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Regd. in England 2066417



## STANDARD TERMS & CONDITIONS

### 1. INTERPRETATION

#### 1.1 In these Conditions:

'Conditions' Means the standard terms and conditions set out in this document and (unless the context otherwise requires and subject to Condition 2.3) includes any special terms and conditions agreed in Writing between the Customer and the Contractor.

'Contract' Means the contract for the installation and provision of the System or as the case may be for the purchase and sale of Goods incorporating these Conditions.

'Contractor' Means Motan Ltd (Registered in England, number 2066417).

'Customer' Means the person who accepts a quotation from the Contractor for the supply of the System or Goods as the case may be.

'Goods' Means the services, goods and materials which the Contractor has agreed to supply to the Customer in accordance with these Conditions but excludes any Software incorporated or used therein.

'Software' Means a code of instructions which can program computer hardware to perform functions and used in connection with the System or Goods.

'System' Means the services, system and materials which the Contractor has agreed to install at the request of the Customer in accordance with these Conditions but excludes any Software incorporated or used therein.

'Writing' Includes Email, telex, cable, facsimile transmission and comparable means of communication.

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 in these Conditions are for convenience only and shall not affect their interpretation.

### 2. INSTALLATION OR SALE AND SOFTWARE LICENCE

2.1 The Contractor shall install the System, or as the case may be the Contractor shall sell and the Customer shall purchase the Goods, subject to these Conditions to the exclusion of any other except only as mentioned in Condition 2.2 in accordance with any written quotation of the Contractor which is accepted by the Customer, or any written order of the Customer which is accepted by the Contractor.

2.2 The Contractor and the Customer shall be bound by any variation to these Conditions specified and agreed in Writing by an authorised signatory of the Contractor and accepted in Writing by or on behalf of the Customer but not otherwise.

2.3 The Contractor grants unto the Customer a non-exclusive, non-transferable licence to use any Software owned by the Contractor or in respect whereof the Contractor has such right as permits the licence granted hereby and incorporated or necessary to be used in operating the System or Goods in connection with the business of the Customer but not otherwise and subject to these Conditions and without prejudice to the generality thereof the Customer undertakes:

2.3.1 Not to copy, reproduce, translate, adapt, vary or modify the Software and not to communicate the same to anyone except any employee of the Customer who needs to know Provided always that any such employee shall enter into a binding agreement to keep the same confidential and not to disclose the Software to anyone else; and

2.3.2 To use the Software only with the System specified in the Contract;

2.3.3 Provided always that this licence shall cease and determine absolutely forthwith on notice of any valid claim that the same infringes the rights of any third party, or where the Contractor is enforced so to do by law, or if the Customer is in material breach of these Conditions and fails to remedy the same to the reasonable satisfaction of the Contractor.

2.4 The Contractor's employees or agents are not authorised to make any representations concerning the System or Goods unless confirmed by the Contractor in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.

2.5 Any advice or recommendation given by the Contractor or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the System or Goods which is not confirmed in Writing by the Contractor is followed or acted upon entirely at the Customer's own risk and the Contractor shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 Any typographical or clerical error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Contractor shall be subject to correction without any liability on the part of the Contractor.

### 3. ORDERS AND SPECIFICATIONS

3.1 Any order submitted to the Contractor by the Customer (save for spare parts of a total price not exceeding £2,000) shall be deemed not to be accepted by the Contractor unless confirmed in Writing by the authorised representative of the Contractor.

3.2 The Contractor shall be responsible to the Customer for ensuring the accuracy of the terms of any order (including any applicable specification contained therein) submitted by the Customer and for giving the Contractor any necessary information relating to the System or Goods within a sufficient time to enable the Contractor to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the System or Goods shall be those set out in the Contractor's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Contractor) and in any case where they are indicated as being approximate the Contractor shall not be liable in respect of any reasonable deviation therefrom.

3.4 If the System is to be installed or the Goods are to be manufactured or any process is to be applied to the System or Goods by the Contractor in accordance with a specification submitted by the Customer, the Customer shall indemnify the Contractor against all loss, damages, costs and expenses awarded against or incurred by the Contractor in connection with or paid or agreed to be paid by the Contractor in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Contractor's use of the Customer's specification.

