

HILL & SMITH LIMITED CONDITIONS OF SALE

In these conditions

"the Company" means Hill & Smith Limited

'**Buyer**' means the person, firm or company who purchases Goods and/or Services from the Company.

'**Delivery Point**' means the Company's trading address from time to time or such other address as the Company may specify to the Buyer in advance.

'**Goods**' means the goods agreed in the Contract to be supplied to the Buyer by the Company.

'**General 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 Company.

'**Contract**' means each and every contract between the Buyer and the Company for the purchase and sale of the Goods and/or Services and incorporating these General Conditions.

'**International Supply Contracts**' as defined by Section 26(3) of the Unfair Contract Terms Act 1977 (or any amending legislation).

'**Services**' means all services to be provided under a Contract by the Company to the Buyer.

1. GENERAL

1.1 Any quotation is not an offer, and no contract shall come into existence unless and until the Company has accepted in writing the Buyer's signed official order to supply the goods specified in any quotation, or (if earlier) the Company delivers the Goods or provides the Services to the Buyer.

1.2 These General Conditions apply to all Contracts to the exclusion of any other terms which the Buyer may purport to impose or incorporate. If, subsequent to this contract, any Contract for sale is concluded with the same Buyer by letter, email, fax, telegram, teleprinter, telex or orally, or by any combination of these, without express reference to these General Conditions, it shall be a term of such a Contract that these General Conditions of sale apply to such Contract.

1.3 If any statement has been made to the Buyer, other than in any document which may have been enclosed with the Company's quotation and upon which the Buyer relies, the Buyer must set out that statement in any documents to be attached to or endorsed on its signed order in which event the Company may clarify the point and submit a new quotation. For the avoidance of doubt illustrations, weights, measures, performance capabilities, application suitability information and other data set out in the sales literature of the Company are statements of opinion and are provided for information only and form no part of the Contract.

1.4 Verbal, telephone, telex and telegraphic or tele-message orders will be executed at the Buyer's risk only and must be confirmed in writing and received by the Company within 72 hours.

1.5 Notwithstanding anything contained in the Buyer's conditions of contract relating to any Contract between themselves and the Company, or in any subsequent acknowledgement of this Contract by the Buyer, the Company's General Conditions shall apply and take precedence over all other conditions.

1.6 No Order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and the Buyer shall indemnify the Company 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 Company as a result of cancellation.

2. PRICES

2.1 In the case of Goods :

2.1.1 unless fixed prices have been expressly agreed by the Company in a quotation or other written document provided to the Buyer by the Company the price payable by the Buyer shall be the price stated in the Company's published price list at the date of despatch of each delivery.

2.1.2 prices do not include the price of delivery or of any import or customs duties unless otherwise stated in writing by the Company.

2.2 In the case of Services:

2.2.1 Where Services are provided on a time and material basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Company's standard daily fee rate;
- (b) the Company's standard daily fee rates for each individual engaged in the Services are calculated on the basis of an eight hour day between 8am and 5pm on weekdays (excluding public holidays);
- (c) the Company shall be entitled to charge an additional overtime rate of 30% of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals engaged to provide the Services outside the hours referred to at condition 2.2.1 (ii).

2.2.2 Where Services are provided for fixed price, the total price for the Services shall be the amount agreed in writing between the parties.

2.2.3 Any fixed and daily rate excludes the cost of any hotel, sustenance, traveling or other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the Services, the cost of any materials and the cost of any Services reasonably and properly provided by third parties and required by the Company for the supply of Services. Such expenses, materials and third party services shall be invoiced separately.

2.3 The Company 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 Company which is due to any factor beyond the control of the Company (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), any 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 Company adequate information or instructions.

2.4 All prices are subject to the addition of VAT (or other applicable sales tax).

3. PAYMENT

3.1 Subject to 3.2 below payment is due in cash or cleared funds by the end of the month following the month of delivery of the Goods or performance of the Services unless otherwise agreed in writing (including without limitation where alternative payment terms are stated on any quotation or order confirmation provided to the Buyer by the Company).

3.2 If the Buyer wrongfully fails to take delivery of the Goods the Company shall be entitled to invoice the Buyer for the price at any time after the Company has tendered delivery of the Goods.

