

TERMS AND CONDITIONS OF TRADING

1. DEFINITIONS

In these Conditions:-

"Buyer"	means the person or firm who buys the Products and/or the Contractual Services;
"Company"	means Souter Trading International Limited registered in England and Wales with company number 03149826;
"Conditions"	these terms and Conditions (as amended from time to time in accordance with Clause 21).
"Contract"	means any contract for the supply of the Products and/or the Contractual Services by the Company to the Buyer in accordance with these Conditions;
"Contractual Services"	means those services supplied by the Company to the Buyer under the terms of the Contract;
"Delivery Location"	has the meaning given in Clause 5.1 ;
"Force Majeure Event"	Has the meaning given in Clause 18 ;
"Intellectual Property Rights"	all patents, copyright and related rights, trade marks, rights in goodwill or to sue for passing off, rights in computer software, rights in confidential information, and all other intellectual property rights, in each case whether registered or not;
"Price"	means the amount payable in respect of the Products (including delivery charges where applicable) and/or the Contractual Services (including any ancillary charges notified by the Company to the Buyer);
"Products"	means the goods supplied by the Company under the terms of the Contract;
"Product Specification"	any specification for the Products including any relevant plans or drawings that is agreed in writing by the Buyer and the Company;
"Third Party Licensor"	the manufacturer and licensor of the Products as set out in the order.

2. THE CONTRACT

- 2.1 A quotation shall constitute an invitation to the Buyer to negotiate with the Company. An order placed with the Company by the Buyer constitutes an offer by the Buyer to purchase the Products and/or Contractual Services in accordance with these Conditions. An order shall be deemed to be accepted by the Company at the time an unqualified acknowledgement and acceptance of such order is issued to the Buyer. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.2 No employee or agent of the Company is authorised to give any guarantee or warranty or to make any representation which may vary these Conditions. Unless otherwise agreed in writing no previous communications between the parties relating to the Products and/or the Contractual Services shall be incorporated into the Contract.
- 2.3 All quotations provided by the Company are based on the Buyer's specifications as supplied to the Company and the Company shall not be responsible for the sufficiency or otherwise of the Products and/or the Contractual Services supplied in accordance with such specifications. The Buyer is liable to pay for all the Products and/or the Contractual Services supplied by the Company in accordance with such specifications.
- 2.4 The Company reserves the right at the expense of the Buyer to make any changes in any specification which are required to conform with any applicable safety or other statutory requirements.
- 2.5 The order placed by the Buyer in relation to the Company's quotation must be accompanied by sufficient technical information to enable the Company to proceed with acceptance of the order and failure to supply such information shall leave the Company at liberty to amend the quoted process to cover any increase in costs which may arise subsequent to placement of the order.
- 2.6 Any quotation includes only such goods, materials and services as are specified therein. In the event of any material information, specification or instructions supplied by the Buyer being defective, the Buyer shall be responsible to the Company for all additional work occasioned by such defect.
- 2.7 All of these Conditions shall apply to the supply of both Products and Contractual Services except where application to one or the other is specified.

3. INFORMATION SUPPLIED BY THE COMPANY

No warranty, express or implied, is given by the Company as to the accuracy or completeness of information supplied by the Company (whether that information is supplied in connection with a quotation or otherwise) and, to the extent that such exclusion of liability shall be permitted by law, the Company shall not have liability for any loss (including consequential loss), damage, costs or expenses (whether the same shall result from the negligence of the Company, its employees, agents, or others for whom it may in law be responsible or otherwise) which may be incurred by the Buyer.

4. DRAWINGS

- 4.1 Any specifications, drawings and particulars of weights and dimensions submitted with a quotation are approximate only, and the descriptions and illustrations contained in the Company's literature are intended merely to present a general idea of the Products

and/or Contractual Services described therein, and none of this documentation shall form part of the contract.

- 4.2 Unless expressly agreed otherwise, any specifications, drawings or technical documents intended for use in relation to the Products and/or the Contractual Services and submitted to the Buyer prior or subsequent to the formation of the Contract remain the exclusive property of the Company. They may not, without the written consent of the Company be utilised by the Buyer or copied, reproduced, transmitted or communicated to a third party.

