

CONDITIONS OF SALE

1. INTERPRETATION

1.1. In these conditions:

- “Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller
- “Goods” means any products or services (including any installment or portion thereof) which the Seller is to supply in accordance with these conditions
- “Seller” means Fern Computer Consultancy Limited or the company shown as Seller on the reverse side of this document or in any other relevant documentation
- “Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller
- “Contract” means the contract for the purchase and/or sale of the Goods
- “Writing” includes letter, telex, cable, facsimile, email, XML, Web transmission and comparable means of communication except in respect of a notice relating to a contract in which case writing shall mean letter only.

- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. The headings or reference clauses in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted, or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller. It is a condition of offering credit that any terms introduced by the Buyer, unless specifically signed for by the Seller, shall not override any element of these Conditions.
- 2.3. The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.6. Where the Buyer resells to a third party any Goods supplied by the Seller then, other than the obligations listed in Section 12 “Guarantees”, the Seller shall have no liabilities whatsoever to that third party and the Buyer shall indemnify the Seller for all liabilities arising thereafter.

3. ORDERS AND SPECIFICATIONS

- 3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative excepting that where the Seller delivers the Goods to the Buyer then the Seller is deemed to have accepted the order.
- 3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3. The quantity, quality, performance and description of and any specification for the Goods shall be those set out in the Seller’s quotation (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller).
- 3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with

or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, Copyright, design, trade mark or other industrial or intellectual property rights of any other person or body, which results from the Seller's use of the Buyer's specification.

- 3.5. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and material used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.7. Where Goods other than the Seller's standard products are made by the Seller to the Buyer's order, the Goods may vary in accordance with normal trade practice in dimensions, format of underlying program code, printing colour variations, or any like type of criteria that do not form a principal factor of the performance of the product and, in any event dimensions may vary in line with normal trade tolerances. General software that is provided by the seller but has been purchased from an OEM shall have as the basis of its performance, the specification laid down by such manufacturers. In all such or like cases the Buyer shall not be entitled to make any claim against the Seller in respect of any such variations.
- 3.8. Notwithstanding that a sample of the Goods may be exhibited to and inspected by the Buyer, any sample is so exhibited or inspected solely to enable the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample.
- 3.9. Without prejudice to the generality of the foregoing any particular purpose for which the Buyer proposes to use the Goods shall be deemed not to be known by or have been made known to the Seller unless specifically recorded in a schedule signed by one of the Seller's directors. The Seller hereby acknowledges that any purpose stated in such a schedule shall be deemed to have been specified by the Buyer.

4. PRICE

- 4.1. The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Seller, all prices are given by the Seller on an ex works the Seller basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. TERMS OF PAYMENT

- 5.1. Where the Buyer does not have an approved credit facility the Seller may invoice the Buyer at any time after receipt of order and the Buyer should provide cleared funds before the Seller is required to deliver the Goods. Where the Buyer has an approved credit facility the Seller shall be entitled to invoice the buyer for the price of the Goods at any time after shipment of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2. The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice, notwithstanding that the delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the contract.

- 5.3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 5.3.1. cancel the Contract or suspend any further deliveries to the Buyer;
 - 5.3.2. demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer;
 - 5.3.3. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
 - 5.3.4. charge the Buyer interest (both before and after any judgment) on the unpaid amount, at the rate of 2% per month for outstanding balances until full payment, inclusive of interest accrued, is made and;
 - 5.3.5. Take legal action(s) to recover the monies due from the buyer with the costs of such legal action(s), including a charge (at the seller's applicable rates) for time consumed by the seller's employees in such legal action(s), being charged to the buyer;
 - 5.3.6. Recover goods supplied (where not paid for) or decline to deliver said goods (pending payment)
- 5.4. In the case of export orders, payment shall be made in the currency stated on the invoice, unless otherwise agreed in writing signed by the Seller's authorised representative.

6. EXPORT TERMS

- 6.1. 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.
- 6.2. Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered FOB to the transport supplied by the Buyer at the collection point designated by the Seller or the premises of the Seller if not otherwise stated and the Seller shall be under no obligation to give no other notice
- 6.3. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 6.4. The Buyer undertakes not to offer the Goods for resale in any other country notified by the Seller to the Buyer at or before the time the Buyer's order is accepted, or to sell the Goods to any person if the Buyer knows or has reasons to believe that the person intends to resell the Goods in any such country. In the case of software originating from the USA, the USA limitations of authorised countries shall apply.

