

1. DEFINITIONS - In these Conditions

the Company means H. Kuhnke Ltd
the Buyer means any company, firm or individual or agent thereof to whom the Company's quotation or acknowledgement of order is addressed.
the Goods means the products (including any parts or accessories), materials and/or services to be supplied by the Company.

2. APPLICABILITY OF CONDITIONS - The Company concludes contracts for the supply of Goods subject only to these Conditions. The Buyer accepts that these Conditions shall govern relations between himself and the Company to the exclusion of any other terms including, without limitation, conditions and warranties written or oral express or implied even if contained in any of the Buyer's documents which purport to provide that the Buyer's own Terms shall prevail. No variation or qualification of these Conditions or of any quotation or contract arising here from shall be valid unless agreed in writing by the Secretary or a Director of the Company.

3. QUOTATIONS - The Company's quotations are given without commitment and no contract between the Company and the Buyer shall arise unless and until the Company has accepted in writing the Buyer's order placed on the Company's quotation.

4. REPRESENTATIONS - No employee of the Company other than a duly appointed employee is authorised to make any statement warranty or representation as to the Goods. The Buyer, therefore, shall not be entitled to rely or to seek to rely upon any statement warranty or representation made by an employee or agent of the Company other than the duly appointed employee.

5. PRICES -

(i) Prices contained in a quotation price list catalogue and similar matter shall be based upon current costs ruling at the date thereof and are for guidance only. The contract price shall be the price current at the date of delivery of the goods PROVIDED THAT
(a) (subject to clause 3 above) where a quotation is given by the Company (whether orally or in writing) and the Buyer's order is received by the Company within 30 days of the receipt by the Buyer of the quotation, then (in the absence of manifest error) the contract price shall be the price given by the Company in the said quotation.
(b) in no case shall the contract price be less than £20.

(ii) Unless otherwise stated prices do not include VAT which will be chargeable at the date of dispatch and/or performance of services as the case may be.

6. DESPATCH AND DELIVERY -

(i) Delivery shall be deemed to occur and the risk of loss or damage of any kind in the Goods shall pass to the Buyer on whichever of the following events occur earliest
(A) collection by or on behalf of the Buyer or by a carrier for despatch to the Buyer (whether or not such carrier be the Company's agent or servant)
(B) 7 days from the date of notice given by the Company that the Goods are ready for collection or dispatch.

(ii) In the event that the Company shall at the request of the Buyer store the Goods or arrange for the Goods to be despatched or dealt with otherwise than by collection by the Buyer then the Buyer shall pay to the Company the Company's reasonable charges for the provision or procurement of such services within 7 days of the date of any invoices sent by the Company in respect thereof. Any such services provided by the Company shall be performed subject to these Conditions. In the event that such services are to be provided by a carrier or other third party then the Company shall in arranging for the provision of the same act only as the agent of the Buyer and the Buyer shall indemnify the Company against any cost, charge, liability or expense thereby incurred by the Company. Should the Buyer request that any Goods be stored despatched or dealt with otherwise than by collection by the Buyer the Buyer shall give written notice to the Company at the time of such request if the Buyer desires the Company to effect insurance to cover any loss or damage arising out of such storage despatch or dealing in order that the Company may effect its own insurance and the cost thereof shall be added to the contract price and if no such notice is given then the Buyer shall not be entitled to raise any claim arising out of any loss or damage during such storage despatch or such other dealing.

(iii) The Buyer shall carefully examine the Goods on receipt of the same and shall be written notice to be received by the Company within 7 days of receipt of the Goods notify the Company of any short delivery, over delivery or any defects reasonably discoverable on careful examination. In the absence of receipt of such notice the Company shall be discharged from all liability in respect of such defects or short or over delivery.

(iv) If the Buyer neglects to serve notice under sub-paragraph (iii) above or any over delivery then the Company may at its option either repossess the excess Goods or invoice them and be paid forthwith by the Buyer for the excess Goods at the price ruling at the date of delivery.

7. TIME FOR AND FROM DELIVERY -

(i) The Company will use reasonable commercial endeavours to deliver the Goods in accordance with any time stated by it but any time stated for delivery is an estimate only and does not form part of the contract.

(ii) (a) if the contract does not otherwise provide the Company shall be entitled to deliver Goods by single delivery or by instalments at its option.
(b) If the contract provides for delivery by instalments or the Company so elects each instalment shall be deemed to be the subject of a separate contract on these conditions and without prejudice to sub-paragraph (i) hereof non-delivery or delay in delivery shall not affect the balance of the contract nor entitle the Buyer to terminate the same.

