

INDIA/OCTOBER 2008

NSG GROUP CONDITIONS OF PURCHASE (PCP2)

1. DEFINITIONS

- 1.1 "Affiliate" means any undertaking which is: (i) the Buyer's ultimate parent undertaking; (ii) an ultimate or intermediate subsidiary undertaking of the Buyer's ultimate parent undertaking; or (iii) a parent undertaking or a subsidiary undertaking of any aforementioned undertaking (and for the purposes of the foregoing, an undertaking is a "subsidiary undertaking" of another company (its "parent undertaking") if that parent undertaking holds a majority of the voting rights in it, or is a member of it and has the right to appoint or remove a majority of its board of directors, or is a member of it and controls (whether alone or pursuant to an agreement with other shareholders or members) a majority of the voting rights in it).
- 1.2 "the Buyer" means the company so described in the Purchase Order.
- 1.3 "these Conditions" means the terms and conditions of purchase set out in this document and, where relevant, the Supplier Guidelines which may be applicable to the Seller in accordance with Clause 2.2.
- 1.4 "Confidential Information" means the Contract (and the existence thereof), all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by the Buyer to the Seller, observed or learned by the Seller whilst on Site and whether before or after the date of the Contract which is of a confidential nature including information relating to all tools and materials and all Designs issued by the Buyer or prepared by the Seller in connection with the Contract and information relating to the Buyer's operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.
- 1.5 "the Contract" means the contract (including the Purchase Order and these Conditions) between the Buyer and the Seller for the purchase of the Goods and/or the Services.
- 1.6 "the Contractual Delivery Date" means the date(s) as specified in the Purchase Order or otherwise specified by the Buyer in Writing as being fixed for Delivery and/or for completion of performance of the Services (as the case may be).
- 1.7 "the Contract Price" means the total price for the Goods and/or Services as stated (save in the case of error) in the Purchase Order or otherwise specified by the Buyer in Writing (or, where no such price is specified, the price list of the Seller applicable at the date of the Contract) and where the context so permits or requires, shall include any variations thereto which are effected in accordance with Clause 7.
- 1.8 "Customer Contracts" means contracts, warranties and/or other agreements between the Buyer and any of its customers relating to the supply by the Buyer of goods and/or services in the supply of which the Buyer (either wholly or in part) uses, intends to use, supplies and/or intends to supply the Goods and/or the Services.
- 1.9 "the Date of Delivery" means the date(s) when Delivery is made or when the performance of the Services is completed (as the case may be).
- 1.10 "Delivery" means the delivery of the Goods to the place(s) specified for such delivery in the Purchase Order or to the place(s) otherwise agreed by the Buyer in Writing.
- 1.11 "Designs" means any drawings, designs, specifications, plans, calculations and other documents and computer software relating to the Goods or Services.
- 1.12 "Free Issue Material" means Tooling, samples, prototypes, goods, drawings, designs, patterns and other items which the Buyer issues to the Seller free of charge for use by the Seller in connection with the Contract, or which the Buyer permits the Seller to use in connection with the Contract.
- 1.13 "the Further Warranty Period" means the period of twelve months commencing on the date of completion (or the Date of Delivery, if appropriate) of any repairs to or replacement of the Goods or any further performance of the Services, in each case in accordance with the provisions of these Conditions, plus any period remaining under the relevant Initial Warranty Period in respect of such Goods or Services.
- 1.14 "the Goods" means all goods, materials, Designs and other items (including any part of them and any packaging in respect thereof) specified in the Purchase Order which are to be supplied by the Seller and shall include (where the context so admits) any replacements or repairs thereof in accordance with the provisions of these Conditions.
- 1.15 "Incoterms" means the provisions of Incoterms 2000 as published by the International Chamber of Commerce or any subsequent variation or amendment thereto from time to time.
- 1.16 "the Initial Warranty Period" means the period commencing on the Date of Delivery and ending on the earlier of:-
- 1.16.1 three years from the date the Goods are put into service; and
- 1.16.2 four years from the Date of Delivery.

- 1.17 "Intellectual Property Rights" means rights in patents, inventions, know-how, trade secrets and other confidential information, registered designs, utility models copyrights, database rights, design rights, rights affording equivalent protection to copyright, rights in trade marks, service marks, logos, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country or jurisdiction, rights in the nature of unfair competition rights and rights to sue for passing-off.
- 1.18 "Losses" means all direct, indirect and consequential loss, liability, damages, claims, costs and expenses (including legal expenses on an indemnity basis, losses of profit and other pure economic loss).
- 1.19 "Notice" has the meaning given to such term in Clause 7.1.
- 1.20 "the Purchase Order" means the Buyer's purchase order which specifies that these Conditions apply to it.
- 1.21 "Product Information" has the meaning given to such term in Clause 15.1.
- 1.22 "the Seller" means the person, firm or company to whom the Purchase Order is issued.
- 1.23 "the Services" means the services (if any) described in the Purchase Order (and shall where applicable include installation, supervision of installation, commissioning or other work) and (where the context so admits) any further performance thereof in accordance with the provisions of these Conditions.
- 1.24 "Site" means all premises (whether in the occupation or ownership of the Buyer or other third party) where the Services and work in relation to the Goods are performed.
- 1.25 "Sub-Contractor" means any person(s), firm or company to whom the Seller sub-contracts work or from whom the Seller purchases goods, services or Designs to be used in the performance of the Seller's obligations under the Contract.
- 1.26 "Supplier Guidelines" means the Buyer's supplier guidelines in respect of the Buyer's purchasing policies, quality, delivery and other procedures and guidelines for its suppliers and potential suppliers, which shall be made known to the Seller by the Buyer from time to time.
- 1.27 "Tooling" means tooling, moulds, dies and equipment.
- 1.28 "VAT" means value added tax or any tax from time to time which is similar to or substituted for such tax.
- 1.29 "Writing" means any writing and shall include any letter, telex, cable, facsimile transmission, internet transmission (including email and any web-based portal which is used as a means of communication between the parties in connection with the Contract) and comparable means of communication.

