

IWS

INDUSTRIAL & WELDING SUPPLIES

Terms and conditions of sale

Revised July 2019

The Customer's attention is in particular drawn to the provisions of Condition 10.

1. Interpretation

1.1 The definitions and rules of interpretation in this Condition 1 shall apply in these Conditions:

"Customer" Means a person or firm who purchases the Goods and/or Services from the Supplier.

"Conditions" Means the standard terms and conditions of sale set out in this document.

"Consumer" Means a Customer who is a consumer within the meaning of the Consumer Rights Act 2015.

"Contract" Means any contract between the Customer and the Supplier for the purchase and sale of the Goods and/or Services, of which these Conditions form part.

"Controller" (or data controller), "Processor" (or data processor), "Data subject", "Personal data" and "Processing" All have the meanings given to those terms in DP Laws (and related terms such as "process" shall have corresponding meanings).

"DP Laws" Means any law relating to the processing of Personal Data, as applicable to the Supplier, the Customer and/ or the Goods and any Services, including: (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any laws or regulations implementing Council Directive 2002/58/EC ("ePrivacy Directive"); and/ or (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR") and any corresponding or equivalent national laws or regulations, once in force and applicable, and/or (iii) any laws that replace, extend, re-enact, consolidate or amend any the foregoing; and/or (iv) any judicial or administrative interpretation of such DP Laws, and any mandatory guidance, guidelines or codes of practice relating to such DP Laws.

"Goods" Means the goods (including any instalment or any parts of them) agreed in the Contract which the Supplier is to supply.

"ISS Group" Means the Supplier, its subsidiaries, its holding companies and their subsidiaries.

"Holding company and subsidiary" Means a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

"Processing purposes" Means the purposes set out in the Supplier's Privacy Statement a copy of which is available at <http://www.ind-weld.co.uk/en/footer/privacy-statement.html> or which the Supplier may provide to the Customer by another method depending on the way that the Customer is contracting with the Supplier.

"Services" Means such services supplied by the Supplier to the Customer as set out in the Service Specification or as otherwise agreed to by the Supplier.

"Service specification" Means the description or specification for the Services provided by the Supplier to the Customer.

"Supplier" Means Industrial Supplies and Services Limited (company number: 01538873) whose registered office address is at The Priestley Centre, 10 Priestley Road, Guildford, Surrey, GU2 7XY, England or any of its Subsidiaries (a list of which is available on request).

"Writing" Includes fax, cable, e-mail and other comparable means of communication.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.5 Words in the singular include the plural and in the plural include the singular.
- 1.6 A reference to one gender includes a reference to the other gender.

2. Basis of the sale

- 2.1 The Supplier shall sell and the Customer shall purchase the Goods and/or Services in accordance with any written quotation of the Supplier which is accepted by the Customer or any written order or verbal order of the Customer which is accepted by the Supplier in Writing, subject in either case to these Conditions which shall, subject to any variation in accordance with Condition 2.3, govern the Contract for such Goods and/or Services to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of any Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Supplier's sales and no variation to these Conditions shall be binding

unless agreed in Writing between the authorised representatives of the Customer and the

- 2.4 The Supplier's employees or agents are not authorised to make any statements, promises or representations concerning the Goods and/or Services other than those expressly set out in the Contract for such Goods and/or Services. In entering into any Contract, the Customer acknowledges and agrees that it does not rely on any statements, promises or representations (whether written or oral) of any kind or of any person other than those expressly set out in the Contract, except for any representation made fraudulently.
 - 2.5 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods and/or Services which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Customer's own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
 - 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to the correction without any liability on the part of the Supplier.
 - 2.7 Each order or acceptance of a quotation for Goods and/or Services by the Customer from the Supplier shall be deemed to be an offer by the Customer to buy Goods and/or Services subject to these Conditions.
- ## 3. Orders and specifications
- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier's authorised representative or (if earlier) delivery of the Goods and/or performance of the Services by the Supplier.
 - 3.2 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order

(including any applicable specification for Goods or Service Specification) submitted by the Customer and for giving the Supplier any necessary information relating to the Goods and/or Services within a sufficient time to enable the Supplier to perform the Contract for such Goods and/or Services in accordance with its terms.

- 3.3 The quantity, quality, description and specification for the Goods and/or Services shall be those set out in the Supplier's written quotation, contemporaneous record of verbal quotations, Service Specification or acknowledgement of order.
- 3.4 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract in respect of such Goods and/or Services, nor shall they constitute in any way a sale by sample.
- 3.5 The Supplier reserves the right to make any changes in the specification of the Goods and/or the Service Specification which are required to conform with any applicable safety or other statutory requirements or, where the Goods and/or Services are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including consequential loss and loss of profit) and costs (including the cost of cancellation of any orders placed by the Supplier in order to fulfil the contract, transportation and warehousing costs), damages, charges and expenses incurred by the Supplier as a result of such cancellation.
- 3.7 All drawings, designs, specifications, Service Specification and other information provided by

the Supplier to the Customer are confidential and the Customer shall not disclose any such drawings, designs, specifications, Service Specification and/or other confidential information to any third party without the Supplier's prior written consent. All

patents, design rights, copyright and other intellectual property rights in the Goods and/or Services and in any such drawings, designs, specifications, Service Specification and/or other confidential information shall remain vested in the Supplier and shall not pass to the Customer.

- 3.8 The Customer shall ensure that any information it provides in respect of the Goods and/or Services are complete and accurate, and will co-operate with the Supplier in all matters relating to the Goods and/or Services.
4. **Price of the goods and/or services**
- 4.1 The price of the Goods and/or Services shall be the Supplier's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Supplier's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Supplier's published price list (then current on the date of acceptance of the order) shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer or withdrawal by the Supplier, after which time they may be altered by the Supplier without giving notice to the Customer.
- 4.2 The Supplier reserves the right by giving notice to the Customer at any time before delivery or performance, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the reasonable control of the Supplier (including without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods and/or Service Specification which is requested by the Customer, or any delay caused

- by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions).
- 4.3 Except as otherwise stated under the terms of any quotation or in any price lists of the Supplier, and unless otherwise agreed in Writing between the Customer and the Supplier, all prices are given by the Supplier on an ex-works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax (or other sales tax), which the Customer shall be additionally liable to pay to the Supplier.
- 5. Terms of payment**
- 5.1 Unless otherwise agreed in Writing between the Customer and the Supplier, the Supplier may invoice the Customer for the price of the Goods (in pounds sterling) on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.
- 5.2 The Customer shall pay the price of the Goods (less any discount to which the Customer is entitled) within 30 days of the date of the Supplier's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract for such Goods. The Customer shall pay the price of the Services within 30 days of the date of the Supplier's invoice. Receipts for payment will be issued only upon request.
- 5.3 Except as provided in Condition 5.2, the Customer shall make all payments due under any Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
- 5.4 No payment shall be deemed to have been received until the Supplier has received cleared funds.
- 5.5 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier (whether under these Conditions, at law (including without limitation, under the Late Payment of Commercial Debts (Interest) Act 1998) or in equity), the Supplier shall be entitled to:
- 5.5.1 cancel the Contract or suspend any further deliveries to the Customer; and
- 5.5.2 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the higher of the rate of 4 per cent per annum above National Westminster Bank plc's base lending rate from time to time or the then applicable rate provided for under the Late Payment of Commercial Debts (Interest) Act 1998, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) and the Customer shall pay such interest immediately on demand.
- 5.6 Where the Customer is a Consumer the Supplier reserves the right to apply a late payment fee to recoup its debt recovery costs where it is not paid according to agreed credit terms.
- 5.7 The Supplier may appropriate any payment made by the Customer to the Supplier to such of the Goods and/or Services as the Supplier thinks fit despite any purported appropriation by the Customer.

5.8 All payments payable to the Supplier under any Contract shall become due immediately on its termination despite any other provision of the Contract.

6. Supply of Services

6.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

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

6.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7. Delivery of Goods

7.1 Delivery of the Goods shall take place at the Supplier's premises at any time after the Supplier has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Goods to that place.

7.2 If the place of delivery is not the Supplier's premises, the Goods shall be delivered by such means as the Supplier thinks fit, unless it is specified in the Contract for such Goods (at the request of the Customer) that a specific carrier is to be used given the nature of the Goods and the other circumstances of the case. In such circumstances, the Supplier shall arrange for the carriage of the Goods and the carrier shall be deemed to be the Customer's agent except for the purposes of Sections 44, 45 and 46 of the Sale of Goods Act 1979.

7.3 Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be made of the essence by notice and shall not be of the essence unless previously agreed by the Supplier in

Writing. If no dates are specified for delivery, delivery shall be within a reasonable time. The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Customer.

7.4 The Customer shall provide at the place of delivery, and at its expense, adequate and appropriate equipment and manual labour for loading (or as appropriate unloading) the Goods.

7.5 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as repudiated. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

7.6 Except as otherwise provided in these Conditions, the Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor shall any delay entitle the Customer to terminate or rescind the Contract for such Goods unless such delay exceeds 60 days.

7.7 If the Supplier fails to deliver the Goods for any reason other than any cause beyond the Supplier's reasonable control or the fault of the Customer, and the Supplier is accordingly held liable to the Customer for such non-delivery, the Supplier's liability (subject to the overall cap in Condition 9.10) shall be limited to replacing the undelivered Goods within a reasonable time or issuing a credit note at the pro rata Contract price against any invoice raised for such Goods.

7.8 If for any reason the Customer fails: (a) to take delivery of the Goods after 10 days of being notified that they are ready for collection; or (b) fails to

give the Supplier adequate delivery instructions, documents, licences or authorisations to make delivery at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

- 7.8.1 store the Goods until actual delivery and charge the Customer for the related reasonable costs and expenses (including, without limitation, insurance) of storage; or
- 7.8.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price for the Goods under the relevant Contract or charge the Customer for any shortfall below the price for the Goods under the relevant Contract.

7.9 If the Supplier delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Customer, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

7.10 The quantity of any consignment of Goods as recorded by the Supplier upon despatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

7.11 The Supplier shall not be liable for any non-delivery of Goods (even if caused by Supplier's negligence) unless the Customer gives written notice to the Supplier of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

7.12 Where the Customer is a Consumer, then in addition to a Consumer's rights where the Goods are faulty, a Consumer may change his or her mind and

an order for Goods within 14 days of delivery or collection. In this case the Consumer will be responsible for the costs of returning the Goods to the Supplier.

8. Risk and property

8.1 Risk of damage to or loss of the Goods shall pass to the Customer:

8.1.1 in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Customer that the Goods are available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, ownership of the Goods shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:

8.2.1 the Goods; and

8.2.2 all other sums which are, or which become, due to the Supplier from the Customer on any other account or under any other contract.

8.3 Until ownership of the Goods passes to the Customer, the Customer shall:

8.3.1 hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods: (a) separate from those of the Customer and third parties in such a way as they are identified as the Supplier's property; and (b) properly stored (at no cost to the Supplier), protected and insured (for their full price against all risks and on request produce the policy of insurance to the Supplier);

- 8.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.3.3 be entitled to resell or use the Goods in the ordinary course of its business; and
- 8.3.4 not: (i) attach the Goods to any land or premises so as to cause them to become a permanent or immovable fixture on such land or premises; or (ii) sell, transfer, lease or otherwise dispose of such land or premises, mortgage, charge or otherwise encumber such land or premises or agree to do any such thing or create any floating charge on such land or premises, unless: (a) the Customer has prior to such event obtained waivers satisfactory to the Supplier excluding the Goods from its effect; (b) any such act does not affect the Goods in any way; and (c) any such act is subject to the right of the Supplier to repossess the Goods at any time and for that purpose to enter upon such land or premises.
- 8.4 If the Customer sells any Goods prior to paying the price due in respect thereof in full and cleared funds: (i) the Customer shall hold the proceeds of sale on trust for the Supplier and shall immediately pay the proceeds of sale into separate bank account for such purposes; and (ii) the Supplier shall be entitled to call upon the Customer to assign all claims that the Customer may have against the purchaser(s) of those Goods.
- 8.5 The Customer's right to possession of any Goods under Condition 8.3 shall terminate immediately if any of the events detailed in Condition 11.1 occur and, in such circumstances, the Supplier shall be entitled to retake possession of the Goods and for that purpose to enter upon the Customer's land or premises.
- 8.6 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed to the Customer.
- 8.7 Until such time as ownership of the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold or irrevocably incorporated into another product), and without limiting any other right or remedy that the Supplier may have under these Conditions, at law or in equity, the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and, the Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter upon any premises where the Goods are stored to recover them.
- 8.8 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier under the Contract for such Goods or otherwise) forthwith become due and payable.
- 8.9 Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated due to any of the events detailed in Condition 11.1 occurring, the Customer shall be deemed to have sold all goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.
- 8.10 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this Condition 8 shall remain in

9. Warranties and liability

- 9.1 Where the Supplier is not the manufacturer of any Goods, the Supplier shall:
- 9.1.1 use reasonable endeavours to obtain from the manufacturer a warranty in respect of such Goods that materially accords with the warranty set out in Condition 9.2;
- 9.1.2 use reasonable endeavours to obtain from the manufacturer a warranty that such Goods will comply with all laws, statutes, rules, regulations, directives, bye-laws, codes of practice, circulating guidance notes and decisions of the courts relating to the Goods and their sale (including, but not limited to, those relating to health and safety and/or pollution of the environment) and applicable at the time of their delivery to the Customer;
- 9.1.3 use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee obtained by the Supplier from the manufacturer under Condition 9.1 and/or Condition 9.2, provided that the Customer shall only be entitled to the benefit of such warranties or guarantees in respect of such Goods or parts: (i) as are given by the manufacturer to the Supplier; and (ii) that the Supplier is entitled to pass onto the Customer.
- 9.2 Subject to Condition 9.1 and Condition 9.3, the Supplier warrants that Goods will in all material respects correspond with their specification at the time of their delivery to the Customer and will be free from defects in materials and workmanship as defined by the original manufacturer (details of which are available on request).
- 9.3 The warranty given in Condition 9.2 shall not apply (nor shall any other applicable warranty, condition or guarantee):
- 9.3.1 to any defect in any Goods or parts thereof arising from any defect in any drawing, design or specification supplied by the Customer;
- 9.3.2 to any defect arising from fair wear and tear, wilful damage, negligence, abnormal storage or working conditions, failure to follow the Supplier's and/or original manufacturer's instructions (whether oral or in Writing) or (if there are none) good trade practices, misuse, maintenance, alteration or repair of the Goods without the Supplier's prior written approval; or
- 9.3.3 if the total price for the Goods has not been paid and the due date for payment has passed.
- 9.4 Subject as expressly set out in these Conditions, and except where the Goods and/or Services are sold to a person dealing as a Consumer, all representations, warranties, conditions or other terms, whether written or oral, express or implied by statute or common law are excluded fully permitted by law, including the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982.
- 9.5 Where the Goods and/or Services are sold under a consumer contract nothing in these Conditions shall be construed as affecting the statutory rights of the Customer, and the warranties contained in these Conditions are in addition to any legal rights the Customer may have as a Consumer.
- 9.6 All and any claims by the Customer which are based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specification or Service Specification shall (whether or not delivery is refused by the Customer) be notified in Writing to the Supplier within 7 days from the date of delivery of the Goods or completion of the Services or where the defect or failure was not apparent on reasonable inspection, within a reasonable time after the date the defect or failure reasonably ought to have been discovered. If delivery is not refused,

- and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and/or Services and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered and the Services performed in accordance with the Contract for such Goods and/or Services.
- 9.7 Where any claim in respect of a breach of the warranty given under Condition 6.3 or Condition 9.2 is notified to the Supplier in accordance with these Conditions, the Customer shall give the Supplier reasonable opportunity to examine the Goods and/or Services and the Supplier shall be entitled (at its option) to: (a) repair or replace the Goods (or the defective part in question) free of charge; and (b) to re-perform the Services free of charge or (c) at the Supplier's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price) or Services; and if the Supplier complies with the foregoing it shall have no further liability to the Customer in respect of the Goods and/or Services. Any Goods replaced shall belong to the Supplier.
- 9.8 These Conditions shall apply to any repaired or replacement Goods and/or re-performed Services supplied by the Supplier.
- 9.9 Conditions 9.9 and 9.10 set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of: (a) any breach of these Conditions or any Contract; (b) any use made or resale by the Customer of any of the Goods and/or Services or any product incorporating the Goods; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with any Contract. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 9.9.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.9.2 fraud or fraudulent misrepresentation;
- 9.9.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 9.9.4 defective products under the Consumer Protection Act 1987; or
- 9.9.5 any other liability that cannot be in any way excluded or limited at law.
- 9.10 Except as otherwise provided in Condition 9.9: (a) the Supplier'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 any Contract shall be limited to the higher of the price of the Goods and/or Services to be supplied under the Contract and the actual proceeds received by the Supplier under its relevant insurance policy in respect of the liability in question; and (b) the Supplier shall not be liable to the Customer for any economic loss, including, without limitation, any loss of profits, business, contracts, revenue, goodwill or anticipated savings or for any losses, damages, costs or expenses however incurred or suffered of an indirect or consequential nature.
- 9.11 The Supplier shall not be liable to the Customer 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 Supplier's obligations in relation to the Goods and/or Services if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing, and without limitation, the following shall be regarded as causes beyond the Supplier's reasonable control:

9.11.1 acts of God, including (but not limited to) fire, flood, earthquake, windstorm or other natural disaster;

9.11.2 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off diplomatic relations or similar actions;

9.11.3 terrorist attack, civil war, civil commotion or riots;

9.11.4 nuclear, chemical or biological contamination or sonic boom;

9.11.5 voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);

9.11.6 fire, explosion or accidental damage;

9.11.7 extreme adverse weather conditions;

9.11.8 collapse of building structures, failure of plant

machinery, machinery, computers or

9.11.9 any labour dispute, including but not limited to strikes, industrial action or lockouts;

9.11.10 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this Condition); and

9.11.11 interruption or failure of utility service, including but not limited to electric power, gas or water.

and demands arising in respect of any claim that the Supplier has infringed any patent, copyright, rights in design, trade mark or other intellectual property rights of any other person, as a result of the Supplier carrying out any instructions given by the Customer (including, but not limited to, manufacturing the Goods or performing the Services to the Customer's specification, drawing or plan).

10.2 The Customer shall fully indemnify, and keep fully indemnified, the Supplier in respect of any liability, claims, actions, costs (including legal costs), damages, expenses, losses and charges arising or incurred by the Supplier as a result of any damage or injury whatsoever to any person or to any property caused by the negligence of the Customer or its employees, agents or subcontractors.

10.3 The Customer shall fully indemnify, and keep fully indemnified, the Supplier against all losses (including losses of profit), costs (including legal costs), claims, expenses, damages or other injury or the like which the Supplier incurs because of the Customer's breach of any of these Conditions or any Contract.

11. Insolvency of the customer

11.1 For the purposes of Condition 8.5, the relevant events are:

11.1.1 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

10. Indemnity

10.1 The Customer shall fully indemnify, and keep fully indemnified, the Supplier from and against any and all claims, actions, costs (including legal costs), damages, expenses, charges, losses (including losses of profit)

- 11.1.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
- 11.1.3 (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- 11.1.4 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 11.1.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- 11.1.6 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver; or
- 11.1.7 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets; or
- 11.1.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or like any of the events mentioned in Condition 11.1.1 to Condition 11.1.7 (inclusive); or
- 11.1.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 11.1.10 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 11.1.11 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 11.2 If the Customer becomes subject to any of the events listed in Condition 11.1, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then the Supplier shall: (a) be entitled to cancel the Contract or suspend any further deliveries under the Contract, or any other contract between the Supplier and the Customer, without any liability to the Customer; and (b) if the Goods have been delivered or the Services performed but not paid for the price for the Goods and/or Services shall become immediately due and payable notwithstanding any previous agreement to the contrary; and (c) the Customer's right to possess the Goods under Condition 8.3 shall cease.
- 12. Export terms**
- 12.1 In these Conditions "Incoterms" means 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. Unless the context otherwise requires, any term or expression which is defined in or given a meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

- 12.2 Where the Goods are supplied for export from the United Kingdom, the provision of this Condition 12 shall (subject to any special terms agreed in Writing between the Customer and the Supplier) apply notwithstanding any other provision of these Conditions.
- 12.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 12.4 Unless otherwise agreed in Writing between the Customer and the Supplier, the Goods shall be delivered EXW (as defined in the Incoterms) and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 12.5 The Customer shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

13. Data protection

- 13.1 When the Customer is acting as a Consumer and provides the Supplier with Personal Data or Personal Data is obtained by the Supplier, or on the Supplier's behalf, from the Customer in connection with the Agreement, the Supplier will handle this in accordance with the Supplier's Privacy Statement a copy of which is available at <http://www.ind-weld.co.uk/en/footer/privacy-statement.html> or which the Supplier may provide to the Customer by another method depending on the way that the Customer is contracting with the Supplier. The Customer is required to read the Supplier's Privacy Statement

before the Customer provides the Supplier with Personal Data.

- 13.2 When the Customer is acting other than as a Consumer and provides the Supplier with Personal Data or Personal Data is obtained by the Supplier, or on the Supplier's behalf, from the Customer (including from the Customer's employees, agents and other representatives) in connection with the Agreement ("Shared Personal Data"):
- 13.2.1 the Customer warrants and undertakes that the Customer will be responsible for ensuring that there is a lawful basis on which the Shared Personal Data can be processed, including in respect of the disclosure of Shared Personal Data to the Supplier and processing of Shared Personal Data by the Supplier in connection with the Processing Purpose and performance of our obligations under the Agreement;
- 13.2.2 the Customer warrants and undertakes that the Customer will be responsible for ensuring that appropriate privacy notices and/or policies, are communicated to the relevant Data Subjects which explain how the Shared Personal Data will be processed, including the fact that the Shared Data may be disclosed to the Supplier in connection with the Processing Purposes and performance of the Supplier's obligations under the Agreement;
- 13.2.3 the Supplier and the Customer each agree not to do or permit anything to be done through act or omission which would cause the other to incur any liability under DP Laws; and
- 13.2.4 the Supplier and the Customer each agree to comply with DP Laws always in respect of the processing of the Shared Personal Data.

14. General

- 14.1 If the Supplier is Industrial Supplies and Services Limited, it may perform any of its obligations or exercise any of its rights hereunder by itself or through any Subsidiaries, provided that any act or omission of any Subsidiaries in performing any such obligations or exercising any such rights shall be deemed to be the act or omission of Industrial Supplies and Services Limited. If the Supplier is such a Subsidiary, that Subsidiary may perform any of its obligations or exercise any of its rights hereunder by itself or through Industrial Supplies and Services Limited or any other Subsidiaries, provided that any act or omission of Industrial Supplies and Services Limited or any such other Subsidiaries in performing any such obligations or exercising any such rights shall be deemed to be the act or omission of that Subsidiary.
- 14.2 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.3 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligation under the Contract without the prior written consent of the Supplier.
- 14.4 Any notice required or permitted to be given by either party to the other under the Contract shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 14.5 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.6 No waiver by the Supplier of any breach of, or default under, the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.7 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.
- 14.8 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.
- 14.9 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 14.10 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.11 The Contract shall be governed by, and construed in accordance with, the laws of England and Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.
- 14.12 Nothing in the Contract shall limit the right of any party to it to take proceedings or actions against the other in any other court or competent jurisdiction in the domicile of that other, nor shall the taking of them in one or more jurisdiction preclude the taking of them in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.