

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

"Business Day" means a day other than a Saturday, Sunday or public holiday in England;

"the Company" means MORAVEK INTERNATIONAL LIMITED, a private limited company registered in England and Wales with company number: 05417788, whose registered office is at Pure Offices Harbour Road, Portishead, Bristol, BS20 7AN;

"Contract" means the contract between the Company and the Customer for the Sale and Purchase of the Goods and/or Services in accordance with the terms;

"Conditions" means the terms and conditions stated in this document and amended from time to time;

"Customer" means the individual(s) and/or organisation(s) to whom the Company is providing Goods or Services;

"Delivery" means delivery in accordance with clause 3.5;

"Goods" means the Goods to be supplied by the Company in accordance with the Customer, including but not limited to raw materials, finished or semi-finished materials or articles, machinery, parts, spares, commodities etc. and whether one or a number of items, whether or not identical or similar;

"Intellectual Property Rights" means all copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Quote" means the initial quote provided by the Company to the Customer with regard to the Goods or Services to be provided;

"Services" means the services to be performed by Company in accordance with the Contract;

"Specification" means any specification for the Goods, including any recorded plans or drawings that is agreed in writing by the Customer and the Company.

1.1 In this document (except where the context otherwise requires):

- (a) any words following the terms "including", "include", "for example" or any similar expression are by way of illustration and emphasis only and shall not limit the generality or extent of any other words or expressions; and
- (b) references to any legislation include any modification or re-enactment of that legislation and any subordinate legislation made (before or after the Contract) under that legislation.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

2.2 Confirmation of the Quote by the Customer constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with the Conditions. The Customer is responsible for ensuring the terms of the Quote and any applicable Specification are complete and accurate.

2.3 The Contract shall only be formed when the Company issue a written acceptance at which point the Contract shall come into existence on these terms and conditions.

- 2.4 Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 The Quote for the Goods or Services given by the Company shall not constitute an offer. A Quote shall only be valid for a period of 20 Business Days from its date of issue.
- 2.6 Tenders submitted by the Company for acceptance by a Customer shall remain open for acceptance for a period of 30 days from the date of the tender, unless in the tender some other period is specified or accepted.

3. **PRICES**

- 3.1 The price of the Goods or Services shall be the price stated in the Quote, or if no price is quoted the ruling price as published in the price list current at the date of dispatch of the goods from the Company's works.
- 3.2 The price of Goods or Services stated in the Quote is based on the cost to the Company of materials fuel and power, transport, tooling and labour at the date of acceptance of the order or quotation (whichever is earlier) if at the date of dispatch of the goods or performance of the service there has been any increase in all or any of such cost, or any extra work or modification is requested by the Customer, the price payable for the goods or services may be increased accordingly
- 3.3 Where the price for the goods is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.
- 3.4 There shall be added to the price any *value* added tax and other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the goods or performance of the services (whether initially charged on or payable by the Company or the Customer).
- 3.5 All goods are sold "ex. works" unless otherwise stated. If the Company arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the point of delivery such costs shall be for the Customer's account and shall not affect the provisions of the contract as to the passing or risk.

4. **TERMS OF PAYMENT**

- 4.1 Accounts are due for payment as per the terms of the Quote. A Non-refundable deposit payment is required with the order prior to commencing the supply or manufacture of goods as detailed in the Quote. All payments must be made in accordance with the Quote. If the quotation does not include any specific terms of payment, payment on full must be made prior to delivery. For the avoidance of doubt delivery does not include the installation and commissioning of any Goods to be provided under the Contract.
- 4.2 When deliveries are spread over a period each consignment will be invoiced accordingly and each invoice will be treated as a separate account and be payable accordingly.
- 4.3 Failure to pay for any goods or services or for any Delivery or installment in accordance with the Contract shall entitle the Company to suspend further Deliveries on all Contracts and orders that exist between the Company and the Customer without prejudice to any other rights the Company may have.

