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UNICOL Engineering - Conditions of Sale

1. Interpretation.

1.1 In these conditions: **'Buyer'** means the person who accepts a quotation of the seller for the sale of Goods or whose order for the Goods is accepted by the Seller. **'Goods'** means the goods (including any installation of the goods or any part of them) which the Seller is to supply in accordance with these Conditions including Goods used in the performance of the Services. **'Services'** means all work carried out by the Seller which the Seller is to supply in accordance with these conditions. **'Article'** means any article owned or usually in the possession of the Buyer on which the Seller has or is to perform Services. **'Seller'** means UNICOL Engineering (registered in England under number 1988697). **'Conditions'** means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller. **'Contract'** means the contract for the purchase and sale of the Goods and/or Services. **'Writing'** includes all electronic means of communication.

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

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

2. Basis of the Sale.

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written or oral order of the Buyer which is accepted by the Seller, subject in either case to these conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Seller in Writing.

In entering into the contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

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

2.5 Goods supplied in good faith may, if returned, be subject to a restocking charge.

3. Order and Specifications.

3.1 No order submitted by the Buyer shall be deemed to be accepted unless and until confirmed in Writing by the Seller's authorised representative or unless the Seller shall execute the order without confirmation in Writing.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller or Services are to be performed in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs, and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other persons which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods and/or Services which are



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required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied or the Services performed to the Seller's specifications, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Goods and/or Services.

4.1 The price of the Goods and/or Services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the Seller's usual selling price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), and change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods or any Article otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

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

4.5 The cost of pallets and returnable containers will be charged to the buyer in addition to the price of the Goods, but full credit will be given to the buyer provided they are returned undamaged to the Seller.

4.6 On the sale of Goods by the Seller to the Buyer on an exchange basis where the Buyer has not delivered the Goods to be exchanged at the time of the sale the Seller shall be entitled to charge a surcharge in respect of the Goods but full credit will be given to the buyer provided the buyer delivers the goods to be exchanged to the seller within 14 days of the date of sale.

5. Terms of Payment.

5.1 Unless the buyer has credit terms agreed in writing which are still valid and effective with the Seller, payment for the Goods and/or Services shall be by cash, bank transfer, credit or debit card, bankers draft or cleared cheque drawn on a United Kingdom clearing bank delivered to the Seller on or before the delivery of the Goods to the buyer or the return of any Article.

5.2 If the Seller has so provided in its quotation that it shall be entitled to render interim invoices in respect of the Goods and or Services then the Seller shall at its option render an invoice at the end of each month in respect of the Goods and/or Services supplied or carried out in the previous month and such invoices shall be payable by the Buyer in accordance with clause 5.4 notwithstanding the Contract shall not be completed at such time.

5.3 If the Buyer has credit terms agreed in Writing with the Seller which are still valid and effective the Seller shall be entitled to invoice the Buyer for the price of the Goods and/or Services unless the Goods or any Article are to be collected by the buyer and the Buyer wrongfully fails to take delivery of the Goods or any Article in accordance with clause 6.5 hereof in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods or any Article are ready for collection or (as the case may be) the Seller has tendered the delivery of the Goods or any Article.

5.4 Where an invoice has been rendered in accordance with clause 5.2 or clause 5.3 the buyer shall pay the price of the Goods and/or Services at the end of the calendar month next following the date of invoice and the Seller shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer or that any Article remains in the possession of the Seller. The time of payment



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of the price shall be of the essence of the contract. Receipts for payment will only be issued only upon request.

5.5 If the buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:

5.5.1 Cancel the contract or suspend any further deliveries to the buyer.

5.5.2 Appropriate any payment made by the buyer to such of the Goods and /or Services (or the Goods and/or Services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer; and

5.5.3 Charge the Buyer interest (both before and after any Judgment) on the amount unpaid at the rate after any Judgment) on the amount unpaid at the rate of five per cent per annum above Lloyds TSB Bank Plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery.

6.1 Delivery of the Goods or any Article shall be made by the Buyer collecting the Goods or any Article at the Seller's premises at any time after the Seller has notified the Buyer that the Goods or any Article are ready for collection or if some other place for delivery is agreed by the Seller by the Seller delivering the Goods or any Article to that place.