7. INSOLVENCY OF BUYER

- 7.1. This clause applies if:
 - 7.1.1. The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - 7.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 7.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
 - 7.1.4. the Seller reasonably apprehends that any of the events mentioned above to occur in relation to the Buyer and notifies the Buyer accordingly.
- 7.2. If this clause applies then, without prejudice to any other right to remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and if the Goods have not been delivered the Seller may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

8. RISK

- 8.1. Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or collection or if the Buyer fails to take delivery of the Goods at the time when the Seller has tendered delivery or allowed collection.
- 8.2. The Buyer shall insure the Goods from the date of their delivery to him until their title has passed to him. In the event of a claim being necessary and the Buyer does not pay the Seller the price, then the benefit of such insurance shall pass to the Seller. If the Buyer shall not insure the Goods or fail to supply details of its policy on demand to the Seller then the Buyer shall reimburse the Seller for the cost of any insurance which the Seller may reasonably arrange in respect of any of the Goods during the whole or any part of the period from the date of the Seller's delivery of the Goods until the date of payment to the Seller of the price.

9. TITLE RETENTION

- 9.1. Until the purchase price of the Goods comprised in this or any other contract between the Seller and Buyer and all other sums whatsoever which are or shall become outstanding from the Buyer to the Seller shall have been paid or satisfied in full (and if by cheque, then only upon clearance):
 - 9.1.1. The property in the Goods remains vested in the Seller (notwithstanding the delivery of the same and the passing of the risk therein).
 - 9.1.2. The Buyer shall store the Goods in such a way that they can be readily identified as the property of the Seller.
 - 9.1.3. The Buyer shall on request inform the Seller of the precise location of each item of the Goods identified where applicable by its serial number by supplying the Seller at the Buyer's expenses within seven days of the Seller's request within a written schedule of the said locations.
 - 9.1.4. The Buyer may sell the Goods in the normal course of its business and may pass good title to its customer being a bona fide purchaser for value without notice of the Seller's rights on the following conditions:
 - 9.1.4.1. The Seller shall be entitled, immediately as a result of its ownership of the Goods, to the beneficial ownership of the proceeds of such sale which the Buyer shall accordingly hold as fiduciary for the Seller;
 - 9.1.4.2. The Buyer shall account to the Seller on demand with the said proceeds of sale provided that no such demand shall be made by the Seller in the absence of reasonable cause to believe that the Buyer might default in making payment for the Goods on the terms contained herein;
 - 9.1.4.3. The Seller shall be entitled to make a claim directly against the Buyer's customers for any purchase monies unpaid by such customers provided that no such claim shall be made by the Seller in the absence of having reasonable cause to believe that the buyer might default in making payment for the Goods on the terms contained herein;
 - 9.1.4.4. The Seller may at any time revoke the Buyer's said power of sale or its continued use of the goods in the circumstances set out in 5.3 or Clause 7 of these Conditions;
 - 9.1.4.5. The Buyer shall notify the Seller without delay of the Goods or actions by third parties which might infringe our title to the Goods.
 - 9.1.5. Upon determination of the Buyer's power of sale the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such Goods or their proceeds of sale and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to the process of such removal and repossession.
 - 9.1.6. Until title in the Goods has passed to the Buyer, the Buyer shall not purport to be the owner of the Goods and shall not show the Goods as stock in the Buyers accounts.
- 9.2. Nothing in these Conditions shall:
 - 9.2.1. Entitle the Buyer to return the Goods or delay payment thereof; or
 - 9.2.2. Constitute or be deemed to have constituted the Buyer as the Seller's agent; or
 - 9.2.3. Render the Seller liable to any third party for any authorised representation or warranty made or given by the Buyer to such third party in relation to the Goods; or
 - 9.2.4. Prevent the Seller from maintaining an action for the price notwithstanding that the property in the Goods may not have passed to the Buyer.

10. LIENS

The Seller retains a general lien on any of the Buyers equipment to materials in its possession for any unpaid balance the Buyer may owe the Seller. The Seller shall be entitled to sell such equipment or materials in the event that payment is not made in full within 28 days of notice given to the Buyer by the Seller of its exercise of the lien. The proceeds of sale may be taken by the Seller for reimbursement of the expense of exercise of the lien and the sale, and payment of the said balance and the Seller shall account for any surplus.

11. DELIVERY

- 11.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 11.2. Any dates quoted for delivery of the Goods are approximate only and Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 11.3. Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with

these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

- 11.4. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 11.5. If the Buyer fails to take delivery of the goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 11.5.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 11.5.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage insurance and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

