SPIRAX-SARCO LIMITED
GENERAL CONDITIONS OF THE SALE OF GOODS AND THE SUPPLY OF SERVICES

November 2013

1. Definitions

"Business Days" means a day (other than a Saturday, Sunday or public holiday) when banks in Abu Dhabi are open for business.
"Buyer" means a customer of the Seller within the United Arab Emirates.
"Conditions" means these terms and conditions for the sale of goods or the supply of services or both.
"Contract" means a binding contract for the sale of goods or the supply of services or both made by the Seller and the Buyer.
"**Electronic Trading Gateway"** means the Seller's electronic system for prospective Buyers to place orders and make payments.
"Emergency Call-out" means the call-out service for emergency breakdowns of the Buyer's plant or equipment provided by the Seller to the Buyer in accordance with these Conditions in connection with a Contract for the performance of the Services.
"Force Majeure Event" means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, riot, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors.
"Goods" means the goods agreed to be sold by the Seller to the Buyer as detailed in the Order Acknowledgment.
"Intellectual Property Rights" means all copyright, database rights, semi-conductor topography rights, design rights, trade marks, trade names, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world.
"**Large Products"** means products known as "Spirax Condensate Recovery Units", "Feed Tanks", "Blowdown Vessels" and all other products over a threshold specified by the Seller.
"**Liability Cap for Services**" means the overall limit on the Seller's liability in respect of a Contract for Services (or that part of a Contract for Goods and Services which relates to Services) as set out in the Order Acknowledgment.
"**Losses**" means:
(a) any indirect, special or consequential loss or damage; or
(b) loss of data or other equipment or property; or
(c) economic loss or damage; or
(d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
(e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill.
"**Seller"** means Spirax-Sarco Limited.
"**Services**" means the services agreed to be supplied by the Seller to the Buyer as detailed in the Order Acknowledgment.
"Specification for Goods" means the specification for the Goods that is agreed in writing by the Seller and the Buyer.
"Specification for Services" means the specification for the Services that is agreed in writing by the Seller and the Buyer.
"United Arab Emirates" means the Kingdom of the United Arab Emirates.

2. Interpretation of Contracts

(a) The Uniform Law on International Sales, the United Nations Convention on Contracts for the International Sale of Goods and the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (INCOTERMS) shall be excluded. The construction, validity and performance of all Contracts shall be governed by English law and, without prejudice to the right of the Seller to take action against the Buyer in any other court of competent jurisdiction, any claim or dispute arising from the Contracts shall be subject to the exclusive jurisdiction of and be determined by the English Courts. The taking of proceedings in any one or more jurisdiction shall not preclude the Seller from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
(b) The complete or partial invalidity or unenforceability of any provision in a Contract shall in no way affect the validity or enforceability of the remaining provisions in a Contract. Any such provision shall be deemed to be modified to the minimum extent necessary to make it valid or enforceable. If such modification is not possible, the relevant provision shall be deemed severed subject to such consequential modification as may be necessary for the purpose of such severance.
(c) The headings used herein are for convenience only and shall not affect construction.
(d) A reference to the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, or the Unfair Contract Terms Act 1977 is a reference to the relevant piece of legislation as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
(e) Words in the singular include the plural and in the plural include the singular.
(f) Reference to a Condition is to a Condition of these Conditions unless the context requires otherwise.

3. Formation of Contracts and Application of Terms and Conditions

(a) All Contracts shall be deemed to incorporate these Conditions.
(b) Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Seller and any variation of a Contract shall have no effect unless it is in writing and signed by the Seller and the Buyer (or their authorised representatives).
(c) A prospective Buyer shall place its order for goods or services (or both) by completing the Seller's purchase order standard form (the "Purchase Order"). Each Purchase Order shall be deemed to be an offer by the prospective Buyer to buy the goods or services (or both) of the Seller that are identified in the Purchase Order or the quotation subject to these Conditions.
(d) The Purchase Order shall only be deemed to be accepted when the Seller issues to the prospective Buyer an order acknowledgement form which indicates acceptance of the prospective Buyer's offer on these Conditions (the "Order Acknowledgment"). A Contract between the Seller and the Buyer shall come into existence at the time and on the date when the Seller delivers the relevant goods or services (or both) to the Buyer.
(e) The Contract shall constitute the entire agreement between the Seller and the Buyer and the Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller that is not set out in the Contract.
(f) The Buyer shall ensure that the description of the goods or services (or both) ordered which is contained in its Purchase Order and any applicable specifications is complete and accurate.
(g) These Conditions apply to the Contract to the exclusion of all other terms and conditions, that the Buyer shall seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These Conditions may be extended by additional terms and conditions issued by the Seller in writing and confirmed in the Order Acknowledgment.