5. DELIVERY

Delivery to the Buyer's Address

- 5.1 Subject to these Conditions the Products shall be delivered by the Company to the address specified in the quotation ("**Delivery Location**"). The Company's charges in respect of delivery shall be payable by the Buyer to the Company in accordance with these Conditions.
- 5.2 Where a delivery has been arranged, then if the Buyer requests that such delivery be effected at an alternative address or (with the agreement of the Company) that such delivery shall be suspended or deferred, then the Buyer shall become liable to pay an additional charge reflecting the additional costs incurred by the Company as a result of any such request.
- 5.3 If the Buyer fails to accept delivery of the Products the Price together with any additional costs incurred by the Company shall be payable by the Buyer.
- 5.4 The Buyer must satisfy himself as to the condition of the Products at the time of delivery and the Products must be inspected and accepted in writing by the Buyer at the time of delivery. The Company shall have no liability in respect of any defects which could have been revealed by examination on delivery unless the said defects are reported within fifteen days of delivery.
- 5.5 Delivery of the Products shall be completed on the completion of unloading of the Products at the Delivery Location.

6. DAMAGES IN TRANSIT

The Company shall replace or (at its discretion) repair free of charge any Products damaged in transit, provided the Company shall receive notification of such damage within twenty four hours of delivery, confirmed in writing within five days.

7. DELAY IN DELIVERY

- 7.1 Any proposed delivery date specified by the Company is the Company's considered estimate of the date on which the Products will be delivered to the Buyer and/or the Contractual Services will be completed by the Company. The Company will make every reasonable endeavour to ensure that Products are delivered to the Buyer and/or that the Contractual Services are duly completed on that date. Time shall not be of the essence with regard to delivery or the completion of the Contractual Services under the terms of the Contract. Save in so far as such exclusion of liability may be precluded by law from time to time, the Company shall have no liability (in contract tort or otherwise) to the Buyer in respect of any loss, damages, costs or expenses (including consequential loss or damage) which may be incurred by the Buyer and

which may arise from any delay in the delivery of the Products and/or the completion of the Contractual Services, and whether or not the said delay shall result from the negligence of the Company, its employees, agents or others for whom it may in law be responsible or otherwise.

- 7.2 The Buyer shall not be entitled to refuse to accept delivery or take collection of the Products, or repudiate or cancel the Contract as a result of any delay in delivery of the Products and/or in the completion of the Contractual Services. Late delivery or late completion shall not affect the obligations of the Buyer to pay the Price.
- 7.3 Where the Products and/or the Contractual Services are to be supplied by instalments each such instalment shall constitute a separate contract and failure by the Company to perform any one or more instalment in accordance with the Contract or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 7.4 If the Company fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. The Company shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.

8. IMPORT LICENCES

The Buyer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products as are required from time to time and, if required by the Company, the Buyer shall make those licences and consents available to the Company prior to the relevant shipment.

9. PRICE AND PRICE ESCALATION

The Price is based upon the costs of materials, labour, transport, overheads, insurance, duties, taxes (other than Value Added Tax), currency regulations or any other similar costs, which are current at the date of the earlier of the Company's quotation and the Buyer's order. The Price may be varied to take account of any reasonable increase in any of such costs or charges or changes in currency regulations or foreign exchange fluctuations which may occur before the Contract is fulfilled. In addition to the price the Buyer shall pay Value Added Tax as appropriate.

10. PAYMENT

- 10.1 Whilst the Buyer remains an approved credit customer payment shall be made within 30 days after an invoice has been submitted to the Buyer. In all other cases payment shall be made cash against delivery or on a pro forma invoice at the Company's option.
- 10.2 The Buyer shall not be entitled to make any deduction from, or retention of, the amount due under the Contract.
- 10.3 In the event that any amount due under the Contract shall not have been paid in full by the due date, the Company shall be entitled to charge interest on all monies outstanding at the date of two per centum per annum above the base rate of National Westminster Bank Plc from the due date until payment.

10.4 The Price shall be payable in pounds sterling (unless agreed otherwise).

11. PASSING OF RISK

The risk in the Products supplied shall pass to the Buyer at the time when such Products are either delivered to the address specified by the Buyer or are loaded on to the Buyer's vehicle or onto the vehicle of any person acting for the Buyer.

12. RETENTION OF TITLE

12.1 The Company and the Buyer expressly agree that, until the Company has been paid in full for the Products comprised in the Contract, such Products remain the property of the Company.

12.2 Until title to the Products has passed to the Buyer, the Buyer shall:

12.2.1 store the Products separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;

12.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products; and

12.2.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery.

