

Gledhill Spare Parts Ltd

JANUARY 2008

TRADE TERMS & CONDITIONS

1. DEFINITIONS

In these conditions:-

- 1.1 The "Buyer" shall mean the corporate entity firm or person seeking to buy Goods from the Company;
- 1.2 The "Company" shall mean Gledhill Spare Parts Ltd
- 1.3 The "Contract" shall mean any Contract for Goods or Services made between the Company and the Buyer;
- 1.4 The "Goods" shall mean the product articles or things to be sold by the Company;
- 1.5 The "Services" shall mean any Services provided by the Company to the Buyer (whether or not the Buyer shall purchase Goods);
- 1.6 The headings to the clauses shall not affect the construction of these conditions;
- 1.7 The use of the plural shall include the singular and the use of the singular shall include the plural; and
- 1.8 References to the masculine, feminine or neuter genders shall include each and every gender.

2. THE CONTRACT

- 2.1 These conditions shall be incorporated into each and every Contract made between the Company and the Buyer.
- 2.1.1 Shall apply to the exclusion of any terms or conditions put forward by or on behalf of the Buyer; and
- 2.1.2 Shall not create any agency or partnership between the Company and the Buyer or any third party.
- 2.2 No variation or waiver of or addition to these conditions, whether written or oral, shall have effect unless and until authorised in writing by a manager of the Company.
- 2.3 Quotations and estimates, whether written or oral, submitted by the Company shall be deemed to be an invitation to treat and not an offer.
- 2.4 Any order given in respect of a quotation or estimate must state the date, the reference of that quotation or estimate and address for delivery.
- 2.5 For the purposes of The Contracts (Right of Third Parties) Act 1999, these conditions do not create any right or remedy enforceable by any person other than the Buyer and the Company. This condition does not affect any right or remedy of a third party that exists or is available apart from the act.
- 2.6 Any Original Equipment Manufacturer (OEM) part numbers provided by the Company are given as a reference only, and no inference or implication beyond that of a useful reference tool should be taken nor is intended.

3. TIME LIMITS

Any time or date quoted by the Company for delivery or collection of all or any of the Goods or performance of any Services is an estimate only, and the Company shall not be liable for any failure to meet any such estimate nor for any loss, whether financial or otherwise resulting directly or indirectly therefrom. Time is not and shall not be of the essence in relation to this condition or performance by the Company of its obligations under the Contract.

4. COLLECTION AND DELIVERY

- 4.1 The Buyer shall collect the Goods from the Company premises. Where it is agreed that the Company shall deliver or procure delivery of the Goods, when ready, it shall do so at the risk and cost of the Buyer to such address in United Kingdom as the Buyer may specify or, if no such address is specified to any address of the Buyer to which correspondence and/or Goods may have previously been sent under the Contract. The manager of delivery shall be such as the Company in its sole direction shall deem appropriate.
- 4.2 If the Company is unable to effect delivery on arrival at the Buyer's premises for any reason whatsoever, an additional charge for any return or subsequent visit will be made.

5. LOSS OR DAMAGE IN TRANSIT

- 5.1 The Buyer is under duty wherever possible to examine the Goods on delivery or on collection (as the case may be).
- 5.2 Where the Goods cannot be examined the carrier's note or such other note (as the case may be) shall be marked by the Buyer at the time of delivery 'not examined'.
- 5.3 The Company shall be under no liability whatsoever for any defects or shortages as aforesaid unless notified in writing of the details within seven days following dispatch.
- 5.4 In all cases where defects or shortages are complained of, the Company shall be under no liability to the Buyer in respect thereof unless a reasonable opportunity to inspect the Goods is provided to the Company by giving at least 48 hours' notice in writing before any use is made thereof or any alteration or modification is made thereto by the Buyer.
- 5.5 The Company shall make good any defects or shortages in accordance with the terms of this condition but otherwise shall be under no liability whatsoever, whatsoever or howsoever arising, whether by way of negligence or otherwise, for such defects or shortages (save for death or personal injury caused by the Company's negligence).

6. CANCELLATION BY THE BUYER

- 6.1 Where Goods are returned by agreement:-
 - 6.1.1 In every case a restocking charge will be made.
 - 6.1.2 In every case the invoice number and date together will reason for return must be stated.

7. PRICE

- 7.1 Any price quoted by the Company is based upon current price ruling as at the date appearing on the quotation, but the actual price to be charged to the Buyer under the Contract shall be based upon such ruling price (less any discount allowed by the Company) current as at the date of invoice and shall include the cost to the Company of any carriage, insurance and/or storage effected by it in

connection with the Buyer's order. In accordance with the terms of this condition, the Company shall be entitled at any time up to the date of the invoice to vary the price quoted to the Buyer.

- 7.2 Unless otherwise expressly stated in writing, all prices are exclusive of, and therefore subject to the addition of VAT.