4. Quotations and Purchase Orders

(a) Any quotation issued by the Seller shall not constitute an offer and is given on the basis that no Contract shall come into existence unless and until the Seller despatches an Order Acknowledgement to the Buyer.
(b) Any quotation issued by the Seller is valid for a period of twenty two (22) Business Days only after the date of its issue, provided that the Seller has not previously withdrawn it by notice in writing to the Buyer.
(c) Subject to Condition 4(d), any Purchase Order accepted by the Seller shall be accepted on the basis that the price for the goods or services (or both) shall be that set out in the Seller's quotation on condition that the Seller's quotation is within its period of validity and notice of withdrawal in writing has not been issued by the Seller at the time of acceptance.
(d) The Seller reserves the right to give in writing of the withdrawal of a quotation at any time within the period of validity of the quotation and before the Contract is formed. In the event that the Seller changes the price of any of the goods or services (or both) offered for sale or supply, any existing quotation in respect of those goods or services (or both) shall be deemed to be automatically withdrawn and the Seller shall issue a new quotation to the prospective Buyer.
(e) The prices stated in the Seller's quotations are exclusive of sales tax.
(f) All Purchase Orders placed by a prospective Buyer shall be placed by fax, post or e-mail, or, where agreed in advance in writing by the Seller, by telephone or Electronic Trading Gateway.

<u>SALE OF GOODS</u>

5. The Goods

(a) The Goods are described in the Specification for Goods. The Goods shall comply with the Specification for Goods in material respects. Any stated dimension or weight set out in the Specification for Goods is an estimate only.
(b) All performance figures, descriptions (other than any description set out in the Specification for Goods), drawings and samples of Goods are approximate only being intended to serve merely as a guide. The Seller shall not be liable for their accuracy and they shall not form part of the Contract. No Contract shall be a contract by sample.
(c) The Seller may alter the Specification for Goods:
(i) for the purpose of making changes to the Goods which it can establish to the reasonable satisfaction of the Buyer constitute improvements to the Goods or;
(ii) if required by any applicable statutory or regulatory requirements.
(d) The Seller may increase the price of the Goods by giving notice in writing to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to:
(i) any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in the cost of acquiring or manufacturing the Goods);
(ii) any request by a Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification for Goods; or
(iii) any delay caused by any instructions of the Buyer in respect of the Goods or failure by the Buyer to the give the Seller adequate or accurate information or instructions in respect of the Goods.
(e) All drawings, designs, and quotations for which goods are not subsequently ordered by the Buyer shall remain the property of the Seller and be treated as confidential by the Buyer and not used in any way. The Seller shall have no liability in relation to any such drawings, designs or quotation.

6. Despatch and Delivery

(a) For the purposes of this Condition 6, the "Goods" shall means the Goods in their entirety where delivery is not by instalments or, where delivery is by instalments, each instalment of the Goods.
(b) Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place at the location stated by the Seller in the Order Acknowledgement (the "Point of Delivery").
(c) Any stated delivery date is an estimate and time for delivery shall not be of the essence. The Seller will use reasonable endeavours to meet any stated delivery date. If no date for delivery is specified, delivery shall be within a reasonable time.
(d) THE SELLER SHALL NOT BE LIABLE FOR ANY LOSSES (AS DEFINED), CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN THE DELIVERY OF THE GOODS EVEN IF CAUSED BY THE SELLER'S NEGLIGENCE.
(e) ANY DELAY IN THE DELIVERY OF THE GOODS SHALL NOT ENTITLE THE BUYER TO TERMINATE OR RESCIND THE CONTRACT UNLESS SUCH DELAY EXCEEDS ONE HUNDRED AND EIGHTY (180) DAYS.
(f) Delivery of the Goods shall be completed on the arrival of the Goods at the Point of Delivery. Risk in the Goods shall pass to the Buyer on completion of delivery of the Goods.
(g) Except insofar as the Contract expressly provides otherwise, the Seller may select the method of delivery, and charge the Buyer for the cost of carriage. Standard carriage and packaging is included in the price except in respect of Large Products. Where the Goods are to be delivered at the Buyer's request by any special or express means, the Seller will charge the Buyer the full cost of carriage. When any special packaging is required (whether at the Buyer's request or because the Seller considers special packaging to be necessary), then the Seller will charge the Buyer the full cost of such packaging.
(h) In contracting for carriage and/or insurance of the Goods in transit, the Seller shall be deemed to act solely as agent of the Buyer and Section 32(2) and (3) of the Sale of Goods Act 1979 shall not apply.
(i) The Buyer must:
(i) examine the Goods on delivery
(ii) notify the Seller and any carrier in writing of any shortage or damage within four (4) Business Days after the date of delivery and in respect of non-delivery within ten (10) Business Days after the Goods would in the ordinary course of events have been received; and
(iii) in the case of short or damaged delivery give the Seller a reasonable opportunity to inspect the Goods, otherwise Goods shall be deemed accepted by the Buyer.
(j) ANY LIABILITY OF THE SELLER FOR NON-DELIVERY OF THE GOODS SHALL BE LIMITED TO EITHER DELIVERING THE GOODS WITHIN A REASONABLE TIME OR ISSUING A CREDIT NOTE AT THE PRO RATA CONTRACT RATE AGAINST ANY INVOICE RAISED FOR SUCH GOODS.
(k) The Seller may deliver the Goods by instalments, each instalment to be deemed to be a separate Contract. Without limiting the other provisions herein, no failure or defect in delivery in respect of any Contract or instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
(l) If for any reason the Buyer fails to accept delivery of any of the Goods within two (2) Business Days of the Seller giving notice to the Buyer that the Goods are ready, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorizations for the Goods when they are tendered by the Seller for delivery then, except where such failure is caused by a Force Majeure Event:
(i) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second (2nd) Business Day after the day on which the Seller notified the Buyer that the Goods were ready;
(ii) risk in the Goods shall pass to the Buyer on completion of delivery; and
(iii) the Seller may store the Goods until delivery takes place, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). The Buyer shall be responsible for all Losses incurred by the Seller where the Buyer fails to accept delivery of Goods.
(m) If ten (10) Business Days after the Seller giving notice to the Buyer that the Goods were ready the Buyer has not accepted delivery of the Goods, the Seller may resell or otherwise dispose of part or all of the Goods.

