



## TERMS AND CONDITIONS OF SALE

This Agreement is made between Mechan Limited a company registered in England and Wales with company number 00947728 whose registered office is at Building Number 5, Davy Industrial Park, Prince Of Wales Road, Sheffield, England S9 4EX (**Company**) and the firm or company named as the customer in the purchase order (**Customer**).

### 1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Acceptance:	the acceptance of the purchase order appearing overleaf signed by the Customer.
Business Day:	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
Commencement Date:	the date of the Contract appearing in the purchase order.
Company's Premises	Building Number 5, Davy Industrial Park, Prince Of Wales Road, Sheffield, England S9 4EX or any other premises occupied by the Company in connection with its business.
Contract:	the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Terms.
Delivery:	completion of delivery of the Goods in accordance with clause 3.4.
Delivery Address:	the address specified for the Delivery in the purchase order (if not collected from the Company's Premises).
Estimated Delivery Date:	the estimated delivery date specified in the purchase order, as for the Delivery of Goods in accordance with clause 3.
Goods:	the goods (and each of them) set out in the purchase order.
Price:	the price for the Goods and/or Services appearing in the purchase order (together with any applicable VAT,

transport and delivery costs) in accordance with clause 7.

Services: the services set out in the purchase order.

Specification: any agreed specification or performance requirements of the Goods and/or Services brief particulars of which appear in or are referred to in the purchase order.

Terms: the terms and conditions set out in this document as amended from time to time in accordance with this Contract.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to one gender shall include a reference to the other genders.

1.6 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of this agreement and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of this agreement.

1.7 A reference to writing or written includes e-mail.

1.8 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## **2. BASIS OF CONTRACT**

These are the Terms on which the Company will supply the Goods and/or Services to the Customer, which are described in the purchase order. These Terms are binding on the Customer and the Company when the Customer signs the Acceptance, at which point the Contract will come into existence between the Customer and the Company.

### **3. SUPPLY OF THE GOODS**

- 3.1 The Company shall supply and the Customer shall purchase the Goods at the Price in accordance with the Terms of this agreement.
- 3.2 The Goods supplied to the Customer by the Company under this agreement shall:
- 3.2.1 conform to the Specification;
  - 3.2.2 be free from defects in design, material and workmanship and remain so for a minimum of 12 months from the date of Delivery of the Goods, or 15 months from notification of readiness to deliver, whichever is the sooner in accordance with clause 12.1; and
  - 3.2.3 comply with all applicable statutory and regulatory requirements.
- 3.3 Except as set out in this agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 3.4 The Company shall deliver the Goods to the Customer as follows:
- 3.4.1 at the Company's Premises at any time after the Company has notified the Customer that the Goods are ready for collection by the Customer or its designated carrier or agent;
  - 3.4.2 if some other place for Delivery is agreed as the Delivery Address, by the Company delivering the Goods to such address;
  - 3.4.3 upon the placing of the Goods in storage facilities either at the request of the Customer or due to its failure or refusal to accept Delivery; or
  - 3.4.4 upon consignment of the Goods by the Company to the Post Office at the request of the Customer for Delivery in the normal course of post.
- 3.5 Non-delivery of the Goods shall be notified to the Company within 7 days of the date of dispatch as indicated by the Company.
- 3.6 The Company and (where relevant) the carriers must be notified within 3 days of the date of Delivery of any damage or shortage and the Customer must retain for inspection any damaged Goods and packaging.
- 3.7 The Company may deliver the Goods by instalments. Each instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

3.8 The Goods may be delivered by the Company in advance of any specified date of Delivery upon giving reasonable notice to the Customer.

3.9 Delays in the Delivery of the Goods shall not entitle the Customer to:

3.9.1 refuse to take Delivery of the Goods;

3.9.2 claim damages; or

3.9.3 terminate this agreement.

For the avoidance of doubt, it is agreed that time for Delivery shall not be of the essence unless it has been stated to be so in the purchase order. Whilst the Company will use reasonable endeavours to deliver the Goods, there may be delays due to a Force Majeure Event. See clause 14 for the Company's responsibilities when a Force Majeure Event happens.

3.10 If Delivery is to take place at the Company's Premises and the Customer fails to take Delivery of the Goods within five Business Days of the Company notifying the Customer that the Goods are ready for collection then, except where such failure or delay is caused by the Company's failure to comply with its obligations under this agreement:

3.10.1 Delivery of the Goods shall be deemed to have been completed at 9.00am on the fifth Business Day following the day on which the Company notified the Customer that the Goods were ready for collection; and

3.10.2 the Company shall store the Goods until Delivery takes place, and may charge the Customer for all related costs and expenses (including insurance).

3.11 If the Customer shall fail to take Delivery of the Goods within 28 days of notification that they are ready for Delivery the Customer shall forfeit any deposit paid to the Company and the Company shall have the right to:

3.11.1 sell, dispose of or otherwise deal with the Goods and the Customer shall be liable to the Company for all loss (including loss of profits) or damage which the Company shall suffer in consequence of the Customer's failure to take Delivery of the Goods or of such sale; and

3.11.2 account to the Customer for any excess over any such liability.

