

CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 In these Conditions:

'BUYER' means BLAKE AERIALS LIMITED whose registered office is at 177/179 Rutland Road Sheffield S3 9PT (registered in England under number 1007505)

'CONDITIONS' means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

'CONTRACT' means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services

'DELIVERY ADDRESS' means the address stated on the Order

'GOODS' means the goods (including any instalment of the goods or any part of them) described in the Order and which the Buyer agrees to buy from the Seller

'ORDER' means the Buyer's purchase order to which these Conditions are annexed or endorsed

'PRICE' means the price of the Goods and/or the charge for the Services including carriage packing and insurance but excluding VAT

'SELLER' means the person so described in the Order

'SERVICES' means the services (if any) described in the Order

'SPECIFICATION' includes any plans, drawings, data or other information relating to the Goods or Services

'TOOLS AND MOULDS' means any equipment made or purchased for the manufacture of any items to be supplied under this or any other contract between the parties

'WRITING' includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

2. BASIS OF PURCHASE

2.1 The Conditions shall apply to all Contracts for the purchase of Goods by the Buyer from the Seller to the exclusion of all other terms and conditions including any terms or conditions to which the Seller may purport to apply under any sales offer or similar document

2.2 Despatch or delivery of the Goods by the Seller to the Buyer shall be deemed conclusive evidence of the Seller's acceptance of these Conditions

2.3 No variation to the Order or these Conditions (including any special terms and conditions agreed between the parties) shall be binding unless agreed in writing by the Buyer

3. SPECIFICATIONS

3.1 The quantity quality and description of the Goods and the Services shall subject as provided in these Conditions be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer

3.2 Any Specification supplied by the Buyer to the Seller or specifically produced by the Seller for the Buyer in connection with the Contract together with the copyright design rights or any other intellectual property rights in the Specification shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller or as required for the purpose of the Contract

3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture packaging packing and delivery of the Goods and the performance of the Services

3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture processing or storage at the premises of the Seller or any third party prior to despatch and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing

3.5 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within 7 days of inspection or testing the Seller shall take such steps as are necessary to ensure compliance

3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course

4. ACKNOWLEDGEMENT OF ORDER

4.1 The Seller will acknowledge the Order in writing within seven days of receipt unless the time for delivery is shorter than seven days in which case the acknowledgement must be made within 48 hours of receipt of the Order

4.2 The Seller's acknowledgement must specify the Buyer's order number the items to be delivered their price and the date of delivery

5. PRICE OF THE GOODS AND SERVICES

5.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated shall be:

5.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice) and

5.1.2 inclusive of all charges for packaging packing shipping carriage insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax

5.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing

5.3 The Buyer shall be entitled to any discount for prompt payment bulk purchase or volume of purchase customarily granted by the Seller whether or not shown on its own terms and conditions of sale

6. TERMS OF PAYMENT

6.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services as the case may be and each invoice shall quote the number of the Order

6.2 The Seller shall deliver to the Buyer a detailed statement at the end of each month where goods have been delivered to the Buyer and the Seller shall ensure that all relevant invoices are accurately incorporated in that statement

6.3 Unless otherwise stated in the Order (and subject to compliance by the Seller with the obligation contained in clause 6.2 above) the Buyer shall pay the Price of the Goods and the Services on a monthly account basis namely by the 21st day of the month following the month of receipt by the Buyer of a proper invoice or if later after acceptance of the Goods or Services in question by the Buyer

6.4 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller

7. DELIVERY

7.1 The Goods shall be delivered to the Delivery Address on the date or within the period stated in the Order during the Buyer's usual business hours

7.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of Order the Seller shall give the Buyer reasonable notice of the specified date

7.3 The time of delivery of the Goods and performance of the Services is of the essence of the Contract

7.4 At least 24 hours prior to the time of Delivery the Seller shall supply the Buyer with confirmation of the order number together with a detailed list of all the Goods which are to be included in the order

7.5 A delivery note or invoice quoting the Buyer's order number together with the Seller's part number and Buyer's part number (if quoted in the Order) for each item must accompany each delivery or consignment of the Goods and must be displayed prominently

7.6 Unless otherwise stated in the Order or agreed in writing by the Buyer delivery at the Delivery Address is to be made only within the following times:

Monday to Thursday (inclusive) 8.30 am to 12.30 pm
1 pm to 3.30 pm

Friday 8.30 am to 12.30 pm
1 pm to 2 pm

7.7 If the Goods are to be delivered or the Services are to be performed by instalments the Contract will be treated as a single contract and not severable

7.8 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or if later within a reasonable time after any latent defect in the Goods has become apparent

7.9 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services

7.10 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods whether or not any Goods are accepted by the Buyer

7.11 If the Goods are not delivered or the Services are not performed on the due date then without prejudice to any other remedy the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damages for delay 2% per cent of the Price for every week's delay, up to a maximum of 16% per cent

7.12 If delivery is effected by a number of parcels or packages then the Seller must ensure that each parcel or package of the Delivery or consignment is labelled to correspond with the Purchase Order

7.13 In the case of deliveries to be unloaded by the Buyer by forklift truck then unless otherwise agreed in writing by the Buyer the Seller shall ensure that no such deliveries shall exceed 1 tonne in weight per load