7. Title

(a) The title in the Goods supplied shall not pass to the Buyer until receipt by the Seller in cleared funds of payment in full (including payment of any default interest) for:
(i) the Goods; and
(ii) any other goods or services that the Seller has supplied to the Buyer and in respect of which payment is due.
(b) Until the title in the Goods passes to the Buyer the Buyer shall:
(i) be a bailee of the Goods;
(ii) store the Goods separately from all other goods held by the Buyer so that the Goods remain readily identifiable as the Seller's property;
(iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
(iv) not fix or annex the Goods to or merge the Goods with any part of the Buyer's premises, plant or equipment without the Seller's prior consent in writing;
(v) maintain the Goods in satisfactory condition;
(vi) keep the Goods insured between the passing of risk in the Goods and title to the Goods against all risks with a reputable insurer which has been approved by the Seller for their full price, and ensure that the Seller's interest in the Goods is noted on the insurance policy until title in the Goods passes to the Buyer. If the Buyer fails to insure the Goods the Seller may do so instead on behalf of the Buyer, who shall reimburse the Seller on demand. Until title in the Goods passes to the Buyer, the Buyer shall hold in trust for the Seller the policy and proceeds of insurance;
(vii) notify the Seller immediately if it becomes subject to any of the events listed in Conditions 21(a)(iv) to 21(a)(x);
(viii) give the Seller such information relating to the Goods as the Seller may require from time to time; and
(ix) not dispose of, charge or encumber the Goods or any interest in the Goods or purport to do so, but the Buyer may resell the Goods to an independent third party on arms length terms in the ordinary course of its business.
(c) If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in Conditions 21(a)(iv) to 21(a)(x), or the Seller reasonably believes that any such event is about to happen and gives notice to the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, the Seller may enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

8. Warranty for Goods

(a) Subject to Condition 8(b), the Seller warrants that on delivery, and for a period of three (3) years from the date of delivery the Goods shall:
(i) conform with the Specification for Goods; and
(ii) be free from material defects in material or workmanship.
(b) In respect of Goods which are packages or electrically or electronically controlled or actuated Goods the Seller warrants that on delivery, and for a period of twelve (12) months from the date of delivery such Goods shall:
(i) conform with the Specification for Goods; and
(ii) be free from material defects in material or workmanship.
(c) Subject to the remainder of this Condition 8, the Seller warrants that if the Buyer returns the Goods within the relevant warranty period for such Goods (as set out in either Condition 8(a) or 8(b)) and on the Seller's examination such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods the Seller shall:
(i) give notice to the Buyer that such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods; and
(ii) following giving notice thereof to the Buyer;
(aa) with respect to Goods which have been manufactured by the Seller, make good the defect without charge by (at the Seller's option) repairing the defective Goods, replacing defective components of the defective Goods, or replacing the defective Goods (in their entirety) as the Seller in its discretion considers appropriate; or
(bb) with respect to Goods which have been supplied, but not manufactured by the Seller, and to the extent that it is entitled to do so, assign or at its discretion use its reasonable endeavours otherwise to make available to the Buyer, at the Buyer's expense and on the basis of an indemnity (secured if appropriate) against all Losses that may be incurred by the Seller in relation thereto, the benefit of any obligations and warranties which relate to such defect which the Seller may be owed by the manufacturer and/or supplier of the Goods or any part or component thereof.
(d) The above warranties shall apply except where the defect in the Goods:
(i) has been caused wholly or partly by deterioration of the Goods which is necessarily incidental to the transit of the Goods;
(ii) has been caused while the Goods were at the Buyer's risk by:
(aa) wilful default or negligence by the Buyer or its employees, agents, consultants or subcontractors;
(bb) the occurrence of an accident;
(cc) failure by the Buyer to follow the Seller's instructions in relation to the storage, use, installation, commissioning or maintenance of the Goods;
(dd) failure by the Buyer to follow good trade practice;
(ee) the Buyer altering or repairing such Goods without the consent in writing of the Seller;
(ff) fair wear and tear, negligence or by any abnormal conditions such as (without limitation) waterhammer, corrosive attack or excessive dirt in the system, RFI or electrical supply failure.
(e) Except as provided in this Condition 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranties set out in this Condition 8.
(f) The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller under Condition 8(c).

