

APPENDIX E - TERMS AND CONDITIONS

These conditions do not apply to sales so far as they would otherwise be void or ineffective by reason of The Unfair Contract Terms Act 1977. The statutory rights of consumers are preserved throughout.

1. GENERAL

- 1.1 Subject to the above statement and in the provisions of Condition 1.2 these Conditions govern all contracts entered into by the company named overleaf (hereinafter "Seller") for the supply or sale of the goods or services identified overleaf or in correspondence tender or contract referring to these Conditions (hereinafter respectively "Goods" and "Services") to the Buyer named overleaf (hereinafter "Buyer"). Any order given to Seller or the acceptance of any tender issued by Seller shall be deemed to constitute an agreement to be bound by these Conditions.
- 1.2 Where Seller and Buyer enter into a separate form of licence for computer software or data licensed by Seller to Buyer, the terms of that licence shall apply to the software or data the subject thereof in addition to these Conditions. In the event of any inconsistency between these conditions and the licence the terms of the licence shall prevail. Subject thereto these Conditions shall apply to the supply of all Goods and Services by Seller to Buyer.

2. OTHER PRINTED OR STANDARD CONDITIONS

It is agreed that only these Conditions shall apply to contracts between Seller and Buyer and any documents emanating from Buyer which contain printed or standard conditions have been and shall be sent by Buyer and received by Seller on the understanding that they appear on Buyer's documents because they are printed thereon but have no legal effect whatever and Buyer waives any rights which Buyer otherwise may have to rely on such conditions.

3. PREVIOUS CONDITIONS AND VARIATIONS

These Conditions shall have effect in place of any other conditions which may have previously been notified by Seller to Buyer. No addition or variation to these Conditions shall be made or apply, unless expressly agreed in writing by Seller and Buyer.

4. LICENCES OR PERMITS

Where an export or import licence, a foreign exchange control or similar authorisation is required for performance of the contract, the party responsible for obtaining the licence or authorisation shall act with due diligence to obtain it in good time. If on the expiration of three months from the formation of the contract, the requisite licence or authorisation cannot be obtained, either party shall be entitled to regard the contract as never having been formed provided that such party informs the other party of its decision without delay.

5. DESCRIPTION

- 5.1 All Goods are supplied subject to reasonable availability to Seller of suitable materials and components. Seller reserves the right to substitute suitable alternative materials and components where necessary.
- 5.2 All designs, drawings, descriptive matter, weights, dimensions, specifications, brochures, catalogues, price lists and all advertising matter are approximate and by way of identification only, and are intended merely to present a general idea of the goods or services described therein and they shall not form part of any contract, or give rise to any independent or collateral liability of any kind. All prices/discounts quoted therein are subject to alteration or withdrawal from time to time without notice.
- 5.3 All designs, drawings, specifications, brochures, catalogues, price lists, advertising matter and computer software are the copyright of and shall remain the property of Seller and must not be copied, reproduced or divulged either directly or indirectly to any other person without Seller's prior permission.
- 5.4 The provisions of this Condition 5 shall apply to all information and data provided by Seller to Buyer, whether in printed or machine readable form.

6. SELECTION OF GOODS AND LICENCE OF SOFTWARE

- 6.1 To assist Buyer to select those goods which most nearly meet Buyer's requirements Seller includes relevant information in its brochures and catalogues and on computer disk and has developed computer software which is available to Seller on the terms of this Condition 6.
- 6.2 Buyer:-
 - 6.2.1 acknowledges that selecting goods requires Buyer to use its own skill and judgement as to which of Seller's goods meets Buyer's requirement;
 - 6.2.2 warrants that it has such skill and judgement and undertakes to exercise it at all times in selecting goods;
 - 6.2.3 agrees it will be responsible for ensuring that goods selected are fit for Buyer's purpose; and
 - 6.2.4 agrees that Seller shall not be responsible for any selection made by Buyer and will not have any liability to Buyer for any loss damages costs or expenses suffered by Buyer as a result thereof.
- 6.3 Any software or data (including any upgrades thereof) (hereinafter "Software") provided under the contract by Seller to Buyer in machine readable form is hereby licensed non-exclusively to Buyer on the following terms:-
 - 6.3.1 Buyer is licensed to use the Software for the purpose of selecting which of Seller's goods most nearly meet Buyer's requirements and for no other purpose; and
 - 6.3.2 Buyer will not copy, reproduce, translate, adapt, vary or modify the Software nor disclose the Software or any part thereof to any third party without Seller's prior written consent;
 - 6.3.3 Buyer will ensure that its employees agents and other parties who will use the Software are notified of this Condition 6 prior to such employee agent or party using the same;

- 6.3.4 Buyer will replace the current version of the Software with any upgrades supplied by Seller from time to time;
- 6.3.5 Buyer will not during or after the expiry or termination of the contract without Seller's prior written consent infringe or permit the infringement of Seller's copyright or use or adopt any trade mark, trade name or commercial designation that includes or is similar to or may be mistaken for the whole or any part of any trade mark or trade name used by Seller.
- 6.3.6 Buyer may not assign or sub-licence the Software or the data or its rights thereto;
- 6.3.7 Seller shall use reasonable endeavours to correct any error in the Software but shall not have any obligation to support or otherwise maintain the Software for Buyer;
- 6.3.8 Seller may terminate the licence by seven days notice in writing to Buyer at any time;
- 6.3.9 On termination of the licence, Buyer will cease to use the Software and return all copies thereof to Seller
- 6.4 Buyer acknowledges that:-
 - 6.4.1 Seller is not in the business of software development and that the development of the Software for the use of customers and distributors is ancillary to Seller's main business; and
 - 6.4.2 software in general is not error-free and that the existence of errors in the Software shall not constitute a breach of this licence; and
 - 6.4.3 the Copyright and any other intellectual property rights used or embodied in or in connection with the Software (including the manner in which either of them is presented or appears and any information documentation and manuals relating thereto) are the sole property of Seller.

7. PRICE TENDERS, PACKING AND CARRIAGE

- 7.1 The price of the Goods or Services (hereinafter "the Price") shall be Seller's quoted price or, where no price has been quoted, Seller's list price current at the date of acceptance of the order. All prices quoted are valid for the period stated on the quotation or if no period is stated 30 days or earlier acceptance by Buyer after which time they may be altered by Seller without giving notice to Buyer.
- 7.2 Seller reserves the right by giving notice to Buyer at any time before delivery to increase the Price of the Goods to reflect any increase in the cost to Seller which is due to any factor beyond the control of Seller (such as without limitation, foreign exchange fluctuation, currency regulation, alteration of duties) any change in delivery dates, quantities or specifications for the Goods which is requested by Buyer or any delay caused by any instructions of Buyer or failure of Buyer to give adequate information or instructions.
- 7.3 Any tender made by Seller may be withdrawn at any time before acceptance. If not accepted within 60 days from the date thereof the tender shall be deemed to have been withdrawn.
- 7.4 Unless otherwise agreed packing will be charged for in addition to the Price and packing cases and materials are not returnable. The Goods will be suitably packed for withstanding the conditions of normal delivery/shipment. Tropical or other special packing will only be supplied on express written request and will be charged for in addition to the Price.

- 7.5 Unless otherwise agreed all Prices are given on an ex works basis and where Seller agrees to deliver Goods otherwise than at Seller's premises:-
- 7.5.1 Goods for home market: carriage charges will be invoiced to Buyer at Seller's rates prevailing at time of despatch.
- 7.5.2 Goods for export markets: carriage charges shall be invoiced on the terms specifically stated in the contract, or otherwise at Seller's rates prevailing at the time of despatch.
- 7.6 The Price is exclusive of any applicable Value Added Tax.

8. DESPATCH AND DELIVERY

- 8.1 Any time or date quoted by Seller for delivery of Goods or performance of Services is given and intended as an estimate only and subject to availability of stock or availability of labour. Seller shall not be liable in any circumstances for any loss or damage of any kind caused by a failure to deliver or perform within such time.
- 8.2 Unless otherwise agreed in writing, Seller is entitled to make deliveries by instalments or partial deliveries. Each instalment shall be construed as constituting a separate contract to which all the provisions of these Conditions shall (with any necessary alterations) apply.
- 8.3 Buyer shall take delivery of the Goods promptly upon the delivery date or dates or at the intervals stated in the contract or as soon thereafter as it is notified by Seller that the Goods are available for delivery. If for any reason Buyer fails to call off or give delivery instructions, or take delivery of the Goods on the due date, or upon receipt of such notification, or otherwise causes or requests a delay in delivery, then, without prejudice to any other rights of Seller hereunder, Seller shall be entitled to store or arrange for the storage of the Goods and if it does so:-
- 8.3.1 it shall so inform Buyer in writing, and
- 8.3.2 Buyer shall pay or reimburse the reasonable cost (including insurance) of such storage from the due date, or the date of notification as aforesaid, until delivery to Buyer.

