

1 Formation of Contracts

- All contracts of sale made by HPC plc ("the Company") and any person to whom the Company agrees to supply goods and/or services (the "Purchaser") shall be deemed to incorporate these terms and conditions. No representative, agent or sales person has the Company's authority to vary, amend or waive any of these terms and conditions on behalf of the Company and no variation or addition to these terms and conditions shall form part of any contract unless specifically accepted by the Company in writing and signed by a director. These terms and conditions supersede all prior discussions, representations, understandings and agreements whether oral or in writing between the parties with respect to the subject matter.
- These terms and conditions shall override and take the place of any other terms and conditions in any document or other communication used by the Purchaser in concluding the contract with the company and the placing of an order for or the acceptance of goods and/or services by the Purchaser shall indicate unqualified acceptance of these terms and conditions.
- No contract shall come into effect until the Purchaser's order has been accepted in writing by the Company.
- No quotation shall constitute an offer and all quotations must be regarded as withdrawn after 30 days.
- All contracts shall be governed by and construed in accordance with the law of England and the Purchaser shall submit to the exclusive jurisdiction of the English Courts. In the event that the Purchaser is situated outside the United Kingdom it will appoint and maintain agents for service within the jurisdiction and notify the Company in writing of such agents.

2 Prices

- Unless otherwise expressly stated in writing by the Company orders are accepted on the basis that:-
 - Prices will be ex-works unpacked unless otherwise stated; where packing cases are charged for credit will be allowed provided they are returned in good condition satisfactory to the Company and carriage paid to the Company's works.
 - The Company is entitled without prior notice to adjust the price to correct errors and omissions in the contract and to take account of any alteration before the date of delivery in the cost to the Company of labour, materials, sub-contracted services or transport which directly affects the cost to the Company of manufacturing or supplying the goods.
 - The prices charged are those ruling at date of despatch.
 - The Company is entitled to increase the contract price where extra expense is incurred by reason of the delay of the Purchaser in giving necessary instructions to the Company, or the provision of inaccurate or insufficient information or as a result of any additional work required which becomes apparent to the Company after the commencement of the relevant contract, or where work on the goods is suspended in accordance with the Purchaser's instructions.
 - The Company reserves the right to vary any price at anytime to take into account any fluctuation in foreign exchange rates, or any change in government or supra-national regulation or legislation, either in the United Kingdom or elsewhere, which directly affects the cost to the Company of supplying the goods.
 - The cost of any jigs or tools made by the Company for the purpose of any contract may be included in whole or in part of the contract price.

3 Payment

- In circumstances where the Company has expressly agreed to grant credit facilities to a Purchaser (unless otherwise expressly stated) prices are due and payable thirty days after the date of invoice.
- In circumstances where the Company has not expressly agreed to grant credit facilities to a Purchaser prices are due and payable prior to delivery.
- If the Purchaser shall fail to make payment in full in accordance with sub paragraphs (a) or (b) of this Clause then (without prejudice to any other rights of the Company):
 - The Company shall be entitled to suspend all or any other deliveries to be made under that or any other contract with the Purchaser. In such event the Purchaser shall not in any respect be released from its obligations to the Company under that or any such other contract; or
 - instead of suspension in accordance with paragraph (i) above the Company shall be entitled to terminate the relevant contract or any other contract with the Purchaser in accordance with Clause 12 below and to claim damages from the Purchaser for breach.
- Unless otherwise expressly stated, amounts due are payable in United Kingdom pounds sterling in immediately available funds with out set-off or counter-claim. Payment by cheque or other negotiable instrument is ineffective until it is honoured and the Company's bank account is credited with the amount due.
- In addition to any rights of set-off and any similar express or implied rights, the Company may at any time, as a continuous right without notice:
 - set-off against the Purchaser's obligations hereunder any moneys which may be or become due and payable by the Company to the Purchaser; and/or
 - retain or appropriate for itself in or towards satisfaction of the Purchaser's obligations any money held by the Company on behalf of the Purchaser.