(iii) In the event that the Goods shall not have been collected by or on behalf of the Buyer or by a carrier for despatch to the Buyer within 7 days of the Company's written notice pursuant to paragraph 6(i)(b) hereof then the Company may at any time thereafter sent to the Buyer a further notice notifying the Buyer of the Company's intention to sell the same after the expiration of a period of not less than 7 days from the date of the notice and any such sale by the Company may be on a forced sale basis. The Buyer shall be liable for the Company's charges and expenses for the sale and for the storage of the Goods (which shall be at the risk of the Buyer) pending their sale hereunder or delivery to the Buyer.

8. PERFORMANCE PREVENTED OR HINDERED - The Company shall not be liable for any delay or failure in carrying out its obligations which is caused wholly or partly by reason of act of God, delay in transportation, labour disputes, fire, flood, war, accident, Government action, inability to obtain adequate labour, materials, manufacturing facilities or energy, or any other cause beyond the Company's control or that of its servants or agents, and if the delay or failure has continued for a period of 3 months then either party may give notice in writing to the other determining the contract and on such termination the Company shall refund to the Buyer the price of the Goods or any part thereof after deduction of any amount due to the Company including any amount under paragraph 21 hereof.

9. PAYMENT

(i) Unless expressly agreed in writing payment shall be made in sterling without any deduction or deferment on account of any disputes or cross claims whatsoever by the end of the month following the month in which the invoice is dated. Where full payment is not received by the due date interest shall accrue on the sum outstanding at the rate of 2% per month calculated on a daily basis but without prejudice to the Company's rights to receive payments on the due dates.

(ii) Time for payment shall be of the essence and in the event of delay or default in any payment for more than 7 days, the Company shall be entitled to suspend deliveries and/or treat the contract as repudiated and/or re-sell any of the Goods in its possession and be indemnified by the Buyer for any loss thereby incurred.

(iii) In the absence of satisfactory references or in cases of default in complying with the said terms of payment under sub-paragraph (i) above the Company shall be entitled to render pro-forma invoices based on its current price lists to be paid by the Buyer before delivery and the Buyer shall pay to the Company on demand any difference between such prices and prices current at the date of delivery.

(iv) If the Company incurs costs of whatever nature in collecting monies due to it from a Buyer on an invoice, the Buyer shall pay to the Company the full amount of such costs

10. PROPERTY IN GOODS - Until full payment has been made of the price of the Goods and of any other sums whatsoever which are or may become outstanding from the Buyer to the Company, whether accrued due or not and whether under this contract or howsoever otherwise and including debts and liabilities arising before and after the date of the contract.

(i) The property in the goods shall not pass to the Buyer and the buyer shall keep the goods as bailee for the Company (returning the same to the Company upon request.)

(ii) The Buyer shall be at liberty to sell the Goods in the ordinary course of business in the name of the Buyer and as principal and not as agent for the Company notwithstanding the fact that title to the Goods has not then passed to the Buyer but the benefit of any such contract or sale and the proceeds of any such sale shall belong to the Company absolutely.

(iii) The Buyer shall keep and safely store the Goods separately and in such manner that they can be readily identified as the property of the Company

(iv) In the event of the determination or repudiation of the contract (howsoever occurring) the Company is hereby irrevocably authorised to enter on to the premises of the Buyer and repossess the Goods and any other goods in the Buyer's possession the property in which is vested in the Company.

(v) The Buyer will keep the Goods free from and will indemnify the Company against any charge, lien or other encumbrance thereon.

11. LIEN -

(i) Notwithstanding that credit may have been given to the Buyer under the contract the Company shall in its discretion be entitled to retain possession of the Goods or any part thereof until payment for the Goods or parts thereof has been received in full.

(ii) Without prejudice to any right which the Company may have the Company shall be entitled to exercise a general lien or right of retention on all goods or any parts thereof in the Company's possession which are or are intended to become the Buyer's property in regard to all debts, damages or other sums due to the Company under any contract whatsoever between the Company and the Buyer and pursuant to such lien or right the Company shall be entitled without notice to the Buyer to sell all or any part of such goods or part thereof privately or by auction or otherwise and to keep the proceeds in diminution of such debts, damages and sums and of all costs and expenses incurred in and about effecting the sales.

12. QUALITY, CONDITION AND DESCRIPTION OF GOODS AND SERVICES -

(i) The Company warrants that products, parts or materials manufactured by it will be of good materials and workmanship and that reasonable care will be employed in assembling or incorporating items not manufactured by it and in performing services so that upon the Buyer giving written notice to the Company that Goods have not been supplied or services performed as aforesaid if the same be established and provided the Buyer has not tampered with the Goods the Company will at its own expense at its option replace or repair such defective goods or remedy such defaults in service.