9. PASSING OF PROPERTY

- 9.1 Notwithstanding the provisions of Condition 10 as to the passing of risk, the Goods shall remain the sole and absolute property of Seller until Buyer has paid the Price in full and all other sums due from Buyer to Seller whether under this contract or otherwise (including any interest thereon). Notwithstanding such retention of title, Seller shall be entitled to maintain an action for the Price as soon as payment falls due.
- 9.2 Buyer acknowledges that it is in possession of the Goods solely as bailee and in a fiduciary capacity for Seller until such time as the Price in full and all other sums due from Buyer to Seller, whether under this contract or otherwise (including any interest thereon). Until such time Buyer will store the Goods on its premises separately from others' goods (including its own) and in a manner which makes them readily identifiable as belonging to Seller and shall not alter, modify or add to any such Goods or any marking or identification on them and shall maintain them in good condition.

- 9.3 If payment for the Goods supplied under this or any other contract is overdue in whole or in part, Seller may (without prejudice to any of its other rights) retake possession of and/or resell any Goods, the title to which it has by these Conditions retained and Buyer shall, upon the request of Seller, allow Seller to enter its premises during normal working hours for the purpose of recovering possession of such Goods.
- 9.4 Notwithstanding any other agreement as to the terms of payment, the total invoice Price shall immediately become due and payable and Seller shall have the right forthwith to terminate this contract (without prejudice to any other of its rights) upon the occurrence of any of the following events:-
- 9.4.1 If Buyer commits any act of bankruptcy or if a petition of bankruptcy is presented against Buyer;
- 9.4.2 If Buyer ceases or threatens to cease to carry on business;
- 9.4.3 If Buyer shall enter into any negotiations for an arrangement or composition with its creditors;
- 9.4.4 In the event of Buyer being a limited company, if a petition is presented for an administration order or if a petition is presented or a resolution is proposed to wind up Buyer or if a receiver of its assets or undertaking or part thereof is appointed;
- 9.4.5 If any distress or execution is levied on Buyer. Upon any such termination Seller shall have such rights of repossession and resale as are set out in Condition 9.3 above.

10. PASSING OF RISK

- 10.1 Goods for home market; in cases where Seller carries or arranges the carriage of the Goods, risk passes upon delivery by the carrier to or to the order of Buyer. In all other cases risk passes on collection from Seller's premises.
- 10.2 Goods for export market; on a sale FOT or FOB risk passes when Goods have been placed on truck or have effectively passed ship's rail at agreed port.

11. LOSS OR DAMAGE IN TRANSIT

In cases where Seller carries or procures the carriage of the Goods, Seller shall not in any event be liable for loss of or damage to the Goods in transit unless the following conditions are complied with;

- 11.1 In the case of any loss from a consignment of Goods or of damage to the Goods Seller must be notified in writing within 3 clear days of delivery to Buyer;
- 11.2 In the case of non-delivery of the whole consignment of the Goods, Seller must be notified within 21 clear days after the date of invoice.

12. PAYMENT

- 12.1 Home market: unless otherwise agreed in writing, payment of the Price in full is due on delivery of the Goods.
- 12.2 Export markets: unless otherwise agreed in writing, payment of the Price is due upon the presentation of the invoice together with the appropriate documents of title and shipping documents.
- 12.3 Time of payment is of the essence in all cases.

- 12.4 Buyer shall not in any circumstances or for any reason whatsoever be entitled to make any deduction or withhold any sum from the Price by way of set-off.
- 12.5 Where payment is due in sterling payment may in the absolute discretion of Seller be accepted in a foreign currency, provided that payment is made at the exchange rate applicable at the date of payment and Buyer pays in addition any charges incurred by Seller in exchanging the currency into sterling.
- 12.6 Seller shall be entitled to charge interest at the rate of 6% pa above Yorkshire Bank plc lending rate for the time being on all outstanding accounts, such interest to accrue day to day from the day the account becomes due to the day of actual payment thereof, whether before or after judgement.

