

# ALCONBURY WESTON LIMITED

## TERMS OF BUSINESS (UK)

### 1. Contract Terms

- 1.1. Unless other terms and conditions are expressly accepted by Alconbury Weston Limited (the Seller) by means of a written amendment hereto signed by an authorised signatory of the Seller the contract will be on the terms and conditions set out below (the "Contract Terms") to the exclusion of any other terms and conditions (except those implied in favour of a Seller which are not inconsistent with the Contract Terms). Any Buyer's order, specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such order, specification or like document will have effect to the exclusion or amendment of the Contract Terms.
- 1.2. The Buyer hereby represents and warrants to the Seller that all of the statements (whether or not in writing) furnished by or on behalf of the Buyer to the Seller are and shall continue to be true and accurate and do not contain any mis-statement of fact or omit any material fact or any fact necessary to make any such information not misleading and that any other information provided to the Seller is true and accurate in all material respects and does not contain any material mis-statement of fact or omit any material fact or any fact necessary to make any such information not misleading.

### 2. Quotations and Orders

- 2.1. Any quotation is given on the basis that no contract will come into existence until the Seller despatches an acknowledgement of order to the Buyer.
- 2.2. Any quotation is valid for a period of 30 days only from its date provided that the Seller has not previously withdrawn it (unless stated otherwise in the quotation).
- 2.3. Each order placed with the Seller must be accompanied by sufficient information to enable the Seller to evaluate whether to accept the same and proceed to provide the Goods and Services so ordered.
- 2.4. The Seller's obligation to accept any order placed by the Buyer by telephone, e-mail, fax, telegram or telex is in all cases conditional upon receipt within 7 days of the date of the order, written confirmation of such order, the Buyer's order number and acknowledgement by the Buyer of acceptance of the Contract Terms a copy of which is available on the Sellers web site [www.a-w-l.co.uk](http://www.a-w-l.co.uk) and available to be sent out by the Seller on receiving the order.
- 2.5. The minimum value of order which can be accepted (excluding packing, delivery and VAT) is £50.00.
- 2.6. All Specifications, Drawings and Particulars of Weight and Dimensions submitted with a Quotation are approximate only, where tolerances are not shown. Descriptions and illustrations contained in Catalogues and other advertising materials area intended merely to present a general description and illustrations shall not form part of any Contract Terms.
- 2.7. The Seller's quotation is limited to the provision of the materials/services specified therein. If, after order acknowledgement, the scope of the material/design/labour content should at the request of the Buyer alter from the material/services specified therein, the following pricing/rates will apply after confirmation and a written amendment has been received and accepted.

- 2.7.1. Additional current standard components will be supplied and invoiced against the Seller's prevailing component price list. Special or third party components/materials will be supplied and invoiced against and after acceptance of a quotation. The original quoted/specified scope of material will be supplied and invoiced against the contract or cancellation charges will be advised and invoiced.

2.7.2. Any increase in labour content will be charged at an hourly rate to be agreed against timesheets or against and after acceptance of a written quotation.

2.7.3. Re-design will be charged at an hourly rate to be agreed.

2.7.4. In the event that changes are made in the equipment, materials or services to be supplied, and these changes cause delays such as to affect delivery, the Seller and the Buyer will mutually agree on a new schedule. When the Buyer requests a change, variation or amendment, the Seller will prepare a quotation as soon as is practical. Upon mutual agreement the cost increase or decrease shall be added to or subtracted from the contract price.

2.8. No changes, variations or amendments to the contract shall be binding unless stated in writing and signed by the Seller and the Buyer.

### 3. Delivery

3.1. The Seller will endeavour to deliver the Goods to be supplied under the contract (the "Goods" which expression includes any of them or any part of them) within the time agreed and if no time is agreed within a reasonable time, but in no circumstances will the Seller be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the delivery of the Goods, nor will any delay entitle the Buyer to terminate or rescind the contract.

3.2. The Seller may make delivery by instalments.

3.3. Delivery will be made ex the Seller's works and the contract price is calculated on that basis (unless stated otherwise in the quotation).

