

**FENNER PLC**

**GENERAL CONDITIONS OF SALE (2007 EDITION)**

**1. INTERPRETATION**

1.1 In these Conditions the following words shall have the following meanings:

“Buyer”	the person, firm or company identified overleaf as the Buyer.
“Conditions”	the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between Seller and Buyer.
“Contract”	the contract between Seller and Buyer for the sale and purchase of the Goods and/or performance of the Services, incorporating these Conditions.
“Goods”	any goods agreed in the Contract to be supplied to Buyer by Seller (including any part or parts of the goods).
“Incoterms”	the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.
“Seller”	the company in Seller’s Group identified overleaf as Seller.
“Seller’s Group”	Fenner PLC and all subsidiary companies (as defined by Section 736 of the Companies Act 1985) from time to time of Fenner PLC.
“Services”	any services agreed in the Contract to be performed for Buyer by Seller (including any part or parts of the services).

**2. GENERAL**

These Conditions govern all Contracts entered into by Seller for the supply or sale of the Goods to Buyer or performance of the Services for Buyer. Any order given to Seller or the acceptance of any tender issued by Seller shall be deemed to constitute an agreement to be bound by these Conditions.

**3. OTHER PRINTED OR STANDARD CONDITIONS**

It is agreed that only these Conditions shall apply to Contracts between Seller and Buyer for the supply or sale of the Goods and/or performance of the Services and any documents emanating from Buyer which contain printed or standard conditions have been and shall be sent by Buyer and received by Seller on the understanding that they appear on Buyer’s documents because they are printed thereon but have no legal effect whatever and Buyer waives any rights which Buyer otherwise might have to rely on such conditions.

#### **4. PREVIOUS CONDITIONS AND VARIATIONS**

These Conditions shall have effect in place of any other conditions which may have previously been notified by Seller to Buyer. No addition or variation to these Conditions shall be made or apply, unless expressly agreed in writing by duly authorised representatives of Seller and Buyer.

#### **5. LICENCES OR PERMITS**

Where an export or import licence, a foreign exchange control or similar authorisation is required for performance of the Contract, Buyer shall act with due diligence to obtain it in good time. Seller shall not be under any obligation to commence work under the Contract until Buyer has obtained all necessary licences and authorisations. If Seller in its sole discretion commences work before Buyer has obtained all necessary licences and authorisations and Buyer fails to obtain such licences and/or authorisations in good time Seller shall be entitled to deliver any Goods at Seller's premises in the United Kingdom and shall be deemed to have fulfilled its delivery obligations in the Contract, notwithstanding anything to the contrary in the Contract.

#### **6. DESCRIPTION**

6.1 All Goods are supplied subject to reasonable availability to Seller of suitable materials and components. Seller reserves the right to substitute suitable alternative materials and components where necessary.

6.2 All designs, drawings, descriptive matter, weights, dimensions, specifications and other information contained in or published on Seller's brochures, catalogues websites and advertising material are approximate and by way of information only, and are intended merely to present a general idea of the goods or services described therein and shall not form part of the Contract, or give rise to any independent or collateral liability of any kind. All prices/discounts specified or listed in or on such media are subject to alteration or withdrawal from time to time without notice.

6.3 All designs, drawings, specifications, brochures, catalogues, websites, price lists, advertising material and computer software are the copyright of and shall remain the property of Seller and must not be copied, reproduced or divulged either directly or indirectly to any other person without Seller's prior permission.

#### **7. SELECTION OF GOODS AND SERVICES**

Buyer:

7.1 acknowledges that selecting goods and/or services requires Buyer to use its own skill and judgement as to which of Seller's goods and/or services meets Buyer's requirement;

7.2 warrants that it has such skill and judgement and undertakes to exercise it at all times in selecting goods and/or services;

7.3 agrees it will be responsible for ensuring that goods and/or services selected are fit or suitable for Buyer's purpose; and

7.4 agrees that Seller shall not be responsible for any selection made by Buyer and will not have any liability to Buyer for any loss, damages, costs or expenses suffered by Buyer as a result thereof.

## **8. PRICE, TENDERS, PACKING AND CARRIAGE**

8.1 The price of the Goods and/or Services shall be Seller's quoted price or, where no price has been quoted, Seller's list price current at the date of acceptance of the order. All prices quoted are valid for the period stated on the quotation or if no period is stated, 30 days or earlier acceptance by Buyer after which time they may be altered by Seller without giving notice to Buyer.

