

Terms and conditions of purchase

1 DEFINITIONS

In these conditions:-

"Affiliate" shall mean those corporations, companies and business entities which are, directly or indirectly controlled by, controlling or under common control with Balmoral.

"Balmoral" means Balmoral Group Limited registered in Scotland under the number 72544.

"Conditions" mean the standard terms and conditions of purchase set out in this document and any special terms included on the Order Form.

"Contract" means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the Services formed by the Supplier's acceptance of the Order which, however made or communicated, shall be deemed made subject to these Conditions.

"Delivery Address" means the address or delivery stated on the Order.

"Delivery Date" means the delivery date or period specified on the Order.

"Goods" means all those goods and materials described in the Order.

"Intellectual Property Rights" means patents, trade marks, service marks, trade names, design rights (whether registrable or otherwise), copyright, knowhow and other similar rights or obligations whether registrable or not in any country.

"Order" means the purchase order of Balmoral or one of its Affiliates for the supply of the Goods and/or supply of Services.

"Price" means the total price of the Goods and/or Services.

"The Purchaser" means the entity (being either Balmoral or an Affiliate) specified in the Order or, in default thereof, Balmoral.

"Services" means the services (if any) described in the Order.

"Specification" means the plans, drawings, data and other technical information relating to the Goods and/or Services.

"Standards" means the safety and technical standards of the Goods and/or Services referred to in the Specification.

"The Supplier" means the person, firm or company to whom the Order is addressed.

"Writing" includes e-mail, telex, cable, facsimile transmission and comparable means of communication.

2 APPLICATION OF TERMS

(a) These Conditions are the only conditions upon which the Purchaser is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

(b) Each Order for Goods or Services by the Purchaser from the Supplier shall be deemed to be an offer by the Purchaser to purchase Goods or Services subject to these Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

(c) No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or document will form part of the Contract and the Supplier waives any right it otherwise might have to rely on such terms and conditions.

3 BASIS OF PURCHASE

The Order constitutes an offer by the Purchaser to purchase the Goods and/or acquire the Services subject to these Conditions. These Conditions shall apply to the exclusion of any other terms and conditions on which any quotation has been given to the Purchaser or subject to which the Order is accepted or purported to be accepted by the Supplier. No variation to the Order or to these Conditions shall be binding unless made in writing and signed by both parties.

4 INSPECTION AND TESTING

(a) The Purchaser shall be entitled to:-

(i) inspect and test the Goods during their manufacture, processing or storage at any reasonable time at the Supplier's works or at the premises of subcontractors and the Supplier shall afford to the Purchaser all such facilities as may be reasonably required by the Purchaser; and

(ii) require one or more samples to be submitted for inspection and testing prior to despatch of the Goods.

(b) Such inspection and testing shall not constitute acceptance by the Purchaser and does not relieve the Supplier or any subcontractor of any responsibility under the Order, whether implied or expressed.

(c) The Supplier 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.

(d) If as a result of any inspection or testing carried out in accordance with clauses 4(a)(i) and (ii) the Purchaser is not satisfied that the Goods comply in all respects with the relevant Contract, or with any other Specification notified to the Supplier by the Purchaser, and the Purchaser so informs the Supplier within 7 working days of such inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance.

(e) In the event that any of the Goods fail inspection and/or testing, the Purchaser reserves the right to charge the Supplier any costs incurred by the Purchaser for subsequent reinspection and/or testing in respect of travel and accommodation.

5 DELIVERY

(a) The Supplier shall deliver the Goods to and the Services shall be performed at the Delivery Address during normal working hours unless specified otherwise in the Order. In the event that the Supplier delivers the Goods to the wrong address, the Purchaser reserves the right to refuse to accept delivery at that address and/or to charge the Supplier for the costs of subsequent transfer.

(b) The Supplier shall deliver the Goods on the Delivery Date. The Supplier shall perform the Services for the period specified in the Order. Time stipulated for delivery of the Goods or performance of the Services shall be of the essence.

(c) In the event of delivery being delayed by a Force Majeure Event, as set out in Clause 18, provided that the Supplier shall give the Purchaser notice in writing immediately of such delay, the Purchaser shall grant the Supplier such extension of time as may be reasonable.