3.5 The Contractor does not warrant and shall not be bound by any terms, specification, proposal or illustration, except only as mentioned expressly in a Contract between the Contractor and the Customer incorporating these Conditions and the Contractor may make any changes at any time free from any liability therefore to the Customer in the specification of the System or Goods which is required to conform with any applicable safety or other statutory requirements or where the System is or the Goods are to be supplied to the Contractor's specification which do not materially affect the quality or performance thereof.

3.6 The Customer may not cancel any order accepted by the Contractor except with the agreement in Writing of the Contractor and on terms that the Customer shall indemnify the Contractor in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Contractor as a result of cancellation.

3.7 The ownership of and copyright in all specifications, plans, designs, drawings and illustrations ("intellectual property") prepared by the Contractor in connection with the System or Goods belong to the Contractor and the Customer may use the same to operate the System or Goods for the purpose for which the System was or the Goods were designed but the Customer shall not permit or procure the intellectual property or any part or parts thereof to be used for any other purpose whatsoever or by any other person.

### 4. PRICE OF THE SYSTEM OR THE GOODS

4.1 The price for the installation of the System shall be the amount agreed between the parties hereto and in the absence of any such agreement shall be calculated according to the Contractor's quoted working hourly rate or, where no rate has been quoted (or a quoted rate is no longer valid), the normal working hourly rate of the Contractor or, as the case may be, the price of the Goods shall be the Contractor's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Contractor's published price list current at the date of acceptance of the order. All rates or prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by the Contractor without giving notice to the Customer.

4.2 The Contractor reserves the right, by giving notice to the Customer at any time before installation, to increase the hourly rate in the case of installing a System, or as the case may be, the price of the Goods to reflect any increase in the cost to the Contractor which is due to any factor beyond the control of the Contractor (such as, but without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the System or Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Contractor adequate information or instructions.

4.3 Except as otherwise stated, under the terms of any quotation or in any price list of the Contractor, and unless otherwise agreed in Writing between the Customer and the Contractor, the Customer shall be liable to pay the Contractor's charges for transport, handling, packaging and insurance and all prices are given by the Contractor on an ex works basis and where the Contractor agrees to deliver the Goods otherwise than at the Contractor's premises, the Customer shall be liable to pay the Contractor's charges for transport, packaging and Insurance.

4.4 The price is exclusive of any applicable value added tax, and the Customer shall be liable to pay value added tax as appropriate.

### 5. TERMS OF PAYMENT

5.1 Subject to any special terms agreed in Writing between the Customer and the Contractor, the Contractor shall be entitled to invoice the Customer for the price of the System or Goods on or at any time after acceptance by the Contractor of the order for the System or Goods.

5.2 The Customer shall pay the price of the System or Goods as the case may be without any deduction whatsoever as to 50% of the total price immediately on acceptance by the Contractor of the order and the 50% balance 30 days after delivery immediately upon completion of the tests in accordance with Condition 7.4 and in the case of a sale of Goods the balance within 30 days from delivery Provided always that in any case of any price aforesaid being less than £5,000 the same shall be paid within 30 days of the Contractor's invoice. The times of payment of the price or any part thereof shall be the essence of the Contract. Receipts for payment will be issued only upon request. The Contractor retains sole direction to attribute any such payments received to any particular part of the invoice.

5.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Contractor, the Contractor shall be entitled to:

5.3.1 Cancel the Contract;

5.3.2 Suspend any further deliveries and services to the Customer and suspend any obligations on the part of the Contractor;

5.3.3 Appropriate any payment made by the Customer to such part of the Contract (or any other Contract between the Contractor and the Customer) as the Contractor may think fit (notwithstanding any purported appropriation by the Customer); and

5.3.4 Charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of the higher of 5 percent per annum above the base lending rate from time to time of the main bank for the time being used by the Contractor and 8 percent per annum, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

### 6. DELIVERY AND INSTALLATION

6.1 The Contractor shall deliver to the Customer the Goods and Software comprised in the System and described in the Contract for installation incorporating these Conditions.

6.2 In order to co-ordinate delivery and installation the Contractor shall confirm or revise on a monthly/weekly basis or as often as is necessary any plan agreed with the Customer.