8.2 Seller reserves the right by giving notice to Buyer at anytime before delivery or performance to increase the price of the Goods and/or Services to reflect any increase in the cost to Seller which is due to any factor beyond the control of Seller (such as, without limitation, increases in raw materials or labour, foreign exchange fluctuation, currency regulation or alteration of duties), any change in delivery dates, quantities or specifications for the Goods or Services which is requested by Buyer or any delay caused by any instructions of Buyer or failure of Buyer to give adequate information or instructions.

8.3 Any tender made by Seller may be withdrawn at any time before acceptance. If not accepted within 60 days from the date of tender, it shall be deemed to have been withdrawn.

8.4 Unless otherwise agreed, packing will be charged for in addition to the price of the Goods and packing cases and materials are not returnable. The Goods will be suitably packed for withstanding the conditions of normal delivery/shipment. Tropical or other special packing will only be supplied on express written request and will be charged for in addition to the price.

8.5 Unless otherwise agreed all prices for Goods are given on an ex works basis and where Seller agrees to deliver Goods otherwise than at Seller's premises:-

8.5.1 Goods for home market: carriage charges will be invoiced to Buyer at Seller's rates prevailing at time of despatch.

8.5.2 Goods for export markets: carriage charges shall be invoiced on the terms specifically stated in the Contract, or otherwise at Seller's rates prevailing at the time of despatch.

8.6 The price of the Goods and/or Services is exclusive of any applicable Value Added Tax, and any other sales tax or duty, which Buyer shall pay in addition at the appropriate rate.

## **9. DESPATCH AND DELIVERY**

9.1 Any time or date quoted by Seller for delivery of Goods or performance of Services is given and intended as an estimate only and subject to availability of stock or availability of labour. Seller shall not be liable in any circumstances for any loss or damage of any kind caused by a failure to deliver or perform within such time.

9.2 Unless otherwise agreed in writing, Seller is entitled to make deliveries by instalments or partial deliveries. Each instalment shall be construed as

constituting a separate contract to which all the provisions of these Conditions shall (with any necessary alterations) apply.

9.3 Buyer shall take delivery of the Goods promptly upon the delivery date or dates or at the intervals stated in the Contract or as soon thereafter as Buyer is notified by Seller that the Goods are available for delivery. If for any reason Buyer fails to call off or give delivery instructions, or take delivery of the Goods on the due date, or upon receipt of such notification, or otherwise causes or requests a delay in delivery, then, without prejudice to any other rights of Seller hereunder, Seller shall be entitled to store or arrange for the storage of the Goods and if it does so:

9.3.1 it shall so inform Buyer in writing, and

9.3.2 Buyer shall pay or reimburse the reasonable costs (including insurance) of such storage from the due date, or the date of notification as aforesaid, until delivery to Buyer.

## **10. PASSING OF PROPERTY**

10.1 Notwithstanding the provisions of Condition 11, ownership of the Goods shall not pass to Buyer until Seller has received in full in cash or cleared funds:

10.1.1 all sums payable in respect of the Goods; and

10.1.2 all other sums which are or which become payable to Seller from Buyer on any account including any interest on such sums.

10.2 Until ownership of the Goods has passed to Buyer, Buyer shall:

10.2.1 hold the Goods on a fiduciary basis as Seller's bailee;

10.2.2 store the Goods separately to other goods of Buyer or any third party in a way that they remain readily identifiable as Seller's property;

10.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

10.2.4 maintain the Goods in satisfactory condition insured for their full price against all risks and hold the proceeds of insurance on trust for Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

10.3 Notwithstanding Condition 10.2, Buyer may use the Goods in its production processes or resell the Goods before ownership has passed to Buyer. Any sale of the Goods by Buyer shall be solely on the condition that such sale shall be on Buyer's own behalf in the ordinary course of Buyer's business and Buyer shall deal as principal when making such sale.

