

TERMS AND CONDITIONS OF PURCHASE ("CONDITIONS")

1. INTERPRETATION

1.1 In this Agreement:

“**Buyer**” means Morgan AM&T BV.

“**Contract**” means an Order accepted by the Seller in accordance with these Conditions.

“**Delivery Address**” means the Buyer's delivery address stated in the Order.

“**Goods**” means the goods (including any instalment of the goods or any part of them) described in the Order.

“**Order**” means the Buyer's purchase order to which these Conditions are annexed.

“**Price**” means the price of the Goods and/or the charge for the Services.

“**Seller**” means the person so described in the Order.

“**Services**” means the services (if any) described in the Order.

“**Specification**” includes any plans, drawings, data or other information relating to the Goods or Services.

“**Writing**” includes email, telex, cable, facsimile transmission and comparable means of communication and the word "Written" shall construed accordingly.

1.2 Any reference in these Conditions to a statute or provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2. BASIS OF PURCHASE

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services in accordance with these Conditions.

2.2 These Conditions shall apply to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 The Order shall be deemed to be accepted on the earlier of the Seller issuing a Written acceptance of the Order, or the Seller doing any act consistent with fulfilling the Order, at which point the Contract will come into existence.

2.4 The Order will lapse unless unconditionally accepted by the Seller in Writing within seven days of its date.

2.5 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

3. SPECIFICATION

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.

3.2 The Specification and any materials, equipment and tools (“**Buyer Materials**”) supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design right or any other intellectual property rights in the Buyer Materials, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Buyer Materials except to the extent that is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

3.4 No change in either the place of manufacture of the Goods or, in the case of the provision of Goods and/or Services, the identity of any sub-contractor used by the Seller, shall be made without the prior consent of the Buyer in Writing.

3.5 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.6 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

3.7 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within twenty one days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

3.8 The Seller shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract, and the Buyer shall have the right to conduct further inspections and tests after the Seller has carried out remedial actions.

3.9 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and property packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4. PRICE OF GOODS AND SERVICES

4.1 The Price of the Goods and Services shall be as stated in the Order and shall unless agreed otherwise be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

4.1.2 inclusive of all charges for packaging, packing, shipping carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

4.2 The Seller shall itemise clearly on each invoice it issues in respect of the Goods, all carriage, delivery and freight costs and charges.

4.3 No increase in the Price may be made (whether on account or increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing. If the Seller is entitled to increase the Price then it shall give the Buyer as much advance notice as is possible of any Price increase and, in any event, not less than sixty days' notice.

4.4 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume customarily granted by the Seller, whether or not shown on its terms and conditions of sale.

5. TERMS OF PAYMENT

5.1 The Seller shall be entitled to invoice the Buyer on or at any time after deliver of the Goods or performance of the Services and each invoice shall quote the Order reference number.

5.2 Each invoice shall be priced in accordance with the Order and sent to the address specified in the Order.

5.3 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and Services within sixty days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services by the Buyer.

5.4 Payment shall be made to the bank account nominated in Writing by the Seller to the Buyer.

5.5 The Buyer shall be entitled, without limitation, to set-off any sums owed to the Buyer by the Seller. The Seller shall not be entitled to assert any credit, set-off or counterclaim against the Buyer in order to justify withholding of payment of any such amount in whole or in part.

6. DELIVERY

6.1 The Goods shall be delivered to, and the Services shall be performed on the date or within the period stated in the Order, to/at the Delivery Address or as instructed by the Buyer prior to delivery, and during the Buyer's usual business hours or as instructed by the Buyer.

6.2 Where the date of delivery of Goods or the performance of the Services is to be specified after the Order, the Seller shall give the Buyer reasonable notice of the specified date.

6.3 The time of delivery of the Goods and/or the performance of the Services is of the essence of the Contract.

6.4 The Seller shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and in accordance with the Specification.

6.5 A packing note quoting the date and reference number of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are to be delivered by instalment, the outstanding balance of Goods remaining to be delivered, must accompany each delivery or consignment of the Goods and must be displayed prominently.

6.6 Where the Buyer agrees in Writing to accept delivery of the Goods or performance of the Services by instalments, the Contract will be treated as a single contract and not severable in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

6.7 The Buyer shall not be deemed to have accepted the Goods until it has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods become apparent

6.8 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted the Goods until the Buyer has had reasonable time (being a period of at least seven days) to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods become apparent.

6.9 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

7. RISK AND TITLE

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

7.2 The property in the Goods shall pass to the Buyer upon the earlier of physical delivery or payment (which, in that case, shall be regarded as the moment of delivery).

