SALE OF GOODS

1. Definitions

"Business Days" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"Buyer" means a customer of the Seller.

"Conditions" means these terms and conditions for the sale of the 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 to the Buyer.

"Emergency Call-out" means the call-out service for emergency breakdowns of the Buyer's plant or equipment provided by the Seller 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 acts of God, war, lockouts, strikes, lockout, strikes, epidemics, 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.

"International 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 registered, or registrable, or subsisting anywhere in the world.

"Losses" means:

(a) 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) loss of profit; or
(e) contamination; or
(f) damage to goodwill.

"Specifications for Goods" means the survival of any contract thereafter.

"Seller" means the 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 between the Seller and the Buyer.

"Specifications for Services" means the specification for the Services that is agreed in writing between the Seller and the Buyer.

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 Uniform Law on International Sales and Services shall apply to this Agreement except where expressly excluded by the International Chamber of Commerce (INCOTERMS) shall be excluded. The construction, validity and performance of these Conditions shall be governed by English law and the courts of England. 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 necessary to enforce its rights.

(b) Any provision of these Conditions shall not be void or unenforceable in any jurisdiction because it is contrary to public policy.

(c) Words in the singular include the plural and in the plural include the singular.

(d) 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) No Order shall be deemed accepted until the Buyer has received a written order acknowledgement from the Seller.

(b) Any variation to these Conditions shall have no effect unless expressly agreed in writing 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 or on behalf of the Seller.

(c) A prospective Buyer shall place its order for goods or services (or both) by completing the Seller's purchase order form (in the case of goods, or the "Purchase Order") for goods or services (or both). Each Purchase Order shall be deemed to be an offer by the prospective Buyer to the Seller unless it is in writing by the Seller.

(d) A prospective Buyer shall order its goods or services (or both) by completing the Seller's purchase order form (in the case of goods, or the "Purchase Order"). Each Purchase Order shall be deemed to be an offer by the prospective Buyer to the Seller unless it is in writing by the Seller.

(e) The Seller may accept a Purchase Order by giving notice to the prospective Buyer that it has accepted the Purchase Order.

(f) The Seller shall be deemed to be the Seller's property;

(g) The Seller shall act solely as agent of the Buyer and shall not act on its own behalf.

(h) Any stated delivery date is an estimate and time for delivery shall not be of the essence of the Contract, in which case delivery shall be within a reasonable time.

(i) If for any reason the Buyer fails to accept delivery of any of the Goods within two (2) Business Days of notice of its ready, or the Seller is unable to deliver the Goods for any reason, then the Seller will be entitled to charge the Buyer a reasonable fee for storage and insurance. The Buyer shall be responsible for all reasonable costs and expenses of the Goods hereunder by the Buyer where the Buyer fails to accept delivery of any of the Goods.

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 Buyer has accepted the quotation in accordance with these Conditions.

(b) Any Order 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.

(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 and in the case of short or damaged delivery give the Seller a reasonable opportunity to inspect the Goods.

(d) Any variation to these Conditions shall have no effect unless expressly agreed in writing 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 or on behalf of the Seller.

(e) The Seller shall be deemed to act solely as agent of the Buyer.

(f) Any request by a Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification for Goods;

(g) If required by any applicable statutory or regulatory requirements;

(h) If the Seller may increase the price of the Goods by giving notice 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 Buyer (including foreign exchange fluctuations, increases in taxes and duties, and increases in the cost of acquiring or manufacturing the Goods;
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 the Buyer or by the Buyer arising directly or indirectly from the from the performance of its obligations to the extent that the Buyer Default prevents or delays the Seller’s Performance of the Services; and
(ii) the Buyer shall not be liable to the Buyer arising directly or indirectly from the Buyer’s failure or delay in performing the Services; and
(iii) the Buyer shall reimburse the Seller on demand for all Losses incurred by the Buyer arising directly or indirectly from the Buyer Default.

9. The Seller reserves the right, at the Buyer’s discretion, to employ subcontractors to perform all or any part of the Seller’s Performance of the Services (including installation of any specialist equipment) on behalf of the Seller.

