Powerworks Maintenance Services Ltd Standard Terms and Conditions of Sale

Applicable to Powerworks Maintenance Services Ltd and any company which is a subsidiary thereof as defined by s.736 of the Companies Act 1985.

1. **Contracts**

a) Contracts are made and orders are accepted only upon and subject to these Conditions of Sale. All other conditions are hereby excluded unless specifically accepted in writing by Powerworks Maintenance Services Ltd (hereinafter called 'the Sellers').

b) In entering into a contract with the Sellers, the Buyer acknowledges that the contract has not been induced by any representations orally or in writing made by the Sellers, their servants or agents

c) No quotation, estimate or tender given or made by the Sellers shall form an offer capable of acceptance by the Buyer. A binding contract for sale shall only be created upon the acceptance in writing by the Sellers of the Buyer's order or other offer to purchase.

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

2. **Prices**

a) Unless expressly stated otherwise in any quotation issued by the Sellers to the Buyer, all prices quoted are ex works and exclude the cost of packing. Any applicable value added tax or any other duties paid or payable by the Sellers shall be added to the price and shall be payable by the Buyer.

b) Firm price quotations are valid for a period of one month only from the date of quotation. The Sellers may, at their absolute discretion, accept or reject any order placed by the Buyer.

c) In the event of the Buyer cancelling a part of the order in accordance with the provisions of Clause 11, the Sellers reserve the right to revise the price or prices quoted for goods already delivered.

d) The Sellers reserve the right to review the contract price(s) in the event of devaluation of the pound sterling or fluctuation in the rates of foreign exchange.

3. **Conditions and warranties**

a) Whilst all descriptions and illustrations of the goods in The Seller's or its Supplier's catalogues, brochures, technical specifications or price lists provided by the Sellers have been carefully prepared, they are intended nevertheless for general guidance only and do not form part of any contract for sale of goods and no responsibility is accepted for any errors or omissions therein or for any loss or damage resulting from reliance on such descriptions and illustrations.

b) All conditions, warranties, terms and obligations, whether expressed or implied by statute, common law, custom or otherwise (including, without prejudice to the generality of the foregoing, any warranty or condition as to the merchantable quality or fitness for any particular purpose of the goods) are excluded to the fullest effect permitted by law.

c) Where the Sellers agree to provide a specific recommendation, programme of work, or other specially prepared document, the Buyer agrees that he is obliged to check the accuracy and suitability of this document and that the Sellers shall not be liable for any omissions or inaccuracies in the proposal.
If the Buyer claims or detects a defect in the goods, the Buyer will either return those goods to the Seller or if the goods are retained by the Buyer, indemnify and keep the Seller indemnified against all liability and claims which may arise out of or incidental to the defect.

4. **Delivery by the Sellers**

a) Any dates quoted for delivery of the goods are approximate only and the Sellers shall not be liable for any delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously and expressly agreed by the Sellers in writing.

b) Where goods are offered for delivery to a site, the Sellers' obligation is to deliver as near to the site as safe hard roads permit. The Buyer is to provide at its own expense the labour required for unloading and stacking.

c) The Sellers reserve the right to deliver goods by instalments and in such event each instalment shall be treated as a separate contract save that the delivery of further instalments may be withheld until goods contained in earlier instalments have been paid for in full.

d) Where goods are held by the Sellers awaiting delivery instructions, they may be subject to a storage charge. For account holding customers, payment for these goods must be made on or before the 30th calendar day following the date of the invoice. For non-account holding customers payment must be at the time of ordering.

5. **Delivery by the Buyer**

a) Delivery of the goods shall be made by the Buyer collecting the goods at the Sellers' premises at any time after the Sellers have notified the Buyer that the goods are ready for collection or, if some other place for delivery is agreed by the Sellers, by the Sellers delivering the goods to that place.

b) On being given notice of delivery to some place other than the Sellers' premises as provided in Clause 5(a) above, the Buyer is responsible for arranging prompt unloading of the motor transport at the final destination. Any additional costs incurred due to delays in discharging motor transport are for the Buyer's account provided such delays occur during the accepted working hours applicable to the area of destination.

c) If the Buyer fails to take delivery of the goods, then, without prejudice to any other right or remedy available to the Sellers, the Sellers may:
   i) Store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
   ii) Sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the contract.

6. **Damage, loss, short delivery**

a) On delivery, the buyer shall examine the goods for defects and completeness. Thereafter no claim for damage in transit, for shortage in delivery or for loss of goods will be entertained unless, in the case of damage, a separate notice in writing is given to the Carriers or to the Sellers within three days of the receipt of the goods, followed within 14 days of the date of advice of despatch by a complete claim in writing; or, in the case of loss of goods, a separate notice in writing and a claim is given to the Sellers and Carriers within 14 days of the date of despatch to the Buyer. In all cases a signature 'unexamined' shall be deemed to be an unconditional acceptance of the goods.

b) The Sellers shall not in any circumstances be liable, whether in contract or tort, to the Buyer for any indirect or consequential damage (including without limitation, loss of profits, loss of contracts or damage to property) or for any claim against the Buyer by any third party and the guarantee given by the Sellers hereunder shall not be transferable to any person.

c) The Sellers' liability for damage or non-delivery of goods duly notified in accordance with the above shall in any event be limited to replacement of the goods within a reasonable time (or, at the Seller's option, refunding the price thereof) whether the damage or non-delivery is due to the Seller's negligence or otherwise.

7. **Credit agreements**

a) Where the Sellers have granted the Buyer a credit facility, the price for the goods and/or service shall be paid by the Buyer on or before the 30th calendar day following the day on which the goods are invoiced ('the due date') or, if the Sellers shall so require under Clause (b) of this Clause, to be paid on demand without any period of notice.

b) The Sellers reserve the right to withdraw or vary credit facilities at any time by summary written notice to the Buyer without either giving any reason for so doing, or thereby incurring any liability to the Buyer.

c) If the Buyer takes goods from the Sellers in excess of the Buyer's credit limit, the Sellers may require payment on delivery for such excess of goods.

8. **Terms of payment**

a) Unless credit facilities have been granted to the Buyer or unless otherwise specifically provided in writing, the price for the goods shall be paid by the Buyer in cash on delivery and in default the Sellers shall be entitled to withhold delivery until payment. In the case of non-cash sales, the Sellers shall be entitled to charge and recover interest from the Buyer on the price of the goods calculated at the rate of four percent per annum above the HSBC Bank base rate from time to time from the due date until date of full payment.

b) The discounts allowable to the Buyer are those shown on the Seller's quotation only, and unless otherwise expressly agreed in writing, no other discounts or commissions are to become due or allowable to the Buyer (any previous course of dealing between the parties notwithstanding).

c) Where it is a term of the contract that payment of any of the Sellers' invoices is dependant upon the issue of the certificate of a third party, such as an electrical engineer, the due date for payment of the invoice is not later than 14 days after the issue of the relevant certificate.

9. **Late payment**

a) When payment of any of the Sellers' invoices is overdue, the Seller may suspend its performance of the contracts to which the invoice relates and/or of any other contract then subsisting between the Sellers and the Buyer.

b) In the event of legal action being taken by the Sellers against the Buyer for breach of payment obligations hereunder, the Buyer shall be responsible for all costs and disbursements incurred by the Sellers on a full indemnity basis.

10.1 **Risk and liability**

a) Risk of damage to or loss of the goods shall pass to the Buyer at the time of the delivery or, if the buyer wrongfully fails to take delivery of the goods, the time when the Sellers have tendered delivery of the goods. For the purpose of this clause, 'delivery' shall mean the arrival of the goods at the place of delivery of the Buyer where delivery is by the Sellers, or the safe loading of the goods into the Buyer's vehicles at the Sellers' premises where delivery is through collection by the buyer.

10.2 **Retention of title**

a) Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions, the property in the goods shall not pass to the Buyer until the Sellers have received in cash (or cleared funds) payment in full of the price of the goods and all other goods agreed to be sold by the Sellers to the Buyer for which payment is then due.

b) Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the Seller's fiduciary agent and bailee, and shall keep the goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Sellers for the proceeds of sale or otherwise of the goods, and shall keep all such proceeds from any monies or property of the Buyer and third parties properly stored, protected and insured.

c) Until such time as the property in the goods passes to the Buyer (and provided the goods are still in existence and have not been resold) the Sellers shall be entitled at any time to require the Buyer to deliver up the goods to the Sellers and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the goods are stored and repossess the goods.

d) The Buyer 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 Sellers, but if the buyer does so, all monies owing by the Buyers to the Sellers shall (without prejudice to any other right or remedy of the Sellers) forthwith become due and payable.

11. **Customer cancellation of orders**

Contracts and orders and parts thereof may be cancelled only by the Sellers' written acceptance of such cancellation. Where the Sellers accept such cancellation, the Sellers reserve the right to charge the Buyer with the amount of any losses or expenses directly or indirectly resulting from such cancellation. Where the Sellers do not accept such cancellation, they, the Sellers, reserve the right to recover the invoice price from the Buyer and to charge the Buyer with additional losses both direct and indirect resulting from the cancellation. In any case where the Sellers were required to place a deposit with a manufacturer or supplier in respect of an order, the Sellers may require the Buyer to reimburse such sum in the event of cancellation.

12. **Consents**

The obtaining of any necessary consents for the installation of the goods, whether from local or other authorities or for ensuring that the installation of the goods is in accordance with the provisions of any by-laws, regulations or statutes shall not be the responsibility of the Sellers.

13. **Force majeure**

The Sellers shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of any delay in performing, or of any failure to perform, any of the Sellers' obligations in relation to the goods, if the delay or failure was due to any cause beyond the Sellers' reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Sellers' control.

a) Act of God, explosion, flood, tempest, fire or accident;
b) War or threat of war, sabotage, insurrection, civil disturbance or requisition;
c) Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
d) Imports or export regulations or embargoes;
e) Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Sellers or of a third party);
f) Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
g) Power failure or breakdown in machinery.

14. **Insolvency, bankruptcy**

The Sellers shall have the right to terminate the contract forthwith where the Buyer becomes insolvent or bankrupt or makes arrangements with its creditors or suffers a receiver to be appointed or being a body corporate enters into liquidation (other than in connection with a reconstruction or amalgamation) in any of which cases the Sellers shall have no further obligation hereunder and the price for all goods delivered and work done shall become immediately due and payable.

15. **Law applicable**

These conditions shall be governed and construed in accordance with English law and all disputes arising in connection therewith shall be submitted to the jurisdiction of the English courts.