7.14 In the case of deliveries of raw steel in length form unless otherwise agreed in writing by the Buyer delivery shall be effected in bundles or packages not exceeding 1/2 tonne each in weight

7.15 In any event it shall be the Seller's responsibility prior to delivery to check with the Buyer on the appropriate method of packaging delivery and unloading

8. RISK AND PROPERTY

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract

8.2 The property in the Goods shall pass to the Buyer upon delivery unless payment for the Goods is made prior to delivery when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract

9. WARRANTIES AND LIABILITY

9.1 The Seller warrants to the Buyer that the Goods:

9.1.1 will be of merchantable quality and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed

9.1.2 will be free from defects in design, material and workmanship

9.1.3 will correspond with any relevant Specification or sample

9.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods and

9.1.5 will be manufactured stored tested and packed in accordance with all British Standards applicable to them

9.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances

9.3 Without prejudice to any other remedy if any Goods or Services are not supplied or performed in accordance with the Contract then the Buyer shall be entitled

9.3.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days or

9.3.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid

9.4 Without prejudice to any other remedy if any Goods are not supplied in accordance with the Contract then the Buyer shall be entitled to recover from the Seller the costs incurred by the Buyer (including labour materials and setting up costs) in working on raw material which is found not to conform with the Contract

9.5 The Seller shall indemnify the Buyer in full against all liability loss damages costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

9.5.1 breach of any warranty given by the Seller in relation to the Goods or the Services

9.5.2 any claim that the Goods infringe or their importation use or resale infringes the patent copyright design right trade mark or other intellectual property rights of any other person except to the extent that the claim arises from compliance with any Specification supplied by the Buyer

9.5.3 any liability under the Consumer Protection Act 1987 in respect of the Goods

9.5.4 any act or omission of the Seller or its employees agents or sub-contractors in supplying delivering and installing the Goods and

9.5.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services

9.6 Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of its obligations in relation to the Goods or the Services if the delay or failure beyond that party's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond either party's reasonable control:

9.6.1 Act of God explosion flood tempest fire or accident

9.6.2 war or threat of war sabotage insurrection civil disturbance or requisition

9.6.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority

9.6.4 import or export regulations or embargoes

9.6.5 strikes lock-outs or other industrial actions or trade disputes (whether involving employees or either the Seller or the Buyer or of a third party)

9.6.6 difficulties in obtaining raw materials labour fuel parts or machinery

9.6.7 power failure or breakdown in machinery

10. TERMINATION

10.1 The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which the Buyer

has exercised its right of cancellation less the Seller's net saving of cost arising from cancellation

10.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

10.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or

10.2.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Seller or

10.2.3 the Seller ceases or threatens to cease to carry on business or

10.2.4 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly

11. TOOLS AND MOULDS

11.1 This clause shall apply in respect of all Tools and Moulds made or purchased for the manufacture of any items to be supplied under this or any other contract

11.2 Where the Order relates to the supply of Tools and Moulds (Buyer's Tools) and where with the consent of the Buyer the Buyer's Tools are to be retained in the possession of the Seller the property in such Tools shall be deemed to pass to the Buyer when the Buyer shall have paid for them

11.3 Where the Contract provides for any contribution by the Buyer towards the cost of any Tools or Moulds required by the Seller for the manufacture of parts to be supplied under this Contract (Seller's Tools) the Buyer shall have the right to have the Seller's Tools transferred to him without further payment (whereupon the property in such Tools shall pass to the Buyer) if the Seller is unable or unwilling for any reason to execute any order for Goods of the required quality from such Tools within a reasonable period and at competitive prices or being an individual or firm shall become insolvent or become insolvent or being a company shall go into liquidation (except for the purpose of amalgamation or reconstruction) and if the Buyer shall have discharged all his liabilities to the Seller whether under this Contract or otherwise

11.4 The Seller undertakes at his own expense to keep all Buyer's Tools and Seller's Tools in good repair and not to use them for any other customers of the Seller without the Buyer's consent in writing

11.5 The Seller undertakes not to sell or dispose of any Buyer's Tools or Seller's Tools or create or allow to be created any lien charge or other encumbrance over such Tools

11.6 Whilst the Buyer's Tools are in the Seller's possession they shall be clearly marked by the Seller as the property of the Buyer and shall be at the risk of the Seller and the Seller shall be responsible for all obligations and liabilities in respect of such Tools or of their operation as though the Seller were the owner thereof

11.7 The Buyer shall have the right at any time on giving reasonable notice to enter upon the Buyer's premises to inspect or make tests on the Buyer's Tools or Seller's Tools and at his discretion to take possession of and remove from the Seller's premises any Tools or Moulds of which he has become the owner by virtue of clause 11.2 or 11.3 hereof

12. HEALTH AND SAFETY REGULATIONS

12.1 In the event that a contractor representative driver or other visitor employed by or connected with the Seller has occasion to attend upon any premises of the Buyer for any purpose whatsoever in connection with the Contract then it shall be the Seller's responsibility (so far as is reasonable) to ensure that any such visitor is aware of any complies with all relevant health and safety regulations

13. GENERAL

13.1 The Order is personal to the Seller and the Seller shall not without the Buyer's prior written consent assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract

13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its 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

13.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision

13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby

13.5 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators

13.6 The Contract shall be governed by the laws of England and Wales

13.7 The parties submit to the jurisdiction of the Courts of England and Wales