2. **BASIS OF CONTRACT**

- 2.1 These Conditions shall apply to the Contract and supersede any earlier conditions issued by the Buyer. Any provision contained in any terms and conditions which may be attached to any acceptance or acknowledgement of the Purchase Order or which may be proffered by the Seller at any date after the date of the Purchase Order and which purports to incorporate such terms and conditions into the Contract and to replace these Conditions shall be of no contractual effect whatever and the terms and conditions of the Contract between the Buyer and the Seller shall be construed in accordance with the provisions of these Conditions. Acceptance of Delivery or services provided shall not constitute any acceptance of any terms and conditions proffered or attached by the Seller.
- 2.2 Subject to prior notification in Writing from the Buyer to the Seller, all or any part of the Supplier Guidelines, to the extent permissible by law, may be binding on the Seller and will accordingly form part of the "Conditions" as referred to herein.
- 2.3 The Purchase Order constitutes an offer by the Buyer to purchase the Goods and acquire the Services subject to these Conditions.
- 2.4 Delivery or the carrying out of work by the Seller in relation to the Contract shall constitute acceptance by the Seller of the Purchase Order and these Conditions.
- 2.5 Save to the extent otherwise provided in these Conditions, no variation to the Contract shall be binding unless agreed by written document signed by the Buyer (acting by its authorised representative) and the Seller. The Buyer's employees who accept delivery of the Goods are not authorised to agree any variation to the Contract or to accept any conditions proposed by the Seller.

3. **DELIVERY**

- 3.1 The Seller shall complete Delivery by the Contractual Delivery Date and time shall be of the essence in respect thereof.
- 3.2 The mode and manner of Delivery (including in respect of applicable packaging requirements) shall be that specified in the Purchase Order (or delivery schedule or other relevant document submitted to the Seller in connection with the Contract) or, if not specified therein, such mode and manner as is reasonable having regard to the nature of the Goods and/or Services and the Contractual Delivery Date.

- 3.3 If Delivery is to be effected or the Services are to be performed by instalments, the Buyer shall be entitled in its discretion to treat the Contract as a single contract or a severable contract.
- 3.4 If any Goods (or instalments thereof) are supplied:
- 3.4.1 earlier than the Contractual Delivery Date, the Buyer shall not be obliged to accept or pay for such Goods;
- 3.4.2 in excess of the quantities specified in the Purchase Order, the Buyer shall not be obliged to pay for the excess;
- and, in each case, unless the Buyer otherwise agrees in Writing, the Buyer may (at its option) return and/or store such Goods or excess, at the Seller's risk and expense.

- 3.5 The Seller shall at its expense provide:
- 3.5.1 on the Date of Delivery (or earlier if reasonably requested by the Buyer) all applicable safety documentation and operating instructions, certificates (including test certificates, certificates of origin and certificates of analysis) and customs documentation in respect of all Goods and/or Services; and
- 3.5.2 with each delivery of Goods a prominent delivery note stating the Purchase Order number, the number of packages, the contents, quantities and (if applicable) the outstanding balance remaining to be delivered.

4. **PRICE**

- 4.1 Unless otherwise stated in the Purchase Order, the Contract Price shall remain fixed for the duration of the Contract and shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall, where properly chargeable, be payable by the Buyer subject to receipt of a valid invoice in accordance with Clause 5.2);
- 4.1.2 inclusive of any other applicable sales tax or duty applicable in respect of the sale, export or import of the Goods and/or the provision of the Services; and
- 4.1.3 in the case of Goods, inclusive of all applicable packaging and for the avoidance of doubt such packaging will not be returned to the Seller (unless the Buyer specifies otherwise in Writing, in which case the Seller shall promptly remove the relevant packaging at no cost to the Buyer and shall be fully responsible for its disposal).

5. **TERMS OF PAYMENT**

- 5.1 The Seller will submit an invoice for the Contract Price (or, in the case of instalments, for part thereof as applicable to each such instalment) after the Date of Delivery.
- 5.2 Each invoice shall be in Euros (unless otherwise specified in the Purchase Order) and shall clearly state the Purchase Order number, all data required by the law and all other information properly required by the Buyer in order for the Buyer to reclaim VAT.
- 5.3 Subject to the Buyer's rights under Clause 5.4 and without prejudice to any other of the Buyer's rights under the Contract, unless a later date for payment has otherwise been agreed, the Buyer will despatch payment on or before the expiry of 60 days following receipt by the Buyer of a valid invoice in accordance with Clause 5.2, provided that the Seller has complied with its obligations under the Contract.
- 5.4 The Buyer shall be entitled (without prejudice to any other remedy it may have) to set off against the Contract Price any sums owed to the Buyer by the Seller at any time (whether under the Contract or any other contract between the Seller and the Buyer and any Affiliate).

