Marshall Engineering (Midhurst) Limited

TERMS AND CONDITIONS OF SALE

1) Definitions

In these conditions:

"Agreement" means these terms and conditions and the Order Form.

"the Company" means Marshall Engineering (Midhurst) Ltd.

"the Customer" means the customer as set out in the Order Form or the customer as set out in the Company's Order Acceptance Form.

"Goods" means all goods, materials, equipment, articles (including documents parts or accessories) supplied by the Company to the Customer whether in the form in which the same was delivered and whether or not combined or admixed with any other item or substance.

"Order Acceptance Form" means that form that is sent out by the Company to the Customer to acknowledge the Customer's order and accept the Customer's order in accordance with and subject to the terms and conditions in this Agreement.

"Order Form" means the order form and contents of that order form which is enclosed with these terms and conditions in which the Customer orders goods and/or services from the Company.

"Services" means all and/or any services provided by the Company to the Customer including but not limited to advice given and statements made whether orally, in writing, by document, drawing, demonstration or in any other way whatsoever as set out in the Order Form.

2) Applicability of Conditions

These terms and conditions (including the Order Form and/or the Order Acceptance Form) shall take precedence over and prevail over any terms and conditions that may at any time be produced or presented by the Customer in relation to or in connection with the Goods and Services provided by the Company to the Customer.

No terms and conditions presented by the Customer in relation to the Goods and/or Services provided by the Company shall apply to the provision of Goods and/or Services by the Company to the Customer.

The Customer hereby expressly acknowledges and agrees that the Company only provides Goods and/or Services to the Customer on the basis of, in accordance with and subject to the terms and conditions of this Agreement and that the Customer, by ordering and/or receiving any Goods and/or Services from the Company (pursuant to or in relation to the Order Form, Order Acceptance Form or otherwise) hereby; (i) agrees to the terms and conditions in this Agreement; and (ii) agrees that the Customer's terms and conditions will not apply to any Goods and Services provided by the Company to the Customer; and (iii) agrees that the Customer will not make any claims or take any action on the basis that any of the Customer's terms and conditions apply to the provision of Goods and Services by the Company to the Customer.

3) Quotations and Estimates

The Company's quotations and estimates constitute invitations to treat and no contract between the Company and the Customer shall arise or be formed unless and until the Company has expressly accepted in writing the Customer's order placed on the basis of the Company's quotation and the terms and conditions in this Agreement (including but not limited to any amendment of the Company's quotation). The Company shall not be obliged to provide any Goods and/or Services that are not expressly stated in the Order Form or the Order Acceptance Form and/or which are not paid for by the Customer in accordance with the Order Form and/or the Order Acceptance Form.

In relation to installation or any assistance the Customer may require in relation to any Goods and/or Services, the Company will if requested to do so in writing by the Customer, provide the Customer with an estimate that comprises a fixed number of days at a fixed price to install any Goods if (and only if) the Company can be certain as to the exact number of days and exact cost that any such installation work will take.

If the Customer does not request in writing any estimate regarding the number of days it will take to install the Goods and/or if the Company believes that the Company cannot provide an estimate with a fixed number of days and fixed cost for installation then the Company will work on a time a materials basis whereby the Customer will pay the Company a daily rate for installation work throughout the period that the Company undertakes installation work up to and including the date that the Company confirms that it has completed the relevant installation work.

4) Representations

Unless the quotation contains a statement expressly nominating an employee to act on behalf of the Company no employee of the Company other than a director of the Company is authorised to make any statement, warranty or representation as to the Goods. The Customer, therefore, shall not be entitled to rely or to seek to rely upon any statement, warranty or representation made by an employee or agent of the Company other than written statements of a director or a nominated employee of the Company.

5) Prices

i) Unless previously withdrawn all prices and quotations given by the Company are only valid for a period of 30 days from and including the date upon which the same has been given by the Company unless a different period has been expressly specified in writing by the Company.

ii) Unless otherwise expressly specified , the price of all Goods and Services shall be ex works and exclusive of VAT which will be chargeable at the rate prevailing at the date of despatch of the Goods and/or performance of the Services as the case may be and of all other taxes of whatever nature imposed or to be imposed upon sales whether existing at the date of the quotation or imposed thereafter.

iii) The price(s) for Goods and Services quoted includes the cost of trade packing designed subject to reasonable handling to ensure safe arrival at any destination within the United Kingdom but unless otherwise expressly specified does not include the cost of carriage, delivery or insurance which if requested by the Customer shall be at the Customer's sole cost.

