

SPEL Products General Conditions of Sale

APPLICATION

1.1 In these Conditions, unless the context otherwise requires:

"Company" means SPEL Products (Company registration no. 787747)

"Contract" means the contract for the sale and/or supply and purchase of the Goods hereunder

"Customer" means the person so described overleaf

"Goods" means the goods, works and/or services described overleaf and includes any or any part of them

"Product Liability" means any loss of or damage to any tangible property caused by the Goods or any other products or services supplied or work done by the Company to or for the Customer or any third party

"Supply of the Goods" includes (if the Company has agreed to do so) installation and/or commissioning of the Goods

"writing" includes facsimile transmission and other electronic means of communication

"person" includes any body corporate or unincorporated

Words denoting the singular only include the plural and vice versa

1.2 These Conditions of Sale, the terms specified overleaf and any special conditions agreed to in writing by the Company constitute the entire agreement for the sale and/or supply of the Goods and supersede any terms or representations referred to in the Company's sales literature or elsewhere. If any terms specified overleaf and/or any special conditions conflict with these Conditions of Sale, the former will prevail

ORDERS AND SPECIFICATIONS

2.1 Orders (including any accepting any estimate or quotation of the Company) will only bind the Company when it accepts them in writing

2.2 The Customer must provide any necessary information and free issue materials which it is to provide under the Contract within sufficient time for the Company to perform its obligations

2.3 The Goods may be required to conform with product development (but without materially adversely affecting their quality or performance) or any applicable safety or other statutory requirements

2.4 Drawings prone to error must be approved in writing before the relevant Goods are manufactured, and any failure to approve any drawings within 24 hours of their being provided to the Customer may result in delay in delivery of the Goods. The Company will not be responsible. Dimensions given on drawings are subject to manufacturing tolerances and should be checked by the Customer before any Goods are installed

PRICE

3.1 The price of the Goods will be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price stated overleaf. Subject to paragraph 1, all prices quoted and quotations are valid for 30 days only or (unless previously withdrawn) until earlier acceptance by the Customer. All prices and other charges will be subject to any applicable value added tax and other taxes or duties which will be payable at the same time as the price of the Goods

3.2 Unless otherwise stated overleaf delivery is ex works.

3.3 Where a transit cost is shown it includes 'goods in transit' insurance in accordance with the policy in place at the time of transit. Any claim must be made in accordance with 7.2.

PAYMENT

4.1 The Company may invoice the Customer for all sums payable under the Contract on or at any time after delivery or, if the Goods are to be collected by or for the Customer or it wrongfully fails to take delivery or procure the unloading of the Goods or the Customer give proper delivery instructions, at any time after it has notified the Customer that the Goods are ready for collection or it has tendered delivery of the Goods. The time for payment shall be of the essence

4.2 Except where the payment is to be made prior delivery, the Company's invoices will be payable within thirty days of their date, notwithstanding that delivery may not have taken place and the property in the Goods has not passed. The Company may withhold delivery of the Goods if and for so long as any sum due to the Company from the Customer under any other contract has not been paid

4.3 If the Customer fails to make any payment on the due date then, without prejudice to any of its other rights, the Company may:

(a) terminate the Contract or suspend any further deliveries;

(b) appropriate any payment by the customer to the sums of the Goods (or any other good and/or services supplied by the Company to the Customer) as the Company decides in respect of any purported appropriation by the Customer; and/or

(c) charge the Customer interest on the amount for the time being unpaid at a rate equivalent to 3% above the base rate (or if it is replaced, the successor) from time to time of Lloyds TSB Bank Plc until payment in full is made. Such interest shall accrue on a daily basis and be payable both before and after judgement

4.4 Where the commission cost is included in the price of the goods, payment shall be in accordance with the terms of the invoice irrespective of whether commissioning has been undertaken or not

4.5 All sums payable shall be in sterling and payable without deduction and regardless of any set-off, counterclaim or other claim or right