6. **PROPERTY AND RISK**

- 6.1 Subject to Clause 6.4 if any part of the Contract Price is payable before the Date of Delivery:-
- 6.1.1 the property in all the Goods, in all components for the Goods, materials for the Goods and tools to be used exclusively in connection with the Goods shall pass to the Buyer as soon as they are allocated to the Contract;
- 6.1.2 the Seller shall clearly mark the Goods and the items referred to in Clause 6.1.1 as the property of the Buyer, keep them in such separate place as may be necessary to preserve their identity, make them available for inspection whenever required by the Buyer and comply with all reasonable instructions of the Buyer; and
- 6.1.3 the Seller shall incorporate in its contract with any Sub-Contractors provisions to ensure that the provisions of this Clause 6.1 are complied with.
- 6.2 Where Clause 6.1 does not apply the property in the Goods (other than Designs) shall pass to the Buyer on the Date of Delivery.
- 6.3 Regardless of the passing of property the risk in the Goods shall not pass to the Buyer until the Date of Delivery. If for any reason the Goods are returned to the Seller pursuant to the Contract the risk in the Goods shall on same having left the possession of the Buyer revert to the Seller. At all times when risk in the Goods is the Seller's responsibility under the Contract, the Seller shall (without prejudice to any rights of the Buyer) fully insure such Goods with a reputable insurer against loss, damage and theft.
- 6.4 The Intellectual Property Rights in Designs and in any computer software created by the Seller for the Contract shall belong to the Buyer immediately they are created. The Seller hereby assigns all such Intellectual Property Rights to the Buyer by way of future assignment. Without prejudice to such assignment the Seller shall, if so requested by the Buyer, forthwith

execute any formal assignment of such Intellectual Property Rights to the Buyer. The Seller shall use such Designs only for the purposes of fulfilling the Seller's obligations under the Contract. The Seller shall not otherwise reproduce, use or transmit in any form such Designs without the Buyer's prior consent in Writing. The provisions of this clause 6.4 shall not affect the moral rights of the Seller in jurisdictions which prohibit the assignment of such rights.

6.5 The Seller shall acquire no rights to any Designs or computer software provided by the Buyer and, except for the purposes of fulfilling the Seller's obligations under the Contract, the Seller shall not reproduce, use or transmit in any form such Designs or software without the Buyer's prior consent in Writing.

7. VARIATIONS

7.1 The Seller shall not alter any of the Goods and/or the Services except that the Buyer shall have the right from time to time prior to the Delivery Date by notice in Writing ("Notice") and subject to Clauses 7.2 and 7.3 to direct the Seller to add to or omit or otherwise vary the Goods and/or the Services (including, for the avoidance of doubt, packaging in respect of the Goods, the place for Delivery, method of shipment and Contractual Delivery Date) and the Seller shall carry out such variations and be bound by the same conditions, so far as applicable, as though such variations were stated in the Purchase Order.

7.2 Promptly after receiving any Notice, the Seller shall (and in any event within 14 days following the date of the Notice) advise the Buyer in Writing of:

7.2.1 any amendment to the Contract Price which the Seller reasonably requires in respect of the relevant Notice, giving the cost of any such amendment reasonably required (which shall be ascertained at the same level of pricing as that reflected in the Contract Price prior to the Notice); and

7.2.2 any impact which the Notice will have upon the Seller's ability to meet any of its obligations under the Contract (including any obligations in respect of meeting the Contractual Delivery Date).

7.3 The Seller's notification under Clause 7.2 shall indicate the Seller's alternative proposals as may most closely and reasonably correspond to the Buyer's requirements referred to in the Notice. Thereafter, the Buyer shall within 14 days decide whether or not the Seller's proposals shall be carried out by advising the Seller in Writing. If the Buyer advises the Seller in Writing within such 14 day period that the Buyer accepts the Seller's proposals the terms of the Contract previously applicable shall be modified to incorporate such proposals. If the Buyer does not within such 14 day period accept in Writing the Seller's proposals then the Notice shall be deemed not to have been given and the Buyer shall be entitled to cancel its agreement to purchase or acquire all or part of the Goods and/or any of the Services in accordance with Clause 10.2.

7.4 If the Seller does not give any notification to the Buyer under Clause 7.2 within the 14 day period set out in such Clause, then the Seller shall be deemed to have accepted the Notice without requiring any other variations to the Contract and shall be bound by the Notice on the basis set out in Clause 7.1.