12. GUARANTEES

- 12.1. The Seller hereby guarantees to the Buyer that:
 - 12.1.1. The Seller shall free of charge either repair or, as its option, replace defective Goods where the defects appear under proper use within 3 (three) months from first delivery in respect of software and 12 (twelve) months from first delivery in respect of hardware or within such other period or periods as may be agreed in writing between the Seller and the Buyer whichever is the first to expire, PROVIDED THAT:
 - 12.1.1.1. notice in writing of the defects complained of shall be given to the Seller upon their appearance, and
 - 12.1.1.2. such defects shall be found to the Seller's reasonable satisfaction to have arisen solely from the Seller's faulty design, workmanship or materials.
 - 12.1.2. For the avoidance of doubt, defects will not be regarded as having arisen solely from the Seller's faulty design, workmanship or materials where such defects arise in parts, materials or equipment which have been manufactured or designed by the Seller but have been purchased at the Buyer's request by the Seller from their designer or manufacturer or from some other third party ("a Third Party Supplier").
 - 12.1.3. Any repaired or replaced Goods shall be redelivered to the Buyer free of charge to the original point of delivery but otherwise in accordance with and subject to these Conditions. If replaced, the original goods will revert to being the property of the Seller.
 - 12.1.4. Alternatively to Condition 12.1.1, the Seller shall be entitled at its absolute discretion to refund the price of the defective Goods in the event that such price shall already have been paid by the Buyer to the Seller, or, if such price has not been paid, to relieve the Buyer of all obligation to pay the sum by the issue of a credit note in favour of the Buyer in the amount of such price, subject to the Buyer's prior return of the Goods to the Seller, though the Seller may, at its absolute discretion, waive the need to return said Goods. Where such a refund is provided, whatsoever the Seller's liability is considered to be, that liability shall in all respects be deemed to have been fulfilled in entirety.
- 12.2. The buyer agrees to insure itself against loss and damage arising in the circumstances identified in clause 12.1.2.
- 12.3. In respect of all Goods supplied to the Seller by a "Third Party Supplier" the Seller will pass to the Buyer (in so far as possible) the benefit of any warranty given to the Seller by such Third Party Supplier and will (on request) supply to the Purchaser details of the terms and conditions of such warranty and copies of any relevant product information sheets, technical data sheets or product leaflets issued by such Third Party Suppliers and the Buyer shall be solely responsible to the entire exclusion of the Seller from complying with the same.
- 12.4. The Seller's liability under this Condition shall be to the exclusion of all other liability to the Buyer whether contractual, tortious or otherwise for defects in the Goods or for any loss or damage to or caused by the Goods, and subject to Conditions 12.7, 12.8 and 12.9 all other conditions, warranties, stipulations or other statements whatsoever concerning the Goods, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing) the Seller grants no warranties regarding the fitness for purpose, performance, use, nature or merchantable quality of the Goods, whether express or implied, by statute, at common law or otherwise howsoever. In particular:

- 12.4.1. The Buyer accepts that the Seller, in respect of Computer Software, whether bespoke or otherwise, is unable to warrant that the product supplied will be free from error and that, in any event, the environmental situations of the Buyer are unique and whatever tests, if any, were carried out by the Seller or the Original Equipment Manufacturer, errors could arise when used by the Buyer. Subject to conditions 12.7, 12.8 and 12.9, no liability shall be placed on the Seller other than to progress a resolution of the errors in accordance with the specification defined by the Buyer, or in the event of Programs supplied by but not manufactured by the Seller, to advise the Manufacturer of the errors arising. If the Buyer has not reported in writing, any such errors within 3 (three) months of initial delivery, the goods supplied will be deemed accepted as performing to specification; and
- 12.4.2. the Buyer accepts that where the Seller supplies licences for the use of software, the Seller cannot ensure that the licences are compliant with all the Manufacturers conditions for sale by or use by the Buyer (or any other third party) and the Seller shall have no liability whatsoever other than the obligations listed in Section 12 "Guarantees"
- 12.5. Subject to Conditions 12.7, 12.8 and 12.9 and notwithstanding anything contained in these Conditions (other than Conditions 12.7, 12.8 and 12.9) or the Contract, in no circumstances shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, (i) for any loss of profit, business, contracts, revenue, or anticipated savings, additional costs including labour costs, loss of customer program configurations or customer data or (ii) for any special indirect or consequential damage of any nature whatsoever.
- 12.5.1. To alleviate the risks borne by the Buyer under section 12.4 above, the Buyer can request to pay to the Seller a suitable agreed premium to compensate the Seller for carrying out extensive testing of the software to confirm that the software is error free where such error would have a material and detrimental effect on the profitability of the company.
- 12.6. Subject to Conditions 12.7, 12.8 and 12.9 and notwithstanding anything contained in these Conditions (other than Conditions 12.7, 12.8 and 12.9) or the Contract, the Seller's liability to the Buyer in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the price of the specific Goods specified in the Contract, subject to the Buyer having returned the goods to the Seller within a period of 3 (three) months from initial supply, notwithstanding that:
- 12.6.1. if, under clause 12.6, computer software, bespoke or otherwise, has been supplied and provided that the Buyer requests in writing that program modifications, corrections or otherwise are to be carried out, then the aforementioned period of 3(three) months may, at the Seller's discretion, be extended by the Seller
- 12.7. If and to the extent that sections 6 and/or 7 (3A) of the Unfair Contract Terms Act 1977 apply to the Contract, no provision of the Conditions shall operate so as to exclude or restrict the liability of the seller for breach of the applicable warranties as to title and quiet possession implied into the terms and conditions of the Contract by section 12(3) of the Sales of Goods Act 1979, or section 2(3) of the Supply of Goods and Services Act 1982, whichever Act implies to the Contract.
- 12.8. If and to the extent that section 2(1) of the Unfair Contract Terms 1977 applies to the Contract, nothing in the Conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller or death or personal injury caused by reason of the negligence of the Seller or of its servants, employees or agents.
- 12.9. Where the Goods are sold under a consumer sale (as defined by the Sales of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions.
- 12.10. The Seller shall not be under any liability for any failure to perform any of its obligations under the Order due to Force Majeure. Following notification by the Seller to the Purchaser of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations. For the purpose of this Condition "Force Majeure" means: Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargos, strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.
- 12.11. The Buyer accepts as reasonable that the Sellers total liability for any Goods which are defective shall be as set out in these Conditions in fixing that limit the Buyer and the Seller have had regard to the same source specification and contract price of the Goods, their