4.6 If any sum due from the Customer pursuant to the Contract or any order or agreement given or made in relation to it has to be converted from the currency ("the first currency") in which the same is payable into another currency ("the second currency") for the purposes of making any payment or for the purpose of any order or judgement against the Customer, it will indemnify the Company against any loss suffered as a result of any discrepancy between (a) the rate of exchange used for such conversion and (b) the rate(s) of exchange at which the Company may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgement or claim

DELIVERY

5.1 The Company will use its reasonable endeavours to supply the Goods in accordance with any estimated delivery date but the time for delivery will not be of the essence of the Contract

5.2 Any transport cost quoted is for the Company's 'Standard' service for up to three days from date of despatch, UK mainland. For a specific day and/or type of transport vehicle eg with self off load, rear steerable trailer, our 'Premium' service is available at extra cost.

5.3 Where the Company arranges for the delivery, the Goods will be delivered at the place at or nearest to the delivery location which provides easy access and good hard ground and is safe and suitable for off loading. The Customer will procure at its cost that such a place and all equipment and personnel necessary for offloading are provided at the time of delivery and be responsible for off loading the Goods from the delivery vehicle

5.4 Provided it has given prior notice, the Company may deliver the Goods by air or by sea and when they are available. Where the Goods are or are to be delivered by instalments, each delivery shall constitute a separate contract

5.5 If the time taken in delivering any of the Goods at the delivery location (including the time taken in off loading) exceeds 2 hours, the Company may charge at its then prevailing rates for the excess time spent by its or its carrier's persons and vehicles

5.6 Delivery of the Goods is subject to a suitable route being available at the relevant time. The Customer will pay to the Company all costs and expenses incurred by it in relation to its or its carrier's persons and vehicles or replacement of any road signs or other street furniture or overhead wires, the carrying out of any other works or the obtaining of any licences or approvals required in connection with transportation of the Goods, or which arise from a police/private escort not being provided by the relevant time plus a 5% administration charge (except to the extent any of the foregoing

is caused by the negligence of the Company or its carrier). If any Goods cannot be transported by the route intended by the Company when the Contract is entered into, it may charge the Customer any costs and expenses incurred by the Company arising from the Goods being transported by a different route. The Customer will indemnify the Company in respect of any loss of or damage to any vehicle of the Company or its carrier occurring whilst it is at the delivery location unless caused by the Company's or carrier's negligence

5.7 If the Customer fails to collect or accept delivery or procure the unloading of the Goods or otherwise comply with its obligations under paragraph 5.3 or to give proper delivery instructions (unless due to the Company's default) or, in the case of sub-paragraph (b) below, the Company terminates the Contract, without prejudice to its other rights, the Company may:

(a) arrange for storage of the Goods at the Customer's risk and expense until they are delivered or collected; including if applicable storage charges at the Customer's then prevailing rates and the cost of any delivery; or

(b) sell the Goods in its discretion notwithstanding that any of them or their packaging may bear or have affixed to them any name, trade or service mark ("Trade Marks") of the Customer or (at the Customer's request) any third party and, after deducting from the sale proceeds all sale costs and other sums owing to the Company, retain any surplus for its own benefit. The Customer will indemnify the Company against any claim, proceedings, costs, liabilities, damages and expenses incurred by the Company as a result of the Goods sold pursuant to this paragraph or paragraph 8.3

5.8 The Customer shall be responsible for the cost of their packaging bearing or having affixed thereto any of the Trade Marks

INSTALLATION, COMMISSIONING & SERVICING

6 If the Company is to install any Goods or carry out any other work under the Contract, the Customer will procure access for its personnel and provide access to the relevant site(s) during the Company's normal working hours, that all work, goods or other items to be done or supplied by the Customer or any third party are done or supplied to the Company in a timely and orderly fashion so as not to affect or delay the performance of any of the Company's obligations under the Contract and (unless otherwise agreed) the Company is provided free of charge with all electricity and other services and plant and machinery required in connection with any such installation or other work