#### **4. TITLE AND RISK**

Title and risk in the Goods shall pass to the Customer from the time of Delivery.

## **5. DESIGN AND SPECIFICATION**

- 5.1 Any drawings, weights, dimensions, shipping specifications and other descriptive matters are approximate unless specified otherwise in the purchase order.
- 5.2 The Company shall have the right to make any changes to the Specification which is necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods and/or Services, and the Company shall notify the Customer in any such event.

## **6. SERVICES**

- 6.1 The Company shall supply the Services to the Customer in accordance with the purchase order in all material respects.
- 6.2 The Company shall undertake the Services using reasonable care and skill, as soon as reasonably practicable. Any dates proposed are estimated only. Whilst the Company will make every effort to complete the Services as quickly as reasonably possible, there may be delays due to a Force Majeure Event. See clause 14 for the Company's responsibilities when a Force Majeure Event happens.
- 6.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.

## **7. PRICE AND PAYMENT**

The Customer shall pay the Company the Price of the Goods and/or Services specified in the purchase order at agreed stages as specified in the purchase order, or within 30 days of the invoice date (**Payment Deadline**). If the Customer fails to make such payment by the Payment Deadline, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. The time for payment of the Price of the Goods and/or Services under the Contract shall be of the essence of the Contract.

## **8. THE COMPANY'S RIGHTS TO CANCEL AND APPLICABLE REFUND**

The Company may cancel the Contract for Goods and/or Services at any time by giving the Customer 30 day's written notice if the Customer breaks the Contract in any material way.

## **9. THE CUSTOMER'S RIGHTS TO CANCEL AND APPLICABLE REFUND**

- 9.1 The Customer has the following rights to cancel the Contract for Goods and/or Services, including where the Customer chooses to cancel because the Company is affected by a Force Majeure Event, the Customer may cancel this Contract at any time before the Company dispatches the Goods or the start date for the Services.
- 9.2 If the Customer so cancels this Contract, the Company will refund any prepayment for Services that have not been provided to the Customer, or Goods that have not been delivered to the Customer (including delivery charges).
- 9.3 However, if the Customer cancels this Contract after the Company has started work, the Customer must pay to the Company any costs reasonably incurred in starting to fulfil the Contract, and this charge will be deducted from any refund that is due to the Customer or, if no refund is due to the Customer, invoiced to the Customer. These charges will not apply where the Customer cancels this Contract because of the Company's breach.
- 9.4 Once the Company has begun to supply the Goods and/or Services to the Customer, the Customer may only cancel the Contract by giving the Company written notice if:
- 9.4.1 the Company breaks this Contract in any material way;
  - 9.4.2 the Company goes into liquidation or a receiver or an administrator is appointed over the Company's assets; or
  - 9.4.3 the Company is affected by a Force Majeure Event.
- 9.5 If the Customer has any questions or complaints, the Customer shall contact the Company by writing to it at its registered address specified on page 1, by calling 0114 2570563 or by e-mailing the Company at [info@mechan.co.uk](mailto:info@mechan.co.uk).

## **10. CONSEQUENCES OF TERMINATION**

- 10.1 Except where expressly stated to the contrary, the rights and obligations of the parties under the Contract will cease immediately upon expiry or termination of the Contract. However, expiry or termination will not affect any accrued rights, obligations or liabilities.
- 10.2 On expiry or termination of the Contract, the Company will return any keys or other property of the Customer which has been provided to it in connection with the Goods and/or Services.

- 10.3 If the Company has any legal obligation or duty to continue providing any of the Goods and/or Services for any period of time after termination of the Contract, the Customer shall be liable to continue to accept and pay for those Goods and/or Services in accordance with the Terms of the Contract.
- 10.4 The following conditions of these Terms shall survive expiry or termination of the Contract for whatever reason:
- 10.4.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of the Goods and/or Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 10.4.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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
  - 10.4.3 clauses which expressly or by implication survive termination shall continue in full force and effect.

## **11. INDEMNITY**

- 11.1 The Company shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods.
- 11.2 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

## **12. RETURNS AND WARRANTY FOR THE GOODS**

- 12.1 The Company will provide a warranty that on Delivery and for a minimum period of 12 months from the date of Delivery (or 15 months from notification of readiness to deliver, whichever is the sooner) the Goods shall be free from defects in design, material and workmanship. However, this warranty does not apply in the circumstances described in clause 12.2.
- 12.2 The warranty in clause 12.1 does not apply to any defect in the Goods arising from:
- 12.2.1 fair wear and tear, including parts;

