried out or attempted by the Buyer or any contractor other than the Seller or its authorised personnel; and

9.2.12. the Buyer has complied with its obligations in Condition 10.1.

9.3. The warranties referred to in Condition 9.1 shall covers parts and labour providing the Goods have been commissioned at the point of installation by the Seller. Where commissioning is not implemented by the Seller the warranties will cover parts only in line with the warranty provided by the manufacturers of the relevant Goods.

9.4. The Buyer shall be under a duty to inspect the Goods within 7 days of delivery. In the event of any patent defect the Buyer shall inform the Seller of such defect immediately on discovery but in any event within 7 days of delivery. In the event of a latent defect being discovered, the Buyer shall inform the Seller of such defect immediately on discovery of the same. 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 the time limit specified within this Condition.

9.5. Any warranty given in these Conditions shall not apply to any servicing, maintenance, modification and/or repair carried out to the Goods by any party other than the Seller without the Seller's prior approval in writing.

9.6. Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.7. 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.

9.8. Where any valid claim in respect of the Goods and/or Services is made by the Buyer the Seller shall be entitled to at its option to:

9.8.1. replace or repair the Goods (or the part in question) or correct the relevant Service and if it elects to do so as such charge the Buyer for any travel expenses it incurs; or

9.8.2. at the Seller's sole discretion, refund to the Buyer an amount equal to the Price (or a proportionate part of the Price) of the relevant part of the Goods and/or Services found not to conform to warranty and subject to Condition 9.12 the Seller shall have no further liability to the Buyer.

9.9. Subject to Conditions 9.10 and 9.12 the Seller shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise arising under or in connection with the Contract for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and any indirect or consequential loss.

9.10. Subject to Conditions 9.10 and 9.12 the Seller's total liability to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall be limited:

9.10.1. in respect of physical damage to or loss of the Buyer's tangible property to the extent that it results from the wilful default or negligence of the Seller, its employees, agents or contractors the Seller's liability shall be limited to an amount of £100,000 in respect of each incident or series of connected incidents; and

9.10.2. in respect of all other direct loss (whether in contract, tort, or otherwise) the Seller's liability shall be limited in the aggregate to the Price.

9.11. Nothing in these Conditions shall limit or exclude the Seller's liability for death or personal injury caused by its negligence or the negligence of the Seller's employees, agents or sub-contractors.

9.12. The Seller shall not be liable to the Buyer nor be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Contract if the

delay or failure was due to any cause beyond the Seller's reasonable control. Events beyond the Seller's reasonable control shall include, without limitation:

- 9.12.1. act of God, explosion, flood, tempest, fire or accident;
- 9.12.2. war or threat of war, sabotage, insurrection, terrorism, civil disturbance or requisition;
- 9.12.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.12.4. import or export regulations or embargoes;
- 9.12.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 9.12.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 9.12.7. pandemic, epidemic or any other contagious disease; or
- 9.12.8. power failure or breakdown in machinery.

## **10. BUYER'S RESPONSIBILITIES**

10.1. The Buyer shall:

- 10.1.1. provide free and clear access to the Buyer's Premises to enable the Goods to be delivered, offloaded and positioned;
- 10.1.2. ensure that doorway and access routes to the final location of the Goods is of adequate size to allow the Goods to access;
- 10.1.3. provide suitable building cover and flat floor and foundations on which the Goods are to be positioned;
- 10.1.4. where any equipment is to be taken in part exchange ensure that such equipment is disconnected from all services, including power, air and extraction and unbolted from the floor and free for uplift at the time of equipment delivery;
- 10.1.5. make necessary provisions of all lighting, air and electrical services including electrical isolators within 3 metres of the position for the Goods;
- 10.1.6. provide a qualified electrician for any wiring that may be required for the installation and connection of the Goods to a suitable electrical supply;
- 10.1.7. make available all necessary provisions, materials and equipment for connection of the Goods to adequate dust and swarf extraction systems;
- 10.1.8. make available all materials necessary for the setting, testing and/or training of the Goods during or following installation;
- 10.1.9. in the case of Goods supplied with PC control, provide a suitable internet data connection with RJ45 network port within 3 metres of the location for the Goods to enable remote access support;
- 10.1.10. ensure that the Buyer's Premises comply with all appropriate statutory and regulatory requirements including Building Regulations, Fire Regulations, Health and Safety Legislation, codes of practice and all other statutory or regulatory requirements, including any risk assessment under Regulation 3 of the Management of Health & Safety at Work Regulations 1992.

