

ENGEL UK Limited Terms and Conditions of Sale

1. INTERPRETATION

- 1.1. In this Contract:
 - o "Customer" - the person who accepts a quotation of Engel for the sale of the Goods and/or Services or whose order for Goods and/or Services is accepted by Engel;
 - o "Contract" - these terms and conditions and the document agreed between the parties identifying the Customer, Specification of Goods and/or Services, any specific exclusions, Target Date(s), Site and Contract Price;
 - o "Contract Price" - the price agreed between the parties for the Goods and/or Services;
 - o "Goods" - the goods (including any instalment of the goods) set out in the Specification and, where applicable, the Parts (whether new or used) which Engel is to supply in accordance with the Contract;
 - o "Intellectual Property" - any intellectual property rights including without limitation patents, registered and unregistered trademarks and service marks, registered designs, utility models, design rights, copyright or any application to register any of the same and any other rights in the nature of intellectual property in the UK or elsewhere in the world, and including the right to bring, oppose and appeal proceedings in respect of alleged infringement;
 - o "Parts" - any parts for or components of the Goods (whether new or used) which Engel is to supply in accordance with the Contract;
 - o "Engel" - ENGEL UK Limited (registered in England under number 0798939);
 - o "Services" - any services supplied by Engel to the Customer in accordance with the Contract;
 - o "Site" - the location designated in the Contract at which the Goods will be delivered or installed and/or the Services performed;
 - o "Specification" - means the specification of the Goods and/or Services to be provided under the Contract set out in writing and agreed by both parties, subject to any specific exclusions recorded;
 - o "Target Date(s)" - means the date(s) agreed between the parties on which Engel will endeavour to deliver or install the Goods or any part of them, or commence installation, as applicable, and/or provide the Services.
- 1.2. Any references in the Contract to any provision of a statute, Regulation or Code of Practice shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. The headings in the Contract are for convenience only and shall not affect their interpretation.
- 1.4. Any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

2. BASIS OF THE SALE

- 2.1. Any order placed by the Customer in any form, constitutes an offer by the Customer to purchase Goods and/or Services from Engel in accordance with the Contract. An order shall only be deemed to be accepted when Engel notifies the Customer that it accepts the order, at which point and on which date the Contract shall come into existence.
- 2.2. Engel agrees to supply the Goods and/or to provide the Services to the Customer and the Customer agrees to pay the Contract Price in accordance with the terms of the Contract.
- 2.3. Any quotation by Engel:
 - 2.3.1. shall be subject to these terms and conditions;
 - 2.3.2. shall not constitute an offer and, unless otherwise agreed in writing by Engel, is only valid for a period of 20 days from its date of issue and may be revoked at any time; and
 - 2.3.3. is based on the instructions and information provided by the Customer. The Customer acknowledges and accepts therefore that Engel reserves the right to amend the quotation to cover any increase in cost which may arise as a result of additional or incomplete instructions or information.
- 2.4. Acceptance of delivery or installation of the Goods and/or provision of the Services shall be deemed conclusive evidence of the Customer's acceptance of the Contract.
- 2.5. Engel's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by Engel in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.6. Any advice or recommendation given by Engel or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods, which is not confirmed in writing by Engel, shall be followed or acted upon entirely at the Customer's own risk, and accordingly Engel shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.7. The terms of this Contract, including these terms and conditions, apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, including the Customer's own terms of purchase or procurement, or which are implied by trade, custom, practice or course of dealing.
- 2.8. For the avoidance of doubt, any terms or conditions endorsed upon, delivered with or referred to in any purchase order or other similar document delivered or sent by the Customer to Engel shall not form part of the Contract.
- 2.9. Any reference to the Customer's purchase order or other similar document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such purchase order or other similar document will have effect to the exclusion or amendment of the Contract.
- 2.10. All descriptions, specifications, technical data and other information in Engel's catalogues, advertising, trade literature and other similar documents are of a generally informative nature only and do not and are not intended to form part of the Contract or any other contract between Engel and Customer for the sale of the Goods and/or Services.
- 2.11. All of the Contract terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.12. Engel may employ sub-contractors to carry out any part of its obligations under the Contract at its sole discretion and it may assign its rights and obligations under this Contract, or any part of them, to any other party. The Customer may not employ sub-contractors nor assign its rights and obligations under this Contract without the written consent of Engel.
- 2.13. Where delivery is agreed to be made by instalments, each instalment may be deemed at Engel's discretion to be a separate and distinct contract and no default by Engel in respect of any one or more instalment shall entitle the Customer to reject or withhold payment in respect of any other instalment.

3. CUSTOMER'S RESPONSIBILITIES

- 3.1. The Customer undertakes and warrants to Engel that:
 - 3.1.1. the terms of any order (including any applicable Specification) shall be accurate and complete;
 - 3.1.2. any necessary information relating to the Goods and/or Services to be supplied will be provided by the Customer within a sufficient time to enable Engel to perform the Contract in accordance with its terms; and
 - 3.1.3. the Customer shall procure all necessary licences and permissions and comply with all statutory obligations and requirements for the provision of the Goods and/or Services.