- 12.2.2 wilful damage, abnormal storage or working conditions, accident, negligence by the Customer or by any third party;
  - 12.2.3 misuse or alteration or repair of the Goods without the Company's approval;
  - 12.2.4 the Customer failing to operate or use the Goods in accordance with the user instructions supplied by the Company;
  - 12.2.5 the Customer failing to notify the Company promptly upon discovery, and for defects that would have been evident on Delivery, within 2 months of the Delivery of the Goods to the Customer, or which is so slight that it would be unreasonable for the Customer to reject the Goods or claim damages for the defect;
  - 12.2.6 any design or specification supplied by the Customer; or
  - 12.2.7 any alteration or repair by the Customer or by a third party who is not one of the Company's authorised repairers.
  - 12.2.8 any production downtimes or consequential loss
- 12.3 Where any valid claim in respect of any of the Goods is based on any defect in the quality or condition of the Goods or their failure to meet the Specification is notified to the Company in accordance with these Terms, the Company shall be entitled to replace the Goods (or the part or parts in question) free of charge or, at the Company's sole discretion, to refund to the Customer the Price (or a proportionate part of the Price), but the Company shall have no further liability to the Customer.
- 12.4 The Company's liability to the Customer is limited to the repair of the defective Goods at the manufacturer's work or supply of spare parts for the Customer to fit. If replacement parts are supplied for the Customer to fit, then the defective parts must be returned to the Company or the Customer will be liable for the value of those parts supplied at full list price. In any case, if parts are found not to be defective when returned and tested at the manufacturer's works, the Customer will be liable for the value of those parts, including the costs of delivery, at full list price (without deduction or discount).
- 12.5 The warranty is conditional upon the end client keeping an approved maintenance log that includes all scheduled servicing and any equipment incident reports. Mechan is to have full, open access to the maintenance log upon request. Maintenance of the equipment must be carried out in accordance to the O+M manual. Please refer to clause 10 of Mechan's terms and conditions of sale for further clarification.



### **13. LIMITATION OF LIABILITY**

13.1 The Company only supplies the Goods for use by the Customer, and the Customer agrees not to use the Goods for any resale purposes.

13.2 Nothing in these Terms limits or excludes the Company's liability for:

13.2.1 death or personal injury caused by the Company's negligence;

13.2.2 fraud or fraudulent misrepresentation;

13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);

13.2.4 defective products under the Consumer Protection Act 1987; and

13.2.5 the indemnity contained in clause 11.

13.3 Subject to clause 13.2, the Company will under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

13.3.1 any loss of profits, sales, business, or revenue;

13.3.2 loss or corruption of data, information or software;

13.3.3 loss of business opportunity;

13.3.4 loss of anticipated savings;

13.3.5 loss of goodwill; or

13.3.6 any indirect or consequential loss.

13.4 Subject to clause 13.2, the Company's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price of the Goods or the price of an individual component of the Goods which proves to be faulty and can be replaced.

13.5 Except as expressly stated in these Terms, the Company does not give any representation, warranties or undertakings in relation to the Goods. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, the Company will not be responsible for ensuring that the Goods are suitable for the Customer's purposes.

### **14. FORCE MAJEURE**

14.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this agreement so long as and

to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event. A Force Majeure Event is defined below in clause 14.3.

14.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:

14.2.1 notify the other party of the nature and extent of such Force Majeure Event; and

14.2.2 use all reasonable endeavours to remove any such causes and resume performance under this agreement as soon as feasible.

14.3 A **Force Majeure Event** means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

## 15. **ARBITRATION**

If at any time in question, dispute of difference whatsoever shall arise between the Contractor and the Customer upon, in relation to, or in connection with the Contract or the rights and obligations of the parties or as to any claim of damages by the one party against the other arising there from either party may give to the other notice in writing of the existence of such question, dispute of difference and the same shall thereupon be referred for decision under the Arbitration Act 1996, or any statutory modification or extension thereof to the decision of a person to be mutually appointed as Arbiter and the awards, interim or final, of any such person so appointed or nominated shall be final and binding upon the parties.

## 16. **INSURANCE**

It is agreed this Contract shall not in any way be construed as a contract for insurance against accident or damage.

## 17. **SEVERANCE**

17.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **18. VARIATION AND WAIVER**

18.1 Any variation of this agreement must be in writing and signed by or on behalf of the parties.

18.2 Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

18.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy.

18.4 No single or partial exercise of any right or remedy under this agreement shall prevent or restrict the further exercise of that or any other right or remedy.

## **19. NOTICES**

19.1 A notice served under this agreement shall be signed by or on behalf of the party giving it, shall be sent for the attention of the person, and to the address given in this clause 19 and shall be sent by pre-paid first-class post or recorded delivery.

19.2 The addresses for service of notice are:

19.2.1 The Company: the Company's Premises

19.2.2 The Customer: the Delivery Address appearing in the purchase order

19.3 A notice or any other communication given in connection with this agreement is deemed to have been received at 9.00 am on the second Business Day after posting. To prove delivery, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

## **20. ENTIRE AGREEMENT**

20.1 This Contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

- 20.2 Each party acknowledges that, in entering into this agreement, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in this agreement.
- 20.3 Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in this agreement.
- 20.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **21. RIGHTS OF THIRD PARTIES**

No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

## **22. GOVERNING LAW AND JURISDICTION**

- 22.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).