6) Cancellation

Cancellation by the Customer of any order shall only take place with the Company's prior written agreement and on such terms as the Company may agree. If (and only if) the Company agrees to any cancellation of any order then this shall be subject to the Customer paying the Company for any losses, costs and/or expenses (including loss of profits) that the Company may have suffered or incurred relating to or connected with the cancellation of an order.

7) Despatch Delivery and Testing

i) Delivery of the Goods to the Customer shall be deemed to occur and the risk of loss or damage of any kind in the Goods shall pass to the Customer on whichever of the following events occur earlier:-

(a) collection by or on behalf of the Customer (whether or not such carrier be the Company's agent or servant)

(b) seven days following notice being given by the Company to the Customer that the Goods are ready for collection or despatch

(c) seven days following notice being given by the Company to the Customer that the Goods would have become available for collection but for some act or omission for which the Customer or its employees or agents are responsible or for which neither the Company nor its employees nor its agents are wholly responsible.

(d) In any case where the Company has undertaken to deliver the Goods to the premises of the Customer or to any premises nominated by the Customer or to any premises nominated by the Customer if the Company has delivered the Goods as near to such premises as can be achieved in the circumstances existing upon the day upon which such delivery is attempted.

ii) Following the occurrence of any of the circumstances referred to in paragraph 7(i) above the Company shall be under no further liability in relation to or in connection with the delivery of the Goods but the Goods shall, following the occurrence of any of the circumstances in paragraph 7(i), be at the sole risk of the Customer. If the Goods shall still remain on the Company's premises the Customer shall forthwith remove the same without delay.

iii) The Customer shall (save where the Goods are to be tested at the Company's premises pursuant to (iv) below or where in the Company's opinion no examination of the Goods should be made until the same are to be used) carefully examine the Goods on receipt of the same and shall by written notice to be received by the Company within 14 days of receipt of the Goods notify the Company of any defects, faults, problems and/or issues reasonably discoverable on careful examination. In the absence of receipt by the Company of such written notice from the Customer, the Company shall be discharged from all liability in relation to or in connection with such defects, faults, problems and/or issues

iv) If (and only if) it is agreed in writing between the Company and the Customer that the Goods shall be tested by the Company in the presence of the authorised representatives of the Customer at the Company's premises the following provisions shall apply.

(a) The Company shall give the Customer a minimum of 14 (fourteen) days' notice (or such other period as may have been previously agreed) of the date(s) on which the Works Acceptance Tests of the Goods will commence and will agree such date(s) with the Customer provided commencement is no later than seven days after the first possible date that tests can be carried out pursuant to the Company's notice to enable the said representatives to witness such tests, which will be carried out in accordance with the Test Schedule agreed between the Company and the Customer. Should the authorised representatives fail to attend on the appointed date(s) the Company shall be entitled to carry out the tests as if the said representatives were present and deliver the Goods and Services which have passed the said tests. Upon the written request by the Customer the Company shall provide to the Customer a copy of the test results.

(b) Unless otherwise agreed the Test Schedule referred to in (a) above shall be established by the parties no later than 30 days or such other period as the contract specifies from the date of acceptance by the Company of the Customer's order or instructions to proceed provided that if at the request of the said tests is delayed or additional tests are carried out (unless such additional tests are considered by the Company to be necessary to enable the Goods to meet the agreed specification), any additional charges incurred by the Company in respect of such delay or additional tests shall be added to the contract price and paid by the Customer to the Company and the time for delivery by the Company shall be extended accordingly.

(c) Travelling and subsistence expenses of the said representatives shall be paid by the Customer to the Company.

(d) Where the contract so required the said tests, which shall be deemed to be the site acceptance tests shall be repeated after installation on site and the provisions set out in (b) and (c) above shall apply to any delay or additional tests which result from the request of the Customer.