10.4 Buyer's right to possession of the Goods shall terminate and the price of all Goods and Services shall become due and payable immediately if:

10.4.1 Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors or (being a body

corporate) convenes a meeting of creditors, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented for the winding up of Buyer or for the granting of an administration order in respect of Buyer, or any proceedings are commenced relating to the insolvency of Buyer; or

- 10.4.2 Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Seller and Buyer, or is unable to pay its debts or Buyer ceases to trade.
- 10.5 Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Seller.
- 10.6 Buyer grants Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where Buyer's right to possession has terminated, to recover them.
- 10.7 Where Seller is unable to determine whether any Goods are the goods in respect of which Buyer's right to possession has terminated, Buyer shall be deemed to have sold all goods of the kind sold by Seller to Buyer in the order in which they were invoiced to Buyer.
- 10.8 On termination of the Contract, howsoever caused, Seller's (but not Buyer's) rights contained in this Condition 10 shall remain in effect.
- 10.9 Buyer shall pay to Seller on demand on a full indemnity basis all costs and expenses (including legal expenses) incurred by Seller in recovering the Goods pursuant to Condition 10.6.

## **11. PASSING OF RISK**

- 11.1 Goods for home market: in cases where Seller carries or arranges the carriage of the Goods, risk passes upon delivery by the carrier to or to the order of Buyer. In all other cases risk passes on collection from Seller's premises.
- 11.2 Goods for export markets: risk passes in accordance with the Incoterm that Seller and Buyer have agreed shall apply to the Contract. In all other cases risk passes on collection from Seller's premises.

## **12. LOSS OR DAMAGE IN TRANSIT**

In cases where Seller carries or procures the carriage of the Goods, Seller shall not in any event be liable for loss of or damage to the Goods in transit unless the following conditions are complied with:

- 12.1 in the case of any loss from a consignment of Goods or of damage to the Goods Seller must be notified in writing within 3 clear days of delivery to Buyer;
- 12.2 in the case of non-delivery of the whole consignment of the Goods, Seller must be notified within 21 clear days after the date of invoice.

**13. PAYMENT**

- 13.1 Goods for home market: unless otherwise agreed in writing, payment of the price in full is due on delivery of the Goods.
- 13.2 Goods for export markets: unless otherwise agreed in writing, payment of the price is due upon the presentation of the invoice together with the appropriate documents of title and shipping documents.
- 13.3 Services: unless otherwise agreed in writing, payment of the price is due no later than completion of the Services.
- 13.4 Time of payment is of the essence in all cases.
- 13.5 Buyer shall not in any circumstances or for any reason whatsoever be entitled to make any deduction or withhold any sum from the price by way of set-off or counterclaim.
- 13.6 Where payment is due in sterling payment may in the absolute discretion of Seller be accepted in a foreign currency, provided that payment is made at the exchange rate applicable at the date of payment and Buyer pays in addition any charges incurred by Seller in exchanging the currency into sterling.
- 13.7 Where payment is overdue Seller shall be entitled to charge:
  - 13.7.1 a fee of £100 in respect of Seller's administration costs of dealing with Buyer's failure to pay in accordance with the Contract; and
  - 13.7.2 interest at the rate of 3% p.a. above Seller's Banker's base lending rate for the time being on all outstanding accounts, such interest to accrue day to day from the day the account becomes due to the day of actual payment thereof, whether before or after judgement.

**14. SAMPLES**

- 14.1 Samples are sent and inspected solely to enable Buyer to judge the quality of the bulk and shall not render any sale a sale by sample.
- 14.2 All samples are to remain the property of Seller and shall be returned to Seller on request.

**15. TOOLS, DIES, ETC.**

All tools, patterns and other equipment used in the manufacture of any of Seller's goods or perform any of Seller's services shall remain the property of Seller unless otherwise expressly agreed in writing. Buyer shall not permit any third party to use such equipment nor disclose to any third party any technical, dimensional or design details, or any other information in respect of such equipment at any time.

**16. BUYER'S MATERIAL AND PARTS**

- 16.1 Buyer's material and parts shall be delivered to Seller's works free of all charge to Seller. All materials removed as part of the Seller's processes or as a consequence of performing the Services become the property of Seller and

are allowed for in Seller's estimate or quotation.

- 16.2 Seller shall not be liable for the value of any materials or finished parts sent for fitting or other purposes, or for any loss or damage whatsoever and however caused, or resulting from the negligent performance or non-performance of the machining, cutting, fitting or other works specified in the Contract.
- 16.3 Buyer's materials or parts sent for fitting shall be suitable in every way for the machining, cutting or fitting specified in the Contract and Seller is to have no obligation to check such suitability. Buyer will pay Seller for work done and for consequential damage to machines and tools of Seller arising directly or indirectly from any unsuitability of Buyer's materials or parts as aforesaid.