- 3.2. The quantity, quality and description of and any specification for the Goods and/or Services shall be as set out in Engel's confirmation of order and incorporated into the Contract.
- 3.3. If the Goods are to be manufactured and/or Services are to be provided, or any process is to be applied to the Goods by Engel in accordance with a Specification submitted by the Customer, the Customer shall indemnify Engel against all loss, damages, costs and expenses awarded against or incurred by Engel in connection with or paid or agreed to be paid by Engel in settlement of any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from Engel's use of the Customer's Specification.
- 3.4. Engel reserves the right to make any changes in the Specification of the Goods and/or Services which are required to conform with any applicable statutory or EC requirements or, where the Goods and/or Services are to be supplied to Engel's Specification, which do not materially affect their quality or performance.
- 3.5. Any request by the Customer to alter the Specification of the Goods and/or Services within 12 weeks of the Target Date specified in the Contract will, if accepted in writing by Engel, result in additional charges and a delay in delivery, both of which will be notified in writing to the Customer. No order which has been accepted by Engel may be cancelled as of right by the Customer and in the event of such cancellation being accepted by Engel, the Customer shall indemnify Engel 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 Engel as a result of cancellation.
- 3.6. The Customer will provide Engel with such information, material, copies, logos, drawings and designs, samples, prototypes, answers to queries, licences, decisions and approvals and access to the Customer's systems, premises and staff, as may be reasonably necessary for or requested by Engel to perform the Contract and deliver or install the Goods and/or provide the Services. The Customer is responsible for ensuring that such material and answers are accurate and complete.
- 3.7. The Customer will provide free of charge the following facilities to authorised personnel of Engel and any sub-contractors at such times not limited to the Customer's normal business hours as Engel requires to allow it to perform the Contract:-
 - 3.7.1. access to the Site;
 - 3.7.2. access to the Customer's employees for information purposes;
 - 3.7.3. all electric power, lighting, heating, water, sanitary facilities and air conditioning reasonably needed by Engel to perform the Contract.
- 3.8. Where applicable, the Customer will ensure that the Site is prepared and conforms with any requirements or description specified to it by Engel prior to commencement of installation of the Goods and/or delivery of the Services.
- 3.9. The Customer will follow any instructions of Engel as to the use and maintenance of any Goods supplied under this Contract.

4. PRICE OF GOODS AND/OR SERVICES

- 4.1. The Contract Price of the Goods and/or Services shall Engel's quoted price in the Contract or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Engel's confirmation of order.
- 4.2. Engel reserves the right, by giving notice to the Customer at any time before delivery, to increase the Contract Price of the Goods and/or Services to reflect any increase in the cost to Engel which is due to:
 - 4.2.1. any factor beyond the control of Engel (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture);
 - 4.2.2. any change in Target Dates, quantities or the Specification of Goods and/or Services which is requested or approved by the Customer;
 - 4.2.3. Goods and/or Services being required by the Customer with exceptional urgency or at anti-social hours;
 - 4.2.4. any delay caused by any instructions of the Customer or failure of the Customer to give Engel adequate information, instructions or facilities;
 - 4.2.5. any other failure by the Customer to comply with its obligations under the Contract, including without limitation those under clause 3.
- 4.3. Engel may levy additional charges for Goods and/or Services provided outside the Specification.
- 4.4. Except as otherwise stated under the terms of any quotation or in any price list of Engel, and unless otherwise agreed in writing between the Customer and Engel, all prices are given by Engel on an ex works basis, and where Engel agrees to deliver the Goods otherwise than at Engel's premises, the Customer shall be liable to pay Engel's charges for transport, packaging and insurance. This will also apply to off-loading and siting services provided by Engel.
- 4.5. The Contract Price in respect of the Goods and/or Services is exclusive of any applicable value added tax, or any similar sales tax, impost or customs duties, which the Customer shall be additionally liable to pay to Engel in accordance with the payment terms at clause 5.
- 4.6. Quotations given in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise agreed in writing between the parties, the Contract Price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.
- 4.7. Unless expressly stated, the Contract Price does not include any third party costs or disbursements, and Engel may levy additional charges if the Customer requires it to procure such items. When reasonably practicable, and save in the case of reasonable travelling, accommodation and subsistence expenses, Engel shall seek the Customer's prior consent to material disbursements. However, Engel reserves the right to incur chargeable disbursements without obtaining the Customer's prior approval, in the event that those are modest in relation to the Contract Price or are required with exceptional urgency.

5. TERMS OF PAYMENT

- 5.1. Unless otherwise agreed between the parties in writing, Engel shall invoice the Customer for the Contract Price of the Goods and/or performance of the Services in the following instalments:
 - 5.1.1. In the case of supply of Goods (except for ad hoc spare parts – see 5.1.2):-
 - (a) 30% upon Engel accepting the order in accordance with clause 2.1;
 - (b) 60% upon Engel issuing notification to the Customer that the Goods are ready for dispatch ex works; and
 - (c) the balance of 10% on the earlier of the following dates:
 - the date of completion of a successful dry cycle, if applicable; or
 - 30 days after the date on which Seller has notified the Customer that the Goods are ready for collection or dispatch (as applicable).
 - 5.1.2. In the case of supply of Services and of ad hoc spare parts for capital Goods, the whole Contract Price upon completion or delivery of such supply or any instalment or part or stage of it.
- 5.2. Invoices shall be sent to the Customer's address recorded in this Contract unless otherwise agreed.
- 5.2. The Customer shall pay each invoice properly rendered by Engel within 30 days of the date of the invoice in full and in cleared funds, or such other date as has been agreed in writing by Engel, and provided that invoices raised in accordance with clause 5.1.1(a) shall be payable on receipt (in each case the "Due Date").