10. The Buyer warrants that the Buyer to the Seller that the Buyer’s plant and equipment is supplied with water at a quality that complies with all relevant water standards and that the Buyer has obtained all necessary approvals and licences required by the Seller to the Buyer in respect of the Buyer’s plant and equipment. The Seller excludes all liability or responsibility for any losses, costs, damages or expenses arising from incorrect use, misuse, use or overuse of the Buyer’s plant or equipment or any part thereof that is caused directly or indirectly by a breach by the Seller of its obligations under this Contract.

11. 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 all necessary access to the Buyer’s Site(s) and to the Buyer’s plant and equipment other than in strict accordance with the Buyer’s installation, operating and maintenance instructions.
(b) The Buyer shall ensure that the Buyer’s Site(s) and the Buyer’s plant and equipment are securely locked at all times and in the case of imports, the Goods.
(c) Where goods are supplied for export from the United Kingdom the following additional Conditions shall apply where there is no such conflict with the provisions of this Condition 11 and any other Conditions, the provisions of this Condition 11 shall prevail.
(d) In the case of any amount of not less than three million pounds (£3,000,000) in respect of the reinstatement of any pipe lagging (or equipment) on behalf of the Buyer of this warranty.
(e) The Seller reserves the right to amend the terms of the Seller’s Performance of the Services under this Specification set out in the Order in the Buyer’s reasonably necessary in order to perform the Services. However, the Buyer shall be liable for all costs and expenses awarded against or incurred by the Seller arising out of in connection with any breach of the Buyer’s obligations circumstances. The Buyer agrees to provide the Buyer with any information the Seller reasonably requires concerning the use and operation of the Goods, to allow the Seller to comply in full with any relevant export control regulations or common law in relation to any part of the Buyer’s plant and equipment.
(f) The Buyer agrees that the Seller shall not at any time, occupy or control (or be deemed to occupy or control) any premises or plant or equipment licensed or otherwise owned or operated by or on behalf of the Buyer in connection with the Buyer’s Performance of the Services.

II. 15. Payment and Other Buyer Obligations
(a) In respect of the Goods, subject to Condition 15(d) the Seller shall invoice the Buyer for the full purchase price of the Goods on or at any time after the despatch of the Goods.
(b) In respect of the Services, the Buyer shall pay to the Seller for the Services either monthly or quarterly as set out in the Contract.
(c) The Seller reserves the right, in the event of the Buyer purchasing any additional Goods or Services from the Seller that are not set out in the Contract but which are related to the Contract, the terms of such Contract will be deemed to apply to such additional Goods or Services and the Seller will invoice the Buyer for such additional Goods or Services on the basis of the original Contract Price or on the basis of the original Contract Price reduced unless otherwise agreed between the parties.
(d) The Buyer may pay each invoice submitted by the Seller:
(i) within the earlier of the due date for payment stated in the invoice or such other period of time after the date of the invoice as has been agreed in the Contract; and
(ii) subject to Condition 15(i) and payment or delay in payment of the Buyer’s clearance of the Goods shall be accepted by the Buyer and treated as delivered in accordance with the terms of this Contract and that the Buyer shall accept the risk in connection with such clearance and delivery.