4.4 The Company reserves the right to charge interest on any account that becomes overdue according to the Contract at the rate of 8% above the base rate (or such rate as base rate may be from time to time) per month. The Company reserves the right where genuine doubts arise as to a Customer's financial position or in the case of failure to pay for any goods or services or any delivery or installment as aforesaid to suspend Delivery or performance of any order or any part or installment without liability until payment or satisfactory security for payment has been provided.

5. NON STANDARD ORDERS

5.1 Where the Customer orders goods or materials of a type, size or quality not normally produced by the Company, the Company will use all reasonable endeavors to execute the order, but if it proves impossible, impractical or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the uncompleted balance thereof, in which event the Customer will only be liable to pay for the part thereof actually delivered.

6. DELIVERY AND COMPLETION DATES

6.1 The Delivery or performance dates specified in the Contract are approximate only and, unless otherwise expressly stated, time is not of the essence for Delivery or performance. The Company will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform if the duration of the delay is not substantial or if the delay or failure is due to act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere), hostilities, breakdowns, shortage of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force of law) or any other cause whatever beyond the Company's control or of an unexpected or exceptional nature.

6.2 No delay shall entitle the Customer to reject any delivery or services or any further installment or part of the order or any other order from the Customer or to repudiate the contract or the order.

6.3 The Company does not undertake to meet any schedule of Customer's requirements supplied after the date of commencement of the Contract and will have no liability whatever for delay in meeting or failure to meet all or any such requirements (howsoever such failure or delay may arise) unless and to the extent that the Company expressly agrees to meet such requirements, in which event clause 6.1 shall apply.

6.4 If in the Contract the Company has agreed to transport the goods, the Company shall insure the goods up until the point that the goods arrive at the Customer's premises but are still in the transport vehicle. The Customer must then insure the Goods whilst they are unloaded from the delivery vehicle and afterwards.

6.5 If in the Contract the Customer has agreed to transport the Goods, the Customer must insure the Goods from the point at which the Goods are ready to be picked up from the Company and the Company shall not be liable for any damage, shortage or loss in transit.

6.6 Claims for any damage, shortage or loss in transit should be made on the carrier, and any conditions imposed by the carrier in relation to claims for damage shortage or loss in transit should be complied with.

7. DELAYED ACCEPTANCE

- 7.1 If for any reason the Customer is unable to accept delivery of the Goods when the Goods are due and ready for Delivery the Goods shall be appropriated to the Customer and the Company may arrange storage of the Goods and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other rights which the Company may have in respect of the Customer's failure to take Delivery of the Goods or to pay for them in accordance with the contract.

8. RETENTION OF TITLE

- 8.1 The risk in the goods shall pass to the Customer when:
- (a) the Goods are under the physical control of the Customer, any of its employees, carriers or agents; or
 - (b) the Goods are appropriated to the Customer but kept at the Company's premises at the request of the Customer or the Goods have been Delivered to alternative storage facilities as described in clause 8.1.
- 8.2 Notwithstanding clause 8.1 legal and equitable ownership of the Goods shall remain with the Company until payment for the Goods has been received by the Company in full or until the Customer sells the goods to its customers by way of a bona fide sale at full market value whichever shall first occur.
- 8.3 At any time prior to full payment (whether or not payment is then overdue) the Company may (without prejudice to any of its other rights) retake possession of the Goods or any part thereof and may enter on the Customers premises by its employees or agents for that purpose.
- 8.4 Until the time of full payment, the Customer is entitled to use the Goods in the normal course of its business or to sell the Goods to third parties in the normal course of its business. The Company shall have the right to trace the proceeds of the sale according to the principles in Hallett's Estate (1880) 13 CHD 696.
- 8.5 The Customer's right to use the Goods or to resell them prior to full payment may be terminated forthwith by written notice given by the Company to the Customer and shall automatically terminate with or without such notice on the appointment of any receiver or liquidator of the Customer.