9. Returns

(a) The Seller shall not refund the Buyer for any amounts paid by the Buyer in the event that the Buyer returns the Goods (or part thereof) except with the Seller's prior consent in writing. Where such consent is given, the Buyer agrees to pay to the Seller a minimum handling charge of thirty per cent (30%) of the invoiced value.
(b) To qualify for any refund, the Goods must be appropriately packed to protect them from being damaged in transit and be received by the Seller in a saleable condition within twenty two (22) Business Days of delivery to the Buyer. The term "Goods" within this Condition 9(b) has the meaning set out within Condition 6(a).

10. Instructions and Health and Safety at Work

(a) The Buyer shall observe strictly the provisions of the Seller's instructions in writing regarding use and application of the Goods together with any revisions thereof and shall ensure that any person other than the Buyer who acquires or has access to the Goods is furnished with and observes such instructions.
(b) The Buyer shall be solely responsible for and shall keep the Seller indemnified against all Losses incurred by the Seller in relation to any use of the Goods other than in strict accordance with the Seller's installation, operating, and maintenance instructions.

11. Export Sales

(a) Where goods are supplied for export from the United Arab Emirates the following additional Conditions shall apply, and where there is any conflict between the provisions of this Condition 11 and the previous Conditions, the provisions of this Condition 11 shall prevail.
(b) Charges for the cost of export deliveries and documentation shall be as stated in the Contract.
(c) Unless otherwise agreed between the Seller and the Buyer in writing, payment shall be made by the Buyer by an irrevocable letter of credit satisfactory to the Seller, established by the Buyer in favour of the Seller immediately upon receipt of the Order Acknowledgment and confirmed by a United Arab Emirates bank acceptable to the Seller. The letter of credit shall be for the price payable for the Goods (together with any tax or duty payable) to the Seller and shall be valid for six (6) months. The Seller shall be entitled to immediate cash payment on presentation to such United Arab Emirates bank of the documents set out in the letter of credit.
(d) Except where specifically agreed in writing to the contrary, delivery to a Buyer outside the United Arab Emirates will be in accordance with the "Ex Works" rule from the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (INCOTERMS). In the case of deliveries outside the United Arab Emirates the Seller does not accept any liability for damage to the Goods during transit, or marine or war risks unless otherwise specifically agreed by the Seller.

<u>SUPPLY OF SERVICES</u>

12. Period of Supply

(a) Unless otherwise specified in the Order Acknowledgment, the agreement for the supply of the Services shall be for a period of one (1) year from the date the Seller issues an Order Acknowledgement to the Buyer in accordance with Condition 3 (d) (the "Term for Services")
(b) The Seller reserves the right to increase its price for the Services at any time during the Term for Services. The Seller will give the Buyer notice in writing of any such increase not less than eight (8) weeks before the proposed date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Seller in writing within two (2) weeks of the Seller's notice and the Seller shall have the right, without limiting its other rights or remedies, to terminate the Contract by giving four (4) weeks' notice in writing to the Buyer.

13. Performance of Services

(a) The Seller agrees to provide the Services in accordance with the Specification for Services in all material respects, and to supply as necessary spare or replacement parts and/or consumables, to the Buyer's plant and/or equipment at the sites(s) specified in the Seller's Order Acknowledgment.
(b) If the Seller agrees to supply spare or replacement parts and/or consumables, such supply will be strictly on the basis of these Conditions.
(c) Any stated performance date is an estimate only and time for performance of the Services shall not be of the essence. The Seller shall use reasonable endeavours to meet any stated performance date. If no date for performance is specified, the Services shall be performed within a reasonable time.
(d) THE SELLER SHALL NOT BE LIABLE FOR ANY LOSSES (AS DEFINED), CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN THE PERFORMANCE OF THE SERVICES EVEN IF CAUSED BY THE SELLER'S NEGLIGENCE.
(e) SUBJECT TO CONDITION 13(G), ANY DELAY IN THE PERFORMANCE OF THE SERVICES SHALL NOT ENTITLE THE BUYER TO TERMINATE OR RESCIND THE CONTRACT UNLESS SUCH DELAY EXCEEDS ONE HUNDRED AND EIGHTY (180) DAYS.
(f) SUBJECT TO CONDITION 13(G), THE SELLER'S LIABILITY FOR NON-PERFORMANCE OF SERVICES SHALL BE LIMITED TO EITHER PERFORMING THE SERVICES WITHIN A REASONABLE TIME OR ISSUING A CREDIT NOTE AT THE PRO RATA CONTRACT RATE AGAINST ANY INVOICE SUBMITTED TO THE BUYER FOR THE SERVICES.
(g) If the Seller's performance of the Services is prevented or delayed by the Buyer or by the failure of the Buyer to perform any of its obligations under the Contract ("Buyer Default") then upon the Seller giving the Buyer notice in writing that there has been a Buyer Default:
(i) the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent that the Buyer Default prevents or delays the Seller's performance of the Services;
(ii) the Seller shall not be liable for any Losses incurred by the Buyer arising directly or indirectly from the Seller's failure or delay in performing the Services; and
(iii) the Buyer shall reimburse the Seller on demand for all Losses incurred by the Seller arising directly or indirectly from the Buyer Default.
(h) The Seller reserves the right, at the Seller's discretion, to employ subcontractors to perform all or any part of the Services (including, without limitation, to commission, install, maintain or repair any parts or equipment) on behalf of the Seller.
(i) The Seller warrants that in providing the Services it will exercise reasonable care and attention and that it will comply with all applicable laws and regulations. However the Seller excludes liability for all Losses arising directly or indirectly out of any failure or diminution in performance of the Buyer's plant or equipment caused by the plant or equipment, or any part thereof:
(i) being used or operated otherwise than in accordance with any applicable installation, maintenance or operational instructions; or
(ii) being used or operated otherwise than in accordance with the Seller's instructions or recommendations; or
(iii) having been adjusted, changed or altered in any way by the Buyer or any third party since the date of installation or commissioning of the plant or equipment or the date of the immediately preceding visit by the Seller's employee or sub-contractor.
(j) The Buyer warrants to the Seller that the Buyer's plant and equipment is supplied with water at a quality that complies with British Standard 2486 and is compliant with any additional requirements in writing notified by the Seller to the Buyer in respect of the Buyer's plant and equipment. The Seller excludes all liability for Losses arising directly or indirectly out of any failure or diminution in performance of the Buyer's plant or equipment or any part thereof which is caused directly or indirectly by a breach by the Buyer of this warranty.
(k) With regard to the testing of safety and relief valves as part of the Services, the effective seat area must be determined to carry out the test. The Buyer shall inform the Seller of the effective seat area or the Seller shall calculate the effective seat area based on data obtained from engineering drawings supplied by the valve manufacturer or the Buyer. The Buyer shall use its best endeavours to ensure the accuracy of the information regarding the effective seat area provided to the Seller as such information is critical to test accuracy. The Seller shall accept no liability for Losses arising directly or indirectly from erroneous test results caused directly or indirectly by incorrect information regarding the effective seat area being provided.
(l) The Seller reserves the right to replace at the Buyer's cost the Buyer's plant or equipment or any part thereof which is unserviceable or inefficient as the Seller considers reasonably necessary in order to fulfil its obligations to provide the Services in accordance with the specification set out in the Order Acknowledgment.
(m) Alternatively, the Seller may charge the Buyer for the reconditioning of any part of the Buyer's plant or equipment that, in the reasonable opinion of the Seller, cannot be suitably or economically repaired on site. The Seller will provide the Buyer with an estimate of reconditioning charges for each item and if the Buyer does not agree to have the item(s) reconditioned, the Seller reserves the right to amend the scope of the Services as in its absolute discretion it considers necessary.