4 Despatch and Delivery

- Whilst the Company will use all reasonable endeavours to keep any estimated despatch or delivery date it accepts no liability whatsoever for any loss of damage (whether direct, indirect or consequential) resulting from delay howsoever the same shall have been caused. If no time for delivery is specified in the contract, the Purchaser shall be bound to accept the goods when they are ready for delivery by the Company.
- The risk in the goods sold shall pass to the Purchaser upon delivery to the Purchaser or to such person as it may direct and the Purchaser shall insure such goods from such time.
 - If the goods are not delivered or upon delivery are found to be damaged the Company shall not in any event be liable unless:
 - in the case of non-delivery both the Company and the carriers receive written notice within 7 days of the date of the invoice;
 - in the case of short or damaged delivery both the Company and the carriers are sent a written complaint within 48 hours of the receipt of the goods, provided that if the Purchaser proves that it was not reasonably possible for the Purchaser to advise the Company and the carrier or make a claim in writing within the time limit applicable, and such advice or claim is made or given within a reasonable time, the Company shall not have the benefit of the exclusion of liability afforded by this Clause. The Purchaser's signature on the consignment note without any endorsement as to short or damaged delivery shall release the Company from any liability in respect of damage or loss in transit or short delivery.
 - Where the contract involves more than one delivery, if default is made in payment on the due date in respect of any one delivery, the Company shall at its option and without prejudice to any rights the Company may have hereunder or otherwise, be entitled to treat the contract as repudiated and to claim damages accordingly. Each delivery will constitute a separate contract and any failure or defect in any one delivery will not vitiate the contract as to the remaining deliveries.
 - If the Purchaser refuses or fails to take delivery of any goods on the date of delivery, the Company will be entitled at its discretion to store such goods at the risk of the Purchaser and the Purchaser shall in addition to the price payable under Clause 2 pay all costs and expenses of such storage and any additional costs of carriage incurred.
 - The Purchaser shall provide at the address specified for delivery, and at its expense, adequate and appropriate equipment and manual labour for loading goods
 - The Purchaser reserves the right to deliver in installments at its discretion.
- ## 5 Specifications
- Where the Company has agreed to work to the Purchaser's drawings or specifications the Company will not guarantee performance of the goods or any defect arising from any such drawing, design or specification.
 - The Company will accept no liability for the loss or damage to patterns or other articles or documents being the property of the Purchaser caused by or arising from fire or other cause beyond the Company's control.
 - All drawings, photographs, illustrations, dimensions, weights and other technical information, specification and particulars of goods and any sample books given by the Company are given in the belief that they are as accurate as reasonably possible but are not to be treated as binding or as forming part of any contract with the Company.

6 Intellectual Property

- In this Clause "Intellectual Property Rights" means patents, trademarks, service marks, rights (whether registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright, rights in and to software, rights in and to confidential information and know-how, rights in and to databases and all other intellectual property rights and similar property rights of whatever nature subsisting in any part of the world.
- The Purchaser warrants that any instructions given or designs furnished shall not be such as will cause the Company to infringe or allegedly infringe any Intellectual Property Right, or become liable to any action or claim for passing off.
- The Purchaser shall indemnify the Company against all losses liabilities costs claims actions or demands which the Company may incur or which may be made against it as a result of or in connection with the infringement of any Intellectual Property Rights arising in any way from the manufacture or sale by the Company of goods made to the Purchaser's own specification drawings or instructions.
- Each party acknowledges that the other owns Intellectual Property Rights which have been independently developed and which relate to that party's business or operations. It is acknowledged that, save only as expressly agreed in writing by the parties, the Intellectual Property Rights owned by either party will remain the exclusive property of the owning party.
- Without prejudice to Clause 6(d), all drawings prepared, and any jigs or tools made for the purposes of any contract by the Company shall remain the property of the Company and shall be returned to it by the Purchaser on demand. All such drawings, jigs and tools shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of the Company neither will the Purchaser use or divulge any of the Company's trade secrets, techniques, processes and methods of carrying on business.