(d) The Supplier shall properly pack and secure the Goods, and all despatches must prominently bear the Purchaser order number. The Purchaser shall not be obliged to accept delivery in instalments.

(e) If for any reason the Purchaser is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery in accordance with sub-clause (b) above the Supplier shall at its own expense store the Goods, insure and safeguard them and take all steps to prevent their deterioration until their actual delivery.

(f) The Purchaser shall be entitled to reject any of the Goods delivered which are not in accordance with the Contract, or in accordance with any other Specification notified to the Supplier, and shall not be deemed to have accepted any Goods until the Purchaser 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.

(g) The Supplier shall provide the Purchaser in good time with any instructions or other information required to enable the Purchaser to accept delivery of the Goods or performance of the Services.

(h) Delivery of the Goods or performance of the Services shall be made or completed not later than the Delivery Date and the Supplier shall be liable to the Purchaser for the cost of delivery, whether direct or consequential, if it is delayed or prevented, in whole or in part, from delivering the Goods or performing the Services or otherwise performing its obligations under the Contract for any reason whatsoever except where the Supplier is so delayed or prevented due to a Force Majeure Event, as set out in clause 18.

6 TITLE AND RISK

(a) Subject to subclause (c) below, title and risk of damage to or loss of the Goods shall pass to the Purchaser only upon acceptance by the Purchaser, without prejudice to any right of rejection which may accrue to the Purchaser under these Conditions. Any loss or damage to the Goods prior to that time shall be borne by the Supplier.

(b) If the Supplier postpones delivery at the request of the Purchaser pursuant to Clause 5(e) above, title in the Goods shall pass to the Purchaser seven days (7) after the date of receipt of notification from the Supplier that the Goods are due and ready for delivery or on such other date as may be agreed in writing between the parties but the Goods shall remain at the Supplier's risk until delivery.

(c) Where the Purchaser pays for all or part of the Goods prior to delivery, title in those Goods paid for (but not risk) shall pass to the Purchaser on the date of payment.

(d) Goods delivered or Services supplied and/or received for under this Order are accepted contingently only upon their being in full conformity with the Specification and these Conditions and are subject to the Purchaser's inspection and approval at the place of delivery. Such receipt shall not prejudice the Purchaser's rights in respect of hidden defects: (1) which could be observed only after use or close inspection and which inspection may not take place until a time subsequent to actual receipt; or (2) which may not be apparent or discovered by inspection at the time of delivery or supply, but which may be discovered at a later date by the Purchaser.

7 PRICE AND PAYMENT

(a) Subject to the subclause (b) below, the Purchaser shall pay the Supplier the Price in accordance with the payment terms set out in the Order.

(b) The Price shall be exclusive of any applicable Value Added Tax (which shall be payable by the Purchaser subject to receipt of a VAT invoice) and inclusive of all charges for packaging, packing, shipping, carriage, insurance, delivery of the Goods to the Delivery Address and any duties, or levies other than VAT.

(c) The Purchaser reserves the right to set off against the Price any sums owed by the Supplier to the Purchaser in respect of Goods and/or Services or other materials and Services under the Contract or otherwise.

(d) In the event that no payment terms have been pre-agreed between the Supplier and the Purchaser (Procurement), the Purchaser shall pay for the Goods and/or Services 60 days following the end of the month in which the Goods and/or Services are received or in which the invoice for the Goods and/or Services is received, whichever is the later.

(e) The Supplier must quote the Order reference on all invoices and send them to the address indicated on the Order. The Purchaser will return invoices to the Supplier for payment. Incorrectly addressed invoices may be subject to delay in payment.

(f) Payment by the Purchaser shall be without prejudice to any claims or rights which it may have against the Supplier and shall not constitute any admission by the Purchaser as to the proper performance by the Supplier of its obligations hereunder.

(g) Wherein the terms on the Order expressly allow for an increase in the Price, or elsewhere in the context of a regular series of repeat orders, the Suppliers shall give three (3) months notice of any increase in its pricing.

8 WARRANTY AND GUARANTEE

(a) In performing the Contract the Supplier as a person supplying goods and/or services in the course of his business, shall exercise proper skill and judgement so as to ensure that the Goods or Services shall be fit for the purpose of the Purchaser, and it is agreed that the Purchaser is relying on this provision. The Supplier shall satisfy himself that he understands the Purchaser's requirements so as to be in a position to comply with his obligations and also so as to prevent delay or account of any modifications which may be necessary to meet the Purchaser's needs. The costs of any modification shall be deemed to be included in the Price.

(b) The Supplier specifically warrants and represents to the Purchaser that the Goods:

(i) shall be of satisfactory quality and fit for the purpose for which the Goods are designed to fulfill, or are commonly bought;

(ii) shall be fit for any purpose or purposes made known expressly or impliedly by the Purchaser to the Supplier, and will conform in all respects with the terms of the Order;

(iii) shall be free from defects in design, materials and workmanship;

(iv) shall conform to the Standards and the Specification;

(v) shall comply with all statutory requirements and regulations relating to the sale of the Goods; and

(vi) were manufactured using all reasonable care and skill; and that the Purchaser shall:

(i) be provided with adequate instructions to enable the Purchaser to make full use of the Goods; and

(ii) acquire the Goods free from all encumbrances.

(c) In respect of the Services, the Supplier specifically warrants and represents to the Purchaser that it shall:

(i) perform the Services with reasonable care and skill;

(ii) provide suitable qualified and experienced personnel to carry out the Services or related tasks;

(iii) provide the Services in a timely and efficient manner and in accordance with any reasonable instruction notified by the Purchaser.

(d) The Supplier warrants and represents to the Purchaser that the sale or use of the Goods and the use of the Services does not infringe any Intellectual Property Right of any third party.

(e) If any Goods or Services are not supplied or performed in accordance with the Contract then the Purchaser may, without prejudice to any of its other remedies:

(i) require the Supplier to repair the Goods or to supply replacement Goods or Services in accordance with the Contract and within such reasonable time period as the Purchaser may stipulate; or

(ii) treat the Contract as discharged by the Supplier's breach and require the refund to the Purchaser of the Price (or part thereof) paid by the Purchaser in respect of such Goods or Services.

(f) If, having required the Supplier to repair the Goods pursuant to 8(e)(i) above, the Purchaser has good reason to believe that such repair will not be successful or timely, without prejudice to any of its other rights or remedies, the Purchaser shall still be entitled to:

(i) require the Supplier to supply replacement Goods as per 8(e)(i); or

(ii) take the option set forth at 8(e)(ii).

(g) Repaired Goods and/or replacement Goods or Services provided in accordance with 8(e) above, shall be subject to the provisions of this Agreement in the same manner as those originally provided hereunder.

(h) Without prejudice to the Purchaser's remedies or rights (whether hereunder, statutory or otherwise), and notwithstanding any inspection and acceptance of the Goods by the Purchaser, the Supplier shall guarantee the Goods for a period

of twelve (12) months from the date of delivery to the Purchaser and shall investigate the cause of faults (including, but not limited to, glitches and operating difficulties) and promptly repair to the Purchaser's satisfaction or replace without charge to the Purchaser all or any part of the Goods found to be faulty by reason of defective material, design or workmanship within the guarantee period. For the avoidance of doubt, nothing in these Conditions shall operate to exclude any warranty, guarantee or condition on the part of the Supplier as to quality, fitness for purpose or any other matter, implied by law, custom of the trade or otherwise all of which warranties, guarantees and conditions shall accordingly apply unless expressly excluded by the terms of the Order.