3.3 No payment shall be deemed to have been received until the Company has received cleared funds.

3.4 The Company reserves the right to charge interest on a monthly basis at a figure equivalent to the current bank lending rate of Barclays Bank plc plus three percent (3%) on all monies due but unpaid until such payment has been paid and all accounts cleared to the satisfaction of the Company.

3.5 In the event of any dispute the Buyer shall not be entitled to withhold payment of the price of the goods or any agreed payments or to any right of set-off, deduction, counterclaim, abatement or otherwise against any payment due to the Company under any Contract.

3.6 In respect of Goods sold for export, unless otherwise agreed in writing, payment should be made by irrevocable letter of credit confirmed with a UK clearing bank approved by the Company.

3.7 Time for payment shall be of the essence to the Contract.

4. TERMINATION

4.1 The Company shall be entitled, without prejudice to the Company's other rights and remedies, either to terminate wholly or in part any or every Contract between the Company and the Buyer and/or to suspend any further deliveries of Goods or Services in any of the following events;

4.1.1 Non-compliance by the Buyer with the Company's terms of payment.

4.1.2 If the Buyer has failed to provide a letter of credit or guarantee, bill of exchange or any other security required by the Contract.

4.1.3 If the Company obtains unfavourable reports on the financial standing of the Buyer or if the Buyer becomes insolvent, or has passed a resolution for voluntary winding up or has suffered an Order of the Court for winding up to be made, or has had a Receiver appointed, or suspended payment of debts in whole or in part, or has proposed or entered into any

composition or arrangements with creditors, or has had a Receiving Order in Bankruptcy made against it.

4.2 In the event of any such suspension the Company shall be entitled as a condition of resuming its former liabilities and obligations under any Contracts between the Company and the Buyer, to require payment or such security as the Company may require for the payment of the Goods and the Services provided for in such contract.

5. TITLE

5.1 Until payment has been made to the Company of all monies owing to the Company from the Buyer on any account whatsoever:

5.1.1 any Goods and/or items supplied to such Buyer under the terms of the Contract shall be held by that Buyer as bailee for the Company and it shall be an express term of the Contract that all legal and equitable title in the Goods shall remain in the Company until such payments have been made in full.

5.1.2 The Buyer shall permit the servants or agents of the Company to enter on the Buyer's premises and to repossess the Goods at any time prior to such payment.

5.1.3 The Buyer shall only be at liberty to resell the Goods purchased from the Company prior to the passing of title on the understanding that if it does resell the goods then it will hold on trust for the Company so much of the proceeds of sale received by it, under contracts which include any of the Goods hereby sold either in their original or altered state as are necessary to discharge payment in full to the Company.

5.1.4 The Buyer shall only be at liberty to mix the Goods with others or use them in the process of manufacture prior to the passing of title with the consent of the Company in writing, which such consent shall not be unreasonably withheld providing that suitable guarantees are given by the Buyer to discharge payment in full at the due date under this Contract for sale to the Buyer;

5.1.5 The Buyer shall not remove any trademark, trade or business name of the Company from any of the Goods;

5.1.6 The Buyer shall keep the Goods insured to their full replacement value and shall ensure that they are securely and safely stored.

6. LIEN

In addition to any rights of lien which the Company may have, the Company shall in any of the events described in clause 4 above have a general lien over all goods of the Buyer then in possession of the Company for any monies due to the Company but unpaid.

7. DELIVERY

7.1 Any date specified by the Company for delivery is an estimate only and is not in any way a guaranteed delivery date and accordingly time for delivery shall not be of the essence to the

Contract and the Buyer shall have no right to damages or to cancel an order for failure for any cause to meet any such date.

7.2 The Company will endeavour to comply with any reasonable request by the Buyer for postponement of delivery but shall be under no obligation to do so and the Buyer is obliged to take delivery at such date and time as specified by the Company. Where postponement is agreed by the Company in writing the Buyer shall if required pay all costs and expenses including a reasonable charge for storage occasioned thereby and any costs incurred by the Company in relation to any insurance payments reasonably made by it.