7 Cancellation

- No cancellation will be accepted where goods are to be supplied to meet the special requirements of the Purchaser. The Purchaser shall indemnify the Company in full against loss (including loss of profit), costs, charges and expenses incurred by the Company as a result of cancellation by the Purchaser.

8 Export

- Where the goods supplied are supplied for export from the United Kingdom it is the duty of the Purchaser to inspect the goods at the Company's works before shipment. No liability is accepted by the Company for damage in transit, and the Purchaser shall insure the goods from point of delivery to the carrier.

9 Exhibition

- Save within the prior consent of the Company in writing, the Purchaser shall not exhibit the goods or allow them to be exhibited either directly or indirectly at any exhibition in the United Kingdom of Great Britain and Northern Ireland or in Eire.

10 General Liabilities

- Any machinery goods or material included in any contract which are not manufactured by the Company are sold with the benefit of such warranties, if any, as the manufacturer gives to the Company and which the Company can enforce (and to the same extent the Company can so enforce) without incurring legal expenses but the Company does not in any way guarantee any such machinery goods or materials
- The Company hereby warrants that all goods supplied which are manufactured by the Company are free from defects in material and workmanship for a period of 90 days but unless otherwise expressly stated in writing the Company's liability under this warranty shall be limited to making good without charge by repair or (at the discretion of the Company) replacement any defects which in the opinion of the Company are defects of material or workmanship provided always that where a claim is made under this warranty in respect of goods supplied for export the Purchaser shall make arrangements and pay all costs and expenses associated with delivering the goods to the Company for repair or replacement and subsequent return delivery to the Purchaser.
- The Company shall be under no liability under the warranty in Clause 10(b) unless it has received written particulars of the nature of claim from the Purchaser within 90 days of the date of delivery of the goods which are the subject of the claim.
- Notwithstanding Clause 10(b), or anything stated in any estimate, order or acceptance, the Company's maximum aggregate liability in respect of the supply and/or the installation and/or provision of the goods and/or services shall be limited to the original VAT exclusive price of such goods and/or services.
- The Company shall be under no liability for any defect arising from fair wear and tear, wilful damage, negligence, abnormal

- working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse, or alteration or repair of the goods without the Company's approval.
- Except as provided for in these terms and conditions, there are no warranties, express or implied, of merchantability or of fitness for a particular purpose, or of any other kind except as to title. In particular, all conditions and warranties which would otherwise be implied by statute or under the common law are hereby excluded. The Purchaser acknowledges that this is reasonable and reflected in the price and shall accept risk and/or insure accordingly.
- The Company shall under no circumstances be liable for any indirect, special or consequential loss (including, without limitation, loss of anticipated profit, loss of business, depletion of goodwill and similar loss or third party claims) howsoever arising either from breach or non-performance of any of its obligations or from the supply of or intended use of the goods, even if the Company has been advised of the possibility of such potential loss, except that in the case of contracts which are not international supply contracts as defined in section 26 Unfair Contract Terms Act 1977 the Company shall be liable for loss arising from death or personal injury resulting from the proven negligence of the Company and except that nothing in these terms and conditions shall have the effect of excluding or limiting liability under the Consumer Protection Act 1987 to a person who has suffered damage caused by a defective product, or to a dependent or relative of such person.
- The Purchaser shall fully indemnify the Company in respect of all actions, suits, claims, demands, costs, charges or expenses arising from damage to or destruction of property, personal injury or death whether caused by the negligence of the Company, its servants, agents or subcontractors in executing any contract or howsoever caused, provided that in the case of contracts which are not international supply contracts (as defined above) the Purchaser shall not be liable to indemnify the Company in respect of any action, suit, claim, demand, cost, charge or expense arising from personal injury or death caused by the proven negligence of the Company.
- The Purchaser shall not rely upon any representation concerning any goods supplied unless the same shall have been made by the Company in writing.
- In any case where any trade description or other indication or representation is applied to any goods at the Purchaser's request the Purchaser warrants that the same is true and accurate in all respects and that the supply or offer of supply of any such goods or material by any person will not give rise to an offence by the Company under the Trade Descriptions Act 1968.
- Notwithstanding any other provision of these terms and conditions, nothing in these terms and conditions excludes or limits the liability of the Company for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability or for fraud or fraudulent misrepresentation.