8. WARRANTIES AND LIABILITY

8.1 The Seller acknowledges that the Buyer is relying on the Seller's skill and judgement with regard to the particular purpose for which the Goods and the Services are being bought and the manner in which they are intended to be used by the Buyer. The Seller also acknowledges that the Goods and the Services are required by the Buyer to enable the Buyer to perform the Buyer's obligations (in respect of which time is of the essence) to the Buyer's customers under all Customer Contracts. The Seller acknowledges that the Seller is aware of the terms of such Customer Contracts and the consequences to the Buyer of breach by the Buyer of such Customer Contracts. The Seller acknowledges that it is within the Seller's contemplation that Losses are likely to arise and be incurred by the Buyer in respect of such Customer Contracts if the Seller breaches the Contract.

8.2 In addition to any other of the Seller's warranties, conditions or obligations whether express or implied the Seller warrants and represents to the Buyer that:-

8.2.1 the Goods will be free from defects in design, materials and workmanship; and

8.2.2 the Goods will be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller at or at any time prior to the issue of the Purchase Order to the Seller or for which the Goods are commonly supplied; and

8.2.3 the Goods will correspond with their description and with any relevant Designs or sample(s); and

8.2.4 the Goods will be packaged and marked in accordance with any instructions given by the Buyer;

8.2.5 the Goods (including their manufacture, packaging and delivery) will comply with all applicable regulations and other legal requirements (including in respect of health and safety); and

8.2.6 the Services will precisely comply with all requirements of the Contract and/or in any applicable instruction, drawing or specification supplied or advised by the Buyer; and

- 8.2.7 the Services will be performed in accordance with all applicable regulations and other legal requirements using the best quality materials and workmanship; and
 - 8.2.8 the Services will be performed and any Designs provided by the Seller will be produced by appropriately qualified and trained personnel, with due care, skill and diligence and in accordance with best industry practice and to the highest standards of performance which are practised in any industry in which services similar to the Services are carried out; and
 - 8.2.9 in respect of any applicable subject matter of the Services, the Services will produce an end result which is capable of meeting any function and/or standard of performance which has been held out by the Seller or made known to the Seller at or at any time prior to the issue of the Purchase Order or for which the Services are commonly supplied; and
 - 8.2.10 in accordance with the provisions of applicable law, the Seller shall ensure that neither itself or its partners, directors, employees and/or advisors, innocently or otherwise, engage in any practice which may constitute a criminal offence and the Seller will adopt suitable procedures to avoid any such breach.
- 8.3 The Seller acknowledges that precise conformity of the Goods and the Services with the provisions of the Contract is of the essence of the Contract and accordingly the Buyer may reject any of the Goods or any of the Services which are not in conformity with any express or implied condition, warranty or other term relating to them (including, for the avoidance of doubt, under the preceding provisions of this Clause 8), however slight the breach may be. The Buyer shall not be deemed to have accepted any of the Goods until the Buyer has had a reasonable time to inspect them after the Date of Delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 8.4 The making of any payment and/or the use or resale of any Goods by the Buyer and/or the carrying out of any repair or replacement of the Goods or further performance of the Services by the Seller shall not prejudice the Buyer's rights of rejection in accordance with Clause 8.3.
- 8.5 Without prejudice and in addition to any other of the Buyer's rights (including, for the avoidance of doubt, pursuant to the indemnity in Clause 9.1), the Buyer shall be entitled to require the Seller (at the Buyer's option) to:
- 8.5.1 in the case of Goods, repair or replace any Goods (at the Seller's risk and expense) or to refund the Buyer with the Contract Price (or a relevant proportion thereof); or
 - 8.5.2 in the case of Services, re-perform (at the Seller's expense) any Services or to refund the Buyer with the Contract Price (or a relevant proportion thereof)
- if and to the extent that during the Initial Warranty Period or (if applicable) the Further Warranty Period such Goods and/or Services fail to comply with any warranty or other requirement of the Contract.
- 8.6 In the event that the Seller fails within a reasonable period to repair or replace any of the Goods or to re-perform any of the Services in accordance with Clause 8.5, then the Buyer may (without prejudice to any other of the Buyer's rights) purchase other goods which are the same as or similar to the Goods and/or itself provide or arrange for a third party to provide services which are the same as or similar to the Services and/or itself repair or arrange for a third party to repair the relevant Goods and (in each case) shall be entitled to reimbursement by the Seller for all costs so incurred.

9. **INDEMNITIES**

- 9.1 The Seller shall, upon demand by the Buyer, indemnify the Buyer and each Affiliate (together, the "Indemnified Party") in full and keep the Indemnified Party fully indemnified at all times against all Losses (including under any Customer Contracts) which the Indemnified Party may suffer or incur or pay arising out of or in connection with:
- 9.1.1 the Seller's failure to perform, or properly perform, or any delay in the Seller performing any of its obligations under the Contract;
 - 9.1.2 any breach of any warranty given by or implied on the part of the Seller;
 - 9.1.3 any act or omission or negligence (including any breach of statute or duty) of the Seller; and/or
 - 9.1.4 any claim that the Goods and/or the Services infringe the Intellectual Property Rights of any third party,
- except (in each case) if and to the extent caused by or contributed to by any negligence of the Indemnified Party or any breach of the Contract by the Buyer or (in the case of the indemnity under Clause 9.1.4) except if and to the extent arising from any drawings, designs or specifications provided to the Seller by the Indemnified Party.
- 9.2 For the avoidance of doubt, any act, omission or failure by any employee of the Seller or by any agent, Sub-Contractor or other party appointed by the Seller shall be deemed to be an act, omission or failure of the Seller for the purposes of indemnity under Clause 9.1.