6.2 Any date quoted for delivery of the Goods or performing the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or the performance of the Services howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods or any Article may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are delivered in installments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the contract as a whole as repudiated.

6.4 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 to replace those not delivered over the price of the Goods.

6.5 If the buyer fails to take delivery of the Goods or any Article or fails to give the Seller adequate delivery instructions at the time stated for delivery within twenty eight days of being notified by the Seller that the Goods or any Article are ready for collection otherwise than by reason cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:-

6.5.1 Store the Goods or any Article until actual delivery and charge the Buyer for the reasonable costs not being less than £10.00 per day (including insurance) of storage; or

6.5.2 Sell the goods or any Article at the best price reasonably obtainable and (after deducting all reasonable storage and selling expenses) account to the buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Risk and Property.

7.1 Risk of damage to or loss of the Goods or any Article shall pass to the Buyer:

7.1.1 In the case of Goods or any Article to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods or any Article are available for collection; or

7.1.2 In the case of Goods or any Article to be delivered otherwise than at the Seller's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods or any Article the time when the Seller has tendered delivery of the Goods or any Article.

7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer the buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the buyer and third parties and properly stored, protected and insured and identified as the Seller's property.



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7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been re-sold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

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

8. Warranties and Liability.

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery.

8.2 Subject to the conditions set out below following the provision of certain Services the Seller shall provide a warranty document in its standard form a copy of which is available on request. The Seller will in its quotation confirm that the Services qualify for such warranty and the extent of the application of the warranty.

8.3 The above warranties are given by the Seller subject to the following conditions:

8.3.1 The Seller shall be under no liability in respect of any defect in the Goods and/or Services arising from any drawing design or specification supplied by the Buyer;

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

8.3.3 The Seller shall be under no liability under the above warranties (or any other warranty condition or guarantee) if the total price for the Goods and/or services has not been paid by the due date for payment;

8.3.4 The above warranties do not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3.5 The above warranties shall not extend to Goods supplied as second hand.

8.4 Subject as expressly provided in these Conditions and except where the Goods and/or Services are sold to a person dealing as a consumer (within the meaning and limitations of the Unfair Contract Terms Act 1977 (amended 03) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

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

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

8.7 Where any valid claim in respect of any of the Goods and/or Services which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods or re-perform the Services (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods and/or Services (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer PROVIDED THAT in any such case the Buyer shall be responsible for the costs incurred in transporting the Goods or any Article to the Seller and the costs of the return of transport to the Buyer.

8.8 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer or the performance of the Services except as expressly provided in



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8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods and/or Services if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control: - strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party).

9. Insolvency of Buyer.

9.1 This clause applies if:

9.1.1 The Buyer makes voluntary arrangement with its creditors or becomes subject to any administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or

9.1.3 The Buyer ceases or threatens to cease to carry on business; or

9.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to incur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer and if the Goods or any Article have been delivered but the price for the Goods and/or Services has not been paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Export Terms.

10.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.

10.2 Where the Goods are supplied for export from the United Kingdom the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions.

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

10.4 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered F.O.B. the air or seaport of shipment and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979 (amended).

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

10.6 The Buyer undertakes not to offer the Goods for resale in any other country at or before the time the Buyer's order is placed or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country without the prior consent to the Seller in writing.

11. General.

11.1 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 notice.

11.2 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.

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



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12. Resolution of Disputes.

12.1 Any dispute or difference between the parties arising out of or in connection with this agreement shall first be referred to mediation in accordance with the mediation procedures of A.D.R. Register Limited. The Mediator shall be agreed upon by the parties and failing such agreement within fifteen (15) days of one party requesting the appointment of a mediator and providing their suggestion therefore the mediator shall be appointed by the then President of the Berkshire, Buckinghamshire & Oxfordshire Law Society. Unless agreed otherwise the parties shall share equally the costs of the mediation. The use of mediation will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party and in particular either party may seek a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary to avoid irreparable damage.

12.2 Should the parties fail to reach agreement on their dispute or difference through the aforesaid mediation then the dispute or difference shall be referred to and finally resolved by Arbitration under the Rules of the Chartered Institute of Arbitrators which Rules are deemed to be incorporated into this clause.

12.3 The contract shall be governed by the laws of England.

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