11 Force Majeure

- The Company shall without prejudice to its right in respect of any breach of contract by the Purchaser be entitled to cancel or rescind any contract without liability for loss or damage resulting there from if the performance of its obligations under the contract is in way adversely affected by any war, strike, lock-out, trade dispute, flood, accident to plant or machinery, governmental control, shortage of any material or labour, failure of sub-contractors or any cause whatsoever beyond the Company's reasonable control and the Company shall not be liable to the Purchaser for any loss or damage caused to or suffered by the Purchaser as a direct or indirect result of the supply of goods by the Company being prevented, restricted, hindered or delayed by reason of any such cause.

12 Default

- The Company may without prejudice to any other rights it may have by notice in writing to the Purchaser terminate any contract forthwith if:
 - the Purchaser shall commit any breach of any of the terms (including without limitation terms concerning the time for payment of the purchase price) of that or any other contract with the Company and on its part to be observed or performed PROVIDED if such breach is remediable that the Company has previously given to the Purchaser notice thereto and the same has not been remedied within seven days thereafter;
 - the Purchaser shall become insolvent or compound with or negotiate for any composition with its creditors generally or permit any judgement against it to remain unsatisfied for seven days;
 - being an individual the Purchaser shall die or have a receiving order made against him or commit any act of bankruptcy; or
 - being a company the Purchaser shall call any meeting of its creditors, suffer a receiver or administrative receiver or administrator to be appointed over all or any of its assets or enter into liquidation.
- In the event that the Company terminates any contract under Clause 12(a):
 - the whole of the balance of the price then outstanding on the goods (and under any related contract between the Company and the Purchaser) shall become due and payable forthwith;
 - the Company reserves the right to repossess any goods in respect of which payment is overdue and thereafter resell the same, and for this purpose the Purchaser hereby grants an irrevocable right and licence to the Company or its servants and agents to enter upon its premises with or without vehicles during normal business hours; such right to continue notwithstanding the termination of the contract for any reason;
 - the Purchaser shall indemnify the Company on demand against any reasonable loss, expense, cost (including legal costs) incurred by the Company in the recovery of the goods or payment for the Company's goods and/or services supplied hereunder.
- The Company reserves the right to charge interest on overdue amounts (at an annual rate of 2 per cent above the current base rate of Barclays Bank Plc, to be calculated on a day to day basis on the balance outstanding until payment is made in full), including amounts recoverable under Clause 12(b) and may, inter alia, on any termination in accordance with this Clause 12 repossess any goods to which Clause 13 may apply.