(e) On satisfactory completion of the said tests, whether on the Company's premises or on the Customer's site or that of the Customer's customer, the Company shall issue a Taking-Over Certificate (with the content and in a format specified by the Company) which shall be signed by the authorised representative of the Customer and shall be final and conclusive proof that the Goods and Services have been supplied by the Company and accepted by the Customer in full accordance with the terms hereof and the Customer shall not thereafter make any claim against the Company in respect of the design, quality, performance and/or any other aspects of the Goods and/or Services provided by the Company unless the Customer can prove to the Company's reasonable satisfaction that the defect, fault, problem and/or issue complained of could not have been revealed by the said tests.

8) Time for and Form of Delivery

i) The Company will use reasonable commercial endeavours to deliver the Goods and/or to perform Services in accordance with any dates specified for delivery or performance but any such dates are stated by way of general information only and time shall not be of the essence and in the event of failure to despatch or deliver or perform within such times for any cause (whether within or outside the Company's reasonable control), the same shall not be a breach or repudiation of the contract and the Company shall not be liable for any loss or damage suffered by the Customer as a result of such delay but the Company will use reasonable endeavours to minimise any such delay (if any such delay occurs).

ii)
a) If the contract does not otherwise provide the Company shall be entitled to deliver Goods by single delivery or by instalments at its option.

b) If the contract provides for delivery by instalments or the Company so elects each instalment shall be deemed to be the subject of a separate contract on these conditions and without prejudice to sub-paragraph (i) hereof non-delivery or delay in delivery shall not affect the balance of the contract not entitle the Customer to terminate the same.

iii) In the event that the Goods shall not have been collected by or on behalf of the Customer or by carrier for despatch to the Customer within 8 working days of the Company's written notice pursuant to paragraph 7(i)(b) hereof then the Company may, in addition to the amounts charged for the Goods, charge an additional daily fee for storage of the Goods up to and including the date upon which the Goods are collected by or on behalf of the Customer. The charge for storage of the Goods will be based upon the area that the Goods are stored in and this shall not be less than [£x] per day per square metre of storage space.

9) Performance Prevented or Hindered

i) The Company shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the Company shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 3 months, either party may terminate this Agreement by giving 14 days' written notice to the other party.

ii) In the event of any work by the Company being suspended as a result of instructions given by the Customer or an omission by the Customer to give adequate instructions, the Customer shall indemnify the Company in respect of any cost incurred by the Company whether flowing directly or indirectly from the Customer's instructions or failure to give adequate instructions.

10) Payment

i) Unless otherwise agreed in writing payment for the Goods or Services shall be due not later than the delivery or performance, as the case may be, and time shall be of the essence in relation to payments being made by the Customer to the Company.

ii) Without prejudice to its right to terminate the contract for non-payment the Company reserves the right to charge interest at the 1% above the base rate of Natwest Bank compounded monthly on overdue accounts and/or to suspend work on the contract and the Customer shall pay the Company all of the Company's costs charges or expenses arising as a result of such suspension that is made due to non-payment, part payment or delayed payment of the Company's invoices.

11) Property in Goods

Until and unless full payment has been made of the price of the Goods and Services sold or supplied by the Company to the Customer:-

i)
a) the title in the Goods shall not pass to the Customer and Customer shall keep the Goods fully insured as bailee for the Company (returning the same to the Company upon request)

b) the Customer shall be at liberty to sell the Goods in the ordinary course of business in the name of the Customer and as principal and not as agent for the Company (but for an amount which is not less than the amount that is due, owing or payable by the Customer to the Company) notwithstanding the fact that title to the Goods has not then passed to the Customer but the benefit of such contract or sale and the proceeds of any such sale shall belong to the Company absolutely

c) the Customer shall keep and safely store the Goods separately and in such manner that they can be readily identified as the property of the Company.

d) In the event that the contract is terminated the Company is hereby irrevocably authorised to enter on to the premises of the Customer (and/or any other premises upon which the Goods are kept or stored by the Customer or on the Customer's behalf) and repossess the Goods and any other Goods in the Customer's possession the property which is vested in the Company.

e) The Customer will keep the Goods free from and will indemnify the Company against any charge, lien or other encumbrance on the Goods that are in the possession or control of the Customer.