8. DATE FOR PAYMENT

- 8.1 The Buyer shall make payment in full within thirty days from the end of the month in which the invoice is dated. The Company understands and will exercise its statutory rights to claim interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to credit terms.
- 8.2 Any delay or default by the Buyer in making payment in accordance with condition 8.1 shall render all sums owing to the Company on any account whatsoever including the costs of recovery of such sums, due and payable forthwith without requirement for any notice to be given to the Buyer, and interest will be charged in accordance with condition 8.1 with immediate effect until the date of actual payment.
- 8.3 The Buyer shall not be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim by the Buyer (whether or not the Goods or Services are to be provided by instalments and in such case each instalment is deemed to constitute a separate and distinct Contract). In the case of any short delivery or delivery of damaged Goods to the Buyer, the Buyer shall remain liable to pay the full invoiced price of all other Goods delivered.
- 8.4 Any Buyer wishing to pay their account by credit card should note that credit card payments are subject to a 2% invoice surcharge.

9. DISPUTES AND SET-OFF

Any Liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Buyer of all its obligations under these conditions, and subject to these conditions, the Buyer shall not be entitled to withhold or delay payment or exercise any right to set off whatsoever and howsoever arising or arisen which might otherwise not be available to it.

10. RISK

Risk in the Goods shall pass to the Buyer when the Goods are dispatched by the Company to or collected by the Buyer or its agent.

11. TITLE

- 11.1 Notwithstanding the passing of risk under condition 10, unless and until payment shall have been made to the Company of all sums due to it under the Contract and/or under any other Contract between the Buyer and the Company on any account whatsoever, property in and beneficial title to the Goods shall remain in the Company.

12. TERMINATION AND SUSPENSION

Without prejudice to any rights and remedies available to it, whether under the Contract or otherwise, the Company shall be entitled in its absolute discretion and upon giving to the Buyer written notice of its intention to do so, either terminate wholly or in part the Contract and/or any other Contract with the Buyer or to withhold, vary or suspend performance of all or any of its obligations under the Contract or any other Contract in anyone or more of the following events:-

- 12.1 If any sum owing to the Company from the Buyer on any account whatsoever shall be unpaid after the due date for payment;
- 12.2 If the Buyer shall refuse to take delivery or collect any of the Goods in accordance with the terms of the Contract;
- 12.3 If an insolvency event occurs;
- 12.4 If the Buyer shall commit any breach of any Contract with the Company;
- 12.5 If the Company in good faith shall have doubts as to the solvency of the Buyer; The Company shall be entitled to exercise its rights of termination or suspension hereunder at any time during which the event giving rise thereto shall not have ceased or been remedied, and in the circumstances of any such suspension, the Company shall be entitled to require as a condition of resuming performance under the Contract, pre-payment of or such security as it may stipulate for the payment of any sum or sums due to or become due to it. Upon any such event happening the Company shall also have a general lien over all monies and property of the Buyer in its possession for any sums due to the Company.

13. WARRANTY AND LIABILITY

The liability of the Company is subject to compliance by the Buyer with all the terms contained in this clause 13.

- 13.1 The Company shall make good by reimbursement of the whole or part of the price (and, where relevant, as a deduction from any of the price remaining unpaid) or at its option by repair or by replacement any defect developing under normal use in the Goods and due solely to faulty design (except where the design is supplied by or on behalf of the Buyer) faulty materials or faulty workmanship provided. that:-
 - 13.1.1 The Buyer shall be responsible for ensuring that the Goods are fit for the purpose for which it wishes to use them and the Company gives no warranty (and none shall be implied) that the Goods are fit for any particular purpose;
 - 13.1.2 The defect in question shall have appeared within 12 months (or such longer period of time (if any) as may be provided for in any guarantee given by or on behalf of the manufacturer of the Goods) after the Buyer shall have taken possession of the Goods or performance of Services has been completed and shall have been thereupon promptly notified in writing to the Company; and
 - 13.1.3 Any Goods alleged to be defective shall be stored in a safe place by the Buyer until such time as the Company authorises their disposal in writing; and
 - 13.1.4 Any Goods alleged to be defective shall, if so required by the Company, be promptly returned at the Buyer's risk and expense to the Company's works for inspection, and the Company shall in its reasonable opinion consider them to be

