

1. INTERPRETATION

1.1. In these conditions the following words shall have the following meanings: "Buyer" shall mean the person, firm or company offering to purchase goods from the Seller and whose order is accepted by the seller;

"Contract" shall mean the contract between the Seller and the Buyer for the purchase of the Goods and/or supply of Services

"Goods" shall mean the articles that the Buyer agrees to buy from the Seller; "The 1980" Act" shall mean the sale of Goods and Supply of Service Act, 1980; "Seller" shall mean Flow Technology Limited or any subsidiary company thereof;

"Services" shall mean any service or facility provided by the Seller for gain or reward or otherwise than free of charge including but not limited to design, implementation and/or operation solutions to the Buyer at Buyer's request which are more particularly described in the relevant specifications.

"Product Manufacturer" shall mean the producer, manufacturer, fabricator of Goods where Flow Technology Limited is acting as a Goods reseller or distribution company.

"Seller" mean Flow Technology Limited or any subsidiary company thereof;

1.2. Any references in these terms and conditions to any provisions 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 terms and conditions are for convenience only and shall not affect their interpretation.

2. GENERAL

2.1. All business undertaken by the Seller is undertaken on the terms and conditions herein contained, which shall prevail over any inconsistent terms and conditions contained in or referred to in the Buyer's order or in correspondence or elsewhere and all or any conditions of stipulations contrary to these are hereby excluded. No variation to these terms and conditions will be binding unless such variation is in writing and signed by a director of the Seller. No employee of the Seller has authority to vary or add to or depart from these terms and conditions.

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

3. ORDERS

The Buyer may place an order with the Seller for the purchase of the Goods and/or the supply of Services

and such order will be deemed for all purposes to be an offer to purchase the Goods and/or Services specified in the order and shall be subject to the terms and conditions herein. The Seller shall be entitled at its sole discretion at any time to accept or reject all or part only of such offer for any reason whatsoever and it shall not be bound to give the Buyer any reasons for doing so. The Seller shall be deemed to have accepted all or part of such offer when it delivers the Goods in accordance with such offer or part thereof to the Buyer or completes provision of the services for which it has been retained.

4. RESERVATION OF OWNERSHIP

4.1. The title in the Goods supplied by the Seller to the Buyer shall remain the sole and absolute property of the Seller until full payment has been received by the Seller for all Goods supplied at any time by the Seller to the Buyer.

4.2. Until title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall store them upon its premises separately from its own Goods or those of any other person and in the manner, which makes them readily identifiable as the Goods of the Seller.

4.3. The Buyer shall, while in possession of any Goods the property of the Seller, properly protect and insure the Goods and any insurance monies received by the Buyer on foot of any insurance policy in respect of any damage, deterioration, loss or destruction of the Goods shall be paid over to the Seller and pending such payments over shall be held in trust by the Buyer for the Seller.

4.4. The Buyer, while in possession of the Goods the property of the Seller, may in the ordinary course of its business sell or dispose of the Goods. The Buyer insofar as it is empowered to resell or dispose of the Goods as aforesaid sells as principal in relation to the sub-purchaser and has no right to commit the Seller to any contractual relationship with or liability to any third party, but as between the Seller and the Buyer the latter shall sell as fiduciary agent. Any resale or disposal of the goods shall be at a price not less than the price payable by the Buyer to the Seller in respect of the Goods.

4.5. The Buyer shall hold so much of the proceeds of the sale of any of the Goods as equals the price payable to the Buyer to the Seller in respect of the Goods (hereinafter referred to as "the proceeds of the sale") on trust for the Seller, less any monies already paid in respect of those Goods and shall keep the proceeds of sale separate from his own monies and those third parties and shall not pay the same of any part thereof to an overdrawn bank account. The Buyer shall open a fiduciary account with its bankers and advise them that it holds the proceeds of sale of the Goods as trustee for the Seller and that not until payment to the Seller of the price of the Goods shall it be entitled to transfer any profit thereon to any other account. The Seller shall

be entitled to any interest earned on the fiduciary account.

4.6. The Seller is to have power to appropriate payments to such Goods on account as it thinks fit, notwithstanding any purported appropriation by the Buyer to the contrary.

4.7. The Buyer shall be at liberty to incorporate the Goods into another product or chattel subject to the condition that if the Seller's Goods are admixed or united in any way with those of the Buyer of any other person, the product of such admixture of unison shall be deemed for all purposes to be owned in common by the Seller with the Buyer of that other person.