13. SAMPLES

- 13.1 Samples are sent and inspected solely to enable Buyer to judge the quality of the bulk and shall not render any sale a sale by sample.
- 13.2 All samples are to remain the property of Seller and shall be returned to Seller on request.

14. TOOLS, DIES ETC

All tools, patterns and other equipment used in the manufacture of any Seller's goods shall remain the property of Seller unless otherwise expressly agreed in writing. Buyer shall not permit any third party to use such equipment nor disclose to any third party any technical, dimensional or design details, or any other information in respect of such equipment at any time.

15. BUYER'S MATERIAL AND PARTS

- 15.1 Buyer's material shall be delivered to Seller's works free of all charge to Seller. All materials removed become the property of Seller and are allowed for in Seller's estimate.
- 15.2 Seller shall not be liable for the value of any materials or finished parts sent for fitting or other purposes, or for any loss or damage whatsoever and however caused, or resulting from the negligent performance or non-performance of the machining, cutting, fitting or other works specified in the contract.
- 15.3 Buyer's materials or parts sent for fitting shall be suitable in every way for the machining, cutting or fitting specified in the contract and Seller is to have no obligation to check such suitability. Buyer will pay Seller for work done and for consequential damage to machines and tools of Seller arising directly or indirectly from any unsuitability of Buyer's materials or parts as aforesaid.

16. LIEN

- 16.1 In addition to any lien to which Seller may otherwise be entitled, in the event of Buyer's insolvency or failure to pay the Price or any sum due under any other contract with Seller (including any contract treated as a separate contract by virtue of Condition 8.2 hereof) Seller shall be entitled to a general lien on all goods of Buyer in Seller's possession for any sums due and unpaid under this or under any contract between Seller and Buyer, and for the reasonable

cost of storing, handling and insuring the goods during the exercise of such lien, which cost accrues from day to day.

- 16.2 Seller may at any time give notice requiring that all sums due and payable to Seller on any account whatsoever be paid not later than seven days from the date of the notice. Notice given by Seller in accordance with this Condition shall be in writing specifying the amount due and the date for payment and shall be sent by recorded delivery to the registered office of Buyer. If all sums due are not paid by the said date Seller shall be entitled to sell the goods or any part of them to meet all sums owing to Seller and all expenses on the sale.

17. BUYERS SPECIFICATIONS AND DESIGNS

- 17.1 When machines or parts of machines are supplied to Buyer's specifications or designs, Buyer shall indemnify Seller fully in respect of loss, damages, costs and expenses awarded against or incurred by Seller in connection with or paid or agreed to be paid by Seller in settlement of any claim made or proceedings brought against Seller by any party claiming infringement of patent rights, copyright design, trade mark or other industrial or intellectual property rights which results from Seller's use of Buyer's specification or design.
- 17.2 Buyer warrants that any design or specification furnished or given to Seller shall not be such as will cause Seller to infringe any patent, copyright design, trade mark or other industrial or intellectual property right in the execution of Buyer's order.
- 17.3 Buyer warrants that any design or specification furnished or given to Seller shall be complete in every respect (including without limitation all necessary technical information) sufficient to enable Seller to manufacture contract goods to comply with all applicable performance, durability, health, safety, conformity and labelling requirements whether of Buyer or Buyer's customer or howsoever arising at law and Buyer shall indemnify Seller fully in respect of loss, damages, costs and expenses incurred by Seller which results from any incompleteness in Buyer's specification or design.

18. EXTENT AND LIMITS OF LIABILITY (DEFECTIVE GOODS)

- 18.1 Subject to the provisions of this clause Seller guarantees all goods of its manufacture against any defect which can be proved to Seller's satisfaction to have been caused by faulty materials or workmanship and which appears within 12 months from the date of despatch.
- 18.2 Should such defect appear within such period, Seller's liability will be limited solely to repairing, or at its option, replacing the defective product or part free of charge provided that Seller shall not be liable for such defect in any circumstances if -
- 18.2.1 The Goods have been subjected to unsuitable storage, treatment or handling prior to use or to abnormal use, or to use under abnormal conditions or beyond their capacity as rated and recommended by Seller; or
- 18.2.2 The defect has been caused or contributed to by exposure to direct weather conditions (whether before or after installation), or by operation in abnormal atmospheric conditions, or by reason of faulty installation servicing or repair of the Goods by any person other than a duly authorised representative of Seller; or