6.3 Delivery of the Goods shall be made by the Contractor, collecting the Goods at the Contractor's premises at any time after the Contractor has notified the Customer that the Goods are ready for collection, or if some other place for delivery is agreed by the Contractor, by the Contractor delivering the Goods to that place.

6.4 Notwithstanding Condition 6.2 above, delivery dates are estimates only and unless the Contractor expressly agrees in Writing to be bound by a delivery date the Contractor shall not be liable for any delay in delivery however caused. Time for delivery or installation shall not be of the essence except only when expressly agreed in Writing by the Contractor. Where the Contractor expressly agrees in Writing to be bound by a delivery date, the Contractor's liability (subject to Condition 8.11) in respect of part, late or non delivery or performance as the case may be shall be limited (subject also to Condition 6.8) to the value of that part of the System or Goods not delivered or installation not performed. The Goods may be delivered by the Contractor in advance of the quoted delivery date upon giving reasonable notice to the Customer.

6.5 The Contractor shall inform the Customer when any part or the whole of the System is ready for delivery and the Customer shall inform the Contractor of "the site" and location thereof for delivery and installation. The System may be delivered by the Contractor in advance of any quoted delivery date upon giving reasonable notice to the Customer.

6.6 Where delivery of a multiple order of Goods is to be made by the Contractor, the Contractor may deliver part only of the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

6.7 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Contractor to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to repudiate the Contract as a whole.