3.4. No claim for damage or shortages will be considered unless the Seller is advised in writing within 3 days of delivery in the absence of such advice the Buyer will be deemed to have accepted the Goods. No claim for non-delivery will be considered unless the Seller is advised in writing within 14 days of the date of the Seller's invoice. Any claim for damage, shortages or non-delivery shall also be notified to the carriers by the Buyer in the manner and within the appropriate time limit prescribed by the carriers' terms and conditions.

3.5. In the event of failure by the Buyer to give the appropriate notice or notices as specified in Clause 3.4, the Buyer's claim will be deemed to have been waived and will be absolutely barred.

### 4. Returned Goods

4.1. Only current standard components will be considered for return (without any obligation on the part of the Seller).

4.2. Acceptance for return of current standard components will be at the sole discretion of the Seller and will only be considered if unused and undamaged.

4.3. The Seller's offer for returned current standard components will be subject to quotation, with carriage and packing at the expense of the Buyer.

### 5. Guarantee and Exclusion Clauses

5.1. Where the Seller is not the manufacturer of the Goods, the Seller will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given by the manufacturer.

5.2. In respect of goods manufactured by the Seller, the Seller will free of charge within a period of 12 months from the

date of despatch repair in whole or in part or at its option, replace any Goods which are proved to the reasonable satisfaction of the Seller to be defective in material or workmanship provided that this obligation will not apply where:

- 5.2.1. the Goods have been altered in any way whatsoever or have been subjected to misuse or unauthorised repair without the Seller's prior approval; or
- 5.2.2. the Goods have been improperly installed or connected (unless the Seller carried out such installation and connection); or
- 5.2.3. the Buyer has failed to observe any maintenance requirements relating to the Goods; or
- 5.2.4. the Buyer has failed to notify the Seller of any defect or suspected defect within 14 days of the same coming to the knowledge of the Buyer; or
- 5.2.5. the Buyer is in breach of this or any other contract made with the Seller; or
- 5.2.6. the defective Goods have not been returned to the Seller carriage paid accompanied by a certificate that the Goods are clean and free from contamination.

Any Goods replaced will belong to the Seller. Any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the twelve month period.

5.3. Save as provided in clauses 5.1 and 5.2, the seller will be under no liability under the contract for any personal injury, death, loss or damage of any kind whatsoever (other than death or personal injury resulting from the Seller's negligence) whether consequential or otherwise including but not limited to loss of profits and the Seller hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which but for such exclusion would or might subsist in favour of the Buyer except that such exclusion will not apply to:

- 5.3.1. Any implied condition that the Seller has or will have the right to sell the Goods when the property is to pass; or
- 5.3.2. When the Buyer deals as a consumer (as defined in section 12 of the unfair contract terms act 1977), any implied term relating to the conformity of the Goods with their description or sample or as to their quality or fitness for a particular purpose.

5.4. In no circumstances will the Seller or its employees, agents or sub-contractors be liable for any loss or damage of any kind whatsoever (other than death or personal injury resulting from the Seller's negligence) whether consequential or otherwise caused directly or indirectly by any negligence or other tortious act or breach of statutory duty on the part of the Seller or on the part of any of its employees, agents or sub-contractors in connection with or arising out of the manufacture or supply of the Goods or in connection with any statement given or made (or advice not given or made) by or on behalf of the Seller.

5.5. The provisions of the clause 5 shall apply to any replaced Goods or parts supplied by the Seller pursuant to this clause 5.

## 6. Risk

Notwithstanding any other Contract term, risk in the Goods shall pass to the Buyer when the Goods are delivered to the Buyer or its agent.

## 7. Property in the Goods

7.1. The property (both legal and equitable) in the Goods shall not pass to the Buyer until:

7.1.1. the purchase price of the Goods has been paid in full, and

7.1.2. payment to the Seller of any sum which is at the date of the contract or may thereafter become due or owing from the Buyer to the Seller.

7.2. Until property in the Goods has passed to the Buyer or until delivery of the Goods to a third party pursuant to the permission given below, the Buyer will hold the Goods in a fiduciary capacity, will not obliterate any identifying mark on the Goods or their packaging and will keep the Goods separated from any other Goods.

