

TERMS AND CONDITIONS

1. (a) All contracts for the sale and/or manufacture of goods and services by SIMBAL Ltd (hereinafter called the “**Supplier**”) to the customer (the “**Customer**”) (the “**Contract**”) shall incorporate these conditions as shall all quotations and offers from the Supplier. The Contract constitutes the entire agreement between the parties. Neither the performance in whole or in part of the Customer’s order nor any other conduct whatsoever on the part of the Supplier shall be construed as the acceptance by the Supplier of terms and conditions inconsistent with these conditions.
(b) No variation to these conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Supplier.
2. The Customer’s order for the Goods (the “**Order**”) shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, or if no written acceptance is issued then the order shall be deemed to be accepted when the supplier despatches the goods, at which point and on which date the Contract shall come into existence.
3. If under any applicable rule of law any provision or part provision of the Contract shall be void or otherwise unenforceable then this provision or part provision shall be void or as the case may be unenforceable to that extent but no further.
4. (a) All prices set out in this document are subject to and conditional upon there being:-
 - (i) no rise in the cost to the Supplier of any of the goods, materials or components or any part thereof between the date of giving the quotation set out in this document and the delivery of those goods, materials or components to the Customer. In the event of there being such a rise in the cost to the Supplier, the Supplier shall be entitled to invoice the Customer at such prices as represent the prices set out in this document together with any additional costs to the Supplier as aforesaid and thereupon such prices shall represent the Contract prices in lieu of any prices set out in this document in respect of the same goods, components or materials and the Customer shall pay such higher prices as if the same were expressly set out in this document; or
 - (ii) no request by the Customer to change delivery date(s), quantities or types of Goods ordered.
(b) All prices set out in this document are exclusive of Value Added Tax which will be charged at the rate current at the date of despatch, delivery or installation whichever shall be the tax point.
- (c) In respect of the Goods, the Supplier shall invoice the Customer on [or at any time after completion of delivery]
- (d) The Customer shall pay each invoice submitted by the Supplier within **30** days of the date of invoice in full and in cleared funds to the Supplier and time for payment shall be of the essence of the Contract.
- (e) Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, the Supplier shall have the right to charge interest on the overdue amount at the rate of 4% above Bank base rate.
- (f) The risk shall pass to the Customer on completion of the delivery.
5. (a)(i) The quoted delivery/installation period is calculated from the date when the Customer supplies full information and does all other things which are necessary for the carrying out and completion by the Supplier of the Contract.
(ii) The Supplier shall deliver the Goods to the location set out in the Order or other such location as agreed between the parties.
(b) Whilst every reasonable endeavour will be made to maintain the proposed delivery and/or installation date the Supplier will not be responsible for any loss incurred by reason of late delivery or installation and they reserve the right to suspend any delivery or installation in whole or in part in the event of any strike, lock-out, accident or other happening operation to cause the entire or partial stopping of the suppliers work and/or labour force.
(c) The Supplier shall further be relieved of all liability incurred under the Contract in the event of and to the extent to which the fulfilment of their contractual obligations is prevented, frustrated or impeded as a consequence of:
 - (i) Conforming to any statute, rule, regulation, order or requisition issued or promulgated by any Government, Government department, Local Authority or other accepted authority;
 - (ii) Any failure on the part of any of the Supplier’s suppliers to conform to any promised or contractual delivery date.
(d) Without prejudice to the provisions of clause 5(a) and 5(b) hereof the Supplier shall be under no liability whatsoever for any delay in either the delivery of any goods, materials or components or the carrying out or completion of any installation work howsoever caused other than the culpable neglect or

default of the Supplier. The liability on the part of the Supplier for any such delay is subject to and limited by Clause 5(e) hereof.

completion of the installation work, the Supplier shall at their option, repair or replace the defective installation work in question.

- (e) The quoted delivery or installation period shall not be regarded as of the essence of the Contract and in no circumstances whatsoever shall the Customer be entitled to treat the Contract as discharged or to reject any goods, materials or components by reason of any delay in either the delivery of any goods, materials or equipment or the execution or completion of any installation work, howsoever caused. In the event of the Supplier being liable for any delay in accordance with Clause 5(d) hereof the Customer's sole remedy shall be in damages.
- (f) Notwithstanding any delay in the delivery of any goods, materials or equipment other than delay due to culpable neglect or default on the part of the Supplier, the Customer shall be liable to pay for the goods, materials and components in accordance with Clause 4(a) hereof.
- (g) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

Provided that:

- (a) The Suppliers shall be under no liability whatsoever under clause (i) and (ii) or otherwise in relation to any defect caused or contributed to by the negligence of the Customer, its servant or agents and/or the use and/or operation of such goods, materials or components or installation work other than that completely in accordance with the Supplier's or other manufacturer's recommendations or instructions or the Customer makes any further use of such Goods after giving notice as per 7(a) above.
- (b) The Supplier shall be under no liability whatsoever under clause (i) and (ii) unless such defect shall have been notified to them in writing within 10 days of the discovery thereof.
- (c) In the event of a defect being alleged by a Customer to exist in any of the goods, materials or components supplied pursuant to this Contract and subject to the clauses (a) (b) (d) (e) and (f) of this proviso, the Supplier will, if so requested by the Customer, send to the Customer, advance, goods, materials or components to replace the same, subject to and conditional upon such replacement goods, materials or components being available to the Supplier. Thereupon such replacement goods, materials or components will be invoiced to and paid for by the Customer at the Supplier current prices at the date of despatch of the replacements save that the Supplier will give credit to the Customer in respect of the price if any paid by the Customer to the supplier in respect of the goods, materials or components replaced upon:-
 - (A) The return to the Supplier of goods and materials and components so replaced; and
 - (B) The Supplier being satisfied upon reasonable grounds that they are liable in respect of the defect in question in accordance with all the other provisions of this proviso.
- (d) The Supplier will be under no liability to accept the return of any of the goods, materials or components unless they have previously agreed with the Customer in writing to accept such return.
- (e) All costs or expenses arising out of or in connection with the return of any of the goods, materials or components to the Supplier and including all costs of insurance carriage or transportation shall be paid for by the Customer.
- (f) Any goods, materials or components returned to the Supplier for repair shall remain at the risk of the Customer at all times, and any goods, materials or components returned to the Supplier for the purpose

6.(a) The Goods are as described in the Order.

- (b) All items have been supplied in accordance with our certified registration to ISO 9002 for stockists.
- (c) The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

7. (i) In the event of any of the goods, materials or components supplied pursuant to this contract being defective at the time of their supply and if such defect be discovered within a period 12 calendar months from the date of such supply, the Supplier shall at their option repair or replace the said goods, materials or components. Should the supplier choose to repair the said goods then any such repair will be carried out at the suppliers premises.

- (ii) In the event of any installation work carried out by or on behalf of the Supplier pursuant to this contract being defective by reason of bad workmanship on the part of the Supplier their servants or agents then in the event of such defective installation work being discovered within a period of 12 months from the date of the

of replacement, pursuant to clauses 7(i) and (ii) hereof shall remain at the risk of the Customer until receipt thereof by the Supplier.

- (iii) Notwithstanding the provisions of sub clauses 7(i) and (ii) hereof, the Supplier shall in no circumstances be liable for any defect whatsoever arising out of wear and tear or accident, or caused or contributed to or aggravated in any way by any misuse, neglect, internal adjustment or modification or servicing by any other person or persons other than employees of the Supplier or their accredited agents or for any defect caused or contributed to or aggravated by the failure of any other person or persons than the Supplier or their accredited agents to observe recommended maintenance and/or servicing programmes or recommendations.
- (iv) When goods, materials or components are supplied by the Supplier subject to any test or inspection or when installations have been effected by the Supplier subject to any test or inspection, such test or inspection must be carried out at the Supplier's premises, and the results of such test and/or inspection shall be conclusive evidence as to whether the goods, materials or components or installation complies with all or any aspects with the requirements under this Contract and thereafter, if as a result of such test and/or inspection it appears that the goods, materials, components and installation comply in all aspects with the requirements of this Contract, the Supplier shall be under no further liability whatsoever in respect of the goods, materials or components or installation of any of the defects therein.

8. (a) In the event of the Customer wishing to operate a trade credit account he must provide in writing his full name and (registered) address, the name and address of his bankers and the branch and account number, and in addition one trade reference. Unless prior arrangements have been made in writing, all goods, materials or components and all installations are supplied and effected on a pro forma cash with order or cash on delivery or completion basis at the option of the Supplier.
- (b) Where a credit account is operated in accordance with clause 8(a) hereof, payment shall be made by the Customer net cash by 20th of the month following the month of invoice.
- (c) The title in the goods, equipment or materials supplied or to be supplied or the installation work effected or be effected pursuant to the Contract will not pass to the Customer unless and until the whole of the amount due in respect thereof shall have been paid to the Supplier in accordance with clause 4(d).

- (d) Until title in the Goods has passed to the Customer, the Customer shall:-
- (i) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (ii) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (iii) not remove or deface or obscure any identifying mark or packaging on or relating to the Goods;
- (iv) maintain the Goods in satisfactory condition and keep insured against all risks for their full price on the Supplier's behalf from the date of delivery; and
- (v) notify the Supplier immediately of any of the events in clause 9 below.

9.(a) This clause 9 applies if:

- (i) the Customer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or
- (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- (iii) the Customer ceases, or threatens to cease, to carry on business; or
- (iv) the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

9.(b) If this clause applies then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Except in respect of death or personal injury caused by the Supplier's negligence, or liability for defective products under the Consumer Protection Act 1987 or breach of the terms implied by section 12 of the Sale of Goods Act 1979 the Supplier shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or



resale by the Customer, and the entire liability of the Supplier under or in connection with the Contract shall not exceed the price of the Goods.

11(a). The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11(b)The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of

its rights or obligations under the Contract without the prior written consent of the Supplier.

12.A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.The Contract shall be governed by the laws of England, and the Customer agrees to submit to the exclusive jurisdiction of the English courts.