Recycling and Processing Solutions

- 6.8 If the Contractor fails to deliver the Goods for any reason other than any cause beyond the Contractor's reasonable control or the Customer's fault, and the Contractor is accordingly liable to the Customer, the Contractor's liability shall be limited to the excess (if any) of the cheapest available cost to the Customer of installing that part of the System not installed by the Contractor, or, as the case may be, of similar Goods to replace those not delivered over the price of the Goods.
- 6.9 If the Customer fails to give the Contractor instructions for delivery, or fails to accept the Contractor's estimate or fails to make alternative arrangements to take delivery in accordance with any plan agreed as aforesaid within 21 days of notification by the Contractor that the System or Goods or part thereof is ready for delivery or from receipt of the Contractor's estimate as the case may be, or fails to give the Contractor adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Contractor's fault) or fails to take delivery, then without prejudice to any other right or remedy available to the Contractor, the Contractor may:
- 6.9.1 Store the System or Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 6.9.2 Sell the System or Goods as the case may be at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) account to the Customer for the excess over the price under the Contract or as the case may be the Customer shall pay forthwith for any shortfall below the price under the Contract.
- 6.10 In the case of any defect at the time of delivery of the System or Goods the Customer may exercise any rights subject to Condition 8 but shall not refuse delivery.
- 6.11 Delivery and installation shall be executed during normal working hours. If the Customer requires delivery or installation to be executed outside such times, an additional charge shall be payable. The Contractor may deliver or install outside such times at no additional cost to the Customer upon prior notification to the Customer.
- 6.12 Where applicable and if the same is not part of the services comprised in the System, the Customer shall prepare the area of installation with a suitable installation environment for the System, or any part thereof and with all the facilities specified by the Contractor and in all the local, national and international regulations as the case may be. Such facilities will include the provision of:
- 6.12.1 Electrical power;
- 6.12.2 Space requirements and clearance;
- 6.12.3 Air conditioning;
- 6.12.4 Temperature and humidity control;
- 6.12.5 False flooring;
- 6.12.6 Usual facilities for use by persons making the installation.
- Where the same has not been prepared or provided or the Contractor is prevented from carrying out installation at the pre arranged day and time through no fault of the Contractor, the Contractor shall be entitled to charge in accordance with the provisions contained in Conditions 4 and 5.
- 7. RISK, PROPERTY AND ACCEPTANCE**
- 7.1 Risk of damage to or loss of Goods shall pass to the Customer:
- 7.1.1 In the case of Goods to be delivered at the Contractor's premises, at the time when the Contractor notifies the Customer that the Goods are available for collection; or
- 7.1.2 In the case of Goods to be delivered otherwise than at the Contractor's premises at the time delivery is made or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Contractor has tendered delivery of the Goods;
- 7.1.3 Provided nevertheless that the Contractor may (but shall not be bound) to insure the Goods against such risks as the Contractor may then think fit and the Customer shall reimburse the Contractor for all premiums and other costs thereby incurred.
- 7.2 It is hereby agreed and declared that all legal, equitable and beneficial right, title and interest in the Goods shall be retained by, and belong to the Contractor as against, and shall not pass to, the Customer or any third party so long as the Contractor shall not have received the whole of the purchase price and all charges by the Contractor for packing, transport, handling, insurance, storage and value added tax as appropriate due for the Goods and for all other property agreed to be sold by the Contractor to the Customer for which payment has become due notwithstanding delivery and the passing of risk in the Goods or other such property and any other terms and conditions. The Contractor shall have the absolute right, title and authority to retake, sell, deal with or otherwise dispose of the Goods or any part thereof or any interest therein so long as aforesaid, and the Contractor shall have priority over all other creditors of the Customer in relation to the Goods or any property representing the Goods if the Customer becomes subject to winding up or other insolvency proceedings within the meaning of the Industry Insolvency Rules 1986. In consideration of the agreement for sale of the Goods the Customer hereby covenants so long as aforesaid and as a fundamental term of Contract with the Contractor:
- 7.2.1 Not to fix the Goods or any part thereof to any land, premises or fixtures thereon, not to permit or procure the Goods or any part thereof to become part of any land, premises or fixtures thereon and not to mix the Goods or any part thereof with any other Goods;
- 7.2.2 Not to sell, hire, charge, pledge or part with possession of, or enter into any analogous transaction relating to, the Goods whether or not for value, and not to allow any right, title or interest in the Goods to arise adverse to the Contractor, Provided nevertheless that into whosever's hands the Goods may come the Customer shall give notice thereto of the exclusive interest of the Contractor in the Goods and that the Customer shall identify and keep the proceeds of any such transaction as aforesaid and the proceeds from any insurance of the Goods separate from all other monies and shall give forthwith written notice to the Contractor on any such proceeds arising and immediately on the happening of any such transaction or proceeds from insurance arising as aforesaid the whole of the said purchase price, charges and tax shall be payable forthwith as a debt due to the Contractor.
- 7.2.3 To keep and maintain the identity of the Goods separate from any other Goods whatsoever and wheresoever situate and to hold the Goods identified as belonging to the Contractor, and not to lose the separate identity of the Goods or any part thereof.
- 7.2.4 To hold the Goods safe and protected from harm and to insure the Goods for the full replacement and installed value thereof naming the Contractor as the payee of any proceeds therefrom until all payments have been made to the Contractor in accordance with the said agreement for sale, and the Customer shall forthwith upon request procure a certificate of insurance to be issued to the Contractor endorsed with a note of the interest of the Contractor;
- 7.2.5 To return the Goods at the expense and risk of the Customer to the Contractor forthwith on demand, free from any damage and in the same condition as that when supplied to the Customer, but subject to Condition 7.4;