7.3. Prior to the property in the Goods passing to the Buyer, the Seller permits the Buyer to deliver the Goods to a third party pursuant to a bona fide and arms-length agreement to re-sell the Goods but such liberty will cease upon the termination of the contract.

7.4. Where the Seller is unable to determine whether any Goods are the Goods the Buyer shall be deemed to have sold, all Goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

7.5. The Seller may at any time after payment for the Goods has become due take possession of the Goods (which for the avoidance of doubt will include the right to stop the Goods in transit) and remove them and the Buyer shall be deemed to have granted irrevocable authority to the Seller to enter upon the Buyer's premises or other premises where the Goods may be by its employees or agents to take possession of the Goods and (if necessary) to dismantle the Goods from anything to which they are attached.

7.6. If prior to the expiry of 7 days from the date which the Seller has taken possession of the Goods the Buyer pays all sums then due or owing to the Seller together with the costs of re-taking possession of the Goods, the Seller will re-deliver the Goods to the Buyer at the Buyer's expense. If within the 7 day period the Buyer fails to pay all sums then due or owing to the Seller, the Seller may re-sell the Goods and if the sums so received by the Seller do not exceed all sums due or owing from the Buyer to the Seller and the costs of taking possession of and reselling the Goods the Buyer will pay to the Seller any shortfall.

7.7. The Seller will have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that property in the Goods has not passed.

7.8. Nothing in the contract will constitute the Buyer the Agent of the Seller in respect of any re-sale of the Goods by the Buyer so as to confer upon a third party rights against the Seller.

## 8. Price

8.1. The contract price is based on the costs of materials, labour, sub-contracts, transport, laws, taxes, duties and currency exchange rates ruling at the date of the quotation. The Seller reserves the right to amend the contract price to take account of any variations in these costs or the imposition of any new taxes or duties occurring from whatever cause before delivery of the Goods.

8.2. Unless expressly stated otherwise, all prices are exclusive of V.A.T. which shall be charged at the rate and in the manner prescribed by law from time to time.

## 9. Payment

9.1. All prices are strictly net and no cash discount is allowed.

9.2. Unless otherwise stated in the Seller's quotation, payment in full shall be due within 30 days of the date of invoice notwithstanding that delivery of the works may not have taken place and property of the Goods is not passed to the buyer. The time of payment of the purchase price shall be of the essence of the contract.

9.3. All Goods will be packed in accordance with Sellers standard practice. Packing materials are non-returnable.

- 9.4. All Goods will be packed in accordance with Sellers standard practice. Order values from £50 to £100 will incur a 10% charge. Order values from £100 to £250 will incur a 7.5% charge. Order values over £250 will incur a 5% charge.
- 9.5. Goods will be invoiced at prices ruling at date of despatch unless otherwise stated.
- 9.6. Goods will be invoiced immediately upon their availability for despatch, with payment due within 30 days.
- 9.7. Interest at an annual rate of 5% above (National Westminster) Bank plc Base Rate from time to time will accrue daily and be calculated on a daily basis on overdue accounts from the date of invoice until payment.
- 9.8. Notwithstanding any Contract Term allowing the Buyer credit payment shall become due and payable to the Seller immediately upon the termination of the contract.
- 9.9. Where the Buyer makes default under the contract or any other contract with the Seller in payment on the due date of any sum due to the Seller, the Seller without liability may postpone any delivery or may cancel the contract or any other contract between the Seller and the Buyer but without prejudice to any right or remedy which the Seller may have against the Buyer in respect of such default.
- 9.10. The Seller will be entitled to payment for all instalments of Goods delivered to the Buyer whether under a blanket order or otherwise.
- 9.11. The Seller shall at any time be entitled to appropriate any payment made by the Buyer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Seller may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary of the Buyer.