- 5.3. Engel shall be entitled to recover the Contract Price for the Goods and/or Services notwithstanding that delivery and/or performance may not have taken place and the title in the Goods has not passed to the Customer. If the Contract provides for payments by instalments and any instalments are unpaid on the Due Date, the entire Contract Price and all other monies due at that time shall become payable forthwith.
- 5.4. Time of payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.5. If the Customer fails to make any payment of any part of the Contract Price on the Due Date then, without prejudice to any other right or remedy available to Engel, Engel shall be entitled to:
- 5.5.1. cancel the Contract or suspend any further deliveries of the Goods and/or performance of the Services to the Customer until payment has been received;
- 5.5.2. attach a condition of prepayment or require a specified deposit for any remaining Goods and/or Services as a condition of resumption of performance;
- 5.5.3. appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and Engel) as Engel may think fit (notwithstanding any purported appropriation by the Customer); and
- 5.5.4. charge the Customer interest (both before and after any judgment) on the amount unpaid until payment in full is made at the higher of the rate of 1% per month and the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998, a part of a month being treated as a full month for the purpose of calculating interest;
- 5.5.5. retain any property of the Customer then in its possession under a general lien for any payment falling due under this Contract;
- 5.5.6. cancel the Contract and/or any part of the Contract and/or any other contract between Engel and the Customer.
- 5.6. The Customer shall make all payments due under the Contract without any deduction or withholding except as required by law, whether by way of set-off, counterclaim, discount, abatement or otherwise. Engel may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Engel to the Customer.
- 5.7. No act or omission of the Customer which prevents Engel from delivering the Goods or continuing to perform the Contract or performing it according to any agreed time-scale shall prevent Engel from raising invoices in accordance with this clause 5.
- 5.8. Where payment is made by means of any bill of exchange, cheque or other negotiable instrument, payment shall not be treated as having been made until such instrument has been honoured on presentation for payment.
- 6. DELIVERY**
- 6.1. Where delivery is required, delivery of the Goods shall, unless otherwise agreed in writing, be made by Engel delivering the Goods to the Site or such other place as set out on Engel's confirmation of order.
- 6.2. Delivery of the Goods shall be completed on the Goods arrival at the Site.
- 6.3. An agreed delivery period shall not commence until the Customer has complied, to the satisfaction of Engel, which it shall confirm in writing, with all precedent technical and commercial requirements.
- 6.4. Target Dates quoted for delivery or installation of Goods or provision of Services are approximate only and unless previously agreed with Engel in writing, time for delivery shall not be of the essence. Engel shall not be liable to the Customer for compensation or damages for delayed delivery or any consequential loss of any kind whatsoever for any delay in delivery or installation of the Goods, howsoever caused. The Goods may be delivered by Engel in advance of the Target Date upon reasonable notice to the Customer.
- 6.5. If no dates are specified, delivery of the Goods or provision of the Services will be within a reasonable time.
- 6.6. In particular, but without limitation, Engel shall not be responsible for delay caused by factors beyond its control, including adverse weather conditions.
- 6.7. If the Customer fails to take delivery of the Goods or fails to give Engel adequate delivery instructions on the Delivery Date and at the time agreed (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Engel's fault) then, without prejudice to any other right or remedy available to Engel, Engel may:
- 6.7.1. store the Goods until actual delivery and charge the Customer for the reasonable costs (including, without limitation, insurance) of storage; or
- 6.7.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses), account to the Customer for any excess over the Contract Price under the Contract or charge the Customer for any shortfall below the Contract Price.
- 6.8. Engel may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.9. The Customer shall provide (at its expense) at the place where delivery of the Goods is to take place, adequate and appropriate equipment and manual labour for loading or off-loading (as appropriate) the Goods.
- 6.10. Engel reserves the right by giving notice to the Customer at any time before delivery of the Goods or provision of the Services to change the Target Date(s) if:-
- 6.10.1. the Customer changes or agrees to change the Specification;
- 6.10.2. the Customer causes any delay;
- 6.10.3. the Customer fails to give Engel adequate or accurate information, instructions or facilities, or fails to comply with its obligations including those at clause 3.
- 6.11. The Customer shall take delivery of the Goods notwithstanding that the quantity delivered is greater or less than that contained in the Specification, provided that:-
- 6.11.1. such discrepancy shall not exceed 10%;
- 6.11.2. Engel shall at its discretion either make up any shortfall or adjust the Contract Price pro rata to the discrepancy, provided that it is notified in writing of the shortfall within 7 days of delivery and is given the opportunity, if required to examine the Goods before they are used or resold by the Customer.
- 6.12. Engel shall not be liable for any claim for loss or damage to the Goods in transit unless such claim is notified in writing both to Engel and the carrier within 7 days of delivery of the Goods. Where the Customer accepts the Goods from the carrier without checking, Engel shall not be liable for such claim unless the Customer has clearly marked the delivery note "not examined".
- 7. RISK AND PROPERTY**
- 7.1. Risk of damage to or loss of the Goods shall pass to the Customer:
- 7.1.1. in the case of Goods to be delivered ex works at Engel's premises, at the time when Engel notifies the Customer that the Goods are available for collection; or
- 7.1.2. in the case of Goods to be delivered or installed otherwise than at Engel's premises, at the time of delivery or installation or, if the Customer wrongfully fails to take delivery of the Goods, the time when Engel has tendered delivery of the Goods;
- and the Customer will be responsible for insuring the Goods from the time risk passes.
- 7.2. Notwithstanding delivery and the passing of risk in the Goods or any other provision of the Contract, the legal and beneficial title in the Goods shall not pass to the Customer until Engel has received in cash or cleared funds:
- 7.2.1. payment in full of the Contract Price including VAT thereon of the Goods; and
