

TERMS AND CONDITIONS OF SALE

ROAK LIMITED



1. Interpretation

1.1. In these Conditions:

"Customer" means the Purchaser of the Goods &/or Services

"Goods &/or Services" means the Goods &/or Services (including any installation of the Goods &/or Services at the Site or any parts of or for them) which the Company is to supply in accordance with these Conditions

"Company" means **Roak Ltd** (registered in England under number 05783761) whose registered office is 14 Farnham Business Centre, Farnham, GU9 7UP, Trading address at Unit 14 Farnham Business Centre, Farnham, Surrey GU9 7UP

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company

"Contract" means the contract for the purchase and sale of the Goods &/or Services

"Free Issue Goods &/or Services" means any Goods &/or Services or parts manufactured and/or supplied by the Customer which the Company is to install

"Sub-Contractor" means any person to whom any part of the contract has been sub-let and the Sub-Contractor's legal successors in title

"Tender" means the Company's priced offer to the Customer for the execution of the Contract

"Site" means the actual place or places, provided or made available by the Customer, to which the Goods &/or Services are to be delivered or at which work is to be done by the Company, together with so much of the area surrounding the same as the Company shall with the consent of the Customer actually use in connection with the installation of the Goods &/or Services

"Writing" includes E-mail, facsimile transmission and comparable means of communication 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time

1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Basis of the Sale

2.1. The Company shall sell and the Customer shall purchase the Goods &/or Services in accordance with these Conditions which shall govern the Contract to the exclusion of any other terms and conditions. No binding Contract shall be effected or shall be deemed to be effected until any written order placed by the Customer has been accepted by the Company.

2.2. Any Tender/Quotation submitted by the Company and expressed as such shall automatically lapse and shall be ineligible for acceptance by the Customer through an order or otherwise upon the expiry of thirty days from the date of the Tender/Quotation

2.3. No variation to these Conditions shall be binding unless agreed in Writing between authorised representatives of the Customer and the Company

2.4. The Company's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Company in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed

2.5. Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage application or use of the Goods &/or Services which is not confirmed in Writing by the Company is followed or acted upon entirely at the Customer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed

2.6. Any typographical clerical or other error or omission in any sales literature Tender/Quotation document quotation price list acceptance or offer invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company

3. Sub-Contracting

3.1. The Company shall be permitted to sub-contract any part of the Contract provided that the Company shall be responsible for the acts defaults and neglects of any Sub-Contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Company his agents, servants or workmen

4. Orders and Specifications

4.1. No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative

4.2. The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the Goods &/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms

4.3. The quantity and description of and any specification for the Goods &/or Services shall be those set out in the Company's Tender/Quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company)

4.4. Specifications designs or drawings supplied by the Company may be used by the Customer only for the purposes of completing maintaining adjusting and repairing the Goods &/or Services. Specifications designs or drawings supplied by the Company shall not without the Company's consent be used copied communicated to a third party by the Customer otherwise than as strictly necessary for the purpose of the Contract

4.5. Specifications designs or drawings supplied by the Customer to the Company for the purposes of the Tender/Quotation and the Contract shall remain the property of the Customer. They shall not without the consent of the Customer be used copied or communicated to a third party by the Company otherwise than as strictly necessary for the purposes of the contract

4.6. If any process or modification is to be applied to the Goods &/or Services by the Company in accordance with specifications designs or drawings submitted by the Customer the Customer shall indemnify the Company against all loss damages costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification or the use by the Customer of the Goods &/or Services manufactured to the Customer's specifications and the Customer shall itself not make or bring any claim against the Company as a result of any failure of the Goods &/or Services to function as anticipated

4.7. If the Goods &/or Services are to be manufactured or any process is to be applied to the Goods &/or Services by the Company in accordance with specifications designs or drawings produced by the Company at the Customer's request the Customer shall approve in writing the specifications prior to manufacture of the Goods &/or Services save for those circumstances envisaged by Clause 4.6 above

4.8. The Customer shall be responsible for errors, omissions or discrepancies in drawings and written information supplied by the Customer. The Customer shall at the Customer's own expense carry out any alteration or remedial work necessitated by such errors omissions or discrepancies or pay the Company the cost incurred by the Company in carrying out such alteration or remedial work