4.8. The Buyer's right to possession of the Goods shall cease at whichever is the earliest of the following dates:

(a) On the expiration of the agreed period of credit, if any.

(b) If the Buyer, not being a company, commits an act of bankruptcy or causes a meeting of or makes any arrangement or composition with its creditors or does anything which would entitle a petition for a bankruptcy order to be made.

(c) If the Buyer, being a company, does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding-up or apply for the appointment of an examiner or causes a meeting of or makes any arrangement or composition with its creditors.

4.9. The Seller may at any time revoke the Buyer's power of sale by notice to the Buyer and may give notice to the Buyer requiring the Buyer to re-deliver forthwith, at the Buyer's expense, any Goods supplied by the Seller where the Buyer is in default of payment or on dishonour of any bill of exchange or other negotiable instrument notwithstanding that the Seller may have negotiated such bill of exchange or negotiable instrument and received value therefor.

4.10. The Seller may, through any servant, agent or contractor authorised by it, for the purpose of recovery of its Goods enter upon any premises where they are stored, or they are reasonably thought to be stored and may repossess the same.

4.11. The credit terms granted by the provisions of this Agreement are without prejudice to anything contained in clause 4 hereof and the Buyer acknowledges that the said credit does not in any way derogate from its status as fiduciary agent and bailee.

5. TRANSFER OF RISK

Notwithstanding the provisions of Clause 4 hereof, Goods and/or Services the subject of the Contract

shall be at the risk of the Buyer at the earliest of the following dictates:

(a) At the time when the Seller notifies the Buyer that the Goods are available for collection.

(b) At the time of delivery.

(c) At the time when the Seller tenders the delivery of the Goods.

6. DELIVERY OF GOODS

6.1. Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer's premises or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2. All delivery dates for Goods mentioned by the Seller are approximate only and not of contractual effect. Time of delivery is not of the essence of the Contract nor shall the Seller be under any liability in respect of any delay in delivery for whatever reason. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3. The Seller may complete an order for the Goods by instalments and invoice the instalments separately. Payment of any instalment due is a condition precedent to starting further deliveries. The Seller shall have the right to terminate the Contract when any instalments or payment is in arrears. The losses of the Seller resulting from withholding deliveries of Goods due to non-payment by the Buyer shall be refunded by the Buyer, but the Buyer shall not have any entitlement to compensation from the Seller in respect of such termination or withholding.

6.4. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for the delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

(a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage;

(b) or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) retain for its own account the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.5. The Buyer shall be responsible for checking all deliveries of the Goods. No claim for shortages or damages or for the quantity or conditions of the Goods will be entertained by the Seller unless submitted in writing to the Seller within 7 days of the date of evidence satisfactory to the Seller.

7 DELIVERY OF SERVICES

7.1 The Seller shall provide the Services to the Customer in accordance with the Services Specification in all material respects.

7.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Seller warrants to the Customer that the Services will be provided using due care, skill and diligence in accordance with Section 39 of the Sale of Goods and Supply of Services Act, 1980 (as amended).

7.5 The Customer shall:

7.5.1 ensure that the terms of the order are complete and accurate;

7.5.2 co-operate with the Seller in all matters relating to the Services;

7.5.3 provide the Seller, its employees, agents, consultants and subcontractors, with safe access to the Customer's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Services;

7.5.4 provide the Seller with such information and materials as the Seller may reasonably require to supply the services, and ensure that such information is accurate in all material respects;

7.5.5 prepare the Customer's premises for the supply of the services;

7.5.6 obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the services are to start;

7.5.7 keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

7.6 The provision which apply in relation to the sale of Goods shall apply to the supply of Services with any required modifications relating to a contract for the supply of Services as if each clause and sub-

clause thereof were set out herein *mutatis mutandis* and each reference to "Goods" shall be construed as a reference to the Services, each reference "Goods Specification" shall be construed as a reference to the Services Specification and each reference to the "delivery of Goods" shall be construed as a reference to completion of the Services. Without prejudice to the generality of the foregoing, in the application of the above provision to clause 10 the maximum liability of the Seller in relation to a Contract for the sale of both Goods and the supply of Services shall be the price paid or payable by the Customer for the Goods and Services under the Contract.