10. **TERMINATION AND CANCELLATION**

- 10.1 The Buyer shall be entitled to terminate the Contract forthwith by notice in Writing to the Seller if at any time:-

- 10.1.1 the Seller party commits a breach of the Contract and fails to remedy it within 7 days of receipt of notice in Writing of the breach requiring remedy of the same; or
 - 10.1.2 the Seller makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction without insolvency); or
 - 10.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
 - 10.1.4 the Seller ceases, or threatens to cease, to carry on business; or
 - 10.1.5 anything analogous to the events referred to in Clauses 10.1.2 and 10.1.3 occurs in any jurisdiction in relation to the Seller; or
 - 10.1.6 there is a change in the control of the Seller (and for this purpose, 'control' means the ability to direct or influence the affairs of another whether by way of contract, ownership of shares or otherwise); or
 - 10.1.7 it reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller.
- 10.2 The Buyer shall be entitled to cancel its agreement to purchase or acquire all or part of the Goods and/or any of the Services by giving notice in Writing to the Seller (with termination taking effect upon the date specified in such notice) at any time prior to Delivery, in which event:-
- 10.2.1 the Contract shall continue in full force and effect in respect of any of the Goods and/or any of the Services in respect of which Delivery or performance has already been effected or payment by the Buyer has been made or which are not the subject of such notice;
 - 10.2.2 the Seller shall, if so required by the Buyer and notwithstanding the Buyer having indicated that it wishes to cancel its order to purchase any of the Goods and/or any of the Services, complete and deliver any of the partially completed Goods and complete the performance of any of the partially performed Services and all the terms of the Contract shall apply to such Goods and Services; and
 - 10.2.3 in the case of cancellation of agreement to purchase or acquire any of the Goods, the Seller shall be entitled to require the Buyer to purchase at the price paid by the Seller any components reasonably purchased by the Seller specifically in order to supply the Goods (if and to the extent purchased for those aspects of the Buyer's forecasted requirements which have been confirmed in Writing to the Seller as being its firm requirements) if the Seller cannot use such items for the performance of any other actual or anticipated agreement with the Buyer or any third party and provided such items are in good condition and fit for the purpose for which they were purchased. All terms of the Contract (other than in relation to the price payable) shall apply to the purchase of such items as if they were the Goods.
- 10.3 Without prejudice and in addition to any other remedies available to the Buyer (including under Clause 8) if the Buyer terminates the Contract or any part thereof under Clause 10.1:-
- 10.3.1 the Seller shall forthwith return to the Buyer all payments already made in respect of any Purchase Orders which have not been fulfilled by the Seller; and
 - 10.3.2 the Buyer shall be entitled to purchase from a third party goods, services, designs and other items equivalent to the Goods and/or the Services that the Seller should have supplied to the Buyer had the Buyer not terminated the Contract, or a reasonable alternative thereto bearing in mind the Buyer's need to take delivery of the goods, services, designs and other items by the Contractual Delivery Date, and in that event the Seller shall be liable to reimburse the Buyer on demand all expenditure incurred by the Buyer in connection with and as a result of the said termination, including any increase in price over the Contract Price or the relevant part thereof; and
 - 10.3.3 the Seller shall be liable to the Buyer in respect of any Losses arising from the said termination incurred by the Buyer including those Losses referred to in Clause 8.6; and
 - 10.3.4 where, on termination, the Buyer elects to keep or take possession of some of the Goods, the Buyer shall account to the Seller for them at a reasonable proportion of the Contract Price or at a value agreed with the Seller, but otherwise no compensation shall be payable to the Seller on termination.
- 10.4 Termination of the Contract for whatever reason shall not affect the rights and obligations of the Buyer and the Seller under the Contract which accrued prior to termination. The Clauses in these Conditions which expressly or by implication have effect after termination of the Contract (including, for the avoidance of doubt, Clauses 6, 8, 9, 13, 14, 15 and 16) will continue to be enforceable notwithstanding any such termination.

11. **PROGRESS AND INSPECTION**

Without prejudice to any other of the Buyer's rights the Buyer's representatives shall have the right to check the progress of manufacture of and inspect all the Goods (whether at the Seller's works, the works of Sub-Contractors or elsewhere) and the Product Information at all reasonable times. Without

prejudice to the generality of the foregoing (and subject to notification to the Seller by the Buyer in Writing that the Supplier Guidelines are applicable with respect to the Contract in accordance with clause 2.2), the Seller shall comply with the requirements and procedures of the Supplier Guidelines with regard to quality audits and inspections (including, for the avoidance of doubt, quality control checks and incident notice procedures) in connection with the Contract. Subject to Clause 12, the Seller's contracts with its Sub-Contractors shall include similar provisions in all material respects to this Clause 11 and the Seller shall ensure that the Buyer has rights to enter the premises of Sub-Contractors on the Seller's behalf.