7.3 If the Buyer is ordering Goods for delivery outside of the UK such Goods may be subject to import duties and taxes which are levied when the Goods reach the specified destination. The Buyer will be responsible for payment of such import duties and taxes. The Buyer will comply with all laws and regulations of the country for which the Goods are destined and the Company will not be liable for any breach of those laws.

7.4 Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered to the Delivery Point and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

7.6 The Company may effect delivery in one or more installments.

8. QUALITY OF GOODS

8.1 The Goods will comply with any specification given by the Company. All other warranties or conditions, expressed or implied, as to material, workmanship, quality, description or fitness of the Goods for any particular purpose, whether such purpose be known to the Company or not (in each case whether statutory or otherwise) are excluded to the fullest extent permitted by law.

8.2 In the event that any material or workmanship of the Goods do not comply with the specification given by the Company the Company will rectify or replace such Goods or part thereof at the Delivery Point and in the condition originally specified, or if rectification or replacement is not practicable, will credit the value of the Goods at the invoice price, if required in writing to do so, provided always:

8.2.1 that the Buyer notifies the Company within three days from the date of delivery; and

8.2.2 that the Company (acting reasonably) accepts that the Goods do not comply with the specification due to the fault of the Company; and

8.2.3 that the Goods are returned to the Company (at the Buyer's own risk and expense) within 28 days from the date on which the Buyer notifies the Company under clause 8.2.1 above.

The Company's liability in respect of or consequent upon any such Goods, whether in original or replaced material or workmanship, is limited to the replacement of such Goods as aforesaid.

8.3 Without prejudice to any other provision of these General Conditions the Company accepts no liability of any kind where:

8.3.1 any Goods have been misused in any manner following delivery;

8.3.2 the Goods have been used outside normal working conditions as referred to in any specification;

8.3.3 there has been a failure by the Buyer to follow any instructions given by the Company as to the use of the Goods; or

8.3.4 there has been any alteration or repair made to the Goods.

9. RISK

9.1 Risk in respect of Goods shall pass upon delivery. When Goods are covered by the Company's own transport, delivery shall be deemed to take place at the moment the Goods are lifted from the delivery vehicle. When Goods are delivered by other means of transport delivery shall be deemed to take place when the Goods are loaded on to the road or rail vehicles used.

9.2 No claim for Goods damaged in transit will be considered by the Company unless the Company used its own transport for delivery of the Goods and unless:-

9.2.1 An appropriately qualified signature, e.g. "Goods received damaged, (signed)" is clearly made by the Buyer on the delivery note; and

9.2.2 The Company is advised in writing, in addition to 9.2 above, within three days of receipt of material.

9.3 No allowance for claims for short weight will be made unless the Company is given an opportunity for verifying same within three days.

9.4 For the avoidance of doubt where the Buyer collects the Goods from the Delivery Point or where a third party delivers the Goods the Company shall have no liability to the Buyer for any Goods damaged in transit.

10. SERVICES

- 10.1 The Services supplied under the Contract are to be provided by the Company to the Buyer from the date agreed between the parties.
- 10.2 The Services supplied under the Contract shall continue to be supplied for the period agreed between the parties ("the Term") or if no Term is agreed shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other not less than three months notice.
- 10.3 The Supplier shall use reasonable endeavours to meet any performance dates agreed, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 10.4 The Buyer shall:
- 10.4.1 co-operate with the Company in all matters relating to the Services;
 - 10.4.2 provide the Company, its agents, sub-contractors, consultants and employees in a timely manner and at no charge, with access to the Buyer's premises, office accommodation, data and other facilities as reasonably required by the Company;
 - 10.4.3 provide to the Company in a timely manner such input, material and other information as the Company may reasonably require and ensure that it is accurate in all material respects;
 - 10.4.4 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Buyer's premises or sites where the Services are otherwise to be provided;
 - 10.4.5 where the Contract is an International Supply Contract, inform the Company of any local laws or regulations relevant to the Services.
- 10.5 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, sub-contractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.
- 10.6 The Buyer shall be liable to pay on demand to the Company all reasonable costs, charges or losses sustained or incurred by the Company (including without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to, or death of any person, and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing..