13 Title to Goods

- The Purchaser expressly agrees that until the Company has been paid in full for all goods supplied by the Company to the Purchaser (whether under a single contract or invoice or a series of contracts or invoices):
- The Company shall retain title to and ownership of the goods although the risk therein passes to the Purchaser at the time when delivery is made;
 - The Company may at any time recover from the Purchaser those goods in its possession and for that purpose the Company's servants and agents may without prior notice enter upon any land or building upon which the goods are or may be situated;
 - If the Purchaser incorporates the goods into other products, with the addition of his products or those of others, or uses such goods as materials for other products, with or without such addition, and:
 - the goods can nevertheless be readily identified and separated, the property in the goods shall remain with the Company and for that purpose the Company's servants and agents may without prior notice enter upon any land or building upon which the goods are or may be situated and recover possession of the goods;
 - the goods cannot be readily identified and separated from the resulting composite or mixed goods, then immediately upon manufacture all such composite or mixed goods shall belong to the Company absolutely and not by way of charge until the goods have been paid for in full or until the Company recovers possession of and resells sufficient of the composite or mixed goods to discharge the purchase price in full and the Company's costs recovered, any excess to be accounted for to the Purchaser;
 - The Company hereby licences the Purchaser to sell in the course of its business, as the Company's agent and bailee, goods which belong to the Company unless or until:
 - otherwise notified in writing by the Company at any time;
 - the Purchaser fails to make any payment to the Company when due;
 - an encumbrancer takes possession or an administrator or administrative receiver or receiver is appointed over any of the property or assets of the Purchaser;
 - the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order;
 - the Purchaser goes into liquidation (except for the purposes of amalgamation, reconstruction or other reorganisation);
 - the Purchaser ceases or threatens to cease business.
 - Until payment of the purchase price the Purchaser shall be the bailee of the goods for the Company and the goods shall be stored separately from any items which belong to the Purchaser or any third party, and shall be clearly marked and identifiable as being the Company's property.
 - In the event of any disposal of the goods under Clause 13(d) the Purchaser has the fiduciary duty to the Company to account to the Company for the proceeds but may retain there from any excess of such proceeds over the amount outstanding and due to and the Company and the Company has the additional right to recover the price payable by the Purchaser's customer to the extent unpaid and the Company will account to the Purchaser for any excess over the amount outstanding and due to the Company less any expenses incurred by effecting recovery.
 - The Company shall be entitled to trace the proceeds of the sale and any insurance proceeds received in respect of the goods owned by the Company. Such proceeds shall be paid into a separate bank account and shall be held by the Purchaser on trust for the Company.
 - The Purchaser shall not be entitled to pledge or in any way charge by way of security for indebtedness any goods which may be the property of the Company, but if the Purchaser does so, all the money owed by the Purchaser to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable.
 - If payments received from the Purchaser are not stated to refer to a particular invoice the Company may appropriate such payments to any outstanding invoice.
 - Each of the sub-clauses contained in this Clause 13 shall be construed as independent of every other sub-clause to the effect that if any sub-clause of this Clause 13 or the application of any sub-clause to any person, firm or company or to any circumstances shall be determined to be invalid and unenforceable such determination shall not affect any other sub-clause of this Clause 13 or the application of such sub-clauses to any person, firm, company or circumstances all of which provisions shall remain in full force and effect.

14 Value Added Tax

- Where chargeable, Value Added Tax will be charged at the rate applicable at the date of despatch.

15 General

- If any provision in these conditions of sale (or part thereof) should be found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability of such provision (or part thereof) shall not affect any other provision and accordingly all provisions (or parts thereof) not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.
- It is the Purchaser's responsibility to assure and satisfy itself that the goods and the use to which the goods are applied comply with all relevant legislation, regulations or other formalities. The Purchaser shall procure at its own expense any import licence required for the import of goods into the country to which the goods are to be despatched from the UK. Where an order is placed from an address in the UK, then the Purchaser shall be responsible for procurement at its own expense of any export licence required on the export of the goods from the UK.
- No relaxation, forbearance or delay by the Company in enforcing any of the terms or conditions herein shall prejudice, affect or restrict the right of the Company hereunder, nor shall any waiver by the Company of any breach operate as a waiver of any subsequent or continuing breach.
- For so long as any account remains unpaid the Company shall have an absolute right of lien upon any goods of the Purchaser that may be in the Company's possession or under its control and the Company may enforce such lien at any time. If the lien is not satisfied within a reasonable time the Company may at its absolute discretion sell such goods or part thereof as agent for the Purchaser and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of such goods and shall upon accounting to the Purchaser for any balance remaining be discharged from all liability whatever in respect of such goods.
- The Company shall be entitled to sub-contract the whole or part of the performance of any contract without prior notice to the Purchaser. All contracts are personal to the Purchaser and may not be assigned without prior written consent of the Company.
- Nothing in these terms and conditions is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer.