



General Conditions of Purchase

Rev: 04

Sulzer Wood Ltd General Terms and Conditions of Purchase

The General Terms and Conditions of Purchase defined in this document apply to all Purchase Orders placed by Sulzer Wood Limited. These conditions shall not over-ride the requirements of local law.

1.0 Definitions

In these Terms and Conditions unless the context otherwise requires:

- a) "Agreement" shall mean the agreement between the Seller and the Buyer governing the terms and conditions on which the Seller will enter into any Contract with the Buyer for the supply of Goods or Services to the Buyer, which shall incorporate these Terms and Conditions;
- b) "Buyer" shall mean Sulzer Wood Limited, a company incorporated in Scotland, Number 147952, having its registered office at John Wood House, Greenwell Road, Aberdeen, Scotland, and a place of business at Castle Road Industrial Estate, Ellon, Aberdeenshire, AB41 9RF;
- c) "Contract" shall mean the contract between the Seller and the Buyer comprising the Quotation, the Purchase Order and these Terms and Conditions;
- d) "Contract Price" shall mean the price for the Goods and/or Services as set out in the Quotation;
- e) "Goods" shall mean the equipment, documents and articles to be supplied under a Contract;
- f) "Purchase Order" shall mean the written Purchase Order issued by the Buyer to the Seller;
- g) "Quotation" shall mean the written quotation for Work issued by the Seller to the Buyer or to others on the Buyer's behalf;
- h) "Seller" shall mean the person firm or company with whom the Buyer enters into the Contract for the Goods and Services;
- i) "Services" shall mean any work or services to be provided by the Seller to the Buyer under a Purchase Order;
- j) "Site" shall mean any site on which any Services are to be carried out as specified in the Contract; and
- k) "Terms and Conditions" shall mean these Terms and Conditions of Purchase.
- l) "Working Day" shall mean any day (not Saturday or Sunday) when the banks in Scotland are generally open for business.

2.0 General

- 2.1 The Buyer's Purchase Order for the purchase of Goods or Services are subject to the following conditions to the exclusion of all other conditions unless expressly otherwise agreed by the Buyer in writing, and no agreement, warranty, condition, statement, promise or undertaking not confirmed officially in writing by the Buyer shall be binding on the Buyer and no condition in any



Agreement or supplemental letter, paper or document shall be imposed upon the Buyer, unless the Buyer's express consent thereto in writing has been previously obtained.

- 2.2 The Goods and Services referred to in the Agreement are to be used in the United Kingdom unless otherwise stated in the Purchase Order.
- 2.3 This Agreement is based on the information supplied to the Buyer at the time the Purchase Order is issued.

3.0 Formation of Contract

- 3.1 All Purchase Orders issued by the Buyer shall constitute an offer by the Buyer to purchase Goods and Services from the Seller in accordance with the Quotation and all Purchase Orders issued by the Buyer shall be deemed to include these Terms and Conditions except insofar as they are inconsistent with any special Terms and Conditions contained in the Purchase Order (as the case may be). Any terms and conditions contained within or referred to in the Quotation will not apply except as specifically confirmed as applying to the Contract in the Purchase Order.
- 3.2 Each Purchase Order shall lapse unless it is unconditionally accepted by the Seller in writing within 7 Working Days of the date of the Purchase Order.
- 3.3 Commencement of design, manufacture, delivery, start of invoicing or supply of the Goods or Services implies acceptance of the Purchase Order by the Seller under these General Conditions of Purchase.
- 3.4 The contract shall consist of and the order of precedence shall be:
 - a) Any special conditions written or referred to on the face of the Purchase Order;
 - b) Any technical specification referred to on the face of the Purchase Order; and
 - c) These General Terms and Conditions of Purchase.
- 3.5 Acceptance of a Purchase Order means that the Seller accepts these Terms and Conditions together with any additional conditions set out in the Purchase Order to the exclusion of any conditions of contract proposed or tendered by the Seller. Any variation or modification to a Purchase Order shall only be valid when issued in accordance with Clause 7 (Variations) of these General Terms and Conditions of Purchase.
- 3.6 If subsequent to any Agreement between the Buyer and the Seller into which these Terms and Conditions are incorporated any Contract for the purchase of goods and services similar to the goods and Services made between the same parties whether the same is by letter, telegram, fax, telex or orally or otherwise, without express reference to any Contract shall be deemed to be subject to these Terms and Conditions.

4.0 Delivery

- 4.1 The Seller shall deliver the Goods, complete or in agreed batch sizes, during normal working hours, properly packed and marked, and complete with all delivery documentation, as specified in the Purchase Order, to the delivery address stated on the face of the Purchase Order. Each delivery shall be marked to show complete delivery or batch, batch number and contents, and the Buyer's Purchase Order number.
- 4.2 Delivery shall not be deemed complete unless the Goods are accompanied by delivery documentation listing the Goods in sufficient detail to enable inspection and checking to take place after delivery. Receipt by the Buyer shall not imply acceptance of the quality or quantity of the Goods.

- 4.3 The delivery date or dates, date of completion of the Services or in the case of a service being performed at intervals, the period of the Purchase Order, shall be that or those specified in the Purchase Order and the Seller shall furnish such programmes of design, manufacture, delivery and installation as the Buyer may reasonably require in relation to the supply of Goods and/or Services. If the Purchase Order includes the carrying out of tests on the Goods after receipt by the Buyer, then delivery shall not be deemed complete until such tests have been passed to the reasonable satisfaction of the Buyer.
- 4.4 The Seller shall notify the Buyer immediately if the Seller becomes aware that any delivery or performance is likely to be delayed beyond the specified date or dates. Failure by the Seller to notify any likely delay shall entitle the Buyer to terminate without liability all or part of the Purchase Order and to compensation for any losses resulting from the failure or delay.
- 4.5 If the Seller fails to deliver on or before the delivery date or dates, there shall be deducted from the price paid to the Seller by the Buyer 1% of the value of such parts of the Purchase Order as cannot in consequence of the said failure be put to the use intended for each week or part week of delay to a maximum of 10% of the said value. The parties agree that this is a reasonable estimate of loss in all circumstances.
- 4.6 If any part of the Purchase Order in respect of which the Buyer has become entitled to the said 10% remains uncompleted, the Buyer may give notice to the Seller requiring completion and the notice shall fix a final date for completion which shall be reasonable in all the circumstances.
- 4.7 If for any reason the Seller fails to complete within such time, the Buyer may by further notice to the Seller elect to require the Seller to complete, or to terminate the Purchase Order in whole or in part and recover from the Seller any loss suffered by the Buyer by reason of the said failure.
- 4.8 The Buyer shall advise the Seller of any loss or damage in transit within the following time limits:
- a) partial loss or damage shall be advised within 7 Working Days of the date of delivery of a consignment or part consignment.
 - b) non-delivery of the whole consignment shall be advised within 14 Working Days of Buyer's receipt of notice of despatch.

5.0 Title and Risk

- 5.1 Title to the goods shall pass to the Buyer on delivery or if earlier upon payment to the Seller of not less than 51% of the contract price of those goods.
- 5.2 Risk in goods which comply with the Terms and Conditions of Contract and are delivered in accordance with the Purchase Order shall pass to the Buyer on delivery.
- 5.3 Title in any Goods belonging to or provided by the Buyer which are in the Seller's custody for any purpose shall remain with the Buyer and will be clearly marked and recorded by the Seller as belonging to the Buyer and shall be held at the Seller's risk.

6.0 Compliance

- 6.1 Goods and/or Services shall exactly conform to and fulfil the requirements of the Contract and shall be fit for purpose. They shall be made or performed in accordance with good engineering practice and all applicable standards and legislation. Goods shall be delivered complete with all instructions, warnings and other data necessary for safe and proper operation. Goods or Services which do not comply with any or all of the above shall be considered to be non-compliant no matter how slight any breach, shortfall or excess.

- 6.2 If for any reason the Seller is uncertain as to whether the Goods or Services to be supplied by it will comply with the Contract, it must promptly and before despatch inform the Buyer in writing with full details of the possible non-compliance. Written acceptance or rejection of the Seller's application will then be provided by the Buyer.
- 6.3 If, in respect of any part of the Goods and/or Services, the Buyer shall at any time within 18 months of delivery or 12 months of putting into commercial use (whichever occurs first), decide that any work done or equipment supplied or materials used by the Seller (including equipment work or materials supplied under this Clause 6) is or are defective, the Buyer will as soon as reasonably practicable notify the Seller of the same, specifying particulars of the defects alleged and of where the same are alleged to exist or to have occurred, the Buyer at its sole option may without prejudice to its other rights and remedies;
- a) require that the Seller shall with all speed and, at his own expense, at the location specified by the Buyer, make good the defects so specified.
 - b) take, at cost and liability of the Seller, such steps as may in all the circumstances be required to make good such defects or replace the Goods.
 - c) reject the Goods and require the Seller to collect them promptly at its own cost and repair or replace them within such time as may be stipulated by the Buyer.
 - d) grant a concession to accept the defects subject to such reservation and/or deduction from the Contract Price which in the opinion of the Buyer reflects the costs incurred or likely to be incurred by the Buyer as a direct result of the circumstances giving rise to the concession or the granting thereof and the benefits (including any reduction in liabilities) accruing or likely to accrue to the Seller by the granting of such concession.

Repairs and replacements shall themselves be subject to the foregoing obligations from the date of delivery, re-installation or passing of tests (if any) whichever is appropriate after repair or replacement.

- 6.4 If the Seller fails to remedy any defect as above provided, the Seller shall return any money paid by the Buyer in respect of the defective item which cannot be used by reason of such defect and the Buyer shall be entitled to terminate the Contract or part thereof without prejudice to its other rights and remedies.

7.0 Variations and Extras

- 7.1 The Seller shall accept and perform any reasonable variation in scope, specification, quantity or delivery requested by the Buyer. The price shall be adjusted to reflect the variation having regard to the rates and prices used in the Contract or, where these are not relevant, to what is fair and reasonable.
- 7.2 Neither party shall be bound by any variation to the Contract unless and until it is confirmed by an official Purchase Order amendment issued by the Buyer.

8.0 Inspection and Testing

- 8.1 The Buyer and any third party authorised by the Buyer shall be entitled to inspect or test the goods or services at any reasonable time.
- 8.2 The Seller shall give at least five Working Days' advance notice in writing of tests, and the Buyer and any third party authorised by the Buyer shall be entitled to attend the tests. If the Buyer attends such tests and the Seller is not able to carry out such tests the Seller shall compensate the Buyer for all costs incurred at such attendance (including the costs of the Buyer's own personnel).



- 8.3 The Seller shall provide the Buyer with such test certificates as the Buyer may reasonably require.
- 8.4 Inspection and testing in accordance with this clause shall not relieve the Seller of any liability nor imply acceptance of the goods or services.

9.0 Price

- 9.1 Unless specifically stated to the contrary, all prices and charges stated in the Contract are fixed and firm for the duration of the Contract.
- 9.2 Where the Contract covers Goods and Services supplied on a repeat order basis, the Purchase Order must not be executed at prices higher than those last charged or quoted by the Seller before the date of this Contract without advice by the Seller and acceptance by the Buyer in writing.
- 9.3 Where the Contract covers Goods on a weight basis (including castings), the weight stated on the Contract shall be the estimated weight.
- 9.4 Unless otherwise stated in the Contract, the Contract Price shall be inclusive of the costs of delivery C.I.P. (as defined in Incoterms 2000) to the delivery address stated on the face of the Purchase Order.
- 9.5 Prices and charges shall exclude Value Added Tax which shall be charged extra if applicable, but shall include all other taxes.

10.0 Rate of Exchange

- 10.1 For any item which is not of United Kingdom manufacture the Contract Price is based upon the current rate of exchange between the Pound Sterling and the currency of the country invoicing the Goods to the Seller at the date of supply. Any increase or reduction in the Contract Price consequent upon variation of the rate of exchange at the times of payments to the invoicing country will be charged or credited to the Buyer.

11.0 Invoicing and Payment

- 11.1 Unless otherwise agreed in writing, the Seller shall submit invoices to the Buyer at the end of each calendar month following provision of the Services in accordance with the Contract or delivery of compliant Goods together with all documentation required under the terms of the Contract upon completion of the Services or delivery of the Goods. All invoices shall clearly show the Buyer's Purchase Order reference, details of all Goods or Services covered by the invoice complete with all supporting documentation. Where the Purchase Order covers Goods on a weight basis (including castings), the invoice shall be submitted against the actual weight using the Purchase Order tariff.
- 11.2 Incorrect invoices shall be returned for correction.
- 11.3 The Buyer shall be entitled to set off amounts due to the Seller against amounts or liabilities due to the Buyer from the Seller.
- 11.4 Unless otherwise agreed in writing, payment shall be made by the Buyer against services performed in accordance with the Purchase Order or delivery of compliant Goods together with all documentation required under the Purchase Order within 40 days from the end of the month following submission of an acceptable invoice.



12.0 Warranties

- 12.1 The Seller warrants to the Buyer that it shall properly perform the Contracts.
- 12.2 This warranty is personal to the Buyer and shall not be assigned without prior written consent of the Seller.

13.0 Indemnities

- 13.1 The Buyer shall be responsible for, and shall save, indemnify, defend and hold harmless the Seller from and against, all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
 - a) loss of or damage to the property of the Buyer unless such property is in the exclusive custody and control of the Seller, such exclusive custody ceasing once the property is defined by the Seller as ex works
 - b) loss of damage to the property of any officer, employee, servant or agent of the Buyer
 - c) loss of or damage to the property of any person or company (other than the Seller) who is a party to a contract with the Buyer
 - d) loss of or damage to the property of any officer, employee, servant or agent of any person or company (other than the Seller) who is a party to a contract with the Buyer
 - e) death of or injury any officer, employee, servant or agent of the Buyer
 - f) death of or injury to any officer, employee, servant or agent of any person or company (other than the seller) who is a party to a contact with the Buyer

arising from or relating to provision of the Services or the Goods, irrespective of cause and whether or not resulting from any act or omission or the negligence in any form, or breach of duty (statutory or otherwise) of the seller, any person or company party to a contract with the Seller, or their respective officers, employees, servants or agents.

The release, defence and indemnity obligations of the parties as set forth in General Conditions 13.1 and 13.2 shall not apply in the event of Gross Negligence or Wilful Misconduct on the part of a party to be indemnified. As used herein "Gross Negligence" shall mean reckless disregard of, or wanton indifference to, harmful and avoidable consequences.

- 13.2 The Seller shall be responsible for, and shall save, indemnify, defend and hold harmless the Buyer from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
 - a) loss of or damage to the property of the Seller
 - b) loss of or damage to the property of any officer, employee, servant or agent of the Seller
 - c) loss of or damage to the property of any person or company (other than the Buyer) who is a party to a contract with the Seller.
 - d) loss of or damage to the property of any officer, employee, servant or agent of any person or company (other than the Buyer) who is a party to a contract with the Seller.
 - e) death of or injury to any officer, employee, servant or agent of the Seller
 - f) death of or injury to any officer, employee, servant or agent of any person or company (other than the Buyer) who is a party to a contract with the Seller.



arising from or relating to performance of the Services or the Goods, irrespective of cause and whether or not resulting from any act or omission, or the negligence in any form, or breach of duty (statutory or otherwise) of the Buyer, any person or company party to a contract with the Buyer, or their respective officers, employees, servants or agents.

The release, defence and indemnity obligations of the parties as set forth in General Conditions 13.1 and 13.2 shall not apply in the event of Gross Negligence or Wilful Misconduct on the part of a party to be indemnified. As used herein "Gross Negligence" shall mean reckless disregard of, or wanton indifference to, harmful and avoidable consequences.

- 13.3 The Seller shall be liable for and shall defend, indemnify and hold the Buyer harmless from and against any and all claims resulting from or arising out of the discharge of trash, waste oil, bilge water or other pollutants, or from the removal of wreckage, which may be asserted against the Buyer as a result of, or in connection with, the provision of the Services or the Goods.
- 13.4 The Seller shall be responsible for, and shall save, indemnify, defend and hold harmless the Buyer from and against, all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of personal injury including death or disease or loss or damage to the property of any third party arising from or relating to the provision of the Services and Goods to the extent that such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Seller.
- 13.5 The Seller shall be responsible for, and shall save, indemnify, defend and hold harmless the Buyer from and against, all claims, losses, damages, costs (including legal costs) expenses and liabilities resulting from loss or damage to any well or hole, blow-out, fire, explosion, cratering or any other well condition (including the costs to control a wild well and the removal of debris) and damage to any reservoir, geological formation or underground strata or the loss of oil or gas therefrom.
- 13.6 The Buyer shall be responsible for, and shall save, indemnify, defend and hold harmless the Seller from and against, all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of personal injury including death or disease or loss or damage to the property of any third party arising from or relating to the performance of the Services or provision of the Goods to the extent that such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Buyer provided that the Buyer's liability arising or incurred in respect of this Clause 13.6 shall be limited to and not in any event exceed the amounts recoverable under the Buyer's applicable insurances in excess of which amounts the Seller shall indemnify and hold the Buyer harmless irrespective of the negligence or breach of duty (whether statutory or otherwise) of the Buyer.
- 13.7 For the purposes of this Clause 13.7, the expression "Consequential Loss" shall mean indirect losses and/or loss of production, loss of product, loss of use and loss of revenue, profit or anticipated profit. Notwithstanding any provisions to the contrary elsewhere in the Agreement, the Buyer shall save, indemnify, defend and hold harmless the Seller from the Buyer's own Consequential Loss and the Seller shall save, indemnify, defend and hold harmless the Buyer from the Seller's own Consequential Loss.
- 13.8 The indemnities given in the Agreement shall constitute the full liability of the indemnitor therefore and shall apply in respect of the full liability of the indemnitor for claims, notwithstanding the indemnitor may be entitled to contribution thereto from a third party and notwithstanding such liability may relate to the negligence of a third party.
- 13.9 For the purposes of this Clause 13, the Seller contracts on its own behalf and expressly as agent on behalf of and as trustee for its subcontractors of any tier, and its and their servants and agents, and the Buyer contracts on its own behalf and expressly as agent on behalf of and as trustee for its subcontractors of any tier, and its and their servants and agents.



14.0 Insurance

14.1 The Seller and the Buyer shall each maintain in force adequate insurance to cover their obligations under the terms of the Contract, and applicable statutory requirements, in particular (without prejudice to the generality of the foregoing), Employer's Liability Insurance, fully complying with all applicable laws, and Public Liability Insurance, and shall, on request, provide evidence that such insurances are in force. All such insurances shall be placed with reputable and substantial insurers. The provisions of this Clause 14 shall in no way limit the liability of the parties under the Contract.

15.0 Free-Issue Materials and Tooling

15.1 Where tooling (including patterns, dies, mould, jigs and fixtures and the like) is manufactured or acquired by the Seller specifically for the purpose of the Purchase Order, title to such tooling shall pass to the Buyer upon its creation or acquisition. The Seller shall deliver up such tooling to the Buyer on demand.

15.2 Where the Buyer for the purpose of the Purchase Order issues materials (including equipment, components, tooling, patterns, dies, moulds, jig and fixtures and the like) free of charge to the Seller, title to such materials shall remain with the Buyer and shall be clearly marked as and remain the property of the Buyer. The Seller shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Seller shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Buyer's discretion. Damage to or waste of such materials arising from bad workmanship or negligence of the Seller shall be made good at the Seller's expense. Without prejudice to any other rights of the Buyer, the Seller shall deliver up such materials, whether further processed by the Seller or not, to the Buyer on demand.

16.0 Confidentiality and Proprietary Rights

16.1 All information and know-how including drawings, specifications and other data provided by the Buyer in connection with the Contract shall remain at all times the Buyer's property and may be used by the Seller only for the purpose of performing the Purchase Order. The Seller shall keep the information and know-how confidential and shall return them to the Buyer upon request. Information relating to the Buyer's business, which comes to the notice of or into the possession of the Seller as a result of the performance of the Purchase Order, shall be kept confidential by the Seller.

16.2 The Seller will save, defend, and hold harmless the Buyer Group (except in respect of materials or equipment supplied by Buyer) from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right, arising out of or in connection with the performance of the Purchase Order. However, the Seller shall use its reasonable endeavours to identify any infringement in the job specification of any patent or proprietary or protected right, and should the Seller become aware of such infringement or possible infringement then Seller shall inform Buyer immediately.

16.3 The Seller shall neither quote nor supply parts made with the Buyer's tools or materials, or the Buyer's patterns, drawings, specifications or designs, to any third party without the Buyer's prior written consent.

16.4 Any inventions, patents, copyrights, design rights and other intellectual property rights, know-how arising from the execution of the Contract shall become the property of the Buyer and the Seller shall not disclose the same to any third party. The Seller shall do all things and execute such documents as may be necessary to assign such proprietary rights to the Buyer.

17.0 Regulations in force at Destination

17.1 In respect of any Goods and Services to be provided by the Seller in the United Kingdom, the Seller will at its own expense conform with the provisions of all Acts of Parliament and with the regulations of local and other authorities which may be applicable to the Goods and Services to be provided. Any additional expense reasonably incurred by the Seller in conforming to any such Acts and Regulations made subsequent to the date of the Contract shall be paid by the Buyer.

18.0 Force Majeure

18.1 If by reason of any act or omission on the part of the Seller, or any industrial dispute, Government action or international sanction, fire, flood, hurricane, earthquake, volcanic eruption, act of God, war declared or undeclared, civil commotion, riots, insurrection, military uprising or any other cause beyond the reasonable control of the Seller, the Seller shall have been delayed or impeded in the performance of its obligations under the Agreement, whether the delay or impediment occurs before or after the time or extended time fixed for completion thereof, then the Seller shall be under no liability for failure to perform its obligations and, provided that the Seller shall within a reasonable time have given to the Buyer notice in writing of its claim for an extension of time, the Buyer shall on receipt of such notice grant the Seller from time to time in writing either prospectively or retrospectively such extension of time as may be reasonable. On removal of the force majeure the Seller shall be entitled to reschedule supplies and services. Any delay on the part of a subcontractor which prevents the Seller from completing its obligations under the Agreement within the time fixed therefore shall entitle the Seller to an extension of time therefore provided such delay was due to any cause for which the Seller itself would have been entitled to an extension of time under this Clause 18.

18.2 Notwithstanding that the Seller be entitled to an extension of time under Clause 18.1 above, should the force majeure circumstances as defined in Clause 18.1 above exist for a period of thirty (30) days, then either party at any time thereafter, and provided performance is still delayed or impeded, by notice to the other terminate any Contract subject to the terms of the Agreement. In this event the Seller shall be entitled to be compensated in accordance with the provisions of Clause 19.1 below.

19.0 Termination

19.1 The Buyer may terminate the Purchase Order or part thereof without prejudice to any other of its rights under the Purchase Order or at law and without liability to the Seller if:

- a) an event of Force Majeure does or is likely to delay performance more than 30 days; or
- b) the Seller is in breach of any of its obligations and does not remedy or commence to remedy the breach as soon as reasonably possible (and within seven days of a notice to remedy or commence to remedy from the Buyer); or
- c) it is entitled to do so under provisions of Clause 4.4 or Clause 6.4; or
- d) the Seller becomes bankrupt or (being a company) makes an arrangement with its creditors or has a receiver or administrator appointed or commences to be wound up.

19.2 The Buyer may terminate the Purchase Order if any corresponding Purchase Order between the Buyer and a third party is terminated. In such event, and provided that the Seller is in compliance with its obligations under the Purchase Order, the Buyer shall compensate the Seller for costs reasonably and properly incurred until then in performing the Purchase Order which would otherwise represent an irrecoverable loss to the Seller, subject to the Seller taking all reasonable steps to minimise its losses and subject to reasonable proof being provided. Compensation shall not in any event exceed the Purchase Order price.



20.0 Independent Contractor

20.1 The Seller shall at all times during the term of the Agreement be an independent contractor with respect to the Buyer, and nothing in the Agreement shall be construed as creating, at any time, any other relationship between the parties hereto. The Seller shall at all times have complete control, as employer, over, and full responsibility for, its employees. None of its employees, servants or agents shall be considered, or in any way represent themselves, as being employees of the Buyer or be entitled to any of the benefits supplied by the Buyer to its own employees.

21.0 Tax

21.1 All profits tax, corporation taxes or other like charges levied on the Seller in connection with the Seller's performance of the Agreement by the United Kingdom tax authorities, shall be the responsibility of the Seller, all other duties, fees, taxes, or other like charges shall be for the Buyer's account.

21.2 All amounts of value added tax due and payable as of Services performed hereunder, shall be invoiced to, and payable by the Buyer as applicable.

21.3 Should the Seller be required to pay any duties, fees, taxes or other like charges which are the responsibility of the Buyer in accordance with the Agreement, then the Buyer shall reimburse the Seller with the amount so paid.

22.0 Limitation of Liability

22.1 Any exclusion or limitation of liability under the Agreement and for the avoidance of doubt the entire provisions of the Agreement without limitation including the terms of this Clause 22 to any work carried out during the warranty period or as a result of warranty defects shall exclude or limit such liability not only in contract but also in delict or otherwise at law.

23.0 Health, Safety and Environment

23.1 The Seller shall provide to the Buyer in writing all data, instructions and warnings as are required to comply with applicable legislation relating to health, safety and the environment and shall indemnify the Buyer against any and all liabilities, claims and expenses which may arise as a result of the Sellers failure to do so.

23.2 If any of the Goods to be supplied under the contract contain any hazardous substances or require any special precautions to be taken to ensure safety in handling, transport, storage or use and for the protection of the environment, the Seller shall prior to delivery furnish the Buyer written details of the nature of those substances and the precautions to be taken. The Seller shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked on the Goods or securely attached to them and on any containers into which they are packed.

23.3 All goods/packages must be in line with the Guidelines for the Safe Packing and Handling of Cargo to and from Offshore Locations.

This guideline makes reference to general guidance and freight packaging and specifically mentions that *"polystyrene chips shall not be used as a packing material as these can clog the helicopter engine intakes"*.

23.4 The Seller shall at all times whilst attending or working on any site (whether or not owned by the Buyer) fully comply with all relevant health, safety and environmental laws, rules, procedures and regulations. Prior to attending or working on any site the Seller shall familiarise itself with all such regulations.

24.0 Disputes with Third Parties

24.1 If any third party makes any claim against the Buyer arising from the performance of the Contract by the Seller, or in respect of Goods or Services supplied under it, the Seller shall at its own expense on request by the Buyer join the Buyer in defending the claim. The decision of any court or arbitration tribunal deciding upon the claim, so far as is relevant, be admitted as conclusive in any consequent claim made by the Buyer against the Seller under the Contract.

25.0 Assignment and Subcontracting

25.1 Neither party shall, without the express written consent of the other party, which consent shall not be unreasonably withheld, assign the whole or any part of the Agreement. Any assignment made in breach of this Clause 25.1 shall not relieve either party of its obligations under the Agreement.

Notwithstanding the above, the Seller may subcontract the supply of materials, equipment, parts and services to its subcontractors and suppliers without the consent of the Buyer.

26.0 Waiver

26.1 No failure on the part of either at any time or from time to time to enforce or to require the adherence and performance of any of the terms or conditions of the Agreement shall constitute a waiver of such terms or conditions and/or affect or impair such terms or conditions in any way or the right of either party at any time avail itself of such remedies as it may have for each and every breach of such terms and conditions.

27.0 Amendment

27.1 No amendment shall be effective unless produced in writing by both parties and signed by their duly authorised representatives and made subsequent to the date of commencement of the Agreement.

28.0 Entire Agreement

28.1 The Agreement represents the entire agreement between the parties relating to the Services and shall supersede all prior representations, agreements, statements and understandings made prior to the date of commencement of the Agreement whether oral or in writing other than those representations, agreements, statements and understandings which have been expressly incorporated in the Agreement.

29.0 Law

The Agreement shall be subject to, interpreted, construed and performed in accordance with the Laws of Scotland. Subject to the provisions of Clause 30, the Buyer submits to the exclusive jurisdiction of the Scottish Courts.

30.0 Dispute Resolution

30.1 The parties agree that they will exercise their rights and perform their obligations under the Agreement acting in good faith and in the spirit of co-operation and with the objective of avoiding disputes arising among them.

30.2 In the event that a dispute arises between any of the parties they will take all reasonable steps to negotiate a settlement of the dispute within 28 days of the dispute arising.

30.3 In the event that the dispute is not resolved within 28 days (or such longer period as the parties may mutually agree) the matter in dispute will be referred to mediation. The fees and expenses

of the mediator will be borne equally between the parties. The parties will fully co-operate with the mediator and each other to ensure that all relevant information and documentation is collated and provided to the mediator and that the mediation hearing takes place within 56 days of the dispute arising.

- 30.4 In the event that the dispute is not resolved within 90 days (or such longer period as the parties may agree) the matter in dispute will be referred to an expert. The expert will be appointed by the mutual agreement of the parties, or failing agreement on the choice of expert within 120 days of the dispute arising, by the President of the Law Society of Scotland on application by either of the parties. The fees and expenses of the expert will be borne equally between the parties. The parties will fully co-operate with the expert and each other to ensure that all relevant information and documentation is collated and provided to the expert and that the expert's decision is made within 30 days of his appointment. The parties agree that the decision of the expert will be binding and will not be capable of appeal to the Courts. The parties also agree that the decision of the expert may be registered by either party to the dispute for the purposes of enforcement.
- 30.5 Nothing in this Clause 30 will prevent any party applying for any interdict, injunction or other preliminary or interim order for the purpose of protecting its commercial interests where that party, acting reasonably, has justification to seek such preliminary or interim protection.

31.0 Headings

- 31.1 The headings and index including hereto are for ease of convenience only, and in no way effect the interpretation of the Agreement.

32.0 Survival

- 32.1 Any provision of the Agreement which is expressed or intended to have effect on, or to continue in force after, the expiry or termination of the Agreement will have such effect, or, as the case may be, continue in force after such expiry or termination. Without prejudice to the generality of the foregoing, the obligations under Clauses 4, 5, 9, 10, 11, 12 and 13 survive the expiry or termination of the Agreement or any Contract subject to the terms of the Agreement.

33.0 Severance

- 33.1 If any provision of the Agreement is to any extent invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby and each of the provisions of the Agreement will be valid, legal and enforceable to the fullest extent permitted by law or replaced by such valid, legal and enforceable provision which comes closest to the parties' original intent. The same applies in the event of omissions in the Agreement.

34.0 Business Ethics

- 34.1 The seller and the Buyer agree that they will adhere to the standards set out in Sulzer Wood Limited Code of Business Conduct (which can be viewed at www.sulzerwood.co.uk) will fully comply with this Code and with all other customary standards of business conduct prescribed by law or regulation.