TESTING, INSPECTION AND ACCEPTANCE OF GOODS

7.1 If the Company is required to carry out tests other than its normal ones or in the presence of the Customer, the Company may charge for those tests at its then prevailing rates. The Company may carry out and charge for the tests if the Customer fails to attend on the specified dates

7.2 The Customer will notify in writing (otherwise than on a delivery or consignment document) (a) the Company and any carrier of any claim regarding the quantity or condition of Goods delivered and (b) the Company within 3 days of delivery and (c) the Company of any claim regarding any defect which should be apparent on reasonable inspection within 5 working days of delivery, time being of the essence. Paragraph 9 will apply to any such defect or damage. If no such notice is given, so far as concerns those matters the Customer will be deemed to have accepted the Goods and that they conform with the Contract

TITLE AND RISK

8.1 Notwithstanding delivery and the passing of risk or any other provision of these Conditions, the legal and beneficial ownership of the Goods will remain with the Company, which retains title to the Goods until the Company has received payment in full of:

(a) all sums payable to the Company in relation to the Contract; and

(b) all other sums due from the Customer to the Company, when the sums referred to in (a) are paid, in respect of the supply of any other goods or services

8.2 Until the property in the Goods passes to the Customer it shall:

(a) hold the goods as fiduciary agent and bailee for the Company which may, at any time and without prior notice, require the Customer to deliver up the Goods to the Company (whether or not the same have been sold or are affixed to any land, buildings or other item) and, if it fails to do so forthwith, enter upon any land or buildings where the Goods may be situated with its representatives and appropriate transport, remove them from any land, building and other item and possess them. The Company will use reasonable skill and care in removing Goods but, subject thereto, the Customer will be responsible for and indemnify the Company in respect of all damage to any land, building or other item caused by such removal;

(b) not sell, part with possession of, use or do anything else inconsistent with the Company's ownership of any of the Goods and will ensure that they are not affixed to or become part of any land or building, are kept separate from any other item, properly stored and protected and clearly identified as the Company's property and are not lost, destroyed or damaged

8.3 After the Company has repossessed any Goods it may sell the same and the proceeds of sale will belong to the Company absolutely and the Customer will have no right or interest therein. If the net proceeds received by the Company are less than the amount payable to it in relation to the Contract it may recover the balance from the Customer

8.4 Subject to paragraphs 5.7, risk in the Goods will pass on delivery if they are to be delivered ex works or otherwise when the vehicle carrying them arrives at the delivery location

8.5 All insurance proceeds receivable by the Customer in respect of the Goods shall be held in trust by the Customer for the Company in a separate account and first be applied in or towards discharging any sums payable under the Contract

8.6 Notwithstanding that property in the Goods has not passed to the Customer, the Company may recover all sums payable to it in relation to the Contract

WARRANTY

9.1 The following warranty will apply to the Goods (except for any accessories referred to in paragraph 9.3): The Goods will correspond with their specification and description and sample (if any) at the time of delivery and if within:

(a) 12 calendar months of the Goods being delivered by the Company or, as the case may be, completion of the supply of the Goods or the sum of the two, as the Company may agree in writing) any defect in the Goods is discovered under normal use which is directly attributable to faulty design, materials or workmanship; or

(b) twenty five years from delivery the tank seal leaks under normal use as a result of any structural failure; or

(c) a valid claim is made under paragraph 7 The Company will at its option and expense remedy the defect or damage by replacement or repair or refund the purchase price of the defective or damaged Goods

9.2 The warranty in paragraph 9.1 will be subject to the following conditions:

(a) it will not apply to any defect or damage resulting from any:

(i) alteration of the Goods without the Company's prior written consent, incorrect installation (except by the Company), incorrect storage, overloading, normal wear and tear, misuse or use other than for the Goods' intended purpose, accident, abnormal conditions of use or maintenance, repair or use which is not in accordance with the Company's or manufacturer's instructions or procedures

(ii) any act or omission of the Customer or any third party (other than the Company's agents or sub-contractors involved in the supply of the Goods) or any fault in any other goods or equipment

(b) the Company will not be liable for any defect in the Goods arising from any drawing, design or specification or free issue materials furnished by or on behalf of the Customer

(c) warranty work will be carried out during

the Company's normal business hours so far as is practicable at the Company's premises and/or elsewhere at its option. The Customer will procure that the Company's personnel will have such access to the Goods as they may require to investigate alleged defects or damage and carry out any warranty work

(d) except for any installation in any land, Goods must be returned carriage paid to the Company's trading premises as required by the Company. Repaired or replacement Goods will be delivered to the Customer's premises within the United Kingdom

(e) in the case of exports, FOB UK port or airport at the cost and discretion of the Company. The Company will reimburse the Customer the reasonable carriage costs incurred by it in returning by road from the place of delivery under the Contract Goods which are repaired or replaced under the warranty or whose purchase price is refunded. Replaced Goods will belong to the Company

(f) the Customer must give to the Company in writing full particulars of any alleged defect or damage within the period stated in paragraph 7 or, in the case of a warranty claim, within 7 days after it becomes aware of the same and in any event within 7 days of the end of the warranty period (time being of the essence)

(g) no sum shall be due and unpaid under the Contract when the Company is to fulfil its obligations under the warranty

(h) the warranty will apply to Goods or components replaced or repaired under the warranty for the balance of the original warranty period

9.3 The Company may transfer to the Customer (so far as it may lawfully do so) the benefit of any warranty received by the Company from any supplier of any accessories including in the Goods but the Company will have no further liability under the contract to the Customer in relation to those accessories

LIABILITY

10.1 The warranty will be in substitution for all other terms, warranties and conditions, express or implied, statutory or otherwise in relation to the Goods (except for the Company's title to them) which are hereby excluded to the fullest extent permitted by law. All descriptions, illustrations and performance figures relating to the Goods contained in any catalogues, sales or other material are intended to provide a general indication of the goods and services described in them and will not form part of the Contract unless expressly otherwise stated in writing by the Company

10.2 Neither the Company nor its employees or agents will be liable in contract or tort (including negligence) or in any other way for any consequential or indirect loss, injury or damage nor for any other claim for consequential compensation whatsoever (including loss of profit, costs or expenses) arising howsoever from or in connection with the Contract or the Goods

10.3 Subject to paragraph 10.2 and excluding any liability falling within paragraph 10.4 (a), the Company's liability for all and any damage to or loss of any tangible property which occurs in any period of the Company's insurance for Product Liability and results from any breach of the Contract by the Company or the negligence of or any other breach of duty by the Company shall be limited in aggregate to damages of an amount equal to £1,000,000 less the Company's total liabilities in relation to all other claims for Product Liability which are made by claimants in respect of that period and are covered by such insurance

10.4 Subject to paragraph 10.2, paragraph 10.2 excluding the Company's liability arising under paragraph 9 or referred to in paragraph 10.3 the Company's aggregate liability whether arising in contract or tort (including negligence) or otherwise however for loss of, cost, damage, injury or liability (whether consequential or indirect or otherwise) arising from or in connection with the Contract or the Goods will be limited to damages of an amount equal to:

(a) in the case of any pollution or contamination of any land, building or water or the atmosphere occurring in any period of the Company's insurance for such pollution or contamination, £1,000,000 less the Company's total liabilities in relation to all other claims for such pollution and/or contamination which are made in respect of that period by claimants and are covered by such insurance; and

(b) in all and any other cases, an amount equal to the net invoice value of the Goods (excluding VAT)

10.5 The limits on the Company's liability stated in paragraphs 10.3 and 10.4 shall include the Company's legal liability to the Customer for all costs (including legal costs) and expenses relating to the liability concerned