9. WARRANTY, LIMITATION OF LIABILITY; GOODS

- 9.1 Nothing in this Contract excludes or limits the liability of the Company (or its Affiliates) for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by the Company's (or its employees', agents' or sub-contractors') negligence; or
 - (c) any other liability that cannot be limited or excluded at law.
- 9.2 The Company warrants in relation to Goods manufactured to the Company's designs that it will (at the Company's choice) either repair or replace or refund the purchase price of any Goods or an appropriate part thereof which are found within a period of 6 months from Delivery of such Goods ("the warranty period") to be defective or not in

accordance with the contract or any express description or representation given or made on behalf of the Company in respect of the Goods. The warranty under this clause does not apply to standard or proprietary components or items of equipment.

9.3 The Company warrants in relation to Goods not manufactured to the Company's design and in relation to standard or proprietary components or items of equipment that it will so far as it is able to do so give the Customer the benefit of any express guarantee or warranty by the manufacturer or supplier of such Goods and of any other rights which the Company has against the manufacturer or supplier.

9.4 In the event of any claim under any of the foregoing warranties or under any condition or warranty implied by law or under any other express condition warranty or guarantee the following provisions shall apply:

- (a) The Company will require a reasonable period of time to carry out any repair or replacement.
- (b) All costs of dismantling, digging out and replacement and re-assembly shall be for the Customer's account.
- (c) The Goods to be repaired or replaced shall be delivered or returned at the Customer's expense to a location specified by the Company for repair or replacement and the expenses of redelivery shall also be for the Customer's account.
- (d) The Customer shall make such facilities (such as handling equipment, tools, labour and services etc.) as the Company reasonably requires available to the Company for the purpose of repair or replacement.
- (e) Replaced items will become the property of the Company.
- (f) The Goods must have been kept in good condition and must have been used properly by the Customer.

9.5 The Customer's remedies in respect of any claim under the foregoing express warranty or against any manufacturer or supplier as aforesaid or any claim under any condition or warranty implied by law or any other claim in respect of the Goods or any workmanship in relation thereto (whether or not involving negligence on the part of the Company) shall in relation to Goods falling within paragraph (1) of this condition be limited to repair replacement or refund of the purchase price or a part thereof as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the warranty period and in relation to Goods falling within paragraph (2) of this condition be limited to the enforcement of the above mentioned liabilities of the manufacturer or supplier.

9.6 If the Goods are sold as second-hand Goods they are sold on the express understanding that they are sold without any warranty. The Customer has had the opportunity to inspect and test the Goods fully and is deemed to be aware of any defects which the Goods have (not limited to those itemized in the order form signed by the Customer). Accordingly, all conditions and warranties implied by law are hereby excluded except to the extent that such exclusion is prohibited by any rule of law.

9.7 If the Goods are found to breach the terms of the Contract, any condition implied by law not hereby excluded or any express description or representation given or made on behalf of the Company in relation to the Goods within 3 days of Delivery, the Company will (at the Company's choice) either rectify the defect or accept return of the Goods and refund the purchase price (less a reasonable allowance for use, wear and tear and damage to the goods occurring between delivery and return thereof).

9.8 The Customer's total remedies in respect of any claim in relation to the Goods howsoever arising (whether or not involving negligence on the part of the Company) shall in all cases be limited to rectification of the Goods or the return thereof or refund of the purchase price.

9.9 The Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law.

10. WARRANTY LIMIT OF RESPONSIBILITY; SERVICES AND CUSTOMERS MATERIALS

10.1 Work involving the use of Customer materials and facilities are undertaken by the Company on the express understanding that the Company shall not be liable for any distortion, faults or defects which are caused to the Customer's materials by performing the Services howsoever arising even if resulting from any fault, negligence or mistake of the Company.

10.2 The Company gives no guarantee or warranty of any kind in relation to reparation of damaged Customer materials during any installation or testing but will use reasonable endeavors to correct any such distortions, faults or defects or carry out other requisite remedial work or services at the Customer's expense and risk.

10.3 The Company shall not in any circumstances be liable for any damages, compensation costs, expenses, losses or other liabilities whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.