12. **ASSIGNMENT AND SUB-CONTRACTING**

The Seller shall not without the Buyer's prior consent in Writing sub-contract any or all of its obligations under the Contract or assign the Contract or any benefit or interest connected with it. Notwithstanding any consent which may be given by the Buyer in respect of the Seller engaging any Sub-Contractor, the Seller shall be responsible for the acts, omissions, defaults or negligence of any Sub-Contractor (and the employees of any Sub-Contractor) as fully as if they were the acts, omissions, defaults or negligence of the Seller.

13. **FREE ISSUE MATERIAL**

13.1 Free Issue Material shall be and remain the property of the Buyer at all times and whilst in the possession, custody or control of the Seller shall be clearly marked by the Seller as the Buyer's property and shall be stored separately from the Seller's property in a safe and proper manner. The Seller shall promptly deliver to the Buyer any Free Issue Material upon being given notice in Writing by the Buyer to do so. The Seller hereby irrevocably grants the Buyer the right to enter any of the Seller's premises (and those of the Sub-Contractors) at any time to remove any Free Issue Material.

13.2 The Seller shall maintain all Free Issue Material in good order and condition subject (where applicable) to fair wear and tear. The Seller shall use Free Issue Material in a proper and economical manner and solely in connection with the Contract and for no other purpose whatsoever. Any surplus Free Issue Material shall be disposed of by the Seller in accordance with the Buyer's instructions. Any waste of, loss of, or damage to the Free Issue Material arising from bad workmanship or negligence of the Seller (including any default of the Seller in storing and maintaining the Free Issue Material) shall be made good at the Seller's expense. The risk in all Free Issue Material shall pass to the Seller when received by the Seller and shall remain with the Seller until returned to and received by the Buyer.

13.3 All Intellectual Property Rights in Free Issue Material remain vested in the Buyer at all times. The Buyer hereby grants to the Seller a royalty-free non-exclusive licence to use its Intellectual Property Rights in the Free Issue Material only to the extent necessary for the Seller's use in connection with the Contract and no other licence, consent or authorisation is granted to the Seller in respect of the Buyer's Intellectual Property Rights in the Free Issue Material. Such licence is personal to the Seller and shall not be assigned or otherwise transferred or sub-licensed without the prior written consent of the Buyer.

14. **CONFIDENTIALITY**

14.1 Subject to Clauses 14.2 and 14.3, the Seller shall treat as confidential all Confidential Information and shall not without the Buyer's prior consent in Writing divulge Confidential Information to any person or use Confidential Information other than as strictly required for the purposes of the Contract.

14.2 The Seller may disclose Confidential Information to any of its employees and (subject to Clause 12) Sub-Contractors to the extent strictly necessary for the purposes of the Contract, provided always that each such recipient of Confidential Information is first made aware of the relevant obligations of confidentiality under Clause 14.1 and shall hold the Confidential Information on like conditions and that any failure by such recipient to observe such conditions shall be deemed to be a breach by the Seller of Clause 14.1.

14.3 The restrictions in Clauses 14.1 and 14.2 do not apply to Confidential Information which:

- 14.3.1 is publicly available or becomes publicly available without breach of Clause 14.1; or
- 14.3.2 is required to be disclosed to any governmental or other authority, regulatory body, or by the listing rules of a recognised stock exchange or as required by law.

14.4 Without prejudice to the generality of Clause 14.1, the Seller shall not:

- 14.4.1 use the Contract or the Buyer's name for the purpose of advertisement;
- 14.4.2 use the Site or any other premises of the Buyer for any purpose other than as strictly required for the purposes of the Contract;
- 14.4.3 take, or allow its employees, the Sub-Contractors (or any employees of Sub-Contractors) to take, photographs of the Goods, the Site or anything situated thereon.

14.5 The provisions of this Clause 14 shall apply without limit in time and notwithstanding any termination of the Contract for any reason.

15. **RECORDS AND INSURANCE**

15.1 The Seller shall maintain for a period of twenty years from the Contractual Delivery Date (or, where the relevant Customer Contracts permit, such lesser period as the Buyer may specify in Writing) full and complete records relating to the design, testing, composition (including any

chemicals or other raw materials contained in the Goods), manufacture, (including, for the avoidance of doubt, the Seller's quality control records), storage, transportation of and the supplies of raw materials and components used in the manufacture of the Goods and the performance of the Services ("Product Information").

15.2 The Seller shall at the Buyer's request promptly provide to the Buyer (or to such third party as the Buyer may direct) such of the Product Information and such other assistance as the Buyer may request in connection with its requirements under Customer Contracts, the Buyer's legal obligations, the defence of any claim arising out of or related to any defect or alleged defect in the Goods or any product in which the Goods have become incorporated or comprised whether as a component, raw material or otherwise or the end result in respect of any applicable subject matter of the Services. The Seller shall impose an equivalent obligation for the benefit of the Buyer upon any Sub-Contractors who supply to the Seller any raw materials or components used in the manufacture of the Goods.

15.3 Unless otherwise agreed in Writing between the Buyer and the Seller, the Seller shall insure with a reputable insurer against all liability to the Buyer (whether arising under the Contract or otherwise) arising out of or connected with the Goods and/or the Services and/or the sale or supply thereof. Unless so agreed in Writing the amount of such insurance shall not be less than €3,000,000 (three million euros).