- 18.2.3 Buyer fails as soon as possible after the assumed defect has become apparent to notify that defect to Seller in writing quoting the serial number if any and the date of purchase.
- 18.3 Seller's aforesaid guarantee shall be subject to the following further provisos, namely;
 - 18.3.1 Where the design of goods of the type in question has been altered since the Goods were despatched, Seller may at its option supply goods of the new design;
 - 18.3.2 Any repair or examination of defective Goods or parts shall be carried out at Seller's premises and Buyer shall at its own expense and risk adequately pack the Goods and return them to Seller;
 - 18.3.3 The decision of Seller is final as to whether or not a defect is due to faulty workmanship or material;
 - 18.3.4 If in the opinion of Seller the Goods are satisfactory in operation or, if defective, then defective only as a result of circumstances for which Seller is not liable hereunder, or as a result of fair wear and tear, Buyer shall if required by Seller pay a reasonable charge for the examination of the Goods by Seller and any cost of returning the Goods to Buyer. In such case Seller will submit to Buyer a quotation for repair of the Goods before effecting any repair;
 - 18.3.5 Seller shall not in any case be liable under this clause or at all in respect of any Goods not of Seller's manufacture although Seller will do all that is reasonable at Buyer's expense to secure for Buyer the benefit of rights equivalent to rights which Seller may have against the supplier of such Goods;
 - 18.3.6 Seller shall not be liable for any costs of stripping or reassembling any equipment into which any of Seller's products may be fitted.
- 18.4 Except as expressly provided in Conditions 18.1, 18.2 and 18.3 except where the absolute prohibitions against exclusion and restriction of liability contained in the Unfair Contract Terms Act 1977 apply, Seller shall in no circumstances be liable to Buyer in respect of any loss, damage or injury of any kind (which for the avoidance of doubt includes consequential loss or damage), whether suffered by Buyer or any other party and howsoever caused (including being caused by any defect in, failure of or unsuitability for any purpose of the Goods or by any negligence whether in relation to design or manufacture of the Goods or at all) and all conditions, warranties or other terms whether express or implied statutory or otherwise are hereby excluded.
- 18.5 Seller shall not be liable for any loss of any kind (which for the avoidance of doubt includes consequential loss or damage) arising from any representations, statements, warranties, recommendations or advice made or given before the making of this contract.
- 18.6 In Conditions 18.4 and 18.5 the expression "consequential loss" shall include loss of profits, loss of business revenue, loss of user or loss of goodwill whether of Buyer or of any other party.
- 18.7 Notwithstanding the foregoing or following Conditions, the liability of Seller in respect of any claim shall in any event be limited to whichever be the greater of (i) such sum as Seller may by reasonable steps be able to obtain under such insurance as it has which covers the claim, or (ii) £100,000 (One hundred thousand pounds).

19. DEFAULT OR INSOLVENCY

Without prejudice to the provisions of Condition 9.4 Seller shall be entitled forthwith to terminate this contract (without prejudice to any of its other rights inter alia to recover payment due in respect of delivered Goods and all expenses properly incurred by Seller in performing the contract) and/or to cancel further deliveries in the event of any default of payment under this or any other contract between Seller and Buyer, or in the event of breach of this contract by Buyer or on the occurrence of any of the events set out in Condition 9.4 hereof.

20. SET OFF

Seller shall be entitled to apply any sum in any way arising out of the contract due from the Seller to the Buyer in settlement of any sum due from Buyer to SM-Cyclo UK Limited. Seller shall on behalf of Buyer be entitled to give to such other company a good receipt for any sum which such other company may pay to Seller in settlement of any sum due from Buyer to Seller in any way arising out of the contract.

21. FORCE MAJEURE

Without prejudice to the generality of any previous exclusion or limitation of liability, Seller shall not be liable for any failure to fulfil any term of any transaction governed by these conditions if fulfilment has been delayed, hindered or prevented by any circumstances whatsoever which are not directly within Seller's control and if Seller is able to fulfil some but not all of the demand for its products, Seller may allocate its available supplies amongst its customers including parent, subsidiary or associated companies in such manner as Seller in its absolute discretion considers to be fair.

22. PROPER LAW

The proper law of the contract is English Law. Buyer submits to the jurisdiction of the Courts of England.