## **17. LIEN**

- 17.1 In addition to any lien to which Seller may otherwise be entitled, in the event of Buyer's insolvency or failure to pay the price or any sum due under the Contract or any other contract with Seller (including any contract treated as a separate contract by virtue of Condition 9.2 hereof) Seller shall be entitled to a general lien on all goods of Buyer in Seller's possession for any sums due and unpaid under the Contract or under any contract between Seller and Buyer, and for the reasonable costs of storing, handling and insuring the goods during the exercise of such lien, which costs shall accrue from day to day.
- 17.2 Seller may at any time give notice requiring that all sums due and payable to Seller on any account whatsoever be paid not later than seven days from the date of the notice. Notice given by Seller in accordance with this Condition 17 shall be in writing specifying the amount due and the date for payment and shall be sent by recorded delivery to the registered office of Buyer. If all sums due are not paid by the said date Seller shall be entitled to sell the goods or any part of them to meet all sums owing to Seller and all expenses on the sale.

## **18. BUYER'S SPECIFICATIONS AND DESIGNS**

- 18.1 When Goods and/or Services are supplied or performed to Buyer's specification or design, Buyer shall indemnify Seller fully in respect of loss, damages, costs and expenses awarded against or incurred by Seller in connection with or paid or agreed to be paid by Seller in settlement of any claim made or proceedings brought against Seller by any party claiming infringement of patent rights, copyright, design right, trade mark or other industrial or intellectual property rights which results from Seller's use of Buyer's specification or design.
- 18.2 Buyer warrants that any design or specification furnished or given to Seller shall not be such as will cause Seller to infringe any patent copyright design right, trade mark or other industrial or intellectual property right in the execution of Buyer's order.
- 18.3 Buyer warrants that any design or specification furnished or given to Seller shall be complete in every respect (including without limitation all necessary technical information) sufficient to enable Seller to manufacture the Goods and/or perform Services to comply with all applicable performance, durability, health, safety, conformity and labelling requirements whether of Buyer or Buyer's customer or howsoever arising at law and Buyer shall

indemnify Seller fully in respect of loss, damages, costs and expenses incurred by Seller which results from any incompleteness in Buyer's specification or design.

**19 BUYER'S ASSISTANCE**

19.1 Where the Services are to be performed on Buyer's premises, Buyer agrees to provide Seller on a timely basis with such access, machine downtime, utilities and equipment as Seller shall reasonably require in order to perform the Services in accordance with the Contract.

19.2 If Buyer shall fail to perform its obligations in Condition 19.1 or shall fail to perform them in a timely manner Buyer acknowledges and agrees that Seller shall be entitled to delay performance of the Services until such time as Buyer has complied in all respects with its obligations in Condition 19.1 and to increase the price for the Services to reflect any increased costs to Seller caused by Buyer's failure to perform or late performance.

**20. EXTENT AND LIMITS OF LIABILITY (DEFECTIVE GOODS AND SERVICES)**

20.1 Unless otherwise agreed in writing by Seller and subject to the provisions of this Condition 20, Seller guarantees all Goods of its manufacture against any defect which can be proved to Seller's satisfaction to have been caused by faulty materials or workmanship and which appears within 12 months from the date of despatch.

20.2 Should such defect appear within such period, Seller's liability will be limited solely to repairing, or at its option, replacing the defective Goods or part free of charge provided that Seller shall not be liable for such defect in any circumstances if:-

20.2.1 the Goods have been subjected to unsuitable storage, treatment or handling prior to use or to abnormal use, or to use under abnormal conditions or beyond their capacity as rated and recommended by Seller; or

20.2.2 the defect has been caused or contributed to by exposure to direct weather conditions (whether before or after installation), or by operation in abnormal atmospheric conditions, or by reason of faulty installation, servicing or repair of the Goods by any person other than a duly authorised representative of Seller; or

20.2.3 Buyer fails as soon as possible after the assumed defect has become apparent to notify that defect to Seller in writing quoting the serial number if any and the date of purchase.