10.6 The Company will have no liability under or in respect of the liabilities referred to in paragraphs 10.3 and 10.4 (a) unless the Customer has given written notice of it to the Company within 14 days of the date when the Customer became aware of the liability or of the Company's liability or the date when it ought reasonably to have become so aware (whichever is the earlier)

10.7 Provided that the insurance is available to it generally in the market, the Company shall procure that the Company will maintain during the continuance of the Contract and for at least 1 year after completion of the supply of the Goods public and product liability insurance in respect of the liabilities referred to in paragraphs 10.3 and 10.4 (a) for not less than the amounts stated respectively in those paragraphs

10.8 The limitations on and exclusions from liability contained in this section shall be subject to the provisions of section 2 (1) of the Unfair Contract Terms Act 1977 and shall not apply to any liability for fraud

10.9 The Customer undertakes to indemnify the Company from and against all claims and proceedings brought against the Company by any third party arising from any act or omission (including negligence) on the part of the Customer (or any other person for whom it is vicariously liable) in relation to the Goods or their supply together with all expenses, costs (including legal costs on a full indemnity basis), damage, losses and liabilities incurred by the Company in connection with any such claims or proceedings

10.10 The Customer agrees that it accepts the limitations on and exclusion from liability contained in these Conditions as reasonable and that if they had not been included in the price of the Goods would have been materially increased

10.11 The Customer warrants that in purchasing the Goods it is not dealing as a consumer (as defined in the Unfair Contract Terms Act 1977)

ACCELERATED PAYMENT

11 Without prejudice to its other rights, if the Company has serious doubts about the Customer's ability to pay any sum under the Contract on the due date the Customer will within seven days of written notice to the Company pay the balance of all sums payable under the Contract (including any sum held or to be held by way of retention) or provide security for such payment to the Company's satisfaction pending which the Company may suspend the performance of all or any of its obligations under the Contract

FORCE MAJEURE

12.1 The Company will not be deemed to be in breach of the Contract or otherwise be liable to the Customer for any delay in performing or any failure to perform any of its obligations under the Contract by reason of any cause of event beyond the Company's reasonable control (including breakdown of plant or machinery, strike or industrial dispute, shortage of materials or failure of delay in receiving supplies)

12.2 In any such delay lasting for more than 14 consecutive days the Company may terminate the Contract forthwith by written notice to the Customer. In that event, (without affecting the Company's other rights) the Company will be entitled to be paid the price payable under the Contract in respect of all Goods delivered or tendered

for delivery or notified to the Customer as being available for collection or delivery before the notice of termination is served

(b) occurs, the Customer will pay to the Company as part of the price of the Goods concerned an amount equal to all additional costs and expenses incurred by the Company in performing its obligations under the Contract beyond the estimated time for performance stated in the Contract

TERMINATION

13.1 If the Customer:

(a) makes any arrangement or composition with its creditors generally or (being an individual) has an interim order (within the meaning of The Insolvency Act 1986) made against him or becomes bankrupt (or being a firm or body corporate or unincorporate) enters into compulsory liquidation or voluntary liquidation or the equivalent or shall be dissolved; or

(b) has a receiver and/or manager, administrative receiver, supervisor or administrator or any other person having similar powers or function appointed over or in relation to the Customer or any part of its assets or undertaking; or

(c) is unable to pay its debts within the meaning of sections 123 or 268 Insolvency Act 1986; or

(d) commits any breach of any of the provisions of the Contract (express or implied) Without prejudice to its other rights (including its accrued rights) the Company may determine the Contract or the balance of the Contract or suspend deliveries or the supply of any of the goods forthwith by written notice to the Customer without any liability whatsoever

13.2 The Customer will indemnify the Company against all claims, proceedings, loss, damage, liabilities, costs and expenses incurred by the Company arising out of or in connection with any breach by the Customer of, or any act or omission of the Customer, in relation to the Contract

CANCELLATION

14 If the Customer wishes to cancel the Contract (whether in whole or in part) with the Company's previous written consent, which shall be given or withheld at the Company's discretion and upon such terms as the Company deems fit