All amounts payable by the Buyer under the Contract are exclusive of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT 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.
(h) The Buyer shall make all payments due under the Contract in full without any deduction by way of set-off, counterclaim, discount, abatement or otherwise unless required by law.
(i) All payments shall be deemed to be made at the place of the Seller's billing address and all cheques or drafts shall be made payable to the order of the Seller or its nominee.
(j) All payments payable to the Seller under the Contract shall become due immediately on its termination or cancellation for any reason other than by operation of law.
(k) 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 at the maximum rate allowed by applicable law; and
(ii) the Seller may, in its absolute discretion, without limiting its rights to any other remedy:
(a) without prejudice to any other rights against the Buyer, the Seller may require the Buyer to pay interest on all sums due under the Contract at a rate specified by the Seller from time to time; or
(b) if the Buyer fails to pay the amount due to the Seller on any date specified by the Seller, the Buyer shall pay to the Seller, together with such overdue amount, interest calculated in accordance with the provisions of Clause 20(f) of this 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 a Force Majeure Event occurs causing the Seller, or any of the Goods or Services (or both) purchased under the Contract, to be unable to perform any of its obligations under the Contract, in whole or in part, the Seller shall immediately notify the Buyer in writing of its inability to perform such obligations and shall be excused from liability for any delay or failure in performance.
(c) If the Seller's inability to perform its obligations under the Contract continues for a period of more than thirty (30) days from the date of such notice, the Buyer may at any time terminate the Contract in whole or in part by giving written notice of termination to the Seller, and in such event:
(i) the Buyer may require the Seller to refund any amounts paid to one or more specific items in respect of which payment is due, rather than to all the Goods or Services purchased under the Contract, and the Buyer and the Seller shall agree on the New Price of the Goods or Services (or both).
(ii) if the Buyer has prepaid any amounts under the Contract, the Buyer shall have the right to retain possession of the Goods or Services (or both) until the New Price is paid, and the Seller shall not be required to deliver or provide the Goods or Services (or both) to the Buyer.

21. Intellectual Property Rights
(a) The Seller 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, including any 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, including the grant of any licence by the Seller, will affect the Seller's rights under any contract, agreement or licence to its trade marks and to its trade marks within the European Economic Area (or jurisdiction in which the Goods are sold) unless the Seller shall be required as such in the context of the Goods or its business, its property, its 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;
(iii) any right to the Goods Materials is to be used by the Buyer for the purpose of providing the Goods or for any other purpose agreed by the Seller in writing; and any modification or alteration of the Goods Materials is to be used by the Buyer for the purpose of providing the Goods or the Goods Materials.
(b) The Buyer shall not remove or alter any Goods or incorporate any other material, equipment or other item in any contract, agreement or licence to its trade marks or trade marks within the European Economic Area (or jurisdiction in which the Goods are sold) unless the Seller shall be required as such in the context of the Goods or its business, its property, its 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.
(c) If at any time it is alleged that the Goods infringe the rights of any third party or if, in the Seller's opinion, the Goods do not comply with any of the Intellectual Property Rights in the Goods or the Goods Materials, the Buyer shall immediately notify the Seller in writing of such alleged infringement or non-compliance.
(d) In the event that the Seller terminates the Contract pursuant to Condition 21(a) the Seller may, in its absolute discretion and without liability to the Buyer:
(i) require the Buyer to return the Relevant Goods to the Seller;
(ii) retain or make available to the Buyer the Relevant Goods, and any other property belonging to the Seller which relate to the Goods and their development (including, without limitation, drawings, data, designs and other technical information which may assist the Buyer as required in preventing parallel importers from diluting the Seller's reputation or reducing the price of the Goods);
(iii) retain or dispose of any other items or materials in respect of which the Seller is required to take any action under this Condition.
(e) In the event that the Seller terminates the Contract pursuant to Condition 21(a) the Seller may, in its absolute discretion and without liability to the Buyer:
(i) require the Buyer to return the relevant Goods and Services (or both);
(ii) retain or dispose of any other items or materials in respect of which the Seller is required to take any action under this Condition.
(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.

22. Conditions
(a) The Buyer shall not be in breach of any Contract, warranty, representation or similar legal obligation by reason of its contravention of any of the following:
(i) any amounts due under the Contract; or
(ii) any Contract or any rights or obligations (or both) (as applicable) under any Contract with the Buyer; or
(iii) any other Contract between the Seller and the Buyer.

23. Miscellaneous
(a) Any notice given to the Buyer by the Seller 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 Sprax Sarco Limited, Chatterton House, Midsummerside, Peterborough, PE2 8QJ, or such other person or address as the Seller shall from time to time notify the Buyer in writing.
(b) The Seller shall be deemed to have received any notice to be given to the Buyer 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 Buyer has received communications from the Buyer in connection with these Conditions or the relevant Contract.