20.3 Seller's aforesaid guarantee shall be subject to the following further provisos, namely;

20.3.1 where the design of goods of the type in question has been altered since the Goods were despatched, Seller may at its option supply goods of the new design;

20.3.2 any repair or examination of defective Goods or parts shall be carried out at Seller's premises and Buyer shall at its own expense and risk adequately pack the Goods and return them to Seller;

- 20.3.3 the decision of Seller is final as to whether or not a defect is due to faulty workmanship or material;
- 20.3.4 if in the opinion of Seller the Goods are satisfactory in operation or, if defective, then defective only as a result of circumstances for which Seller is not liable hereunder, or as a result of fair wear and tear, Buyer shall if required by Seller pay a reasonable charge for the examination of the Goods by Seller and any cost of returning the Goods to Buyer. In such case, Seller will submit to Buyer a quotation for repair of the Goods before effecting any repair;
- 20.3.5 Seller shall not in any case be liable under this Condition 20 or at all in respect of any Goods not of Seller's manufacture although Seller will do all that is reasonable at Buyer's expense to secure for Buyer the benefit of rights equivalent to rights which Seller may have against the supplier of such Goods; and
- 20.3.6 Seller shall not be liable for any costs of stripping or reassembling any equipment into which any of Seller's goods may be fitted.
- 20.4 Unless otherwise agreed in writing by Seller, Seller guarantees all Services performed by Seller against defects in workmanship for a period of 3 months from completion of the Services. Should such defect appear within such period, Seller's liability will be limited solely to re-performing the Services free of charge or refunding the price where it has been paid provided that Seller shall not be liable for such defect in any circumstances if Buyer fails as soon as possible after the assumed defect has become apparent to notify that defect to Seller in writing. The decision of Seller is final as to whether or not a defect is due to faulty workmanship or material.
- 20.5 Subject to Conditions 20.1 to 20.4, the following provisions set out the entire liability of Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Buyer in respect of:
  - 20.5.1 any breach of these Conditions;
  - 20.5.2 use made or resale by Buyer of any of the Goods, or of any product incorporating the Goods; and
  - 20.5.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 20.6 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 20.7 Nothing in these Conditions excludes or limits the liability of Seller:
  - 20.7.1 for death or personal injury caused by Seller's negligence;
  - 20.7.2 under section 2(3) of the Consumer Protection Act 1987;
  - 20.7.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

20.7.4 for fraud or fraudulent misrepresentation.

**BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 20.8**

20.8 Subject to Conditions 20.6 and 20.7:

20.8.1 Seller shall not be liable to Buyer for economic loss or loss of profit, goodwill, business opportunity or production downtime or for any type of indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and

20.8.2 Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to whichever is the greater of (i) £25,000 (twenty five thousand pounds sterling) or (ii) 125% (one hundred and twenty five percent) of the price of the Goods and/or Services (excluding any applicable value added tax) the subject of the claim.

**21. DEFAULT OR INSOLVENCY**

Without prejudice to the provisions of Condition 10.4, on the occurrence of any of the events set out in Condition 10.4, Seller shall be entitled forthwith to terminate the Contract. Termination of the Contract shall be without prejudice to any of Seller's other rights including, without limitation, to recover payment due in respect of delivered Goods or Services performed and all expenses properly incurred by Seller in performing the Contract and/or to cancel further deliveries and/or suspend further performance.

**22. SET OFF**

Seller shall be entitled to apply any sum due from Seller to Buyer in settlement of any sum due from Buyer to any other company in Seller's Group and, where there is any amount due from any other company in Seller's Group to Buyer, Seller shall on behalf of Buyer be entitled to give to such other company a good receipt for any sum which such other company may pay to Seller in settlement of any sum due from Buyer to Seller.

**23. FORCE MAJEURE**

Without prejudice to the generality of any previous exclusion or limitation of liability, Seller shall not be liable for any failure to fulfill any term of any transaction governed by these Conditions if fulfillment has been delayed, hindered or prevented by any circumstances whatsoever which are not directly within Seller's control and if Seller is able to fulfill some but not all of the demand for its goods and/or services Seller may allocate its available supplies and resources amongst its customers including parent, subsidiary and associated companies in such manner as Seller in its absolute discretion considers to be fair.

**24. GENERAL**

- 24.1 Buyer shall not assign the Contract or any part of it without the prior written consent of Seller.
- 24.2 Seller shall be entitled to assign the Contract or any part of it to any person, firm or company.
- 24.3 Buyer shall not use Seller's name, logo or other intellectual property rights in advertising or publicity without Seller's prior written consent.
- 24.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 24.5 Failure or delay by Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of Seller's rights under the Contract.
- 24.6 Any waiver by Seller of any breach of, or any default under, any provision of the Contract by Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 24.7 Each right or remedy of Seller under the Contract is without prejudice to any other right or remedy of Seller whether under the Contract or not.
- 24.8 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 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 notice.
- 24.9 Subject to Conditions 24.1 and 24.2, nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.
- 24.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the jurisdiction of the English courts.