#### 10. Lien

The Seller will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Buyer a general lien on all Goods (whether or not the property of the Buyer) in the possession of the Seller for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 days notice in writing to the Buyer to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

#### 11. Cancellation or Postponement

- 11.1. If the Buyer cancels, postpones, extends or delays or purports to cancel, postpone, extend or delay the contract or part thereof, or fails to take delivery of any Goods at the time agreed (if any) or if no time is agreed within a reasonable time, then the Buyer will be liable (without prejudice to any other rights of the Seller to claim damages) to indemnify and keep indemnified the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the supply or non-supply of the Goods including the cost of any material, plant or tools used or intended to be used therefore and the cost of labour and other overheads including a percentage in respect of profit.
- 11.2. If the Seller is unable (whether temporarily or permanently) to procure any services or Goods necessary to enable it to supply the Goods or if the supply of the Goods is prevented or hindered by reason of any cause beyond the Seller's reasonable control which for the avoidance of doubt and without prejudice to the generality of the foregoing shall include governmental action, war, riot, civil commotion, fire, flood, epidemic, labour disputes including labour disputes involving the work force or any part thereof of the Seller, restraints or delays affecting shipping or carriers, currency restrictions and Act of God, the Seller may cancel the contract by notice in writing to the Buyer so far as it relates to Goods not then supplied or work not then done and such cancellation shall not give rise to any claims by the Buyer provided that the Buyer shall remain liable to pay for Goods delivered prior to the date of such cancellation.

#### 12. Storage

If the Buyer fails to take delivery of the Goods when they are ready for delivery, the Seller may at its option, either at the risk of the Buyer, store them itself or have them stored by third parties on such terms as the Seller may in its absolute discretion think fit. In any event the risk and costs of storage will be borne by the Buyer and insofar as the storage is done by the Seller then such cost will be the Seller's storage charges current at the time of storage. The cost together with any additional insurance or double handling charges will be added to and form part of the price for the Goods.

#### 13. Specification or Design

13.1. Where the Goods are manufactured in accordance with information or drawings supplied by the Buyer or to his design or specification or where standard Goods of the Seller are altered in accordance with the Buyer's instructions:

13.1.1. No guarantee or warranty is given by the Seller as to the practicability, efficiency, safety or otherwise of the Goods (this being without prejudice to any other of the Contract Terms).

13.1.2. The Buyer will indemnify and keep the Seller indemnified against all liability incurred by the Seller as a result of:

13.1.2.1. Such Goods infringing any intellectual property right including without prejudice to the generality of the foregoing patents, registered designs and copyright or the provision of any statute, statutory instrument or regulation

13.1.2.2. Any impracticability, inefficiency or lack of safety or other defect in the Goods where such defect is due (whether in whole or in part) to faults or omissions in such information, drawings, design, specification or instructions.

13.2. No variation in the specification or design of any Goods which in the reasonable opinion of the Seller does not affect the suitability of the Goods for the purpose for which they are supplied by the Seller will constitute a breach of contract or impose upon the Seller any liability whatsoever.

13.3. The Seller will be under no liability whatsoever to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer should any Goods supplied by the Seller infringe any intellectual property right including without prejudice to the generality of the foregoing patents registered designs and copyright or the provision of any statute statutory instrument or regulation.

13.4. Unless otherwise agreed in writing all patterns, drawings, tools or other similar items produced or other property (whether intellectual property or not) owned or created by the Seller will remain the property of the Seller and must not be used or copied by the Buyer.

13.5. Where it is agreed that ownership in any data, patterns, drawings, tools or other similar items is to pass to the Buyer, property shall only pass when such items have been paid for by the Buyer in full.

13.6. The Buyer warrants that any design or instruction furnished or given by the Buyer shall not be such as will cause the Seller to infringe any Letters Patent Registered Design, Trade Mark or Copyright in the execution of the order.

#### 14. Promotional Material

No promotional drawings, descriptive matter, weights, dimensions or shipping specifications issued by the Seller or manufacturer of the Goods, not the descriptions and illustrations contained in the Seller's or manufacturer's catalogues, price lists or other promotional material will form part of the contract now be regarded as a warranty or representation relating to the Goods.

#### 15. Right of Re-Sale

If the Buyer defaults in accepting delivery of or paying for the Goods, the Seller reserves the right to re-sell the Goods or any of

them to a third party without giving notice to the Buyer of the Seller's intention to re-sell.