- 7.2.2. all other sums outstanding from the Customer to Engel for which payment is then due.
- Engel shall be entitled to be paid the Contract Price (or any proceeds of sale of the Goods by the Customer under clause 7.4) notwithstanding that title has not passed to the Customer.
- 7.3. Until such time as the title in the Goods passes to the Customer, the Customer shall:
- 7.3.1. hold the Goods as Engel's fiduciary agent and bailee;
- 7.3.2. keep the Goods separate from those of the Customer and third parties and identified as Engel's property;
- 7.3.3. keep the Goods properly maintained in satisfactory condition, stored and protected;
- 7.3.4. keep the Goods insured for their full reinstatement value against all risks customarily insured against for products which are similar or equivalent to the Goods, on request to provide Engel with evidence of the existence of, and continued payment of premiums for, such insurance policies and shall hold the proceeds of such insurance on trust for Engel and not mix those proceeds with any other money, nor pay them into an overdrawn bank account. The Customer shall whenever requested by Engel produce a copy of the policy of insurance;
- 7.3.5. not remove, deface or obscure any identifying mark or packaging relating to the Goods;
- 7.3.6. not, without Engel's prior written consent, effect any mechanical or other modification to the Goods, or make any alterations or additions to them, it being agreed that any such additions, alterations or modified parts which are made or added (with or without consent) to them shall become part of the Goods and shall belong to Engel;
- 7.3.7. not use, or permit others to use the Goods for any purpose for which they are not expressly designed or suitable; and
- 7.3.8. notify Engel immediately if it becomes subject to any of the events listed in clause 10.
- 7.4. Except with the consent of Engel in writing, until such time as title passes to the Customer, the Customer shall not be entitled to resell the Goods but may use the Goods in the ordinary course of its business. If, in breach of this clause, the Customer resells the Goods, it shall do so as agent for Engel (provided that the Customer shall not be entitled to sell the Goods with the benefit of any warranty) and shall account to Engel for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured. The Customer assigns to Engel any rights and claims which it may have against any third parties in relation to the Goods, including any right to recoup payment.
- 7.5. Until such time as the property in the Goods passes to the Customer, and provided that the Customer is in default in payment or Engel in good faith on reasonable grounds believes the Customer is or may be insolvent, Engel shall be entitled at any time to require the Customer to deliver up the Goods to Engel and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored, using only such force as may be necessary, and repossess the Goods (including, without limitation, a right to remove any fixture or fitting from the Goods which causes the Goods to be affixed to such premises), without prejudice to Engel's right to payment of the Contract Price of the Goods. On the making of such demand under this clause, the Customer's right to use the Goods under clause 7.4 shall cease.
- 7.6. The Customer's right to use the Goods under clause 7.4 shall automatically cease if any of the grounds for termination of the Contract under clause 10 arise, and the other provisions of clause 7.5 shall then apply as if a demand by Engel had been made.
- 7.7. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Engel, but if the Customer does so, all monies owing by the Customer to Engel shall (without prejudice to any other right or remedy of Engel) forthwith become due and payable.
- 7.8. Title to any packaging of the individual Goods shall pass with title to the Goods, save that title shall not pass to any containers, pallets or the packaging of multiple items.
- 7.9. Where the Customer provides Engel with designs, samples or prototypes of the Goods, title to those shall pass to Engel on delivery.
- 7.10. Each clause and sub-clause in this clause 7, is separate, severable and distinct and accordingly, in the event of any of them being for any reason whatever unenforceable, the other provisions shall remain in full force and effect.
- 8. WARRANTIES**
- 8.1. Subject to the conditions set out below Engel warrants that:
- 8.1.1. the Goods (excluding for this purpose, the Parts) will correspond with 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 12 months from delivery, whichever is the first to expire; and
- 8.1.2. the Parts will correspond with their Specification at the time of delivery and will be free from defects in material and workmanship for a period of 6 months from the date of their initial use or 6 months from delivery, whichever is the first to expire, unless otherwise agreed in writing between the parties.
- 8.2. The Supplier further warrants that it shall supply the Services with reasonable skill and care.
- 8.3. Except as set out in the Contract, all other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) are excluded from the Contract to the fullest extent permitted by law.
- 8.4. The warranties in clause 8.1 are given by Engel subject to the following conditions:
- 8.4.1. Engel shall be under no liability in respect of any defect in the Goods arising from any drawing, design, model or specification supplied by the Customer;
- 8.4.2. Engel shall be under no liability in respect of any defect arising from fair wear and tear, inadequate maintenance, wilful damage, excessive stressing, negligence, abnormal working conditions, chemical or electrolytic influences, construction and assembly work not carried out by Engel, failure to follow Engel's instructions (whether oral or in writing), misuse, modification or alteration or repair of the Goods without Engel's approval in writing;
- 8.4.3. Engel shall be under no liability under clause 8.1 (or any other warranty, condition or guarantee) if the total Contract Price for the Goods has not been paid by its due date; and
- 8.4.4. the Customer makes no further use of the Goods after giving notice in accordance with clause 8.7.
- 8.5. The warranties in clause 8.1 do not extend to parts, materials or equipment not manufactured by Engel, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Engel. For the avoidance of doubt, this includes any parts, materials or equipment manufactured by any subsidiary or holding company of Engel as defined in section 1159 of the Companies Act 2006 and/or any associated company of Engel.
- 8.6. The Warranty does not extend to any Goods supplied by Engel for which the warranty period in clause 8.1 has already expired, or which were already in use on Engel's or any third party premises with the Customer's knowledge, unless otherwise agreed in writing between the parties.
- 8.7. Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with Specification shall (whether or not delivery is refused by the Customer) be notified to Engel within 3 days from the date of delivery or