- defective solely by reason of faulty design or materials or workmanship; and
- 13.15 Not attempt shall have been made by the Buyer or by any third party to remedy the defect before, if so required by the Company, the Goods in question shall have been returned to the Company for inspection; and
- 13.16 The Goods in question shall have been serviced and maintained properly and in accordance with the Company's recommendations and shall not have been fitted with any parts, components or accessories other than those manufactured or recommended by the Company.
- 13.2 Apart from such reimbursement repair or replacement the Company, its employees and agents shall be under no liability to the Buyer or to any third party for any injury, loss or damage of any kind whatsoever, howsoever and whosoever arising or arisen, and whether direct or indirect, including without limitation any injury, loss or damage arising out of or incidental to:-
- 13.21 Any negligence of the Company or of any of its employees or agents (except insofar as such negligence may result in death or personal injury); or
- 13.22 The Company's performance of or failure to perform or breach of any of its obligations, whether express or implied under the Contract or otherwise; or
- 13.23 The supply, installation, repair or maintenance of any of the Goods; or
- 13.24 Any defect in any of the Goods; or
- 13.25 Any advice given or representation made by the Company or on its behalf; or
- 13.26 Any performance of its Services.
- 13.3 Save as set out in Clause 13.1 the liability of the Company arising from all and any claims relating to any single Contract shall be limited to a maximum sum of £200 in total or such amount (less the costs of recovery incurred by the Company) as the Company receives from the manufacturer of the Goods giving rise to the claim from the Buyer.
- 13.4 The Company shall not be liable for any claim relating to any breach of warranty, express or implied, brought after the expiry of the period of twelve months from the date on which the Contract was made (or, in the case of Goods, after the expiry of such longer period (if any) as may be provided for by or on behalf of the manufacturer of those Goods).
- 13.5 The Company shall in no circumstances be liable to the Buyer for any economic loss, loss of profit, loss of business or like loss.
- 13.6 The terms of this condition replace all conditions, warranties, representations, statements, liabilities and other terms whatsoever implied by common law, statute or otherwise, all of which shall accordingly be excluded to the extent allowed by law, and the Company shall in relation to the Goods and Services have no obligation to the Buyer, either arising by statute or in tort or in Contract and whether arising out of any negligence of the Company or any of its employees or agents (and whether under the Contract or under any other Contract), other than the express obligations contained in these conditions or in any other document expressly incorporated in writing into the Contract. Accordingly, it shall be for the Buyer to ensure against any liability arising from the performance of the Services and from its use of the Goods.
- 13.7 The Company shall use its reasonable endeavours to transfer to the Buyer the benefit of any guarantee in respect of the Goods available from the manufacturer provided that the Company may in its discretion, elect to do so only at the cost of the Buyer.
- 13.8 Notwithstanding anything to the contrary herein contained the Company's liability to the Buyer for:-
- 13.81 Death or personal injury resulting from the negligence of the Company, its employees or agents;
- 13.8. Damage suffered by the Buyer as a result of a breach by the Company of the condition as to title or the warranty as to quiet the possession implied by section 12 of the Sale of Goods Act 1979 or section 2 of the supply of Goods and Services Act 1982; and
- 13.8.3 Damage for which the Company is liable to the Buyer under part 1 of the Consumer Protection Act 1897; shall not be limited to save that nothing in this clause 13 shall confer a right or remedy upon the Buyer to which the Buyer would not otherwise be entitled.
- 13.9 The provisions of this clause 13 shall survive any termination of the Contract.
- 13.10 The exclusions from and limitations of liability set out in this Clause 13 shall be considered severally. The validity or unenforceability of anyone clause, sub-clause, paragraph or sub-paragraph of this clause 13 shall not affect the validity or enforceability of any part of this clause 13.

14. INDEMNITY

- 14.1 If any process is to be applied to the Goods or Services by the Company in accordance with a specification or direction (as the case may be) submitted by the Buyer, the Buyer shall indemnify and hold harmless the Company from and 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 or alleged infringement of any intellectual property rights of any other person which results from the Company's use of the Buyer's specification or from the Company complying with the Buyer's direction as the case may be.
- 14.2 Where the Buyer uses Goods or Services:-
- 14.2.1 In the manufacture, supply or distribution of any other Goods;
- 14.2.2 In the provision of a service; then the Buyer shall indemnify and hold harmless the Company from and against all loss, damages, costs and expenses awarded against or incurred by the Company in respect of such use by the Buyer arising out of the manufacture, supply or distribution of those other Goods or the provision of that service.
- 14.3 The Buyer shall indemnify and hold harmless the Company from and against all

loss, damages, costs and expenses awarded against or incurred by the Company in respect of:-

- 14.3. Any liability which the Company may incur as a result of a claim against the Company by a third party under part 1 of the Consumer Protection Act, 1987;
- 14.3.2 Any warranty howsoever given by the Buyer to a third party;
- 14.3.3 Any loss caused by the Goods during transit.

15. FORCE MAJEURE

The Company shall have no liability whatsoever for any failure to perform, or for any delay in the performance of any of its obligations under the Contract arising wholly or in part by reason of any factor beyond its direct control.

16. NOTICES

Any notice required to be given in writing under the Contract shall be given either by telex or facsimile transmission or by first class post addressed to the registered office of the party for which it is intended.

17. GOVERNING LAW

This Contract shall be governed by the law of England and subject to the exclusive jurisdiction of the English Courts.