16. **SPARES**

The Seller shall guarantee the availability of any spares and replacement parts in relation to the Goods for a period of twenty years from the Date of Delivery (or, where the relevant Customer Contracts permit, such lesser period as the Buyer may specify in Writing). If the Buyer elects to purchase such spares and replacement parts from the Seller the price for same shall be the published list price (or if no such price is published a reasonable proportion of the Contract Price) increased in line with the United Kingdom Retail Prices Index or equivalent index in the country where the Buyer is situated (or any index which succeeds or replaces any such index from time to time) since the Date of Delivery.

17. **WAIVER**

The rights and remedies of the Buyer under the Contract may be waived only in Writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Buyer shall not constitute a waiver of that right or remedy or of any other rights or remedies. No waiver by the Buyer in respect of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

18. **NOTICES**

Unless otherwise stated, any notice required or permitted to be given or served under these Conditions by the Seller or the Buyer shall be by way of written document and shall be validly given if sent by facsimile transmission or recorded delivery post (or by airmail where appropriate) to the address or facsimile number stated for the Seller and the Buyer respectively on the Purchase Order or to any address subsequently specified in Writing for this purpose. Any such notice shall be deemed served (in the case of service by post) on the fifth day after the date of posting and (in the case of service by facsimile) on the next working day after transmission.

19. **INTERPRETATION**

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

19.2 In these Conditions (unless the context otherwise requires):

19.2.1 use of the words "including" and "include" and words of similar effect shall not limit the general effect of the words which precede them;

19.2.2 words importing persons shall include firms, companies, associations, bodies corporate and vice versa;

19.2.3 words importing the singular shall include the plural and vice versa;

19.2.4 words importing any one gender shall include either other gender; and

19.2.5 references to a Clause are to a clause of these Conditions.

19.3 In interpreting the terms of the Contract:-

19.3.1 the terms of the Purchase Order shall apply to the Contract and in the event of any conflict shall take precedence over these Conditions and any other documents referred to in the Purchase Order; and

19.3.2 the provisions of these Conditions shall in the event of any conflict take precedence over any other documents referred to in the Purchase Order; and

19.3.3 the provisions of these NSG Group Conditions of Purchase (PCP2) shall, in the event of any conflict, take precedence over the Supplier Guidelines and any policies or guidelines referenced therein; and

19.3.4 where the Contract is for the international supply of the Goods, Incoterms shall apply to the Contract and shall prevail over these Conditions in the event of there being any conflict; and

19.3.5 the terms of the Purchase Order shall prevail over Incoterms in the event of any conflict.

- 19.4 If any provision of the Contract is held by any court or competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.
- 19.5 The Contract (comprising the Purchase Order, these Conditions and any document or notice which the Buyer issues in Writing in connection with it) constitutes the entire agreement and understanding between the Buyer and the Seller in respect of the matters dealt with and supersedes, cancels and nullifies any previous understanding or agreement between the Buyer and the Seller relating to such matters.

20. DISPUTE RESOLUTION

- 20.1 In the event of a dispute or difference arising between the parties including, without limitation, the existence, construction, validity, performance and termination of the Contract ("**Dispute**"), the matter shall be referred by either party to representatives of each party at operational level with authority to settle the Dispute, who shall attempt to resolve the Dispute within 14 days of referral. If the Dispute remains unresolved, the matter shall be referred by either party to the chief executives (or equivalent) of the parties, who shall attempt to resolve the Dispute within 14 days of referral.
- 20.2 If the Dispute remains unresolved by the chief executives (or equivalent), then such Dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which LCIA Rules are deemed to be incorporated by reference into this clause.
- 20.3 The seat, or legal place, of arbitration shall be London, England.
- 20.4 The language to be used in the arbitration proceedings shall be English.
- 20.5 The construction, validity and performance of the Contract shall be governed by the substantive laws of the place of incorporation of the Buyer and the terms of the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) shall not apply.
- 20.6 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales for the purpose of assisting any arbitration proceedings (actual or intended) brought pursuant to the Contract, including (without prejudice to the generality of the foregoing) for the purpose of granting injunctive or other interlocutory relief and/or ordering disclosure of documents or information from third parties.
- 20.7 Notwithstanding clauses 20.2 to 20.6 above, the Buyer shall at its sole option have the right to refer any Dispute (providing always that it has not already been referred to arbitration in accordance with clause 20.2 above) to the courts of the jurisdiction where the Buyer is incorporated, which courts shall have exclusive jurisdiction in relation to such Dispute. For the avoidance of doubt, this clause 20.7 is for the benefit of the Buyer only. A Dispute shall, for the purposes of this clause 20.7, have been referred to arbitration when a valid written request for arbitration from the Seller is received by both the Buyer and the Registrar of the LCIA Court.