installation or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time (being not more than 7 days) after discovery of the defect or failure.

- 8.8. If delivery is not refused and if the Customer does not notify Engel within 3 days from the date of delivery or installation, the Customer shall not be entitled to reject the Goods outright in any event, and the Customer shall be bound to pay the Contract Price in full.
- 8.9. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Engel in accordance with the Contract, Engel must be given a reasonable opportunity of examining such Goods and shall be entitled at its sole discretion to:
- 8.9.1. repair or replace the Goods (or the Part in question) free of charge;
- 8.9.2. take such part of the Goods as necessary away from the Site to examine the Goods or carry out repair work;
- 8.9.3. refund to the Customer the Contract Price of the Goods (or a pro rata part of the Contract Price) but Engel shall have no further liability to the Customer; and such action shall be accepted by the Customer in full satisfaction of Engel's liability for the Fault concerned.
- 8.10. Engel's sole liability and the Customer's sole remedy for breach of the warranty at clause 8.2 is the re-performance of the affected Services.
- 8.11. The Customer's obligations at clause 3 shall apply in relation to this clause 9, as to the original provision.
- 8.12. For the avoidance of doubt, where any claim in respect of any of the Goods is made by the Customer outside of the warranty periods set out in the Contract, Engel may repair or replace the Goods at the request of the Customer subject to the payment of a fee of an amount to be notified by Engel to the Customer in writing.
- 8.13. These terms and conditions shall apply to any repaired or replacement Goods supplied by Engel. Goods which are repaired or replaced shall be guaranteed for the remainder of the original warranty period at clause 8.1.
- 8.14. Title in all defective Goods (or parts thereof) which are replaced shall transfer back to Engel.
- 8.15. Engel reserves the right to make any changes in the Specification of the Goods and Services which are required to conform with any applicable legal or regulatory requirements or which do not materially affect their quality or performance.
- 8.16. The Customer shall be responsible for ensuring that the Goods are fit for the purpose for which it or any third party intends to use them, and covenants that the Goods will only be used for purposes for which they are sufficient and suitable.
- 8.17. The Customer warrants that it has not relied on any representations made by or on behalf of Engel or upon any descriptions, illustrations, samples, prototypes or specifications or any other material contained in any material produced by or on behalf of Engel save for the Specification.
- 8.18. The Customer warrants that any drawings, designs, specifications, proofs, samples, prototypes and other material which may be supplied by it to Engel in connection with this Contract will not infringe any Intellectual Property or other rights of any third party, nor will it be misleading, defamatory or otherwise unlawful, and the Customer will indemnify Engel in respect of any claim relating to such infringement.
- 8.19. The Customer agrees to indemnify Engel against all losses, claims, costs and liabilities incurred by it due to any breach by the Customer of the terms of this Contract, including any consequential losses.
- 8.20. The Customer will maintain sufficient insurance against liability to Engel arising under this Contract.
- 8.21. Engel may submit drawings, designs, specifications, proofs, samples, prototypes and other material to the Customer for its specific approval as may be relevant. Within 3 working days of receipt by the Customer of such items (or such longer or shorter period as Engel specifies), the Customer shall notify Engel in writing of its approval of, or of any change or rejection of, such material. Where applicable, the Customer shall return the material duly marked approved or amended by a duly authorised person within that time period. Engel shall, however, be entitled to rely upon verbal or electronic approval or other instructions received from the Customer.
- 8.22. If no such notification is received within the period specified, the Customer shall be deemed to have accepted the item or material concerned.
- 8.23. The Customer shall be responsible for any specific material which it has approved, or which is manufactured to a drawing, design or specification so approved, whether such approval is express or deemed. After such approval, the Customer shall be responsible for any production or other costs incurred in connection with the approved material, and Engel's liability shall be limited to correcting any faults or defects in the design or other material submitted. The Customer shall not be entitled to reject the items nor to have any defects remedied by Engel, whether or not they comply with the Specification, without the agreement of Engel, in which event Engel may levy reasonable additional charges for such work.
- 8.24. The approval of items by the Customer will constitute Engel's authority, where applicable within the Specification, to:
- 8.24.1. incur chargeable disbursements;
- 8.24.2. contract with third parties, whether as chargeable disbursements or acting as agent for the Customer;
- 8.24.3. purchase production materials and enter into production contracts.