8. WARRANTIES

8.1 The Seller warrants to the Buyer that:

8.1.1 the Goods, for a minimum period of two years (or such longer period as is specified in the Order) from the date of their initial use:

8.1.1.1 will be of satisfactory quality and fit for any purpose for which such Goods are customarily used and any other purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;

8.1.1.2 will be free from defects in design, material and workmanship;

8.1.1.3 will correspond with any relevant Specification or sample; and

8.1.1.4 will, to the extent that such terms are more favourable than those contained within these Conditions, benefit from the Seller's standard warranty,

8.1.2 the Services will be performed by appropriately qualified, trained and experienced personnel, with due care and diligence and to such high standard of quality as is reasonable for the Buyer to expect in all circumstances; and

8.1.3 the Seller shall comply with the Buyer's on-site health and safety and security policies, all applicable laws, statutory requirements and regulations and other similar instruments relating to the sale of the Goods or the provision of the Services (including without limitation all applicable health and safety legislation).

9. REMEDIES

9.1 Without prejudice to any remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled at its sole discretion:

9.1.1 to terminate the Contract;

9.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

9.1.3 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within twenty one days;

9.1.4 whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid;

9.1.5 to refuse to accept any subsequent delivery of the Goods or performance of the Services which the Seller attempts to make;

9.1.6 to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods or services from a third party; and

9.1.7 to claim damages for any costs, losses or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the Contract.

10. INDEMNITY

10.1 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (whether direct or indirect), including any interest, penalties and legal and other professional fees and expenses awarded against or incurred by the Buyer as a result of or in connection with:

10.1.1 breach of any warranty given by the Seller in relation to the Goods or the Services;

10.1.2 any claim that the Goods infringe, or their importation, use or re-sale, infringes the patent design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with the Specification supplied by the Buyer;

10.1.3 any liability resulting from the Goods being defective at delivery, including any liability under Book 6, title 3 section 3 of the Dutch Civil Code;

10.1.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and

10.1.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.

11. FORCE MAJEURE

11.1 Neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delays in performing, or any failure to perform any of its obligations in relation to the Goods or the Services if the delay or failure was beyond that party's reasonable control (including acts of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export embargoes, strikes, lockouts, or other industrial actions or trade disputes (whether involving employees of either the Seller or the Buyer or of a third party), difficulties in obtaining raw materials, labour, fuel, parts of machinery or power failure or breakdown in machinery, provided that the Seller shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract.

11.2 If any events or circumstances prevent the Seller from carrying out its obligations under the Contract for a continuous period of more than thirty working days, the Buyer may terminate the Contract immediately by giving notice in Writing to the Seller.

12. TERMINATION

12.1 The Buyer shall be entitled to cancel the Contract in whole or in part by giving notice to the Seller at any time prior to delivery, in which event the Seller shall discontinue all work on the Contract and the Buyer's sole liability shall be to pay such fair and reasonable compensation for work-in progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

12.2 The Buyer shall be entitled to terminate the Contract with immediate effect and without liability to the Seller by giving notice to the Seller at any time if the Seller:

12.2.1 commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen days of receipt of notice in writing of the breach;

12.2.2 enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them;

12.2.3 passes a resolution or makes a determination for it to be wound up;

12.2.4 has a winding-up order or bankruptcy order made against it;

12.2.5 has appointed to it an administrator or administrative receiver;

12.2.6 being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or

12.2.7 suffers a change of control in relation to which the Buyer has not provided its prior written consent.

12.3 Termination shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination shall continue in full force and effect.

13. INSURANCE

13.1 The Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13.2 Any materials, tools or patterns sent to the Supplier by the Buyer must be insured against any loss, damage or undue deterioration through neglect, which may occur whilst in Seller's custody.

14. GENERAL

14.1 The Seller shall not assign, transfer, charge, sub-contract or deal in any other manner with any or all of its rights or obligations under the Contract. The Buyer may, at any time, assign, transfer, charge or sub-contract or deal in any manner with any or all of its rights or obligations under the Contract.

14.2 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 address 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 and shall be delivered personally or sent by pre-paid first class post, recorded delivery, commercial courier or fax. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first class post or recorded delivery, at 9:00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, twenty four hours after transmission.

14.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be construed as a waiver of any subsequent breach of the same or any other provision.

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

14.5 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in Writing.

14.6 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, Dutch law.

14.7 Any claim or dispute arising out of or in connection with the Contract (including any non-contractual dispute or obligation) or further agreements resulting therefrom will be submitted to the exclusive jurisdiction of the competent court in Rotterdam.