14. Access to Buyer's Site(s)

(a) The Buyer shall co-operate with the Seller in all matters relating to the Services, and shall provide the Seller with such information as the Seller may reasonably require in order to perform the Services. The Buyer shall ensure that such information is accurate in all material respects.
(b) The Buyer shall obtain and maintain any necessary licences, permissions, and consents which may be required before the date upon which the Services are due to start.
(c) The Buyer shall permit the Seller, its employees, agents, consultants and subcontractors full and free access to the Buyer's site(s) and to the Buyer's plant and equipment which is the subject of the Contract, subject to the Seller and its employees, agents, consultants and subcontractors complying with the Buyer's reasonable requirements as to site safety and security. If, at the time of any pre-arranged visit the Seller's employees, agents, consultants and subcontractors are unable to gain access to the Buyer's site(s) or plant or equipment in order to supply the Services, the Seller reserves the right to charge for the time spent attending at the Buyer's site(s) and for the cost of carrying out any subsequent visit.
(d) If reasonably required by the Seller, the Buyer shall make available to the Seller a secure storage area at the Buyer's site(s) for storage of the Seller's service equipment and shall keep all materials, equipment, documents and other property of the Seller (the "Seller Service Equipment") in such storage area in safe custody and at the Buyer's risk. The Buyer shall not dispose of the Seller Service Equipment other than in accordance with the Seller's instructions in writing.
(e) Prior to any visits by the Seller's employees, agents, consultants or subcontractors, the Buyer will:
(i) strip back any pipe lagging;
(ii) supply and erect suitable scaffolding (if required) to allow working access to the Buyer's plant and equipment; and
(iii) supply any necessary lifting equipment and required operators.
(f) Following any visits by the Seller's employees, agents, consultants or subcontractors, the Buyer will be responsible for the reinstatement of any pipe lagging and the dismantling of any scaffolding erected.
(g) The Buyer will provide the Seller's employees, agents, consultants and subcontractors with all specialist safety clothing or equipment as may be necessary to meet the Buyer's health and safety and environmental rules (excluding hard hat, safety glasses, overalls and protective shoes which will be provided by the Seller).
(h) The Buyer will procure that the Seller's employees, agents, consultants and subcontractors are covered by the Buyer's third party liability insurance policy of an amount of not less than three million pounds (£3,000,000) per occurrence whilst such employees or subcontractors are on the Buyer's site(s).
(i) Emergency Call-outs are intended for genuine emergency breakdown of the Buyer's plant or equipment which is the subject of the Contract only and will be charged by the Seller to the Buyer at the appropriate daily rate specified in the Order Acknowledgment. Each Emergency Call-out will be charged as one (1) additional day of Services over and above the number of days specified in the Order Acknowledgment for the supply of the Services.
(j) The Buyer acknowledges and agrees that the Seller shall at no time own, occupy or control (or be deemed to control) any part of the Buyer's site(s) and/or hold or be fixed with any duties or liabilities under health and safety laws or regulations or common law in relation to any part of the Buyer's site(s).