4.9. The Company reserves the right to make any changes in the specification of the Goods &/or Services from time to time to ensure that any description or illustration of the Goods &/or Services is accurate

4.10. No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Company as a result of cancellation

5. Price of the Goods &/or Services

5.1. The price of the Goods &/or Services shall be the price set out in the Tender/Quotation or the Company's written acceptance of an order placed by the Customer. All prices set out in the Tender/Quotation are valid for ninety days only or until earlier acceptance by the Customer after which time they may be altered by the Company without giving notice to the Customer

5.2. If the cost of performing the Company's obligations under the contract shall be increased by reason of the making after the date of the Tender/Quotation of any law or of any order regulation or by law having the force of law that shall affect the Company in the performance of the Company's obligations under the Contract the amount of such increase shall be added to the price

5.3. The price is exclusive of any applicable Value Added Tax which the Customer shall be additionally liable to pay to the Company

6. Payment

6.1. Subject to any specific terms agreed in writing between the Customer and the Company, the Company may make application to the Customer for 20% mobilisation and interim or final payments in respect of:- Goods &/or Services in the course of manufacture, Goods &/or Services delivered or shipped and en-route to the Site, Work executed on the Site. **The Customer will pay the Company within 3 days of the date of the mobilisation invoice unless prior agreement in place.**

6.2. The Customer will pay the Company within 7 days of the date of the interim applications 'unless prior agreement in place'. For contract works **interim applications to be every 14 days unless prior agreement in place.**

6.2i Standard terms 7 days from Invoice dates

6.3. An interim payment shall not be withheld on account of defects of a minor character which were not such as to affect the use of the Goods &/or Services

6.4. The Company shall make application for final payment forthwith after completion of the Contract

6.5. The application by the Company for final payment shall be accompanied by a final account and Final Tender/Quotation Documentation prepared by the Company. The final account shall give full details of the value of the Goods &/or Services supplied and work done under the Contract together with a detailed analysis and valuation of all claims to which the Company is entitled under the Contract

6.5.i Deposit payments may be required for different specialist suppliers as part of the contract agreement. These may fall outside contract terms but do need to be honoured to satisfy programme timelines.

6.6. The Customer shall pay the final account from the company within 7 days 'unless prior agreement in place'

6.7. Payment is conclusive evidence that the Company has performed all the Company's obligations under the Contract

6.8. If the Customer fails to make any payment due (including any interim payment) then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:-

6.8.1. cancel the contract or suspend any further deliveries to the Customer;

6.8.2. appropriate any payment made by the Customer to such of the Goods &/or Services (or the Goods &/or Services supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and

6.8.3. charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of [8] per cent per annum above [Bank of England] base rate from time to time in force until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

6.8.4. suspend the progress of the whole or any part of the installation of the Goods &/or Services at the Site

6.9.5. suspend all Warranty commitments

7. Access & Consents

7.1. The Customer shall give the Company at all reasonable times access to the Site to enable installation of the Goods &/or Services and shall provide such roads and other means of access to the Site as may be necessary from time to time

7.2. The Customer shall before the delivery of any Goods &/or Services to the Site obtain all consents wayleaves and approvals in connection with the regulations and by-laws of any local or other authority which shall be applicable to the Site

8. Utilities and Power

8.1. The Customer shall make available on Site for use by the Company such supplies of electricity water gas air and other services as may be necessary for the installation of the Goods &/or Services

9. Storage Facilities

9.1. The Customer shall make available on the Site for use by the Company such secure storage facilities as may be necessary for the storage of the Goods &/or Services and the Company's equipment and materials

10. Rubbish Disposal

10.1. The Customer shall make available on the Site for use by the Company such apparatus as may be necessary for the disposal of surplus materials and rubbish

11. Safe Working Environment

11.1. The Customer shall be responsible for the adequacy stability and safety of operations on the Site [provided that the Company shall comply with all safety regulations applicable at the Site unless specifically authorised by the Customer to depart there from in any particular circumstances]

12. Risk and Property

12.1. Risk of damage to or loss of the Goods &/or Services shall pass to the Customer either when Goods &/or Services are delivered pursuant to the Contract or when the Company becomes entitled to have the value of the Goods &/or Services in question included in an interim certificate for payment whichever is earlier