f) In the event of the total or partial destruction of the Goods while the same are the property of the Company the Customer shall, amongst other things, apply any insurance monies received by the Customer in respect of such loss or destruction in payment to the Company of the price of the Goods and pending such payment shall hold such moneys on trust for the Company but the Customer shall in any event always be primarily liable to the Company for all losses, damages, costs and expenses that may be suffered or incurred arising out of or as a result of the total or partial destruction of the Goods.

ii) Should the Goods (or any of them) be converted into a new product, whether or not such conversion involves the admixture of any other Goods or things whatsoever and in whatever proportions, the conversion shall be effected by the Customer solely as agent for the Company and the Company shall have the full legal and beneficial ownership of the new product.

12) Drawings, Specifications, etc

i) Where the goods to be supplied are standard products and unless the contract specifies otherwise, all descriptions, drawings, illustrations, particulars of weights and measures or details or specifications or other descriptive matter supplied by the Company are approximate only.

ii) The Goods will be in accordance with the Company's or the manufacturer's written specification at the time of manufacture and any earlier or other specifications, descriptions, drawings, illustrations, particulars as to weights and measures, detail or other descriptive matter shall not form part of the description of the Goods or services supplied so that the Company shall not be under any liability in respect thereof.

13) Warranty and Limitation of Liability

i) The Company agrees to replace or at its option repair either at its works or on the Customer's premises free of charge Goods or any part thereof which are found to be defective through faulty materials provided by the Company, defective workmanship of the Company or defective design by the Company of the Goods. The Company may at its own expense inspect defective Goods at the premises of the Customer or require the Customer at the Customer's expense to send such Goods to the Company. Where the Company is liable hereunder to repair or replace the Goods the Company shall bear the cost of returning the same to the Customer.

ii) The above warranty shall only apply provided that:-

a) only the Company's parts (or the parts and spare parts of sub-contractors and suppliers to the Company) parts and spare parts have been and are used in relation to the maintenance and operation of the Goods

b) the Company has properly maintained the Goods and kept them in good condition (in the opinion of the Company acting reasonably) and has followed all maintenance and operational guidelines and procedures regarding the operation and maintenance of Goods

c) the Customer gives written notice within 12 months or such other period as the contract specifies of delivery or performance or in the case of items which have been replaced or repaired by the Company within 6 months or such other period as the contract specifies of such replacement or repair respectively after which any claim in respect thereof shall be absolutely barred;

d) the Goods have remained in the possession and ownership of the Customer during such period and have remained in the country in which they were first supplied to the Customer; and

e) the part or parts of the Goods which are proven to be defective materials, workmanship or design are part or parts manufactured by or manufactured from components manufactured by the Company.

If the defective materials, workmanship or design of any parts are provided by the Company to the Customer but are manufactured by or from components provided by third party suppliers to or sub-contractors of the Company then the Customer will only take action against those third party suppliers or sub-contractors and the Company will offer the Customer reasonable assistance in relation to facilitating any discussions between the Customer and the relevant third party suppliers or sub-contractors. Only if those third party suppliers or sub-contractors offer no remedy for the Customer will the Customer then be entitled to take any action against the Company in respect of such defective materials, workmanship or design of any such parts.

iii) The above warranty **shall not** apply:-

a) if the Goods and/or Services have been used in a manner contrary to or not strictly in accordance with the terms and conditions of this Agreement and any instructions accompanying them and/or any instructions or directions of the Company;

b) if the Goods and/or Services have been subjected to other improper use; or

c) if the Goods and/or Services were manufactured or provided according to a design made, furnished, or specified by the Customer for which the Company has disclaimed responsibility in writing.

iv) Nothing in this Agreement shall limit or exclude the Company's liability for:

a) death or personal injury caused by its negligence, or the negligence of its employees, agents, or subcontractors (as applicable).

b) fraud or fraudulent misrepresentation; or

c) any matter in respect of which it would be unlawful for Company to exclude or restrict liability.
(v) Subject to clause (iv):

a) the Company shall under no circumstances whatever be liable to the
Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit (whether direct and/or indirect), or any indirect or consequential loss arising under or in connection with this Agreement; and

(v) Subject to clause (iv):

a) the Company shall under no circumstances whatever be liable to the
Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit (whether direct and/or indirect), or any indirect or consequential loss arising under or in connection with this Agreement; and

b) the Company's total maximum aggregate liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lesser of (i) the contract price that is paid or payable by the Customer to the Company in the year in which the first event relating to any Customer claim or action took place; and (ii) one million pounds sterling (£1000,000 GBP).