9. LIABILITY

- 9.1. Nothing in the Contract shall limit Engel's liability for death or personal injury resulting from its negligence or the negligence of its employees, agents or subcontractors, or as may otherwise be prohibited by law.
- 9.2. Engel's total liability in respect of damage caused to the Customer's tangible property as a result of its negligence shall not in any event exceed £2 million per claim or series of connected claims.
- 9.3. Subject to clauses 9.1 and 9.2 Engel's total liability for any claim or total of all claims arising out of all acts or defaults of Engel whether in contract, tort or in breach of statutory duty or otherwise shall not exceed the Contract Price of the Goods and/or Services involved (as applicable) notwithstanding that Engel may be advised of the possibility of greater loss or damage.
- 9.4. Engel shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect or consequential loss or damage (whether for loss of profit or otherwise), financial losses, costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of Engel, its employees or agents or otherwise), including any loss of production, loss or corruption of data, loss of profits or of contracts, loss of operation time, loss of goodwill, loss of anticipated savings or delayed opening, which arise out of or in connection with the supply of the Goods and/or Services or the use or resale by the Customer of the Goods, except as expressly provided in the Contract.
- 9.5. The terms of this Contract represent the whole agreement between the parties and all other warranties, conditions, terms, undertakings or representations of any kind, whether express or implied, statutory or otherwise relating to the provision of any goods or services under or in connection with the Contract including (without limitation) as to the condition, quality, performance or fitness for purpose of the Goods or any of them or the standard of care used in the provision of the Services are hereby expressly excluded from the Contract

save for the undertakings implied by the Sale of Goods Act 1979 section 12 in respect of title to any Goods.

- 9.6. Engel 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 Engel's obligations in relation to the Goods and/or Services, if the delay or failure was due to the Customer's failure to provide Engel with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or Services or any other breach by the Customer.
- 9.7. If Engel's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to Engel on demand all reasonable costs, charges or losses sustained or incurred by it including direct or indirect consequential losses; loss of profit and loss of reputation; loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere; the cost of providing a crane for any installation Services; storage costs; insurance costs; and additional transport costs.
- 9.8. Engel 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 Engel's obligations in relation to the Goods and/or Services, or from carrying on its business, if the delay or failure was due to any cause beyond Engel's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Engel's reasonable control:
- 9.8.1. Act of God, explosion, flood, tempest, fire or accident;
- 9.8.2. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.8.3. import or export regulations or embargoes; difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 9.8.4. any default of Engel's suppliers;
- 9.8.5. power failure or breakdown in machinery.
- 9.9. Nothing in the Contract shall limit any liability or any remedy arising from any fraudulent misrepresentation or any other fraudulent act or omission by or on behalf of any party to the Contract.
- 9.10. The Customer may only institute legal action against Engel for any claims within 12 months after the date of the Contract and thereafter all claims shall be time-barred.
- 9.11. Engel shall not be liable for any change to the Specification if the variation does not materially affect the characteristics of the Goods or Services, and the substituted materials (if any) are of comparable quality to the originals.
- 9.12. The Customer agrees that except as expressly provided in this Contract Engel will not be under any liability of any kind whatever and however caused, arising directly or indirectly in connection with this Contract.
- 9.13. Any liability of Engel under the Contract shall be subject to and conditional upon the due performance by the Customer of all its obligations under this Contract and, subject to these terms, the Customer shall not be entitled to withhold or delay payment or exercise any right of set-off which might otherwise have been available to it.
- 9.14. The Customer shall maintain such insurance protection as shall be reasonable and prudent, taking account of the nature of the Customer's business. Engel shall not be liable under this Contract for losses suffered by the Customer which are, or would have, been recoverable under such policy of insurance.
- 9.15. Engel is a limited company. This Contract and the Goods and Services are provided solely on behalf of the company. No personal liability, whether in contract, tort or otherwise, is accepted by any individual who may provide services to the Customer, whether as a shareholder, director, employee, consultant, freelancer or supervisor or otherwise.
- 9.16. The Customer acknowledges that it has had the opportunity to negotiate different terms of the Contract, and that the Contract Price was fixed based on these terms.

10. TERMINATION

- 10.1. Engel may terminate this Contract or suspend its performance with immediate effect on written notice if:-
- 10.1.1. the Customer ceases or threatens to cease to carry on its business or becomes insolvent;
- 10.1.2. a Receiver, Administrator or similar Officer is appointed over all or any part of the assets or undertaking of the Customer;
- 10.1.3. the Customer makes any arrangement for the benefit of its creditors;
- 10.1.4. the Customer goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;
- 10.1.5. the Customer suspends or threatens to suspend payment of any its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 10.1.6. an encumbrancer takes possession of any of the property or assets of the Customer;
- 10.1.7. the Customer's financial position deteriorates to such an extent that in Engel's opinion the Customer's capability adequately to fulfil its obligations under the Contract has been placed in jeopardy;
- 10.1.8. Engel reasonably apprehends that any of the above events is about to occur in relation to the Customer and notifies the Customer accordingly;
- 10.1.9. the Customer commits a material breach of this Contract and (in the case of a breach capable of remedy) fails to remedy it within 7 days of receipt of written notice from Engel specifying the breach and containing a warning of an intention to terminate if the breach is not remedied;
- 10.1.10. the Customer refuses to take delivery of the Goods or accept the Services or any part of them or collect them on the Target Date(s) or on such later date as they are ready for delivery; or
- 10.1.11. the Customer defaults in paying the Contract Price or any part of it.
- 10.2. In the event of a suspension, Engel shall be entitled to demand pre-payment of any part of the Contract Price not yet due for payment as a condition of re-commencing its performance.
- 10.3. Engel may terminate this Contract at its discretion at any time by giving 14 days notice in writing to the Customer.
- 10.4. Upon termination of this Contract for whatever cause, the Customer shall pay to Engel all monies due to Engel at that date after taking into account amounts previously paid including:-
- 10.4.1. the total value of Goods delivered or installed and Services performed up to the date of termination, the Contract Price for which shall then become payable immediately notwithstanding any prior contrary arrangement;
- 10.4.2. any cancellation charges payable to Engel's sub-contractors;
- 10.4.3. the cost of the Goods or Parts or components or services associated with the Goods ordered for the purposes of the Contract for which Engel has paid or is legally bound to pay. Engel may at its discretion retain or take back part or all of the Goods in lieu of the payment attributable to such material;
- 10.4.4. the cost of removal from the Site of any property of Engel;
- 10.4.5. any other costs incurred by Engel in connection with the Contract or its termination including but not limited to loss of profits, processing costs already incurred and any reduction in the value of the material used.