#### 16. Set-Off

The Buyer will have no right of set-off, statutory or otherwise.

#### 17. Termination

17.1. The Contract will terminate immediately upon the happening of any one or more the following, namely, that the Buyer has had a bankruptcy order made against it or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver manager administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution has been 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 have been commenced relating to the insolvency or possible insolvency of the Buyer.

17.2. The Contract will terminate immediately upon service of written notice of termination by the Seller on the Buyer on the happening of any one or more of the following, namely, that the Buyer has suffered or allowed any execution whether legal or equitable to be levied on its property or obtained against it or has failed to observe or perform any of its obligations or duties under the contract or any other contract between the Seller and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act of 1986 or the Buyer has ceased to trade.

17.3. The Seller's rights contained in the clause headed "Property in the Goods" (but not the Buyer's rights) shall continue beyond the discharge of the parties' primary obligations under the contract consequent upon its termination.

17.4. The termination of the contract howsoever arising will be without prejudice to the rights and duties of either party accrued prior to termination.

#### 18. Performance

18.1. The Seller does not accept any responsibility whatsoever for the failure of any Goods to meet performance figures supplied unless such figures have been embodied in the Seller's written performance guarantee specifying an agreed sum by way of liquidated damages for failure to meet the guaranteed figures and the performance of the Goods does not fall within the specified acceptance limits.

18.2. The Buyer will only be entitled to reject the Goods or to claim liquidated damages for failure to meet agreed performance figures on condition (i) that the figures obtained are not within the acceptance limits specified in the written performance guarantee and (ii) that the Seller has been given a reasonable time to rectify the performance and has failed to do so.

18.3. If the Buyer exercises his right to reject the Goods pursuant to the Seller's performance guarantee the Seller shall repay such part of the contract price already paid to the Seller.

#### 19. Patents

The Seller will indemnify the Buyer against any claim for infringement of Letters Patent, Registered Design, Trade Mark or Copyright (published at the date of the Contract) by the use or sale of any article or material supplied by the Seller to the Buyer and against all costs any damage which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to our having followed a design or instruction furnished or given by the Buyer or to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to the Seller, or to any infringement which is due to the use of such article or material in

association or combination with any other article or material not supplied by the Seller. Provided also that this indemnity is conditional on the Seller receiving the earliest possible notice in writing of any claim being made or action threatened or brought against the Buyer and the Seller being permitted at the Seller's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

#### 20. General

20.1. The Seller will be entitled to assign, sub-contract or sub-let the contract or any part thereof.

20.2. Failure by the Seller to enforce any of the Contract Terms will not be construed as a waiver of any of its rights hereunder.

20.3. In relation to all obligations of the Buyer under the contract, the time of performance is of the essence.

20.4. The legal construction of these clauses shall not be affected by their headings which are for convenience of reference only.

20.5. The formation, interpretation and operation of the contract will be subject to English Law and the Buyer submits itself to the non-exclusive jurisdiction of the English Courts.

20.6. Neither party shall be liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to force majeure which expression for the purposes of this Agreement means any cause beyond the reasonable control of the party in question which for the avoidance of doubt and without prejudice to the generality of the foregoing shall include governmental actions, war, riots, civil commotion, fire, flood, epidemic, labour disputes including labour disputes involving the work force or any part thereof of the party in question, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials, currency restrictions and Act of God.

#### 21. Health and Safety at Work

21.1. The Buyer shall be solely responsible for and shall indemnify and keep indemnified the Seller against any loss, liability or expense arising directly or indirectly from use of the Goods other than in accordance with the uses to which a competent engineer would put Goods of that description and specification of which may be contained in literature supplied by the Seller. It is a condition of any order that any information which may have been supplied by the Seller about the use for which Goods are designed and have been tested about the results of any relevant tests and about conditions necessary to ensure that Goods will be safe and without risk to health when properly used, are publicised or displayed by the Buyer and that specification of Goods contained in trade categories or circulars are made known by the Buyer to those persons who will use the Goods.

#### 22. Undertaking

22.1. The Buyer undertakes that during the term of the Contract and thereafter it will keep confidential and will not use for its own purpose nor without the written consent of the Seller disclose to any third party any information of a confidential nature regarding the Seller and Goods (including trade secrets and information of commercial value) unless such information is public knowledge.