nature, the use they will receive and the resources available for each party including servicing facilities and insurance cover, to meet any liability.

13. HEALTH AND SAFETY

The Buyer's attention is drawn to the provisions of the Health and Safety at Work Acts. The Seller will make available on written request such information on the Goods as is in the Seller's possession to ensure that as far as is reasonably practical they are reasonably safe and without risk to health when properly used.

14. CONFIDENTIALITY

The Seller shall use all reasonable endeavours to keep confidential all information relating to the Buyer's business to the extent that the Seller safeguards information relating to its own business for so long as and to the extent that such information is and remains unpublished and is not known to the Seller at the time of disclosure by the Buyer or is not thereafter lawfully obtained by the Seller from a third party.

15. PROTECTION OF TO SELLER'S "KNOW HOW"

- 15.1. The Buyer, subject as hereinafter provided, shall be responsible for keeping and procuring to be kept secret and confidential all information (hereinafter referred to as "the Know-How") supplied by the Seller of a secret or confidential nature provided that the Seller shall first have given notice in writing to the Buyer of the secret or confidential nature of such information before so supplying it.
- 15.2. The obligations under this Paragraph shall cease within six months of the publication by the Seller or any third party of information comprising or being part of the Know-How to the extent of such publication, or of agreement by the Seller that such information or part thereof is in the public domain.

16. INTELLECTUAL PROPERTY

- 16.1. The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programs or any other material prepared by the Seller whether readable by humans or by machines shall belong to the Seller absolutely and they shall not be reproduced or disclosed or used in their original or translated for by the Buyer without the Seller's written consent for any purpose other than that for which they were furnished.
- 16.2. The Seller accepts no responsibility for the accuracy of drawings, data or specifications supplied by the Buyer. The Buyer shall indemnify the Seller against all claims whatsoever for damages and costs and against all liability in respect of any infringement of patent or other intellectual property rights resulting from compliance with the Buyer's instructions express or implied and the Buyer will indemnify the Seller against any liability in respect thereof and shall pay all costs and expenses which may be incurred by the Seller in reference to any such claim. The indemnity shall extend to any amount paid on lawyers' advice or other charges in respect of any such claim.
- 16.3. Where the Seller supplies third party product then any intellectual property of that third party remains with that third party and is not transferred to the Buyer by way of this sale.

17. INDEMNITY

- 17.1. If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights (collectively referred to as "Intellectual Rights") of any other person or organisation, then (except where clause 12.1.4 applies) the Seller shall indemnify the Buyer against all loss damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
 - 17.1.1. the Seller is given full control of any proceedings or negotiations in connection with any such claim;
 - 17.1.2. the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;
 - 17.1.3. except pursuant to a final award, the buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
 - 17.1.4. the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this Indemnity shall not

- apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 17.1.5. the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of such claim; and
 - 17.1.6. without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to Indemnify the Buyer under this clause;
 - 17.1.7. The claim of infringement is brought by the owner (or their agent) of the Intellectual Rights

18. GENERAL

- 18.1. The Seller reserves the right to subcontract the fulfillment of the Contract (including any installation) or any part thereof.
- 18.2. The Buyer shall not assign any rights under this agreement without the prior consent in writing of one of the Seller's directors.
- 18.3. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 18.4. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as waiver of any subsequent breach of the same or any other provision.
- 18.5. If any provision of these 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 Conditions and the remainder of the provisions in question shall not be affected thereby.
- 18.6. The Contract shall be governed by the laws of England and all parties shall submit to the sole jurisdiction of the English courts.