- 10.5. Termination of this Contract shall not affect any rights of the parties accrued to them up to the date of termination.

11. CONTRACTS FOR SERVICES

If the Contract is for or includes Services to be performed by Engel, whether of installation, commissioning, maintenance, repair, rectification, improvement, consultancy, training or otherwise, then unless the confirmation of order otherwise provides, the following additional provisions shall apply:

- 11.1. Engel shall be obliged to carry out such Services only during its own normal weekday working hours. If the Customer requests that overtime is worked and Engel agrees thereto, such overtime shall be paid for by the Customer at an agreed premium rate.
- 11.2. If the Services are to be performed at the premises of the Customer or at its request at the premises of any other person, then the Customer undertakes to provide or to procure the following free of charge:
- 11.2.1. proper and safe storage and protection of all Goods, tools, plant, documents, equipment and materials on Site and not dispose of or use Engel's materials other than in accordance with the instructions or authorisation of Engel in writing;
- 11.2.2. free and safe access to the Site and to the point at which the services are to be performed;
- 11.2.3. all facilities and services necessary to enable such Services to be performed safely and expeditiously;
- 11.2.4. if such Services include the installation of any Goods or builders work, the cutting away of foundations and making good, the ready availability of all plant and equipment so as to permit such Goods to be tested forthwith on completion of such Services; and the Customer shall pay to Engel the amount of any expenses incurred by Engel by reason of any breach by the Customer of any of its obligations in this sub-clause but without prejudice to Engel's right to recover any loss thereby occasioned.
- 11.3. When the Goods and Services are to be supplied on Site, they shall at all times be at the sole risk of the Customer and if any part thereof is lost, damaged or destroyed through any cause whatsoever Engel shall be entitled to charge for the restoration of any Goods or Services so lost, damaged or destroyed.
- 11.4. The Customer will be responsible for the cost of taking any necessary services (including electricity, gas, air and water) to the position where the machine is to be erected or fitted.

12. EXPORT SALES

- 12.1. Where the Goods are supplied for export from the UK the provisions of this clause 12 will apply despite any other provision of the Contract.
- 12.2. The Uniform Laws on International Sales Act 1967 will not apply.
- 12.3. Unless otherwise agreed in writing the currency will be pounds sterling. The Customer shall establish and maintain in favour of Engel an irrevocable and confirmed letter of credit in English with a UK clearing bank payable on drafts drawn at sight upon presentation to the bank by Engel of a certified copy of Engel's invoice. All bank charges and other expenses in relation to the letter of credit will be borne by the Customer. Engel may specify an alternative method of payment acceptable to it.
- 12.4. Unless otherwise agreed in writing Goods will be sold F.O.B. (as defined in INCOTERMS 2010 Edition) and Engel shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 12.5. The Customer shall be responsible for arranging for testing and inspection of Goods intended for export, at Engel's premises before shipment. Engel 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.
- 12.6. The Customer will be responsible for:
- 12.6.1. complying, at its own cost, with any legislation or regulation governing the importation of the Goods into the country of destination;
- 12.6.2. payment of any relevant duties, including import/export duties, or taxes in addition to the Contract Price; and
- 12.6.3. ensuring any relevant consents and licences are obtained and available to Engel, as applicable, prior to the relevant shipment where the Site is outside the UK.

13. COMMISSIONING

- 13.1. Engel will supply an operating manual for the Goods as soon as practicable after actual delivery. Engel shall be under no liability for any losses or expenses incurred by the Customer as a result of Engel's delay in or failure to supply such manual. The Customer will not commence operation of the Goods until such manual has been supplied to the Customer and the Health and Safety at Work etc. Act 1974 and all Regulations made thereunder including, without limitation, the provision and use of the Work Equipment Regulations 1992, have been complied with by the Customer. Engel shall be entitled to assume, unless the Customer specifically notifies Engel to the contrary in writing, that copies of the manual and operating instructions will be supplied by the Customer to all persons connected with the operation and maintenance of the Goods. Should any further steps be necessary to ensure that adequate information is available in accordance with the provisions contained in the Health & Safety at Work etc. Act 1974, then the Customer will notify Engel of such steps in writing.
- 13.2. Engel shall be entitled to assume if no such notice is received that there are no special circumstances requiring further information than is required in the manual supplied. Engel will, if so required in the Contract, arrange for one of its installation engineers to commission the Goods. Delays in the availability of the Goods for commissioning shall not be accepted as reason for delay in payment to Engel.
- 13.3. Should the scope of supply to the Customer extend to the delivery of non-standard machines, automation equipment, robotics or other equipment which to facilitate safe operation according to current legislation requires additional guarding or safety features not ordered from Engel, the Customer shall take full responsibility to ensure that before the equipment is placed into operation it is inspected by the appropriate safety inspectorate. Only when such approval is received shall the Customer put the Goods into operation. The Customer shall indemnify Engel against all claims resulting from damage or personal injury caused by the unauthorised use of the Goods.
- 13.4. The Customer will on completion of commissioning to dry cycle be required to sign a commissioning protocol by which means the Customer accepts the equipment as meeting the technical requirements of the Contract. Unless specifically confirmed otherwise, the warranty period shall commence on the date that the commissioning protocol is signed by the Customer. If the availability of the equipment for commissioning is delayed more than 1 week from delivery, the warranty period shall be considered to have commenced on the date of delivery.