#### SPECIAL CONDITIONS FOR INSTALLATION CONTRACTS

The following conditions shall apply to any contract which involves installation of Goods by the Seller. Any inconsistency between these special conditions and the general conditions above shall be resolved in favour of these special conditions:

#### 23. Delivery

23.1. Unless otherwise stated in the Seller's quotation, the Seller will deliver the Goods at ground level to the site named in the Seller's quotation Access to the Buyer's site is to be afforded to the Seller in reasonable time and the Buyer shall provide a road or railway suitable for the

transport of the Goods and all tackle required for installation from the nearest public thoroughfare or railway available.

#### 24. Terms of Payment

Unless otherwise agreed, payment shall be made as follows:

- 24.1. 100% of contract value as and when Goods are despatched from time to time.
- 24.2. Installation fees will be invoiced monthly.

#### 25. Installation

Unless otherwise agreed:

- 25.1. The Buyer shall provide proper secure storage accommodation and suitable weatherproof protection from time of delivery, access to and possession of the site, all installation and lifting equipment and scaffolding, masons, joiners and builders work, haulage, any lighting and heating necessary on the site during installation, all necessary facilities and adequate assistance. All these to be supplied at the Buyer's expense and at no cost to the Seller to enable the work to be expeditiously and continuously carried out.
- 25.2. The Buyer shall be responsible for the provision of suitable foundations and seatings for the Seller's structure on the site. The Buyer will also be responsible for the positioning of the Goods in relation to buildings and other works.
- 25.3. When the Seller's quotation includes for supervision of installation only, then the Seller will supply competent supervision during normal working hours to supervise and give instructions to the requisite skilled and unskilled labour which the Buyer shall provide. All labour provided shall remain servants of the Buyer and under his control.
- 25.4. The cost of keeping the Seller's employees or agents on site after completion of installation will be added to the contract price unless otherwise agreed.

#### 26. Test on Completion

- 26.1. When works are completed on site in accordance with the Contract, the Seller shall give 24 hours notice of readiness to perform mechanical tests. If for any reason the Buyer's representative is unable to attend, then the Seller shall be entitled to proceed with the mechanical tests in his absence. Unless otherwise agreed, all mechanical test procedures will be in accordance with the manufacturer's recommendations.
- 26.2. On the passing of successful mechanical tests in accordance with this clause 24, the Buyer and the Seller will both sign the Seller's certificate to this effect.

#### 27. Taking Over

The Goods shall be deemed to have been taken over by the Buyer when installation has been completed and the Goods have passed mechanical tests on site or one calendar month after the Goods have been put into commercial use (whichever may be earlier). The time of taking over shall not be delayed on account of additions, variations, minor omissions or defects which do not materially affect the commercial use of the Goods.

#### 28. Commissioning

- 28.1. Following the taking over of the Goods, the Seller may be required to perform commissioning tests to demonstrate that the Goods and works meet the specification therefore. If such tests do not demonstrate that the Goods and works meet the specification therefore the Seller will carry out such reasonable remedial works to ensure that repeat commissioning tests are successful (but without prejudice to the Seller's right to notify the Buyer that the reasons for the failure of such commissioning tests are not the responsibility of the Seller due to the default of the Buyer or for other reasons outside the reasonable control of the Seller in which case the Buyer and the Seller will liaise so as to agree a programme of remedial works at the cost of the Buyer).

- 28.2. On the passing of successful commissioning tests in accordance with clause 28.1, the Buyer and the Seller will both sign the Seller's certificate to this effect.

- 28.3. If prior to commissioning tests being completed the Buyer uses the Goods in a commercial environment other than for the purpose of conducting commissioning tests the tests shall be deemed to have been passed in full.

#### 29. Cancellation or Postponement

- 29.1. All costs, including those for design, incurred by the Seller at the time of cancellation or postponement shall be at the expense of the Buyer.
- 29.2. In the event of cancellation or postponement during installation, installation will be deemed to have been completed and will be invoiced accordingly.

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