10.2. If for any reason, when the Seller attends the Buyer's Premises in connection with the delivery of the Goods or to perform the Services the premises or equipment employed on it do not, in the Seller's reasonable opinion, comply with any of the provisions set out in Condition 10 the Seller at its option may:

- 10.2.1. elect to remain at the Buyer's Premises whilst the Buyer takes the necessary steps so that the premises complies with the requirements of this Condition 10 and charge the Buyer for the time spent by each of its representatives present at the site, at its current hourly rate for engineers as an Additional Charge; or

10.2.2. elect to leave the Buyer's Premises and return at some time in the future on a date to be agreed between the Seller and the Buyer by which time the Buyer will ensure that the premises comply with the requirements of this Condition 10. The Seller may charge the Buyer as an Additional Charge for its wasted time at its current hourly rate for engineers for each occasion when the Seller's representative(s) attend at the Buyer's Premises and leave with the Goods due to the Buyer's failure to comply with this Condition 10.

10.3. Where the Seller agrees that the Buyer may have use of a previously owned machine, the Goods are supplied, in the UK only, on a free approval basis and may be returned by the Buyer to the Seller within 30 days of delivery of the Goods do not comply with their applicable category as referred to in Condition 9 provided that:

- 10.3.1. the Buyer has taken reasonable care of the Goods during the free approval period and keeps such Goods in satisfactory condition;
  - 10.3.2. risk in the Goods shall remain with the Buyer during the free approval period.
- 10.4. Where the Goods are to be returned to the Seller pursuant to Condition 10.3 above, the Goods must:
- 10.4.1. be in good working order; and
  - 10.4.2. be complete with all accessories and manuals or literature supplied, including but without limitation the Operations Guide.
- 10.5. The Buyer shall not be entitled to return any Goods under Condition 10.3 if such Goods were specifically obtained by the Seller at the Buyer's request or manufactured or adapted to meet any individual requirements of the Buyer.

## **11. INSOLVENCY OF BUYER**

11.1. This Condition applies if:

- 11.1.1. 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
  - 11.1.2. an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 11.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
  - 11.1.4. 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
  - 11.1.5. in the reasonable opinion of the Seller, the Buyer's financial position deteriorates to such an extent that the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 11.1.6. the Buyer fails to pay the Price or any part of it in accordance with Condition 8.
- 11.2. If this Condition 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 and any Additional Charges shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11.3. On termination of the Contract, the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice

has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer on receipt.

11.4. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## **12. GENERAL**

12.1. 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 its 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. Notices sent by post shall be deemed served on the next Working Day following posting where the notice is sent and received within the United Kingdom, or on the seventh Working Day following posting where the notice is sent and/or received outside of the United Kingdom. Any notice sent by facsimile, e-mail, or delivered personally, shall be deemed served on successful transmission of the facsimile or e-mail or at the time of personal delivery, provided the same occurs on a Working Day.

12.2. 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.

12.3. The Seller may at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

12.4. The Buyer shall not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

12.5. Failure or delay by the Seller in enforcing or partially enforcing its rights under any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

12.6. 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 and shall in no way affect the other terms of the Contract.

12.7. Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or otherwise.

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

12.9. The Contract constitutes the entire agreement between the Seller and the Buyer and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.10. Each of the Seller and the Buyer acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each of the Seller and the Buyer agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

12.11. The Contract shall be governed by the laws of England and Wales, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.