The parties hereby expressly agree that the terms and conditions in this Agreement (including but not limited to clause 13) are reasonable, that the price that the Company charges the Customer and the price the Customer has paid reflects this allocation of risk (and that the Customer could pay more than the Customer actually paid for the Goods and/or Services if the Customer required the Company to take on more or additional risk), that they have each had an opportunity to seek professional advice in relation to these terms and conditions and that each party has entered into these terms and conditions in their own respective commercial interests.

14) Responsibility for Services

i) Save as is provided in clause 13 and sub-paragraph 14(ii) hereof, the Company shall not be under any liability for any loss or damage of whatsoever nature howsoever arising from any Services rendered by the Company (whether in whole or in part properly or otherwise) or by an omission by the Company howsoever arising to supply Services.

15) Radio-active and other Dangerous Goods

If any goods specified by the Customer and supplied or to be supplied by the Company shall consist of or incorporate any radio-active material or any other inherently dangerous matter of whatsoever nature, the Customer shall indemnify the Company in respect of all loss and damage suffered by the Company arising out of or due to the presence of such matter in the Goods whether or not any such loss or damage or any part thereof be otherwise caused or contributed to by or attributable to any act, neglect or default of the Company or any of its servants or agents.

16) Installation and Erection

Where the Company specifically undertakes to perform works of installation or erection or is on the premises of the Customer, for any other purposes connected with the contract then (unless otherwise specifically provided):-

i) the Customer shall be responsible for the unloading of materials and machines as delivered and for providing a suitable place for storage for the plant from its delivery until the commencement of erection. The place of storage shall be convenient and adjacent to the erection site.

ii) The Customer will at its own expense provide adequate and suitable foundations, fixings, buildings, lifting tackle, cranes and scaffolding and such other structures or equipment or requirements and facilities as the Company may reasonably require and water and lighting facilities for the use of the Company its servants or agents on the site and continuous means of access thereto and clear passage for all Goods together with adequate protection for all materials and equipment which shall be at the Customer's sole risk from the time of delivery. In the event of delay in completion and increased cost to the Company due to default by the Customer in any obligation hereunder the price shall be increased by the amount of such increased cost. All unskilled labour necessary for erection will be supplied by the Customer at his own risk and expense acting on the instructions of the Company's engineer.

iii) the Customer shall indemnify the Company from and against any claim for any compensation loss or damage whatsoever howsoever caused to any person (other than the members of the Company's own staff) or property whatsoever and to whomsoever the same belongs arising out of or in connection with the unloading, erection, installation or trial run by the Customer (or the Customer's agents or contractors) of the Goods and further agrees fully to compensate the Company for any damage to any Goods materials or equipment the property of the Company arising out of or in connection with such unloading erection or trial run.

iv) During the course of and after completion or erection all necessary power, fuel, water, lubricating material and such other assistance of whatsoever nature as the Company may reasonably require for the purposes of starting up or maintaining any trial run or otherwise shall be provided by the Customer at the Customer's own expense.

17) Sub-contracting

The Company shall be entitled at any time to sub-contract all or any of its rights and/or obligations hereunder without the consent of the Customer and the Company shall be entitled to create, produce, supply and deliver all goods and/or services by using the services of any of its affiliated or connected companies.

18) Intellectual Property

i) All drawings, tools, patterns, materials, specifications and other data prepared by the Company and all intellectual property rights therein, including but not limited to the copyright, patent, design and other like rights therein shall remain the property of the Company at all times and shall not be transferred or licensed to the Customer except as may be agreed upon in writing between the parties. All rights that are not expressly granted by the Company to the Customer in this Agreement are hereby expressly reserved by the Company.

ii) The Customer warrants that any design or instructions furnished or given by the Customer to the Company shall not be such as will cause the Company to infringe the intellectual property rights of any third party and that the Customer will indemnify and hold harmless the Company against any and all claims made in respect thereof.