9 LIABILITY AND INDEMNITY

(a) Without prejudice to the generality of these Conditions, the Supplier undertakes to keep the Purchaser fully indemnified against all liability, loss, damage, costs and expenses (including but not limited to legal expenses) directly or indirectly arising from or incurred or paid by the Purchaser in relation to:-

(i) any damage to the Purchaser's property and any claims for loss, injury or death to any third party or the property of any third party by reason of the Supplier's negligence or any act or omission on the part of employees, subcontractors or agents of the Supplier arising out of the execution of the Order or the failure to adequately insure against this liability;

(ii) failure of the Goods to be of satisfactory quality and fit for the purpose for which they were designed to fulfil or other purpose made known expressly or impliedly by the Purchaser to the Supplier;

(iii) any defect or fault discovered in the Goods including, without limitation, defects in design, materials and workmanship;

(iv) failure of the Goods to conform to the Standards and the Specification;

(v) failure of the Goods to comply with all statutory requirements and regulations relating to the sale of the Goods;

(vi) any encumbrance over the Goods;

(vii) failure to provide the Services with reasonable care and skill;

(viii) failure of the Supplier to provide suitable qualified and experienced personnel to carry out the Services or related tasks;

(ix) failure to provide the Services in a timely and efficient manner;

(x) any claim for infringement of any Intellectual Property Rights which arises as a result of the sale or use of the Goods or Services; and

(xi) delivery of the Goods or performance of the Services after the Delivery Date.

(b) The Purchaser shall not be liable to the Supplier in contract:

(i) any loss of revenue, business, contracts, or profits; or

(ii) any indirect or consequential loss, however arising.

(c) The Purchaser's aggregate liability in contract, tort or otherwise, including negligence, however arising out of or in connection with the Contract shall be limited to the Price under the Contract.

(d) Nothing in this Contract shall limit the liability of either party for death or personal injury resulting from negligence, fraud or deceit of either party or any other liability to the extent that it cannot be limited by law.

10 REGULATIONS AND LABELLING

The Supplier shall be responsible for compliance with all relevant laws and regulations, including those of any country where the Goods are to be delivered or the Services supplied or, to the knowledge of the Supplier, ultimately resold or used, and the Supplier shall ensure that the Goods when delivered to the Purchaser are labelled in such a way as to ensure the safety which a person is entitled to expect from the Goods.

11 CONFIDENTIALITY

(a) The parties shall treat each Order as confidential and, in particular, the Supplier shall not make use of the name the Purchaser or the name of the Purchaser's customers or suppliers for any advertisement, announcement or publicity without the prior written consent of the Purchaser.

(b) The Specification and all information supplied therewith, both of which contain Intellectual Property Rights, shall remain the property of the Purchaser and are confidential. The Supplier shall not without the prior written consent of the Purchaser use the Specification except for the purpose of the Order and shall not communicate such information to third parties except insofar as may be necessary for the purpose of the Order. The Supplier will ensure that third parties who are given confidential information keep that information confidential.

(c) On completion of the Order or the termination of the same, at the request of the Purchaser, the Supplier must return to the Purchaser the Specification and any other documentation supplied.

12 TERMINATION

(a) Without prejudice to any claim or right it might otherwise make or exercise the Purchaser shall have the right forthwith to terminate the Order by notice prior to the Delivery Date or if the Supplier commits any breach or non-observance of any of the Conditions, including a failure to deliver by the Delivery Date, whereupon the Purchaser shall be entitled:

(i) to return to the Supplier at the Supplier's risk and expense any of the Goods and/or Services already delivered and to recover from the Supplier any monies paid by the Purchaser in respect of such Goods and/or Services; and

(ii) to recover from the Supplier any additional expenditure incurred by the Purchaser in obtaining other Goods and/or Services in replacement of the Goods and/or Services.

(b) The Purchaser shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier if:-

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

(ii) within a non-UK jurisdiction and subject to any foreign law, the Supplier makes an equivalent or similar arrangement to that in (i) above or becomes subject to an equivalent or similar order or condition;

(iii) an encumbrancer takes possession, or a receiver is appointed of any of the property of the Supplier; or

(iv) the Supplier ceases, or threatens to cease, to carry on business; or

(v) the Purchaser reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

(c) The Purchaser 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 Supplier at any time in which event the Purchaser's sole liability shall be to pay to the Supplier the Price for the Goods and/or Services supplied prior to such cancellation date. The Purchaser shall have no further liability to the Supplier as a result of any such cancellation.

13 NOTICES

All notices, demands, or other communications under this Contract shall be given or made in writing and shall be delivered personally or sent by first class post or facsimile transmission, addressed to the other party at the address set out in the Contract or at such other address as may be designated by notice from such other party. Any notice, demand or other communication sent by first class post shall be deemed to have been delivered (in the absence of evidence of earlier receipt) two days after the date of mailing. Any notice, demand or communication given by facsimile transmission shall be deemed to have been delivered on the next working day following transmission.

14 SPARES SUPPORT

The Supplier shall keep spare parts for the Goods for a period of ten (10) years from the date of the Order and where the Goods or spare parts thereof are to be made obsolete, the Supplier will give the Purchaser at least twelve (12) months' notice in writing.

15 ASSIGNMENT/SUB-CONTRACTING

(a) The Supplier shall not assign or sub-contract the Contract or any part of it without the prior written consent of the Purchaser.

(b) In any case where the Contract is assigned or sub-contracted in accordance with Clause 15(a) above, the Supplier will ensure that the assignee or sub-contractor, as the case may be, agrees to be bound by the Contract and these Conditions, and such assignment or sub-contract shall in no way limit or affect the obligations or liability of the Supplier hereunder.

(c) The Purchaser shall be entitled to assign or novate the rights and liabilities under this Contract to any affiliate of the Purchaser at any time.

16 AMENDMENTS

No amendment, interpretation or waiver of any of the provisions of the Order, the Contract or these Conditions shall be effective unless made in writing and signed by the authorised representatives of the Purchaser and the Supplier.

17 ENFORCEMENT

The failure to enforce or to require the performance at any time or times of any of the provisions of the Contract or these Conditions shall not be construed to be a waiver of such provision, and shall not affect either the validity of the Contract or these Conditions or any part thereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of the Contract and these Conditions.

18 FORCE MAJEURE

Neither party shall be liable to the other under the Contract, for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control including any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, the act or omission of Government, war, military operations, acts of terrorism or riot, (a Force Majeure Event"). A Force Majeure Event shall not include any strike or lock-out, trade dispute or labour disturbance or the delay or failure in manufacture, production or supply by third parties of the Goods or Services.

19 DATA PROTECTION

(a) In this paragraph, in addition to the terms defined in clause 1, the following expressions shall have the following meanings:

"Personal Data" means information defined as such in the Data Protection Act 1998 or information treated as personal data under any other law or regulation applicable to the information and subsequent enactment.

"Applicable Data Protection Law" means the EU Data Protection Directive (95/46/EC) or other applicable law or regulation as they may be amended from time to time and subsequent enactment.

(b) The parties acknowledge that in providing the Goods and Services, the Supplier may process Personal Data, and/or disclose it to third parties. The Supplier shall have in place adequate technical and organisational security measures so that the confidentiality of this processing complies with Applicable Data Protection Law.

20 CONTRACTS (RIGHTS OF THIRD PARTIES)

Any Affiliate of the Purchaser shall have the right to enforce the terms of this Contract on its own behalf and / or on behalf of the Purchaser.

21 ENTIRE AGREEMENT

(a) The Contract represents the entire understanding between the Supplier and the Purchaser in relation to its subject matter and supersedes all prior agreements, understandings or arrangements made by either party, whether oral or written.

(b) Where special conditions specified by the Purchaser are stated on the face of the Order, such special conditions shall apply equally with these Conditions, except that where there is any inconsistency between the two, the special conditions stated on the face of the Order shall apply.

(c) No variation to the Contract shall be effective unless reduced to writing and signed by or on behalf of a duly authorised representative of each Party.

22 GOVERNING LAW

The Contract and the relationships of the parties in connection with the subject matter of the Contract will be governed by and determined in accordance with the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the English courts in relation to any legal action or proceedings arising out of or in connection with the Contract.

23 NO AGENCY

None of the parties to the Contract are the agent or representative of any other party to the Contract.

24 REPRESENTATIONS AND WARRANTIES

Each party to the Contract represents and warrants that it has the full legal right, power and authority to perform its obligations under the Contract and these Conditions and that the person executing the Contract has been duly authorised to sign the Contract on behalf of such party.

25 SEVERABILITY

In the event any one or more of the provisions contained in the Contract or these Conditions shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Contract or these Conditions, but the Contract or these Conditions shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Contract and these Conditions shall be carried out as nearly as possible according to their original terms and intent.