- 7.2.6 To use best endeavours to allow the Contractor as licensee free and uninterrupted access with or without notice to the location of the Goods or to the premises where the Goods or any part thereof are reasonably believed to be for the time being and to remain at the location or premises for the purpose of inspecting, recovering possession of, removing and protecting title to the Goods;
- 7.2.7 To include a note in all statutory accounts of the Customer that the Goods are subject to the retention of title, and that an amount equal to the purchase price of the Goods, the proceeds mentioned in Condition 7.2.2 above and any debt accruing to the Customer in respect of the Goods belongs to the Contractor until receipt by the Contractor of the whole of the purchase price, charges and tax as aforesaid; and
- 7.2.8 To indemnify and keep indemnified the Contractor and any successor and assign thereof against breach of any of the above covenants and against any claim arising from the exercise of the said rights of the Contractor as licensee except to the contrary of anything as aforesaid only with the prior consent in Writing as may be given expressly by, and within the authority and absolute discretion of the Contractor.
- 7.3 The Customer shall accept the System from the Contractor upon notice that the same has been installed, whether or not there is any defect therein other than a material defect and the Contractor shall rectify any defect in the System as soon as reasonably practical after receiving notice thereof.
- 7.4 The Customer shall be deemed to have accepted that the System is free from any defect immediately after notice from the Contractor that the System has been installed and tested and is free from any defect.
- 7.5 In the event that the System fails to pass any test under Condition 7.4 the Contractor shall have the opportunity of repairing and re-testing until such time as the System passes such test.
- 8. WARRANTIES AND LIABILITY**
- 8.1 Subject to Conditions 3.3 and 3.5 and the conditions set out below the Contractor warrants to the Customer that:
- 8.1.1 The System supplied by the Contractor is believed to be free from defects and the Contractor undertakes to provide or arrange for the provision of maintenance of the System free of charge for 12 months from being brought into service and thereafter (upon the terms and for the charges specified therein) in accordance with any maintenance agreement, Software support agreement which may be entered into between the Contractor and the Customer, or as the case may be;
- 8.1.2 That the Goods will correspond with and operate according to their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 15 months from delivery whichever is the first to expire and that the Software does not, so far as the Contractor is aware, infringe any protected rights of any third party and will allow the Goods to operate according to their specification.
- 8.2 During the warranty period, the Customer shall inform the Contractor of any claim under warranty by specifying the type and nature of the defect. Upon receipt of such information the Contractor or its agent or representative shall have the option of testing and inspecting the System or Goods at the site or having the defective part sent to the Contractor or the appropriate original supplier or manufacturer.
- 8.3 The above warranty shall not be assigned.
- 8.4 The above warranty is given by the Contractor subject to the following conditions:
- 8.4.1 The Contractor shall be under no liability in respect of any defect in the System or as the case may be the Goods arising from any drawing, design or specification supplied by the Customer;
- 8.4.2 The Contractor shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Contractor's instructions (whether oral or in Writing), misuse or alteration or repair of the System or Goods without the Contractor's approval;
- 8.4.3 The Contractor shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the System or Goods charges and tax as aforesaid have not been paid by the due date for payment;
- 8.4.4 That it does not extend to parts, materials or equipment not manufactured by the Contractor in respect of which the Customer shall be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Contractor.
- 8.5 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.6 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Customer are not affected by these Conditions.
- 8.7 Any claim by the Customer which is based on any defect in the quality or condition of the System or Goods or their failure to correspond with specification shall be notified to the Contractor within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within the shortest reasonable time after discovery of the defect or failure. Delivery shall not be refused, and if the Customer does not notify the Contractor of any valid claim in accordance with these Conditions, the Customer shall not be entitled to reject the System or Goods and the Contractor shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the System or Goods had been delivered in accordance with the Contract.
- 8.8 Where any valid claim in respect of any of the System or Goods which is based on any defect in the quality or condition of the System or Goods or their failure to meet specification is notified to the Contractor in accordance with these Conditions, the Contractor shall be entitled to repair on site or at the premises of the Contractor or replace as the Contractor may within the discretion thereof think fit the System or Goods (or the part in question) free of charge or, at the Contractor's sole discretion, refund to the Customer the price of the System or Goods (or a proportionate part of the price) and in either case the Contractor shall be entitled to reclaim the defective System or Goods, but the Contractor shall have no further liability to the Customer.
- 8.9 Except in respect of death or personal injury caused by the Contractor's negligence, the Contractor shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for loss of profit or for any indirect special or consequential loss or damage costs, expenses or other claims for compensation whatsoever (and whether caused by the negligence of the Contractor, its employees or agents or otherwise) which arise out of or in connection with the supply of the System or Goods (including any delay in supplying or installing or any failure to supply or install the System or Goods in accordance with the Contract or at all) or their use by the Customer, except as expressly provided in these Conditions and in any event but except as aforesaid the entire liability of the Contractor (subject to Conditions 6.8 and 10) shall not exceed the price payable under Condition 4.1.
- 8.10 The Contractor shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Contractor's obligations in relation to the System or Goods if the delay or failure was due to any cause beyond the Contractor's reasonable control. Without prejudice to the generality of the foregoing the following are regarded as causes beyond the Contractor's reasonable control:
- 8.10.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.10.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.10.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of the governmental, parliamentary or local authority;