11. UK Supply Contracts

- 11.1 Save in respect of International Supply Contracts (where clause 12 shall apply), the provisions of this clause 11 shall 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 General Conditions;
- (b) any use made or resale by the Buyer of any of the Goods or Services, or of any product incorporating any of the Goods or Services; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract;

11.2 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 General Conditions excludes or limits the liability of the Company

- (a) For death or personal injury caused by the Company's negligence; or
- (b) Under section 2(3) of Consumer Protection Act 1987; or
- (c) For any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) For fraud or fraudulent misrepresentation.

11.4 Subject to condition 11.2 and condition 11.3 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:

11.4.1 shall not exceed the amount paid by the Buyer for the Goods and/or Services (excluding expenses) under the Contract ("the Contract Price");

11.4.2 shall not exceed the sum of £50,000.00

11.5 Save as where otherwise stated in these General Conditions, the Company shall not be liable for:

11.5.1 any loss of profit; or

11.5.2 loss of business, depletion of goodwill and/or similar losses; or

11.5.3 loss of anticipated savings; or

11.5.4 loss of goods;

11.5.5 loss of contract;

11.5.6 loss of use;

11.5.7 loss or corruption of data or information;

11.5.8 any loss of government grant or similar financial allocation;

11.5.9 any loss of trust status or similar;

11.5.10 any special loss;

11.5.11 any indirect loss;

11.5.12 any consequential loss; or

11.5.13 any pure economic loss, costs, damages, charges or expenses.

11.6 The Buyer acknowledges and agrees that the Contract Price reflects the limitations of liability contained in these General Conditions

12 International Supply Contracts

The following provisions of this clause 12 apply to all International Supply Contracts and 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 General Conditions;
- (b) any use made or resale by the Buyer of any of the Goods or Services, or of any product incorporating any of the Goods or Services; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract;

12.1 The parties agree that where this clause 12 applies the Unfair Contract Terms Act shall not apply to the Contract.

12.2 All warranties or conditions (whether express or implied) as to quality, condition or fitness for purpose (whether statutory or otherwise) are excluded from the Contract to the fullest extent permitted by English law.

12.3 The Company's total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to these General Conditions

12.3.1 shall not exceed an amount equal to 10% of the price paid the Buyer for the Goods and/or Services (excluding Expenses) under the Contract ; and

12.3.2 shall not exceed the sum of £20,000.00;

12.4 The Company shall not be liable to the Buyer for:

12.4.1 any indirect, special or consequential loss or damage; or

12.4.2 loss or corruption of data or other equipment or property; or

12.4.3 any pure economic loss or damage; or

12.4.4 incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or 12.4.5 any loss of actual or anticipated profit,

12.4.6 any loss of interest; or

12.4.7 any loss of revenue; or

12.4.8 any loss of anticipated saving; or

12.4.9 loss of business or damage to goodwill and/or similar losses even if the Company is advised in advance of the possibility of any such losses or damages; or

12.4.10 loss of profits; or

12.4.11 loss of contract;

12.4.12 loss of use;

12.4.13 loss of any trust status or similar

12.5 The Company is not liable for any losses arising:

12.5.1 from the Buyer's subsequent use or misuse of the Goods and/or Services

12.5.2 from the willful misconduct of the Company, or its employees or agents;

12.5.3 from the Company's negligence, or that of its agents, or employees.

12.6 The Buyer acknowledges and agrees that the Contract Price reflects the limitations of liability contained in these General Conditions.

12.7 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.

13 CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

13.1 All drawings, documents, confidential records, computer software and other information supplied by the Company, whether produced by itself or a third party, are supplied on the express understanding that all intellectual property rights are reserved to the Company (or the third party) and that the Buyer will not, without the written consent of the Company, give away, loan, exhibit or sell any drawings, documents, records, software or other information or extracts from them, or copies of them, or use them in any way except in connection with the Goods and/or Services in respect of which they are issued.