12.3 Subject to **Clause 12.3** the Buyer may use the Products in the ordinary course of its business (but not otherwise) before the Company receives payment for the Products.

12.4 If before title to the Products passes to the Buyer the Buyer becomes subject to any of the events listed in **Clause 15.1**, then, without limiting any other right or remedy the Company may have:

12.4.1 the Buyer's right to use the Products in the ordinary course of its business ceases immediately; and

12.4.2 the Company may at any time:

(a) require the Buyer to deliver up all Products in its possession which have not been irrevocably incorporated into another product; and

(b) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products are stored in order to recover them.

13. WARRANTY AND DEFECTS

13.1 Notwithstanding the provisions of **Clause 14** and subject to the conditions set out below, the Company warrants that the Products and the Contractual Services shall correspond in all material respects with their Product Specification and/or Services Specification at the time of delivery or in the case of the Contractual Services at the time of their performance and will be free from material defects in design, material or workmanship for a period twelve (12) months from the date of their initial use or twelve (12) months from delivery or performance as the case may be, whichever period is the first to expire.

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 Products or Contractual Services arising from any drawing, design or specification supplied by the Buyer;
- 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 alternation or repair of the Products and/or the Contractual 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 Price has not been paid by the due date for payment;
- 13.2.4 the above warranty does not extend to any Products not manufactured by the Company. In such circumstances, the Buyer shall only be entitled to such benefit of any such warranty or guarantee as is given by the manufacturer to the Company subject to any terms imposed on the Company by the manufacturer in relation to the transfer of the benefit of such warranty and subject to the ability of the Company to enforce the terms of such warranty or guarantee against the manufacturer.

13.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

13.4 Where any valid claim in respect of any of the Products or Contractual Services which is based on any defect in the quality or condition of the Products and/or Contractual Services or their failure to meet the Product Specification and/or services specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Products (or the part in question) or to re-perform the Contractual Services free of charge or, at the Company's sole discretion, refund to the Buyer the Price (or a proportionate part of the Price), but the Company shall have no further liability to the Buyer.

14. LIMITATION OF LIABILITY

The Buyer's Attention is in Particular Drawn to the Provisions of this Clause 14

14.1 The potential losses that might be caused or be alleged to be caused by the failure of the Company, its agents, employees or sub-contractors to complete the Contract or to take any particular precaution or care (whether as a result of breach of contract or tort (including negligence)) or to avoid doing any act are so great in proportion to the sums which can be reasonably charged by the Company that the Company and its agents, employees and sub-contractors cannot and will not assume any liability whatever in respect of any loss or damage howsoever caused outside or beyond the express terms of these Conditions. However, the Company is prepared to negotiate special indemnity cover in any particular case at the request and expense of the Buyer.

14.2 Accordingly, without prejudice to the provisions of Clauses 3, 7 or 13 , the Company's entire liability under the Contract and the Buyer's exclusive remedy shall be as follows:

- 14.2.1 the Buyer's remedies (whether in contract or in tort (including negligence)) against the Company for any breach of the Company's obligations hereunder or otherwise for any act, omission or statement of the Company, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract, shall subject to Sub-Clause 14.2.3 below be limited to actual money damages not exceeding the Price. For the purpose of this Sub-Clause 14.2.1 a number of causes, whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as one cause occurring at the date of the last of such causes;
- 14.2.2 the Company will accept liability for physical injury to or death of persons which is caused by the negligence of the Company or its employees, agents, or sub-contractors and the exclusions set out in this Clause 14 shall not apply;
- 14.2.3 in no event will the Company be liable for
- (a) any loss of profits;
 - (b) any loss of business;
 - (c) any loss of anticipated savings;
 - (d) loss of use or corruption of software, data or information;
 - (e) loss of or damage to goodwill;
 - (f) loss of agreements or contracts,
 - (g) indirect or consequential loss
- howsoever caused even if the Company has been advised of the possibility of such loss or damages.
- Furthermore the Company will not be liable in respect of any claim against the Buyer by any third party (except with regard to personal injury claims arising under the foregoing Sub-Clause) for any loss or damage caused by the Company's failure to perform its responsibilities;
- 14.2.4 no action, (whether in contract or in tort, (including negligence) and regardless of form including arbitration proceedings) arising out of the Contract or any other services of any kind supplied or to be supplied hereunder may be brought by either party more than two years after the party concerned becomes aware of the facts constituting the cause of the action;
- 14.2.5 the Buyer agrees that it is fair and reasonable for the Company to limit its liability hereunder and accordingly the Buyer agrees that except as expressly set forth in this Clause 14 all conditions or warranties or implied statutory or otherwise are hereby excluded.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 The Buyer acknowledges that:

- 15.1.1 the Intellectual Property Rights in or arising out of or in connection with the Products are the Third Party Licensors' property;
 - 15.1.2 nothing in the Contract shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the Intellectual Property Rights; and
 - 15.1.3 any reputation in any trade marks affixed or applied to the Products ("Trade Marks") shall accrue to the sole benefit of the Third Party Licensors or any other owner of the Trade Marks from time to time.
- 15.2 The Buyer shall not, without the prior written consent of the Company, alter or make any addition to the labelling or packaging of the Products displaying the Trade Marks and/or remove any copyright notices, confidential or proprietary legends or identification from the Products.

16. TERMINATION

- 16.1 If the Buyer fails to make any payment when it becomes due or enters into any voluntary arrangement with its creditors or if, being an incorporated company, has a receiver appointed or becomes subject to an administration order or if the Buyer ceases or threatens to cease to carry on its business or if the Buyer shall be taken over by or amalgamate with a competitor of the Company or become part of a group of Companies of which any member is a competitor of the Company or passes a resolution for winding up or a Court makes an order to that effect or if not being an incorporated company has a receiving order made against it or if there is any breach by the Buyer of any of these Conditions then the Company may defer or cancel any further deliveries of the Products and/or the completion of the Contractual Services and treat the Contract as terminated but without prejudice to the Company's rights to any unpaid price of Products delivered and/or Contractual Services supplied and to damages for any consequential loss incurred as a result of termination.
- 16.2 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer 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 such cancellation.
- 16.3 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Buyer and the Company if the Buyer fails to pay any amount due under the Contract on the due date for payment, the Buyer becomes subject to any of the events listed in **Clause 16.1**, or the Company reasonably believes that the Buyer is about to become subject to any of them.

17. INDULGENCE

No indulgence or forbearance extended to the Buyer shall limit or prejudice any right or claim available to the Company.

18. FORCE MAJEURE

The Company shall not be responsible or liable in any manner for any loss, (direct, indirect or consequential), arising from any delay or default in the performance of any of the Company's obligations under the Contract where such delay or default arises as

a result of any circumstance beyond the control of the Company including (but without prejudice to the generality of the foregoing) war, industrial action, riot, malicious damage, fire, storm, flood, Act of God, accident, non-availability or shortage of material or labour, failure by any sub-contractor or supplier to perform failure of production equipment, or any statute, rule, byelaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority (“**Force Majeure Event**”). If performance of the Contract shall be delayed by any such Force Majeure Event then the Company shall have the right to suspend further performance of the Contract until such time as the cause of the delay shall no longer exist. If performance of the Contract by the Company shall be prevented by any such circumstances then the Company shall also have the right to be discharged from further performance of and liability under the Contract. If the Company exercises such right the Buyer shall thereupon pay all sums due under the Contract less a reasonable allowance for such part of the Contract as has not been performed.

19. ASSIGNMENT

The Buyer shall not, without the Company's prior written consent, assign or transfer or purport to assign or transfer the Contract to any other person whatsoever.

20. SEVERABILITY

Each of the clauses and sub-clauses contained in these Conditions shall be construed as independent of every other clause and sub-clause and in the event of any clause or sub-clause being determined by any Court of Law as being unenforceable then such determination shall not affect the applicability of any other clause or sub-clause and the unaffected provisions of any clause or sub-clause shall remain in full force and effect.

21. VARIATION

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

22. NOTICES

22.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, in English and shall be delivered by hand or by pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) and any such notice or communication shall be deemed to have been received in accordance with **Clause 22.2**.

22.2 Any notice or communication shall be deemed to have been received:

22.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

22.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the seventh (7th) Business Day after posting or at the time recorded by the delivery service.

23. GOVERNING LAW AND JURISDICTION

- 23.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.
- 23.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 23.3 Each party irrevocably consents to any process in any legal action or proceedings under **Clause 23.2** above being served on it in accordance with the provisions of these Conditions relating to service of notices. Nothing contained in the Contract shall affect the right to serve process in any other manner permitted by law.

24. LANGUAGE

- 24.1 These Conditions are drafted in the English language. If these Conditions are translated into any other language, the English language version shall prevail.