

**1 INTERPRETATION**

1.1 In these Conditions:

"Buyer" means the person who accepts a quotation of the Company for the sale of Goods and/or provision of Services or whose order for Goods and/or Services is accepted by the Company;

"Company" means Richard Irvin FM Limited, incorporated in England (registered number 11454668), and whose registered office is at 5th Floor, 24 Old Bond Street, London W1S 4AW and its subsidiary or associated companies.

"Conditions" means these terms and conditions (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company.

"Contract" means the contract for the purchase and sale of the Goods and/or Services;

"Goods" means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with the Contract.

"Services" means the services which the Company is to provide in accordance with the Contract.

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

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

**2 BASIS OF THE SALE**

2.1 The Company shall sell and/or provide and the Buyer shall purchase the Goods and/or Services in accordance with these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions on which any quotation has been accepted or purported to be accepted by the Buyer, or on which any order has been given to the Company. The placing of an order, or the acceptance of the Company's quotation, for Goods and/or Services includes acceptance of these Conditions.

2.2 References to any quotation of the Company and to any order of the Buyer shall include any amended or supplementary quotation or order, duly accepted by the other party.

2.3 No variation to these Conditions shall be binding on the Company unless agreed in writing by the authorised representatives of the Company.

2.4 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.5 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company 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 Company shall be subject to correction without any liability on the part of the Company.

**3 ORDERS AND SPECIFICATIONS**

3.1 The quantity, quality and description of and any specification for the Goods and/or Services shall, subject as provided in these Conditions, be as specified in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company).

3.2 No order submitted by the Buyer shall be deemed to be accepted by the Company unless confirmed by the Company's authorised representative.

3.3 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods and Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.4 The Company reserves the right to make any changes in the specification of the Goods and Services which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied and/or the Services provided to the Company's specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

**4 PRICE OF THE GOODS AND SERVICES**

4.1 The price of the Goods and the Services shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the Company's price for such Goods and/or Services current at the date of acceptance of the order or quotation. The price shall include any charges for labour and materials used, unless otherwise specified. For labour any call out charge will include the first hour on site. Where no call out charge applies a minimum of one hour labour will be charged. Where time exceeds one hour the time in excess of one hour will be rounded up and charged in thirty-minute intervals. Please note that time charged will include travelling time and possible journeys to wholesalers etc for materials. Where the Goods are supplied for export from the United Kingdom, the Company's export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Company without giving notice to the Buyer.

4.2 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and the Services to reflect (a) any increase in the cost to the Company due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture); (b) any change in delivery dates, quantities or specifications for the Goods or Services which is requested by the Buyer; or (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Buyer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Company.

4.5 The cost of pallets and suitable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Company before the due payment date.

**5 TERMS OF PAYMENT**

5.1 Subject to any special terms agreed in writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer:

5.1.1 for the price of the Goods on or at any time after delivery of the Goods or if the Goods are to be collected by the Buyer or the Buyer wrongly fails to take delivery of the Goods, at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods; and

5.1.2 for the price of the Services on or at any time after provision of the Services.

5.2 Notwithstanding the provisions of Condition 5.1, if the parties have agreed that interim invoice requirement(s) for payment of the price may be made by the Company at any time or times after acceptance of the Company's quotation or the Buyer's order, the Company shall be entitled to make such application(s) for interim payment (whether by submitting a formal invoice therefor or otherwise) in terms of such agreement.

5.3 The Buyer shall pay the price of the Goods and/or the Services (without any deduction) within the payment period stated on the Company's invoice, (or any application for payment in terms of Condition 5.2), and the Company shall be entitled to recover the price, notwithstanding that the Buyer has not passed the title of the Goods to the Buyer. The time of payment of the price shall be the essence of the Contract. Receipts for payment will be issued only upon request.

5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

5.4.1 cancel or suspend the Contract any part therefor;

5.4.2 appropriate any payment made by the Buyer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 per cent per annum above The Royal Bank of Scotland plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

**6 DELIVERY**

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises within such reasonable time as may be specified after the Company has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.

6.2 The Services shall, unless otherwise agreed in writing between the Buyer and the Company, be performed at the Company's premises.

6.3 Any dates quoted for delivery of the Goods or performance of the Services are approximate only and the Company shall not be liable for any delay in delivery of the Goods or performance of the Services however caused. Time for delivery/performance shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered and the Services performed by the Company in advance of any quoted delivery date upon giving reasonable notice to the Buyer.

6.4 Where the Goods are to be delivered, or the Services are to be performed, in instalments, each instalment shall constitute a separate contract and failure by the Company to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Buyer or any other party shall not entitle the Buyer to give the Company adequate information or instructions.

6.5 If the Company fails to deliver the Goods or perform the Services (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods and services to replace those not delivered or performed over the price of the Goods and Services.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Buyer shall:

6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.6.2 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.

**7 RISK AND PROPERTY**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, property in the Goods shall not pass to the Buyer until the Company has 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 Company to the Buyer for which payment is then due.

7.3 Until such time as the Goods are delivered to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company 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.

7.5 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 Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

**8 WARRANTIES AND LIABILITY**

8.1 Subject to the conditions set out below the Company warrants that:

8.1.1 the Goods will correspond with their specification and will be free from defects in material and workmanship at the time of delivery; and

8.1.2 the Services will be performed with due care and diligence.