15. Payment

(a) In respect of the Goods, subject to Condition 15(c) the Seller shall invoice the Buyer for the full purchase price of the Goods on or at any time after the completion of delivery of the Goods.
(b) In respect of the Services, the Seller shall invoice the Buyer monthly in advance for the Services.
(c) The Seller may in its absolute discretion agree in writing to the Buyer paying for the Goods in instalments, or may agree in writing to extend credit to the Buyer in respect of the payment for Goods. In the event that the Seller agrees to payment by instalments or extends credit in respect of the payment by the Buyer for Goods, the Seller shall invoice the Buyer monthly for agreed instalments of the purchase price. The Seller may in its absolute discretion by notice in writing to the Buyer withdraw (with immediate effect) the Buyer's right to credit or to pay for the Goods by instalments.
(d) The Buyer shall pay each invoice submitted by the Seller:
(i) within the earlier of thirty (30) days of the date of the invoice or such other period of time after the date of the invoice as has been agreed in the Contract; and
(ii) in Pounds Sterling (or such other currency as the Seller may from time to time agree in writing) to a bank account nominated in writing by the Seller.
(e) Time is of the essence in relation to payment.
(f) All amounts payable by the Buyer under the Contract are exclusive of sales tax chargeable from time to time. Where any taxable supply for sales tax purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid sales tax invoice from the Seller, pay to the Seller such additional amounts in respect of sales tax as are chargeable on the supply of the Services or the Goods at the same time as payment is due for the supply of the Services or the Goods.
(g) The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless required by law.
(h) No payment shall be deemed to have been received until the Seller has received cleared funds.
(i) All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.
(j) If the Buyer fails to pay the Seller any sum due pursuant to the Contract by the due date for payment:
(i) the Buyer shall be liable to pay interest to the Seller under the Late Payment of Commercial Debts (Interest) Act 1998; and
(ii) the Seller may, in its absolute discretion and without liability to the Buyer, suspend performance of its obligations under the Contract and under any or all other Contracts between the Seller and the Buyer or terminate the Contract and any or all other Contracts between the Seller and the Buyer with immediate effect.
(k) If the Buyer pays any amount to the Seller without apportioning it between specific debts or liabilities, the amount paid shall be apportioned as the Seller thinks fit. The Seller may attribute the entirety of an amount paid to one or more specific items in respect of which payment is due, rather than to all the items in respect of which payment is due.

16. Cancellation

(a) No contract shall be cancelled by the Buyer except with the Seller's prior consent in writing.
(b) In the event of the Seller agreeing to the Buyer cancelling all or any part of the Contract, the Seller may, without prejudice to any other rights against the Buyer which it may have, require the Buyer to pay a cancellation charge. Any cancellation charge will correspond to the type of contract being cancelled. Contracts for Specialist Equipment may be subject to a cancellation charge of 100% of the price of the Contract after the Order Acknowledgement has been sent.
(c) In the event that the Seller agrees to cancellation of a Contract in respect of the supply of Goods or Services (or both) which have been ordered to comply with the Buyer's special requirements, the Buyer shall be liable for all costs incurred by the Seller up to the time of cancellation of the Contract in addition to payment of a cancellation charge pursuant to Condition 16(b).

