

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Acknowledgement of Order: the acknowledgement of order sent by the Company to the Buyer under condition 2.5.

Buyer: the person, firm or company who purchases the Goods from the Company.

Company: BGB Engineering Limited (registered in England under Number 2107467).

Company Materials: all materials, documents, designs, drawings, specifications and other property of the Company relating to the Goods (**Company Materials**)

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4. **Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Buyer and the Company.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and **Intellectual Property Right** means any one of the Intellectual Property Rights.

- 1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.3 Words in the singular include the plural and in the plural include the singular.

- 1.4 A reference to one gender includes a reference to the other gender.

- 1.5 Condition headings do not affect the interpretation of these conditions.

- 1.6 A reference to writing or written includes faxes and e-mails.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the authorised representatives of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written Acknowledgement of Order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an Acknowledgement of Order to the Buyer. Any quotation is valid for a period of 90 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate

idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

- 3.3 The Company reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 The Goods shall be delivered to the Buyer's place of business or to such other place as is agreed in the Acknowledgement of Order by the Company

- 4.2 The Company shall deliver the Goods to the Buyer within 7 days of the delivery date set out in the Acknowledgement of Order.

- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice unless otherwise agreed by the Company in the Acknowledgement of Order. If no dates are so specified, delivery shall be within a reasonable time.

- 4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

- 4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

- 4.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.

- 4.7 If the Company delivers to the Buyer a quantity of Goods of up to 10 % more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;

- (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Goods.

- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. INTELLECTUAL PROPERTY

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and the design of the Goods shall unless otherwise explicitly agreed in writing by the Buyer and the Company be owned by the Company.
- 7.2 The Company will upon request by the Buyer consider the granting of a non-exclusive royalty free licence in the Company's standard written form for use of the Intellectual Property in the Goods by the Buyer subject to the payment in full of all outstanding invoices, which relate to this Contract.
- 7.3 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods, the Buyer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Buyer.
- 7.4 All Company Materials are the exclusive property of the Company and such Company Materials shall be kept and maintained at the Buyer's premises in safe custody at its own risk, in good condition until returned to the Company, the Buyer shall not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and
- 7.5 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company

in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Goods Specification.

- 7.6 The Company reserves the right to make further use of Intellectual Property Rights in the Goods, without agreement from the Buyer and will make reasonable efforts to ensure third party Intellectual Property Rights are not infringed in doing so. However, the Company does not warrant that its designs do not infringe the Intellectual Property Rights of third parties.
- 7.7 The Company shall not be liable to the Buyer for any infringement of Intellectual Property Rights in the manufacture and supply of its Goods to the Buyer, including but not limited to patent, copyright or registered design infringement.
- 7.8 This clause 7 shall survive termination of the Contract between the Buyer and the Company and shall apply to the extent allowable by law.

8. PRICE

- 8.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Acknowledgement of Order published on the date of delivery or deemed delivery.
- 8.2 The price for the Goods shall, unless otherwise stated in the Acknowledgment of Order, be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

9. PAYMENT

- 9.1 Subject to condition 9.4, payment of the price for the Goods is due in the currency stated in the Acknowledgement of Order or, if not stated, in pounds sterling on the last working day of the month following the month in which the Goods are invoiced.
- 9.2 Time for payment shall be of the essence.
- 9.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 9.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

- 9.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 9.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.7 In the event that payment is not made for the Goods by the Buyer on time in accordance with this condition 9 then the Company shall be entitled to terminate any other Contract it has with the Buyer at such time and shall have no further obligation to deliver any Goods under any other Contract it may have with the Buyer and the Company shall not be liable for any damages to the Buyer under such Contract for any failure to deliver such Goods.

10. QUALITY

- 10.1 Where the Company is not the manufacturer of the Goods, the Company shall use reasonable endeavours to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 10.2 The Company warrants that (subject to the other provisions of these conditions) on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 10.3 The Company shall not be liable for a breach of the warranty in condition 10.2 unless:
- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there.
- 10.4 The Company shall not be liable for a breach of the warranty in condition 10.2 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or

- (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the Buyer alters or repairs such Goods without the written consent of the Company; or
 - (d) the defect arises as a result of fair wear and tear, wilful damage or abnormal working conditions.
- 10.5 Subject to conditions 10.3 and 10.4, if any of the Goods do not conform with the warranty in condition 10.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, return the Goods or the part of such Goods which is defective to the Company.
- 10.6 If the Company complies with condition 10.5 it shall have no further liability for a breach of any of the warranties in condition 10.2 in respect of such Goods.
- 10.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 10.2.
- 11. **LIMITATION OF LIABILITY THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 11.1 Subject to condition 4, condition 5 and condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
 - (a) any breach of these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these conditions excludes or limits the liability of the Company:
 - (a) for death or personal injury caused by the Company's negligence; or
 - (b) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (c) for fraud or fraudulent misrepresentation.

- 11.4 Subject to condition 11.2 and condition 11.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - (b) the Company shall under no circumstances whatever be liable to the Buyer whether in Contract, tort (including negligence) breach of statutory duty or otherwise for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential loss arising under or in connection with the Contract.

11.5 This clause 11 shall survive termination of the Contract.

12. ASSIGNMENT

- 12.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 12.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14. TERMINATION

- 14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving Written Notice to the other party if:
- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
 - (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than

(where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (d) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (g) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(b) to clause 14.1(i) (inclusive);
- (j) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (k) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

14.2 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.

14.3 Without limiting its other rights or remedies, the Buyer shall have the right to suspend the further deliveries of Goods under the Contract or any other contract between the Buyer and the Company if:

- (a) the Buyer fails to make pay any amount due under this Contract on the due date for payment; or

- (b) the Buyer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(k), or the Company reasonably believes that the Buyer is about to become subject to any of them.

14.4 On termination of the Contract for any reason:

- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- (b) the Buyer shall return all of the Company Materials. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 15 shall survive termination of the Contract.

16. GENERAL

16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

17. COMMUNICATIONS

- 17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or by e-mail:
- (a) (in case of communications to the Company) to its registered office or such changed address or e-mail address as shall be notified to the Buyer by the Company; or
 - (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address or e-mail address as shall be notified to the Company by the Buyer.
- 17.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery;
 - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or
 - (d) if sent by e-mail on delivery.
- 17.3 Communications addressed to the Company shall be marked for the attention of the sales, quality and design department of BGB Engineering, Dysart Road, Grantham, Lincolnshire NG31 7NB.