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- 8.10.4 Import or export regulations or embargoes;  
8.10.5 Strikes, lock outs or other industrial actions or trade disputes (whether involving employees of the Contractor or of a third party);  
8.10.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;  
8.10.7 Power failure or breakdown in machinery.
- 8.11 In any event the entire liability of the Contractor under any indemnity or warranty or otherwise howsoever arising under the Conditions shall not exceed the total amount (subject to Conditions 8.8, 8.9 and 10) payable hereunder by the Customer to the Contractor.
- 9. PATENTS, TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS**
- 9.1 The Customer acknowledges that any and all of the trade marks, trade names, copyrights, patents and other intellectual property rights used or embodied in or in connection with the System or Goods including the Software and any parts of the System or Goods is and shall remain the sole property of the Contractor or such other party as may be identified therein or thereon (the "owner") and the Customer shall not during or at any time after the completion, expiry or termination of this Agreement in any way question or dispute the ownership by the Contractor or the owner of any such rights.
- 9.2 In the event that new inventions, designs or processes evolve in performance or as a result of this Agreement, the Customer acknowledges that the same shall belong to the Contractor unless otherwise agreed in Writing by the Contractor.
- 9.3 The Customer shall indemnify the Contractor fully against all liabilities, loss, damages, costs and expenses which the Contractor may incur in connection with work done in accordance with the Customer's specifications involving infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person.
- 10. INDEMNITY**
- Subject to Condition 9.3 if any claim is made against the Customer that the System or Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person then unless the claim arises from the use of a drawing, design or specification supplied by the Customer the Contractor shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:
- 10.1 The Contractor is given full control of any proceedings or negotiations in connection with any such claim.  
10.2 The Customer shall give the Contractor all reasonable assistance for the purposes of any such proceedings or negotiations.  
10.3 Except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Contractor (which shall not be unreasonably withheld).  
10.4 The Customer shall not do anything which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do).  
10.5 The Contractor shall be entitled to the benefit of, and the Customer shall accordingly account to the Contractor for, all damages and costs (if any) awarded in favour of the Customer which are payable by or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and  
10.6 Without prejudice to any duty of the Customer at common law, the Contractor shall be entitled to require the Customer to take such steps as the Contractor may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Contractor is liable to indemnify the Customer under this Condition 10.
- 11. INSOLVENCY OF CUSTOMER**
- 11.1 This Condition 11 applies if:
- 11.1.1 The Customer makes a composition or voluntary arrangement with its creditors or (being an individual or company) becomes bankrupt or (being a company) enters administration, goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or  
11.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or  
11.1.3 The Customer ceases, or threatens to cease, to carry on business; or  
11.1.4 The Contractor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.2 If this Condition 11 applies then, without prejudice to any other right or remedy available to the Contractor, the Contractor shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the System or Goods have been delivered but not paid for the price shall become immediately due and payable as a debt notwithstanding any previous agreement or arrangement to the contrary.
- 12. GENERAL**
- 12.1 The Contractor is a member of a group of companies and accordingly the Contractor may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member for the time being of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Contractor.  
12.2 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.  
12.3 No waiver by the Contractor of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.  
12.4 Where notice of these Conditions has been given by the Contractor to the Customer these Conditions shall apply and be deemed to be incorporated in every Contract for the supply of the System or Goods as the case may be by the Contractor to the Customer, and may be referred to as the "standard conditions" of the Contractor.  
12.5 Any part of these Conditions held by any competent authority to be invalid or unenforceable in whole or in part shall be severed from the rest of the Conditions and the rest of these Conditions and the remainder of the provision in question shall continue to be valid and enforceable to the fullest extent permitted by law and shall not be affected thereby.  
12.6 Any dispute arising under or in connection with these Conditions or the sale of the System or Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Law Society, in accordance with the rules of the London Chamber of Commerce.  
12.7 The Contract shall be governed by the laws of England.  
12.8 These Conditions shall override all other terms and conditions inconsistent herewith whether express or implied and in the case of any ambiguity or variation between these Conditions and any other conditions, these Conditions shall prevail and these Conditions shall supersede any arrangements made or existing between the Contractor and the Customer whether before, at or after the date these Conditions are adopted by the Contractor and shall constitute the entire understanding between the Contractor and the Customer except only as mentioned in Condition 2.2.  
12.9 The Contract and the benefit of these Conditions shall not be assigned by the Customer.