19) Customer's Drawings and Designs

i) Unless expressly agreed by the parties in writing the Company shall be under no obligation whatsoever to check the accuracy, originality or novelty of all or any materials provided by the Customer to the Company and it shall be the Customer's responsibility to check the soundness or suitability or otherwise whatsoever materials supplied by the Customer to the Company.

20) Health and Safety at Work

i) Where the Goods are manufactured by the Company to designs or specifications supplied by the Customer the Customer undertakes that the designs or specifications are such as will enable the Goods to be safe and without risks to health when properly used.

ii) The Company undertakes so far as is reasonable and practicable to provide such close proximity guarding as is necessary to meet statutory requirements unless the goods are to be used in conjunctions with or assembled to other goods not supplied by the Company. In such cases the Company will require from the Customer a written undertaking that the Customer shall take specified steps sufficient to ensure insofar as it is reasonable and practicable that the Goods will be made safe and without risk to health when properly used.

iii) The Customer undertakes:-

a) that no machine supplied by the Company will be used save in conjunction with all proper fencing and guards and in accordance with all such other measures as may be reasonable to safeguard the persons operating or tending such machine or being in the vicinity thereof;

b) that all warning notices and other written information supplied by the Company in connection with any machine will be supplied by the Customer to all sub-purchasers thereof and to the persons operating or tending the machine.

c) that all machines supplied by the Company will be operated in accordance with all laws and regulations in force in the place where the machines are operated.

d) to indemnify the Company against any loss or liability incurred by it and caused or contributed to as a result of a failure to comply with any of sub-paragraphs (a) (b) or (c) hereof notwithstanding that such loss or liability may also have been caused or contributed to by some act, neglect or default of the Company or its servants or agents.

21) Name plates and warning plates

The Company reserves the right to affix its nameplate or any warning plate to any Goods or part thereof supplied by it to the Customer and the Customer undertakes that it will not subsequently remove deface or cover up the same.

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22) Termination

Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies each party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party:

a) fails to pay any amount due under this Agreement on the due date for payment and remains in default for more than 30 days after being notified to make such payment: or

b) commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so; or

c) has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over any of its assets, or a court or arbitrator with authority to so determine, determines that the debtor is unable to pay its debts.

23) Notices

Unless otherwise provided in writing any written communication or notice under this Agreement shall be made or given by sending the same by ordinary prepaid first class letter post in the case of the Company to its current address and in the case of the Customer to his last known address and if so sent shall be deemed to be made or given two days after the date when posted.

24) Law and Jurisdiction

This Agreement shall be governed by English Law and the parties shall submit to the exclusive jurisdiction of the English Courts in relation to all matters relating to or connected with this Agreement PROVIDED THAT the Company may take action against the Customer under any law and in any jurisdiction in order to enforce the Company's rights in relation to this Agreement (including but not limited to when the Company exports Goods and/or Services to the Customer for use of those Goods and/or Services outside the UK) and the Customer shall have the right to defend any such action by the Company under the relevant law in the relevant jurisdiction.

25) Entire Agreement

This Agreement supersedes any prior contracts, arrangements, and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to that subject matter. Neither party is relying upon any warranties, representations, agreements, understandings and/or courses of trade or business (whether in writing or otherwise) that have not been expressly set out in this Agreement. Nothing in this Agreement excludes or limits a party's liability for fraud or any fraudulent misrepresentations.

26) Severance

If any part of this Agreement is held unlawful or unenforceable that part shall be struck out and the remainder of this Agreement shall remain in effect.

27) No Waiver

No delay, neglect, or forbearance by either party in enforcing its rights under this Agreement shall be a waiver of or prejudice those rights.

28) No Set Off

The Customer shall not withhold or set off (whether under law, equity or otherwise) any monies that may be due, owing, or payable to the Company in relation to this Agreement. If the Customer believes that the Customer is owed any monies by the Company (of whatever nature and howsoever arising) then the Customer shall (if the Customer wishes to do so) make a separate claim for any such monies against the Company but this claim by the Customer shall be a separate claim and shall not affect in any way the Customer's obligation to pay the Company all monies in accordance with the terms and conditions of this Agreement that may be due, owing or payable by the Customer to the Company.