13.2 All claims for alleged infringement of patents, trademarks, registered designs, design rights or copyright received by the Buyer relating to the Goods must be notified immediately to the Company. If requested by the Company, the Company shall be entitled to have conduct of any proceedings relating to any such claim in such manner as the Company thinks fit and the Buyer shall be entitled to have conduct of any proceedings relating to any such claim in such manner as the Company thinks fit and the Buyer will provide the Company such reasonable assistance as the Company may request. The cost of any such proceedings will be borne by the Company.

13.3 If any allegations shall be made against the Buyer to the effect that the supply of the Goods or the supply of the Services infringes the intellectual property rights of any third party or the Company has reason to believe that such allegation is likely to be made, the Company may at its option and expense modify or replace the Goods or amend the Services so as to avoid the infringement (but without adversely affecting the overall performance of the Goods), or obtain for the benefit of the Buyer the right to continue to use the Goods, or repurchase the Goods at the Contract Price as reduced by a reasonable provision for depreciation. If the Company pursues any of such options, the Buyer will have no rights or remedies against the Company arising directly or indirectly out of the alleged infringement.

14. FORCE MAJEURE

In the event of the performance of any obligation by the Company being prevented, delayed or in any way interfered with by war, riot, civil commotion, strikes, lock-outs, accidents, flood, fire, explosion, or by any other cause beyond its control (including the delay or failure to supply of any suppliers of the Company) the Company may suspend or treat as impossible the performance of any obligation to the Buyer without liability for any loss.

15. INDULGENCE TO BUYER

The Company's rights and remedies shall not be prejudiced by an indulgence or forbearance to the Buyer and no waiver by the Company of any breach of the Contract by the Buyer shall operate as a waiver of any subsequent breach.

16. DESPATCH ABROAD

16.1 Goods despatched abroad shall be deemed to have been inspected by the Buyer's agent or representative prior to despatch from the Company's works as no responsibility can be accepted by the Company after goods are consigned for shipment and the Company shall be under no obligation to give the Buyer the notice specified in Section 32 (3) of the Sale of Goods Act 1893.

17. INDEMNITY

The Buyer shall indemnify the Company against all actions, costs, (including the cost of defending any legal proceedings) claims, proceedings, accounts and demands in respect of any infringement or alleged infringement of patent rights, registered design or similar protective rights resulting from compliance with the Buyer's instructions or specification, whether express or implied.

18. LIFTING OR UNLOADING

Bundling of Goods is carried out only as a means of identification and/or separation and for safety reasons the bundling wires or strapping must not be used for lifting purposes.

19. TESTING AND INSPECTION

Testing and inspection if specified by the Buyer or his agent shall be at the Company's works (at the Buyer's expense) and such testing and inspection shall be final and conclusive as to the results thereof.

The Company shall not be obliged to produce test and performance certificates or safety critical certificates unless requested by the Buyer and accepted by the Company in writing.

In addition to any costs incurred by the Company in testing the Goods the Buyer shall pay for all test pieces which comply with specification.

20. SEVERABILITY

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

21. CANCELLATION

Cancellation of orders, in whole or in part, cannot be accepted without the consent in writing of the Company and on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be reimbursed by the Company forthwith.

22 ANTI BRIBERY AND CORRUPTION

22.1 The Buyer shall:

- 22.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- 22.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 22.1.3 comply with the Company's Ethics, Anti-bribery and Anti-corruption in each case as the Company may update them from time to time (**Relevant Policies**).
- 22.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies, and will enforce them where appropriate;
- 22.1.5 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of this agreement;
- 22.1.6 immediately notify the Company (in writing) if a foreign public official becomes an officer or employee of the Buyer (and the Buyer warrants that it has no foreign public officials as officers or employees

22.2 Breach of this clause 22 shall be deemed a material breach.

23. ASSIGNMENT AND SUBCONTRACTING

23.1 The Buyer shall not, without the written consent of the Company assign, transfer, mortgage, charge or deal with in any other manner with any of its rights under any Contract or purport to do the same.

23.2 The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any Contract and shall for the avoidance of doubt be entitled to assign, any interest or rights that it has in relation to any Contract.

24. APPLICABLE LAW

The construction validity and performance of this contract shall be governed by the laws of England, and the Buyer hereby expressly submits to the jurisdiction of the English Courts.