8 PRICES

8.1 The Seller shall deliver to the Buyer as soon as possible after issue of Goods from Product Manufacturer premises or the Seller's premises, whichever is applicable, an invoice stating the type and quantity of the Goods contained in the delivery and the price at the time of the delivery that the Buyer is bound to pay therefor.

8.2 The Seller shall invoice the Buyer at regular intervals as agreed with the Buyer before services are commenced and provided.

9. PAYMENT AND CREDIT TERMS

9.1. Payment shall be due within thirty days from date of invoice.

9.2. If an invoice is disputed only the amount of such invoice may be withheld from payment from monthly account.

9.3. The Seller reserves the right at any time to revoke the terms of credit of the Buyer.

9.4. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

(a) cancel the Contract or suspend any further deliveries to the Buyer;

(b) appropriate any payment made by the Buyer to such of the Goods or Services (or the goods supplied or Services provided under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

(c) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 15 per cent per annum until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

9.5. No payments may be withheld nor may any counterclaim of the Buyer be set-off against the payment without the consent of the Seller.

9.6. The Seller shall be entitled to charge the Buyer with an amount equal to all costs and expenses (whether incurred pursuant to the issue of legal

proceedings or not) incurred by the Seller in any way connected with the collection of monies from the Buyer which have not been paid when due. The amount of such costs and expenses will be submitted to the Buyer by the statement and thereupon these costs and expenses shall immediately become due to the Seller.

10. EXCLUSION OF WARRANTY ETC.

(a) These conditions contain all the terms and conditions under which the Buyer agrees to purchase the Goods and any express or implied condition, statement, warranty or term statutory or otherwise, not stated herein is hereby excluded.

(b) The Seller shall not be responsible to the Buyer or to any other person for damage injury or loss of any kind whatsoever (including loss of profits and consequential damages) and whether caused by the negligence of the Seller, its employees, agents or otherwise to any property, persons or animals caused directly or indirectly by the Goods supplied or the Services provided, advice given or any act or omission by the Seller; and the Buyer shall indemnify the Seller in respect of all claims made by any person against the Buyer or the Seller in respect of such damage, injury or loss.

(c) The exemptions from the provisions of Section 13, 14 and 15 of the Sale of Goods Act 1893 ("the 1893 Act") (as inserted in Section 10 of the 1980 Act") contained in paragraphs (a) and (b) hereof shall, in all cases other than a contract for the international sale of goods (as defined in the 1980 Act) be subject to the restrictions on such exemptions contained in Section 55(4) if the 1893 Act (as inserted by Section 22 of the 1980 Act).

11. FORCE MAJEURE

The Seller shall not be liable to the Buyer 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 Seller's obligations in relation to the Goods or Services howsoever arising including, without prejudice to the generality of the foregoing, any delay or failure due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

(a) act of God, explosion, flood, tempest, fire, or accident or any sort:

(b) war or threat of war, sabotage, insurrection, civil disturbance, requisition or global health pandemic;

(c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authorities (including but not limited to naval or military authorities);

(d) import or export regulations, embargoes or blockades;

(e) strikes, lockouts or other industrial actions or trade disputes whether actual or threatened and whether involving employees of the Seller or of a third party;

(f) difficulties in obtaining raw materials, labour, fuel, parts of machinery; (g) power failures or breakdown in machinery.

12. TERMINATION

If the Buyer becomes bankrupt, or enters into an arrangement with his creditors or if execution is levied against him or (if a Company) a petition be presented, or another is made, or resolution is passed for a winding up of the Buyer or if a receiver is appointed over any property of the Buyer or if the Buyer becomes insolvent or if an examiner is appointed or if the Buyer is in breach of any contract with the Seller, the Seller may stop any Goods in transit and suspend further deliveries and may determine the Contract with the Buyer without prejudice to any existing claim of the Seller and nothing in this condition shall prejudice any other right vested in the Seller.

13. MISCELLANEOUS

13.1. All Goods are sold subject to availability of stocks.

13.2. A waiver by the Seller of any of the foregoing conditions does not constitute a general waiver of such conditions.

13.3. The Buyer shall not assign or transfer or purport to assign or transfer to any other person the Contract or the benefit thereof.

13.4. If any of these conditions or any part thereof is found by a Court or other competent Authority to be void or unenforceable, such provisions shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing the Seller and the Buyer shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the condition or part thereof so found to be void or enforceable.

13.5. This Contract shall be governed and construed in all aspects in accordance with the laws of the Republic of Ireland.