17. Intellectual Property

(a) The Buyer acknowledges that:
(i) the Intellectual Property Rights in the Goods and any materials prepared by the Seller or on its behalf which relate to the Goods and their development (including, without limitation, drawings, designs, samples, models and similar items) (the "Goods Materials") are the Property of the Seller or the third party manufacturers of the Goods (as applicable);
(ii) nothing in these Conditions or in a Contract shall be construed as conferring any licence or granting any rights in favour of the Buyer in the Intellectual Property Rights in the Goods or the Goods Materials. The Buyer may re-sell the Goods subject to the Seller's right to control the use of its trade marks within the European Economic Area and the Buyer shall assist the Seller as required in preventing parallel importers from diluting the Seller's rights; and
(iii) any goodwill in any trade marks affixed or applied to the Goods shall enure to the sole benefit of the Seller or any other owner of the trade marks from time to time.
(b) The Buyer shall not repackage the Goods and shall not without the Seller's prior consent in writing allow any trade marks of the Seller or other words or marks applied to the Goods to be obliterated, obscured or omitted or add any additional marks or words.
(c) The Buyer shall not use (other than pursuant to these Conditions or a Contract) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to, or incorporates any trade mark or trade name which the Seller owns or claims rights in anywhere in the world.
(d) If at any time it is alleged that the Goods infringe the rights of any third party or if, in the Seller's reasonable opinion, such an allegation is likely to be made, the Seller may at its option and its own cost:
(i) modify or replace the Goods in order to avoid the infringement; or
(ii) procure for the Buyer the right to continue using the Goods; or
(iii) repurchase the Goods at the price paid by the Buyer, less depreciation at the rate the Seller applies to its own equipment.
(e) The Buyer shall promptly notify the Seller of:
(i) any actual, threatened or suspected infringement of any of the Intellectual Property Rights in the Goods or the Goods Materials (or both) which comes to the Buyer's notice; and
(ii) any claim by any third party that comes to the Buyer's notice that the sale or advertisement of the Goods or the use of the Goods Materials (or both) infringes the rights of any person.
(f) The Buyer agrees (at the Seller's request and expense) to do all such things as may be reasonably required to assist the Seller in taking or resisting any proceedings in relation to any infringement or claim referred to in Condition 17(e), and the Buyer shall not make any admissions or statements in respect of or compromise any such claim other than with the prior written consent of the Seller.
(g) In the event of any claim, proceeding or suit by a third party against the Buyer alleging an infringement of such party's rights by any of the Intellectual Property Rights in the Goods or the Goods Materials (or both), the Seller shall defend the claim, proceeding or suit at the Seller's expense, subject to:
(i) the Buyer promptly notifying the Seller in writing of any such claim, proceeding or suit; and
(ii) the Seller being given sole control of the defence of the claim, proceeding or suit, and provided that the Seller shall not be liable and shall not defend the claim, proceeding or suit to the extent that such infringements arise out of or in connection with modifications to the Goods or the Goods Materials (or both) made by anyone except the Seller or its authorised representative, or out of use or annexation of the Goods or the Goods Materials (or both) with or to products or third party materials not specified or expressly approved in advance in writing by the Seller, or where the claim, proceeding or suit arises from the Seller's adherence to the Buyer's requested changes to the Specification for Goods or from infringing items of the Buyer's origin, design or selection.
(h) The Seller shall reimburse the Buyer with an amount equal to any liability assessed against the Buyer by final judgment on account of an infringement described in Condition 17(g).
(i) All Intellectual Property Rights in the or arising out of the or in connection with the Services shall be owned by the Seller.
(j) All Intellectual Property Rights in the materials, equipment, documents and other property of the Seller are the exclusive property of the Seller or of its licensors and shall be returned to the Seller on demand.

18. Trade Prohibitions

(a) The Buyer undertakes to the Seller that the Buyer shall not re-sell or otherwise supply the Goods to a third party which is the subject of any statutory trade prohibition of the United Stated of America or a member state of the European Union ("Sanctioned Third Party").
(b) Without prejudice to Condition 18(a), if the Seller shall have notice of or reasonable grounds to believe that the Buyer intends to re-sell or otherwise supply the Goods to a Sanctioned Third Party the Seller may upon giving notice thereof to the Buyer refuse to deliver the whole or any part of the Goods and shall have no liability to the Buyer for such refusal.

19. Limitation and Exclusion of Liabilities

(a) SUBJECT TO CONDITION 19(B), THE SELLER'S OBLIGATIONS AND LIABILITIES TO THE BUYER UNDER THE CONTRACT SHALL BE LIMITED TO THOSE SET OUT EXPRESSLY IN THESE CONDITIONS AND THOSE IMPLIED BY:
(i) SECTION 12 OF THE SALE OF GOODS ACT 1979 (IN RESPECT OF A CONTRACT FOR THE SALE OF GOODS); AND
(ii) SECTION 2 OF THE SUPPLY OF GOODS AND SERVICES ACT 1982 (IN RESPECT OF A CONTRACT FOR THE SUPPLY OF GOODS AND SERVICES).
ALL OTHER TERMS AND CONDITIONS IMPLIED BY LAW (INCLUDING THE CONDITIONS IMPLIED BY SECTIONS 13 TO 15 OF THE SALE OF GOODS ACT 1979 AND THE CONDITIONS IMPLIED BY SECTIONS 3 TO 5 OF THE SUPPLY OF GOODS AND SERVICES ACT 1982) ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.
(b) Notwithstanding any other terms of these Conditions the Seller does not limit or exclude its liability for fraud or fraudulent misrepresentation or for death or personal injury resulting from its negligence or the negligence of its employees, agents or subcontractors.
(c) THE BUYER ACKNOWLEDGES AND AGREES THAT THE LIMITED WARRANTIES AND ALL LIMITATIONS AND EXCLUSIONS OF THE SELLER'S LIABILITY SET OUT IN THESE CONDITIONS ARE REASONABLE AND ARE REFLECTED IN THE PRICE OF THE GOODS OR SERVICES (OR BOTH) (AS APPLICABLE) AND THE BUYER SHALL ACCEPT RISK OR INSURE ACCORDINGLY (OR BOTH).
(d) SUBJECT TO AND WITHOUT LIMITING CONDITIONS 19(A) AND (B) OR ANY OTHER CONDITION, THE SELLER SHALL NOT BE LIABLE TO THE BUYER WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, FOR ANY LOSSES (AS DEFINED) ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN CONNECTION WITH ANY CONTRACT FOR THE SUPPLY OF GOODS (OR THAT PART OF A CONTRACT FOR THE SUPPLY OF GOODS AND SERVICES WHICH RELATES TO GOODS).
(e) SUBJECT TO AND WITHOUT LIMITING CONDITIONS 19(A) AND (B) OR ANY OTHER CONDITION:
(i) THE SELLER SHALL NOT BE LIABLE TO THE BUYER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, FOR ANY DIRECT OR INDIRECT LOSS OF PROFIT OR ANY OTHER INDIRECT OR CONSEQUENTIAL LOSS ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN CONNECTION WITH ANY CONTRACT FOR THE SUPPLY OF SERVICES (OR THAT PART OF A CONTRACT FOR THE SUPPLY OF GOODS AND SERVICES WHICH RELATES TO SERVICES); AND
(ii) THE SELLER'S TOTAL LIABILITY TO THE BUYER IN RESPECT OF ALL OTHER LOSS ARISING OUT OF OR IN CONNECTION WITH ANY CONTRACT FOR THE SUPPLY OF SERVICES (OR THAT PART OF A CONTRACT FOR THE SUPPLY OF GOODS AND SERVICES WHICH RELATES TO SERVICES), WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED THE LIABILITY CAP FOR SERVICES.
(f) The Seller shall have no responsibility for any Losses incurred by the Buyer in the event that any information in any quotation or Order Acknowledgement is applied in connection with products other than the Goods and Services.
(g) This Condition 19 shall survive the termination of the Contract.