(ii) The same term shall apply mutatis mutandis, in respect of such replacement, repair or remedial services.

(iii) The above warranty shall apply in respect of matters whereof the Buyer gives written notice within 12 months of delivery or performance or of replacement repair or remedial services respectively after which any claim in respect thereof shall be absolutely barred.

(iv) Such replacement repair or remedial services will be the absolute limit of the Company's liability and the Company will not be liable in any circumstances whatsoever for loss or damage of any kind suffered by the Buyer or by any third party howsoever caused unless the same shall relate to personal injury or death and only then if the same shall arise out of the Company's negligence. Save as aforesaid the Company shall be under no liability whatsoever in regard to goods or services or replacement repair or remedial services whether manufacture or performance be by itself or of any other persons and any condition or warranty which might otherwise be implied or incorporated by the contract or by reason of Statute or Common Law is hereby excluded.

(v) Without prejudice to the foregoing if called upon so to do by the Buyer in writing the Company shall use its best endeavours to assign to the Buyer the benefits of any warranty, guarantee, indemnity, claim, privilege or other rights which the Company may have in regard to manufacturers or suppliers of any goods not manufactured by the Company in relation to the quality, condition or description of such goods.

13. OPERATING INSTRUCTIONS - The Buyer undertakes that all necessary steps will be taken to ensure that the Goods will be safe and without risk to health when properly used in accordance with Clause 6(8) of the Health and Safety at Work Etc. Act 1974.

14. DRAWINGS, SPECIFICATIONS ETC. - All descriptions, drawings, illustrations, particulars of weights and measures rating standard statements or details or specifications or other descriptive matter, whether or not contained in the contract document, are approximate only. The Goods will be in accordance with the Company's specification at the time of manufacture and any earlier specifications, drawings, descriptions, illustrations, particulars as to weights and measures rating standard statements or details shall not form part of the description of the parts or services supplied or to be supplied so that the Company shall not be under any liability in respect thereof.

15. PATENTS - The sale by the Company of the Goods shall not convey to the Buyer any licence or right to use any inventions, letters, patent, copyright registered designs or trade marks owned or controlled by the Company except to the extent that one or more of such inventions, letters patent registered designs or trade marks may be embodied in the Goods.

16. TRADE MARKS - The Buyer agrees not to alter or remove any trade mark of the Company which has been applied to the Goods nor to apply to the Goods any other trade mark nor before any resale of the Goods to make any alteration to their state, condition, get-up or packing.

17. INDEMNITY - The Buyer shall indemnify the Company against all actions claims or demands by Third Parties whether in tort or otherwise howsoever arising directly or indirectly in connection with the use, functioning or state of the Goods or in connection with the performance of services.

18. LIMITATION - The Company shall in no circumstances be liable.

(i) for any consequential or special loss or damage or claim by the Buyer including without limitation, delay, detention, loss, of production, loss of profit, loss of time, charges or liability to third parties.

(ii) for any loss or damage in excess of the contract price or in the case of a defect in a part only then the cost of manufacture of such part and these limitations will apply even in the case of breach of a fundamental term or repudiation by the Company and even if further performance of the contract is frustrated.

(iii) for any loss or damage covered by insurance or which would ordinarily be covered by insurance.

19. SUB-CONTRACTING - The Company shall be entitled to sub-contract or assign all or any of its obligations hereunder.

20. DETERMINATION - If the Buyer shall make default in or commit a breach of the contract or of any of his obligations to the Company or if any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the Buyer is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of such company's undertaking, property or assets or any part thereof shall be appointed, the Company shall have the right forthwith to determine any contract then subsisting and upon written notice of such determination being given to the Buyer any subsisting contracts shall be deemed to have been determined and the Company shall be entitled to recover from the Buyer all losses thereby arising including but not limited to those under paragraph 21 of these conditions or otherwise.

21. PARTIAL COMPLETION - In the case of partial completion of an order by reason of any of the events referred to in paragraphs 8 or 18 of these conditions the Company shall be entitled to a quantum meruit in respect of all work done by it without prejudice to its rights should non-completion be occasioned by the Buyer.

22. NOTICE - Unless otherwise provided in writing any written communication or notice under the contract shall be made or given by sending the same by ordinary prepaid first class letter post in the case of the Company to its current address and in the case of the Buyer to his last known address and if so sent shall be deemed to be made or given two days after the date when posted.

23. LAW AND INTERPRETATION - The contract shall be governed by English Law and the Buyer shall submit to the non exclusive jurisdiction of the English Courts. If any of these conditions or any part thereof is rendered void or unenforceable by any legislation which is subject or by any rule of law it shall be void or unenforceable to that extent and no further.