GOVERNING LAW AND JURISDICTION

15 The Contract will be governed by the laws of England and all claims and legal proceedings arising in connection with the Contract will be subject to the non-exclusive jurisdiction of the courts of England to which the Customer irrevocably and unconditionally submits

PATENTS AND INTELLECTUAL PROPERTY RIGHTS

16.1 Any specifications, drawings or other documents in any medium provided or created by the Company in connection with the Contract, and the intellectual property rights in them, remain with the Company or the relevant third party unless otherwise agreed in writing by the Company

16.2 The Customer will indemnify the Company against all loss, damage, proceedings, liabilities, costs and expenses incurred by the Company in connection with any claim for infringement of any intellectual property rights, or for unlawful use or disclosure of any confidential information, of any third party arising from the Company's use of any specification or other material provided by the Customer in relation to the Contract

EXPORTS

17.1 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 will have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter will prevail

17.2 Where Goods are supplied for export from the United Kingdom, the provisions of this paragraph 17 will (subject to any special terms agreed in writing between the parties) apply notwithstanding any other provision of these Conditions

17.3 The Customer will be responsible for complying with all legislation or regulations (including obtaining at its own cost all necessary licences and authorities) governing the importation and exportation of the Goods of destination outside the United Kingdom and for payment of all taxes and duties in relation thereto

17.4 Delivery of the Goods or any instalment thereof will be subject to the granting of all necessary export licences and the Customer will provide all necessary assistance and information to the Company to enable it to apply for or obtain the same. The Company will not be liable for any loss, damage, liability or expense howsoever arising from any delay in obtaining or failure to obtain any export licences. Where Goods are ordered for export from the Customer's address in the United Kingdom or by the Customer or by the United Kingdom the Customer or its agent will be responsible for obtaining such licences

17.5 Unless otherwise agreed in writing, the Goods will be delivered FOB the air or sea port of shipment and the Company will not be obliged to give notice under section 32(3) of the Sale of Goods Act 1979

HEALTH AND SAFETY

18 In manufacturing the Goods the Company will comply with its duties under the Health and Safety at Work etc Act 1974 and other applicable legislation relating to health and safety at work. Subject thereto, it is the Customer's responsibility to ensure that the Goods comply with all health and safety regulations and other legislation in force where the Goods are used. Any additions or modifications required to be made to any Goods by the Customer for the purpose of compliance with any such regulations or legislation shall be at the Customer's expense but no warranty or representation is given by the Company that any such additions or modifications will cause the Goods to so comply. The Customer will make available to its employees and any third party who may handle, store, re-sell or use the Goods any safety information, warnings and instructions that may be appropriate, including any supplied by the Company and all revisions thereto

DATA PROTECTION & ELECTRONIC COMMUNICATION

19.1 The Customer acknowledges and agrees that their details; name, address and payment details, can be used as necessary to fulfil the contract and provide you information on products and services

19.2 Electronic communications are capable of data corruption and therefore we do not accept responsibility for errors or problems that may arise through the use of electronic communication.

MISCELLANEOUS

20.1 The provisions of the Contract are severable, and if any provision or part of it is held to be invalid or unenforceable by any court of law or by any other jurisdiction that will not affect the other provisions or the remainder of the relevant provision

20.2 Any variation of the Contract or waiver of any breach by the Customer must be in writing by the Company's authorised representative

20.3 The Customer may not assign or otherwise deal with any of its rights or obligations in relation to the Contract without the Company's prior written consent but the Company will be free to do so

20.4 Any time or indulgence given by the Company will not in any way prejudice any of its rights in respect of the contract

20.5 Any notice or claim under the Contract shall be in writing and shall be effectively served if it is personally delivered or sent by pre-paid first class post or facsimile transmission to the address to which all correspondence or any other address for service notified to the other in accordance with this paragraph

20.6 Telecommunications may be recorded to ensure service standards are met.