14. INTELLECTUAL PROPERTY

- 14.1. Unless otherwise agreed in writing by Engel, ownership in all intellectual property rights subsisting in, resulting from or relating to the Goods and/or Services or any associated plans, descriptions, designs, technical information, drawings, samples, prototypes, tooling, documents or specifications provided by Engel will remain or vest in or be assigned to Engel.
- 14.2. The Customer shall promptly notify Engel, in the event that it becomes aware of any infringement by any party of Engel's intellectual property rights in the Goods.

- 14.3. No right or licence is granted in that case, except the right to use and resell the Goods in the ordinary course of the Customer's business, as anticipated by this Contract.
- 14.4. Save as may be expressly agreed in the Specification, Engel shall not be required to assign, nor to procure the assignment or licensing, to the Customer of any Intellectual Property belonging to any third party.
- 14.5. To the extent that the Customer supplies Engel with any original material in relation to this Contract, the Customer grants a licence to Engel to publish, reproduce, adapt, sell and otherwise use without limitation any such material for the purposes of its performance of this Contract but not otherwise.
- 14.6. Engel may (without the Customer's consent and without charge) make unlimited use of all material produced under this Contract which is then in the public domain, whether or not the Intellectual Property to such material passes to the Customer, to promote, market or advertise its services.
- 14.7. The provisions of this clause 14 shall survive the termination of this Contract.

15. CONFIDENTIALITY AND GDPR

- 15.1. For the purposes of this clause 15, the following definitions will apply:-
- 15.1.1. Confidential Information - all information (whether commercial, financial, technical or otherwise) relating to the disclosing party, its business, sub-contractors, other clients and suppliers, disclosed to or otherwise obtained by the recipient party under or in connection with this Contract and which is designated as being confidential or which is by its nature clearly confidential, including any and all Protected Data;
- 15.1.2. GDPR - The General Data Protection Regulation (EU) 2016/679 and any laws which implement GDPR or replace, extend, re-enact, consolidate or amend it;
- 15.1.3. Protected Data means personal data received from or on behalf of the Customer in connection with the performance of Engel's obligations under this Contract.
- 15.2. Each party undertakes in respect of Confidential Information for which it is the recipient:-
- 15.2.1. to treat such Confidential Information as confidential;
- 15.2.2. not without the disclosing party's prior written consent to communicate or disclose any part of such Confidential Information to any person except:-
- only to those employees, agents, sub-contractors and other suppliers on a need to know basis who are directly involved in the Contract;
 - the recipient's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the recipient.
- 15.3. The obligations in clause 15.2 will not apply to any Confidential Information which is:-
- 15.3.1. in the recipient's possession (with full right to disclose) before receiving it;
- 15.3.2. becomes public knowledge other than by breach of this clause;
- 15.3.3. independently developed by the recipient without access to or use of the Confidential Information; or
- 15.3.4. lawfully received from a third party (with full right to disclose).
- 15.4. The parties agree that the Customer is a controller and that Engel is a processor for the purposes of processing Protected Data pursuant to this Contract. The Customer shall at all times comply with GDPR in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Engel in respect of Protected Data (including the terms of this Contract) shall at all times be in accordance with GDPR.
- 15.5. Engel shall process Protected Data in compliance with the obligations placed on it under GDPR and the terms of this Contract.
- 15.6. The Customer shall indemnify and keep indemnified Engel against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to data subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 15.
- 15.7. This clause 15 will continue in force notwithstanding the termination of this Contract for any reason. Following termination, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

16. GENERAL

- 16.1. Engel is a member of the group of companies whose holding company is ENGEL Holding GmbH and accordingly Engel may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of that group, provided that any act or omission of any such other member shall be deemed to be the act or omission of Engel.
- 16.2. Any notice required or permitted to be given by either party to the other under the Contract shall be in writing or by e-mail, addressed to the proper recipient at 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.
- 16.3. Neither party shall during or for a period of 6 months after termination of this Contract, whether on its own account or on behalf of any other person, firm, company or otherwise, employ or directly or indirectly solicit away from the other, or employ or engage in any capacity, any employee or contractor of the other engaged in a managerial, creative, technical or sales function with whom it has dealt under this Contract.
- 16.4. Any variation to the Contract shall only be binding when agreed in writing and signed by Engel.
- 16.5. The Contract contain the whole agreement between the parties and supersedes all previous discussions, correspondence and negotiations between them relating to its subject matter. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract.
- 16.6. No waiver by Engel 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.
- 16.7. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its obligations under the Contract without the prior written consent of Engel.
- 16.8. Engel may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its obligations under the Contract.
- 16.9. If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part that provision or part provision shall, to the extent required, be deemed to be deleted and the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.
- 16.10. A person who is not party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 16.11. The Contract shall be governed by the laws of England and the courts of England shall have non-exclusive jurisdiction.