12.2. Notwithstanding delivery and the passing of risk in the Goods &/or Services or any other provision of these Conditions the property in the Goods &/or Services shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods &/or Services and all other Goods &/or Services agreed to be sold by the Company to the Customer for which payment is then due under any certificate for payment

12.3. Until such time as the property in the Goods &/or Services passes to the Customer the Customer shall hold the Goods &/or Services as the Company's fiduciary agent and bailee and shall keep the Goods &/or Services separate from those of the Customer and third parties and properly stored protected and insured and identified as the Company's property but shall be entitled to resell or use the Goods &/or Services in the ordinary course of its business

12.4. Until such time as the property in the Goods &/or Services passes to the Customer (and provided the Goods &/or Services are still in existence and have not been resold) the Company shall be entitled at any time to require the Customer to deliver up the Goods &/or Services to the Company and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods &/or Services are stored and repossess the Goods &/or Services

12.5. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods &/or Services which remain the property of the Company but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable

13. Warranties and Liability

13.1. Subject to the conditions set out below the Company warrants that the Goods &/or Services will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their installation



13.2. The above warranty is given by the Company subject to the following conditions:

13.2.1. the Company shall be under no liability in respect of any defect in the Goods &/or Services arising from any drawing design or specification supplied or approved by the Customer;

13.2.2. the Company shall be under no liability in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Goods &/or Services without the Company's approval;

13.2.3. the Company shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods &/or Services has not been paid;

13.2.4. the above warranty does not extend to Free Issue Goods &/or Services or other parts materials or equipment comprised in the Goods &/or Services not manufactured by the Company

13.3. Subject as expressly provided in these Conditions and except where the Goods &/or Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

13.4. Any claim by the Customer which is based on any defect in the quality or condition of the Goods &/or Services or their failure to correspond with specification shall (whether or not installation is refused by the Customer) be notified to the Company within seven days from the date of installation or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If installation is not refused and the Customer does not notify the Company accordingly the Customer shall not be entitled to reject the Goods &/or Services and the Company shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Goods &/or Services had been installed in accordance with the Contract

13.5. Where any valid claim in respect of any of the Goods &/or Services which is based on any defect in the quality or condition of the Goods &/or Services or their failure to meet specification is notified to the Company in accordance with these Conditions the Company shall be entitled to replace the Goods &/or Services (or the part in question) free of charge or at the Company's sole discretion refund to the Customer the price of the Goods &/or Services (or a proportionate part of the price) but the Company shall have no further liability to the Customer

13.6. Except in respect of death or personal injury caused by the Company or its Sub-Contractor's negligence the Company or its Sub-Contractors 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 any indirect special or consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company its employees or agents or Sub-Contractors or otherwise) which arise out of or in connection with the supply of the Goods &/or Services or their use or resale by the Customer and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods &/or Services except as expressly provided in these Conditions

13.7. The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods &/or Services if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Company's reasonable control:

13.7.1. Act of God explosion flood tempest fire or accident;

13.7.2. war or threat of war sabotage insurrection civil disturbance or requisition;

13.7.3. acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;

13.7.4. import or export regulations or embargoes;

13.7.5. strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

13.7.6. difficulties in obtaining raw materials labour fuel parts or machinery;

13.7.7. power failure or breakdown in machinery

14. Insolvency of Customer

14.1. This clause applies if:

14.1.1. the Customer makes any voluntary arrangement with its creditors (whether formal or informal) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

14.1.2. an encumbrancer takes possession of or a receiver or receiver and manager or administrative receiver is appointed over any of the property or assets of the Customer; or

14.1.3. the Customer ceases or threatens to cease to carry on business; or

14.1.4. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

14.2. If this clause applies then without prejudice to any other right or remedy available to the Company the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Goods &/or Services have been delivered but not paid for under a certificate for payment the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

15. General

15.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice

15.2. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision

15.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected

15.4. Any dispute arising under or in connection with these Conditions or the sale of the Goods &/or Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Institute of Electronic Engineers. The Arbitration Act 1996 shall apply

15.5. The Contract and these Conditions of Sale shall be governed by the laws of England and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts