The Seller reserves the right to refuse to accept any request by a Buyer to change the delivery date.

(ii) 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 acquiring or manufacturing the Goods, or in any other circumstances described in clause (ii) above, provided that if any such increase in price is not acceptable to the Buyer, the Buyer may terminate the Contract in accordance with clause 7.4.3.

The Seller shall have no liability in relation to any such changes, designs or quotations.

The Seller shall remain the property of the Seller and shall be treated as confidential by the Buyer and not used in any way.

The Seller shall have no liability in relation to any such changes, designs or quotations.
the above warranties shall apply except where the defect in the Goods:

1. has been caused by the misuse or by its parts comprising the Goods which is necessarily incidental to the transfer of the Goods;

2. has been caused by the Goods at the Buyer’s risk by:
   (a) wilful default or negligence by the Buyer or its employees, agents, consultants or subcontractors;
   (b) the Buyer’s interference or lack of maintenance of the Goods;
   (c) failure by the Buyer to follow the Seller’s instructions in relation to the storage, use, installation, commissioning or maintenance of the Goods;

3. failure by the Buyer to follow any instruction or advice of the Seller or to comply with any requirement of the Seller’s practice in writing;

4. the Buyer altering or repairing such Goods without the consent of the Seller;

5. the use of any combination of the Goods which in the Seller’s opinion is prohibited by the law of the country where the Goods are to be used;

6. any water hammer, corrosive attack, or excessive dirt in the system, RFI or electrical supply failure.

10. Instructions and Health and Safety at Work

(a) The Buyer shall observe strictly the provisions of the Seller’s instructions relating to the handling and use of the Goods and apply, with the advice and recommendation of the Buyer’s employer, such additional precautions as the Seller recommends as necessary to prevent any risk to the health and safety of the Buyer’s employer and his employees, agents, consultants and subcontractors.

(b) The Buyer shall be solely responsible for and shall keep the Seller indemnified against all losses incurred by the Seller in connection with 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 UK/Kenya the following additional Conditions shall apply, and any other requirements of the Export Control Act 2008, are subject to Conditions 11 and 11A.

(b) The provisions of this Condition 11 shall prevail.

(c) Unless otherwise agreed by the Seller the Buyer shall indemnify the Seller against any claim, demand, costs, expenses or losses which may be made against the Seller or its employees or agents for breach of any obligation on the Buyer’s part in respect of the Goods or any part thereof, notwithstanding that such loss, damage, cost or expense be directly or indirectly by a breach by the Buyer of this warranty.

(d) In respect of the testing of safety and relief values as part of the Services, the effective seal area must be determined to be of such size as to prevent the release of auxiliary equipment or the loss of its best endeavours to ensure that the accuracy of the information regarding the effective seal area provided to the Seller as such information is critical to test efficiency. The Buyer acknowledges that the effective seal area must be determined by the Seller in its absolute discretion.

(e) The Seller reserves the right to charge for the performance of any work or assessment carried out as reasonably test results caused directly or indirectly by incorrect information regarding the effective seal area being provided.

12. Access to Buyer’s Site(s)

(a) The Seller shall have unrestricted access to the Buyer’s site(s) for the purpose of seller shall have access to all such parts of the Buyer’s site(s) which in the opinion of the Seller are required for the completion of the Buyer’s obligations.

(b) Where any notice has been given as to the maintenance, commissioning, installation, repair or removal of Goods or the maintenance, commissioning, repair or removal of any part of the Goods or any part of the Services, the Buyer will ensure the provision to the Seller of all reasonable access to the Goods and any part of the Services for that purpose.

(c) The Buyer shall comply with all applicable laws, regulations or common law in relation to any part of the Services or the Goods at the Seller’s risk and that it will comply with all applicable laws and regulations or common law in relation to any part of the Services or the Goods at the Seller’s risk.

(d) Where any notice has been given as to the maintenance, commissioning, installation, repair or removal of Goods or the maintenance, commissioning, repair or removal of any part of the Services, the Seller will, during normal business hours, be given all reasonable and safe access to the Buyer’s plant and equipment to enable the Seller to perform such work.

(e) The Buyer shall co-operate with the Seller in providing such assistance and facilities as shall be reasonably required to enable the Seller to access the Goods and to carry out the terms of this Contract.

(f) Prior to any visits to the Buyer’s site(s), the Seller shall provide the Buyer with such information regarding the identity of the personnel likely to visit the Buyer’s site(s) and the nature of the work to be undertaken on site that the Buyer reasonably requires to ensure the safety and security of its site(s).

(g) The Buyer undertakes not to:
   (i) alter the Goods for resale in any country where the Buyer knows the export of the Goods is prohibited by the US Government, the UK Government, the UN, the EU or any other relevant organisation;
   (ii) offer to sell the Goods to any person the Buyer knows or suspects will subsequently resell the Goods into a country where the export of the Goods is prohibited by the US Government, the UK Government, the UN, the EU or any other relevant organisation.

(h) The Buyer agrees to provide the Seller with any information the Seller reasonably requires concerning the destination and use of the Goods, to allow the Seller to comply in full with any relevant export legislation.

SUPPLY OF SERVICES

12. Period of Supply

(a) If not 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 Acknowledgment to the Buyer under the Order and Conditions.

(b) The Seller reserves the right to increase its price for the Services at any time during the term for Services.

(c) The Buyer will give the notice in writing of any such increase not later than eight (8) weeks prior to the commencement of such additional price.

(d) 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 prejudice to any other remedies 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 sell the Goods as necessary spare or replacement parts and/or consumables, to the Buyer’s plant and/or equipment at the site(s) specified in the Seller’s Order Acknowledgment.

(b) The Seller agrees to supply for all liabilities, costs, damages and losses awarded against or incurred by the Seller arising from the breach of the Seller’s obligations contained in Condition 11(g).

(c) The Buyer agrees to provide the Seller with any information the Seller reasonably requires concerning the destination and use of the Goods, to allow the Seller to comply in full with any relevant export legislation.

14. 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) The Seller shall issue to the Buyer under the Contract an invoice for all sums due under the Contract, whether payment has been made for such sums or not, in accordance with the terms of the Order and Conditions, whether the invoice is paid for or not.

(c) The Buyer shall make payments due under the Contract in full and without deduction or set-off in accordance with the terms of the Order and Conditions.

(d) The Buyer shall pay each invoice submitted by the Seller:
   (i) in the earlier of the due date or a period of thirty (30) days after the due date for payment, or on such other period of time after the due date of the invoice as has been agreed in the Contract; and
   (ii) in Kenyan Shillingi 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 of the essence in relation to payment.

(f) The Seller is entitled to retain and set-off any sums owing to the Seller under the Contract against any sums due to the Buyer under the Contract, subject to any deduction or set-off in accordance with paragraph (d) above.

(g) Failure to pay any sums due to the Seller under the Contract will entitle the Seller to suspend performance of any part of the Contract, and to claim interest at up to 15% per annum on such sums from the due date until payment is made.
(g) This Condition 19 shall survive the termination or cancellation 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 arising from any event beyond its control which is beyond its reasonable control, including events such as war, acts of terrorism, strikes, lockouts, civil commotion, government regulations, and natural and industrial disasters.

(b) If the Force Majeure Event prevents the Seller from providing any of the Services or Goods (or both) for a period of forty-five (45) 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, Suspension; Dispute Resolution

(a) The Seller may terminate the Contract if the Buyer fails to pay any amounts due under the Contract on the due date for payment; or

(b) if the Buyer otherwise breaches the Contract with the Seller and the breach, if remediable and provable in writing to the Buyer, is not remedied within five (5) Business Days of the Buyer receiving such notice; or

(c) if the Buyer terminates any other Contract between the Seller and the Buyer; or

(d) if the Buyer is declared bankrupt or insolvent by a competent court of law, or if the Buyer has given any notice of its intention to be placed in administration or破产, or if any appointment is made of a liquidator or administrator of the Buyer (or both) (as applicable) (or both).

(e) if a petition is filed, a notice, a judgment, or a bankruptcy or insolvency order is given, or an order is made, for or in connection with the winding up of the Buyer or for the sole purpose of a scheme for a solvent amalgamation;

(f) any creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied on or enforced on or against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;

(iii) if a notice of intention to appoint an administrator is given if an administrator is appointed over the Buyer.

(f) the holder of a qualifying charge over any of the assets of the Buyer has become entitled to appoint or has appointed an administrator of the Buyer;

(i) if 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;

(g) if any default is made by the Buyer in the performance or observance of any of its obligations under the Contract and the default, if remediable and provable in writing to the Buyer, is not remedied within four (4) Business Days of the Buyer receiving such notice; or

(h) if any distress, execution, sequestration or other such process is levied on or enforced on or against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;

(i) if the Buyer fails to pay any amounts due under the Contract on the due date for payment; or

(j) the Buyer breaches the Contract with the Seller and the breach, if remediable and provable in writing to the Buyer, is not remedied within five (5) Business Days of the Buyer receiving such notice; or

(k) if the Buyer terminates any other Contract between the Seller and the Buyer; or

(l) if the Buyer is declared bankrupt or insolvent by a competent court of law, or if the Buyer has given any notice of its intention to be placed in administration or破产, or if any appointment is made of a liquidator or administrator of the Buyer (or both) (as applicable) (or both).

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 operations 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 not disclose any such confidential information to any third party or use it for any purpose other than those expressly permitted by the Disclosing Party. The Receiving Party shall not disclose any such confidential information to the public or to any other third party without the prior written consent of the Disclosing Party.

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 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 its rights or obligations (or both) (as applicable) under any Contract or part of it to any person, firm or company.

(e) Any 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 under the Contract or law shall not constitute as a waiver of that right 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) The Seller’s rights under these Conditions are subject to and shall be enforceable only by the Seller and shall not be amended, modified, or replaced by terms of the Buyer’s Order unless the Seller has agreed to the amendment, modification, or replacement in writing.

(g) If the Seller shall not be deemed a waiver of any subsequent breach or default and shall not affect the operation of any other provision of these Conditions to which the breach relates.

(h) If any dispute arises out of or in connection with the Contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules, with the laws of Kenya governing the Contract. The language of the arbitration shall be English.

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 Sprack East Africa Limited, Clifton Park, Mbombasa Road, P.O. Box 38919– 0223, Nairobi, Kenya or to such other address or address or by such other means as may be notified by such party to the other party from time to time.

(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 the Seller's address or to such other address as may be notified by the Seller to the Buyer from time to time.

(c) Any notice so given shall be deemed to have been served when sent by the Seller or the Buyer as the case may be.

(d) If an invoice is sent by prepaid first class post, two (2) Business Days after posting (exclusive of the day of posting), or

(e) if confirmed by hand, on the day of delivery.