20. Force Majeure

(a) The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
(b) If the Force Majeure Event prevents the Seller from providing any of the Services or Goods (or both) for more than forty four (44) Business Days, the Seller shall, without limiting its other rights or remedies, have the right to terminate the Contract with the Buyer immediately by giving notice in writing to the Buyer.

21. Events of Default, Termination, Repossession and Suspension

(a) The Seller may terminate the Contract with immediate effect by giving notice in writing to the Buyer if:
(i) the Buyer fails to pay any amounts due under the Contract on the due date for payment; or
(ii) the Buyer otherwise breaches the Contract with the Seller and the breach, if remediable and previously notified in writing to the Buyer, is not remedied within five (5) Business Days of the Buyer receiving such notice; or
(iii) the Seller terminates any other Contract between the Seller and the Buyer; or
(iv) the Buyer is or otherwise becomes insolvent or unable to pay its debts (as defined in the Insolvency Act 1986) or suspends payment of its debts or threatens to do so or is unable to pay its debts as they fall due or admits its inability to pay its debts; or
(v) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation;
(vi) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer other than for the sole purpose of a scheme for a solvent amalgamation;
(vii) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
(viii) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
(ix) the holder of a qualifying charge over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver;
(x) a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
(xi) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 21(a)(iv) to Condition 21(a)(x) (inclusive);
(xii) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
(xiii) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
(b) In the event that the Seller terminates the Contract pursuant to Condition 21(a) the Seller may (in its absolute discretion and without prejudice to its other rights under these Conditions or otherwise) by notice in writing to the Buyer do any one or (to the extent not inconsistent with one another) more of the following:
(i) suspend any deliveries of Goods to be made under any contract with the Buyer;
(ii) revoke any express or implied authority to sell or use any Goods the title in which has not passed to the Buyer ("Relevant Goods");
(iii) require the Buyer to deliver to the Seller any Relevant Goods; and the Buyer shall do so, failing which the Seller may enter the premises where the Relevant Goods are or are thought to be and repossess the Goods, without liability for any resulting damage to the Buyer's premises, plant or equipment.

22. Confidentiality

Each of the Seller and the Buyer (the "Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Condition 22 as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Condition 22 shall survive termination of the Contract

23. Miscellaneous

(a) The Seller's rights under these Conditions are in addition to any other rights which the Seller may have under the general law or otherwise.
(b) If the Buyer comprises two or more persons, their obligations are joint and several.
(c) The Buyer shall not assign, transfer, mortgage, charge, sub-contract, or otherwise dispose of or deal in any Contract or any rights or obligations (or both) (as applicable) thereunder in whole or in part without the Seller's prior consent in writing. Any such action purported to be taken by the Buyer without the Seller's prior consent in writing shall be void.
(d) The Seller may at any time assign, transfer, mortgage, charge, sub-contract or otherwise dispose of or deal in its rights or obligations (or both) (as applicable) under any Contract or any part of it to any person, firm or company.
(e) A waiver by the Seller of any right under the Contract or law will only be effective if it is in writing. Any failure or delay by the Seller in exercising, or any partial exercise by the Seller, of any right or remedy under the Contract or by law shall not constitute as a waiver of that or any other right or remedy. No single exercise by the Seller shall prevent the further exercise of that or any other right or remedy.
(f) Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall no way affect the other terms of the Contract.
(g) No term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

24. Notices

(a) Any notice to be given by the Buyer under these Conditions or any relevant Contract to the Seller shall be in writing and given by prepaid first class post or hand-delivered to Spirax-Sarco Limited, Charlton House, Cheltenham, Gloucestershire, GL53 8ER for the attention of the Seller's Company Secretary or to such other address or for the attention of such person as the Seller may notify to the Buyer.
(b) Any notice to be given by the Seller under these Conditions or any relevant Contract to the Buyer shall be in writing and given by prepaid first class post or hand-delivered to any address from which the Seller has received communications from the Buyer in connection with these Conditions or the Contract.
(c) Notices shall be deemed to have been received:
(i) if sent by prepaid first class post, two (2) Business Days after posting (exclusive of the day of posting); or
(ii) if delivered by hand, on the day of delivery.