8.2 The above warranty is given by the Company subject to the following conditions:

8.2.1 the Company shall be under no liability in respect of any defect in the Goods and/or Services arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence (other than negligence of the Company), abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods and/or Services without the Company's approval;

8.2.3 the Company shall be under no liability in respect of any Services performed where the Services include the installation of any parts, materials or equipment not supplied by the Company;

8.2.4 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and/or Services has not been paid by the due date for payment;

8.2.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to and/or Services are performed for a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law shall be excluded to the extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and/or Services and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and/or Services had been delivered in accordance with the Contract.

8.6 Where any valid claim in respect of any of the Goods and/or Services which is based on any defect in the quality or condition of the Goods and/or Services or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) or perform the Services (or the part in question) free of charge to, at the Company's sole discretion, refund to the Buyer the price of the Goods and/or Services (or a proportionate part of the price), but the Company shall have no further liability to the Buyer.

8.7 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect or consequential loss or damage, or for loss of or damage to profits, contracts, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services or their use or resale by the Buyer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods and/or Services, except as expressly provided in these Conditions.

8.8 The Company 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 any failure to perform, any of the Company's obligations under the Contract, if the delay or failure was due to any cause beyond the Company's reasonable control. The following shall be regarded as causes beyond the Company's reasonable control:

8.8.1 Act of God, explosion, flood, pest, fire or accident;

8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

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

8.8.4 import or export regulations or embargoes;

8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7 power failure or breakdown in machinery.

**9 INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

9.1 The Contract and any drawings, designs and specifications supplied by the Company shall be treated as confidential and the Buyer shall take all steps necessary to avoid the disclosure to third parties thereof or of any information contained therein or any information communicated to the Buyer on a confidential basis by the Company. This obligation will terminate only when such information has fallen legitimately into the public domain.

9.2 Title and copyright in all designs and drawings of the Goods or in connection with the Services or any part thereof and in all specifications and information relating thereto provided by the Company or prepared or made by the Company, its employees, agents or subcontractors for the express purpose of fulfilling the Contract shall vest in and belong to the Company absolutely.

9.3 The Buyer shall forthwith upon request at any time and without charge deliver to the Company all designs, drawings, specifications and information relating to the Goods or Services then in the possession of the Buyer or in the possession of any other person, firm or company who has possession of such documentation, through under or by direction of the Buyer.

9.4 If any claim is made against the Buyer that the Goods and/or Services infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Company shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

9.4.1 the Company is given full control of any proceedings or negotiations in connection with any such claim;

9.4.2 the Buyer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;

9.4.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);

9.4.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

9.4.5 the Company shall be entitled to the benefit of, and the Buyer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

9.4.6 without prejudice to any duty of the Buyer at common law, the Company shall be entitled to require the Buyer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Buyer under this clause.

9.5 If the Goods are to be manufactured or any process is to be applied to the Goods and Services by the Buyer in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.

**10 TERMINATION**

10.1 If:

10.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an embargoe takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel or suspend the Contract in whole or in part without any liability to the Buyer by giving notice to the Buyer and the Company shall be entitled to immediate payment for the Goods delivered and/or Services performed as at the date of such cancellation or suspension, notwithstanding any previous agreement or arrangement to the contrary.

10.2 In the event of any default by the Buyer of any of its obligations under the Contract, the Company may give Buyer written notice to remedy such default (if capable of remedy) within such reasonable time as specified therein. If the Buyer fails to comply with such requirements, or if the Company's reasonable opinion the default is incapable of remedy, the Company shall, without prejudice to its other rights whether under the Contract or otherwise, be entitled to terminate the Contract in whole or in part by immediately serving notice on the Buyer and shall be entitled to immediate payment in full for Goods delivered and/or Services performed as at the date of termination.

**11 EXPORT TERMS**

11.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Company) apply notwithstanding any other provision of these Conditions.

11.2 The Buyer 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 on them and shall advise the Company of any special regulations or restrictions.

11.3 Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered ex works and all costs of carriage, shipping and insurance shall be the Buyer's responsibility. Insurance and shipping will be arranged by the Company unless otherwise agreed in writing.

11.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company 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.

**12 ASSIGNATION**

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

**13 ANTI CORRUPTION**

13.1 The Company operates an Anti-Corruption Code. The Company's Anti-Corruption Code can be viewed under "policies" on the Company's website ([www.richard-irvin.com](http://www.richard-irvin.com))

**14 GENERAL**

14.1 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.

14.2 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.3 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.

14.4 Any dispute arising under or in connection with the Contract shall be referred in the first instance to the managing director of the Company and (a) if a company, the managing director of the Buyer; (b) if a firm, the managing or senior partner of the Buyer; or (c) if an individual, the Buyer, who shall discuss the matter and make all reasonable efforts to reach an agreement. If no such agreement is reached the dispute shall be referred to such independent person nominated by agreement of the parties, who shall act as an expert, not an arbitrator, and whose decision shall be final and binding. In the absence of an expert being reached on a particular dispute either party may take appropriate action in the courts to resolve the breach at any time.

14.5 The Contract shall be governed by the laws of Scotland, and the Buyer agrees to submit to the non-exclusive jurisdiction of the Scottish courts