10.4 Where the contract provides for the Company to install or test any Goods or equipment in any building or premises, the Customer is solely responsible for the suitability of the site for the installation of the Goods or equipment, for obtaining all necessary consents and approvals under planning and building regulations and bye-laws and for the preparation of the site, the construction of foundations and the provision of services so that the site is safe and suitable to receive the Goods or equipment. The Company will if requested provide drawings and specifications showing the site requirements for the Goods or equipment based on normal requirements in a suitable location but does not thereby warrant that the site as prepared by the Customer will be suitable or satisfactorily prepared.

10.5 The Customer agrees to ensure that, where the Company, its employees, agents or sub-contractors are on its premises, the premises are safe at all times. The Customer will indemnify, keep indemnified and hold harmless the Company in full and on demand from and against all liabilities, direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including without limitation costs of enforcement) and expenses which the Company incurs or suffers directly or indirectly in any way whatsoever arising out of or in connection with any claim or action against the Company for death and/or personal injury arising out of the Customer's failure to provide safe premises;

11. INSTALLATION ETC.

11.1 Unless the Contract expressly provides the Company shall not be responsible for the installation, erection or commissioning of the Goods or the supervision thereof.

12. TESTING

12.1 The Company shall only be obliged to carry out tests which are specified in the Contract, and reasonable tolerances shall be accepted by the Customer who shall not be entitled to reject any Goods on the ground that they are not precisely as specified. Tests and inspections shall take place under the Company's standard testing arrangements. Any additional testing which the Company expressly agrees to carry out for the Customer shall be charged extra to the Customer and shall be undertaken subject to these conditions.

13. DRAWINGS AND INFORMATION

13.1 The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to the Company, whether written or verbal, is in all respects complete, accurate and entirely suitable for the Customer's requirements.

13.2 Unless otherwise expressly agreed, the Company shall have no liability for the performance, suitability or durability of any Goods, materials or workmanship manufactured in accordance with the Customer's designs, drawings, standards or specification.

13.3 The Customer shall indemnify the Company against all actions, costs, (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's specific requirements, designs or the Specification.

13.4 Any extra work, requirement or modification (including but not limited to foundation work) in relation to the Goods or their installation which is not expressly specified in the contract or which is expressly excluded by these conditions and which the Customer requests shall increase the price of the Goods (including an appropriate allowance for profit) in accordance with clause 3.2.

14. MODIFICATIONS ETC.

14.1 Any extra work, requirement or modifications in relation to the Goods or their installation which is not expressly specified in the contract and which the Customer requests shall, if the Company is able and willing to agree thereto, be charged extra in accordance with clause 3.2, and the Company shall be allowed a reasonable extension or postponement of performance or delivery dates required to comply with any such request. The Company reserves the right to reasonably reject any request by the Customer to undertake additional work to that which is provided for in the Contract if it is uneconomical or impracticable.

15. CONFIDENTIALITY: PATENTS ETC

15.1 Any drawings, Specifications or other technical information supplied to the Customer by the Company in connection with the contract are provided on the express understanding that the Customer will not give, loan, exhibit or sell such drawings, specifications or technical information to any third party and that the Customer will not use them in any way except as permitted under the Contract. The Intellectual Property Rights in all documents provided by the Company

will remain vested in the Company and no assignment or transfer of such rights shall be deemed to be granted under these terms and conditions or the Contract.

16. PACKING

16.1 Unless otherwise specified, packing cases and packing materials will be charged extra, but where stated to be returnable, will be credited in full upon return of the packing cases and packing materials to the Company's works carriage in good condition within one month of Delivery.

16.2 The Company uses its best endeavors to ensure, where necessary, suitability of packing before dispatch, but will not be liable for breakage or damage in transit, on the ground of alleged unsuitability of packing.

17. SUB-CONTRACTING

17.1 The Company reserves the right to sub-contract the whole or any part of the Contract.

18. APPLICABLE LAW

18.1 These Terms and Conditions and the Contract shall in all respects be governed by and construed in accordance with English law and the Customer hereby submits to the exclusive jurisdiction of the English Courts.