21. MISCELLANEOUS

- 21.1 The Seller shall at the request of and at no cost to the Buyer do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to the provisions of the Contract.
- 21.2 Save in respect of the rights granted under the Contract to each Affiliate (which rights shall be enforceable by such Affiliate), a person who is not a party to the Contract shall have no right to enforce any term of the Contract.
- 21.3 Nothing in the Contract is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon the Buyer for the act or failure to act of the Seller or its sub-contractors, or to authorise the Seller or its sub-contractors to act as agent for the Buyer. The Seller shall have no authority to make representations, act in the name or on behalf of or otherwise to bind the Buyer without the prior consent of the Buyer in Writing.
- 21.4 The rights and remedies provided by this Agreement are cumulative and (unless otherwise provided in the Contract) are not exclusive of any rights or remedies provided at law or in equity.
- 21.5 These Conditions may be translated into any language other than English but if there is any conflict in meaning between the English language version and the translated version then the English language version shall prevail.
- 21.6 The Parties expressly agree that all personal data used in relation to this Condition of Purchase and in general for the performance of the Contract will be processed in compliance with the EU Data Protection Directive (95/46/EEC).
- 21.7 The parties have discussed, agreed and the Seller expressly accepts the provisions of these Conditions of Purchase.
Date.....
Seller's signature.....

SECTION TWO - ADDITIONAL CONDITIONS APPLICABLE WHERE SITE WORK IS REQUIRED

22. **APPLICATION**

Clauses 22 to 29 inclusive of these Conditions shall be added to Clauses numbered 1 to 21 inclusive when the Services are to be performed on Site (whether or not the Services are specified in the Purchase Order).

23. **KNOWLEDGE OF SITE**

The Seller is deemed to have visited Site and to have understood the nature and extent of the Services and shall make no claim founded on the Seller's failure to do so.

24. **PLANT FOR USE ON SITE**

24.1 Unless otherwise specified in Writing, the Seller shall provide all plant, materials, equipment and other items ("**Plant**") and labour necessary to perform the Services. The Seller must ensure that the Seller holds all appropriate test and examination certificates for such Plant and must produce them forthwith on request for inspection by the Buyer.

24.2 Notwithstanding the provisions of Clause 24.1 should the Buyer allow the Seller to use any Plant owned or lawfully used by the Buyer the Seller shall ensure that such Plant is:-

24.2.1 suitable for the purposes to which it is to be put and is in proper working order and good condition prior to use;

24.2.2 used in a safe and workmanlike manner and that it is returned to the Buyer in an undamaged condition, fair wear and tear excepted.

25. **SITE REGULATIONS**

25.1 The Seller shall deliver the Goods and, where necessary, Plant and perform the Services on Site at times which have previously been agreed by the Buyer (such agreement not to be unreasonably withheld).

25.2 The Seller shall perform the Services and use Plant on Site properly and safely and without risk to persons, property or the environment. Without prejudice to the foregoing obligation, the Seller shall also comply with all safety, environmental and any other reasonable regulations in force on Site.

25.3 The Buyer shall have the right to require the removal of any person brought to Site by the Seller who has:-

25.3.1 failed to comply with the obligations referred to in Clause 25.2; or

25.3.2 in the opinion of the Buyer, misconducted himself or been negligent or incompetent.

26. **SITE WORK BY SELLER**

In respect of any of the Services to be performed on Site and any of the Goods to be assembled, installed, commissioned or in some other way worked on Site ("**Site Goods**") the Seller shall:-

26.1 before making any delivery to Site, arrange for the offloading and adequate storage of the items to be delivered.

26.2 before commencing the Services, agree with the Buyer the hours to be worked by its personnel including any overtime and any hours to be worked outside of normal business hours. Such matters shall not be changed without the Buyer's written consent.

26.3 not offer employment during the Contract period to any person employed on Site by others.

26.4 notify the Buyer when the Site Goods are ready for inspection and shall make available the Site Goods until such time as the Buyer has had a reasonable opportunity to inspect the same.

26.5 not have exclusive access to or possession of Site but only such as shall enable the Seller to perform the Services concurrently with the performance of services by others.

27. **INDEMNITY**

The Seller shall take every reasonable precaution not to damage or injure any property or persons on the Site or contaminate the environment or cause any nuisance. The Seller shall indemnify the Buyer against all claims founded on any such damage, injury, contamination or nuisance which arise out of or in consequence of any operations on Site under the Contract whether such claims are made by the Buyer or by a third party against the Seller or by a third party against the Buyer, and the Seller shall indemnify the Buyer against all Losses arising in connection therewith provided that nothing in these Conditions shall render the Seller liable for any damage, injury, contamination or nuisance to the extent that same wholly results from any negligent act or omission of the Buyer, its agents or sub-contractors.

28. **INSURANCE**

28.1 The Seller shall have in force and shall require any Sub-Contractor to have in force:-

28.1.1 Employer's Liability Insurance; and

28.1.2 Public Liability Insurance for such sum and range of cover as the Seller deems appropriate but not less than €3,000,000 (three million euros) for any one accident unless otherwise agreed by the Buyer in Writing. All such insurances shall be extended to indemnify the Buyer against any claim for which the Seller or any Sub-Contractor may be legally liable.

28.2 The policies of insurance referred to in Clause 28.1 shall be shown to the Buyer whenever the Buyer requests, together with satisfactory evidence of payment of premiums.

28.3 The Buyer shall maintain Employer's Liability and Public Liability Insurance in respect of the Buyer's own liabilities.

28.4 The Seller shall give immediate notice in the event of any accident or damage likely to form the subject of a claim under the Buyer's insurance and shall give all the information and assistance in respect thereof that the Buyer's insurers may require, and shall not negotiate, pay, settle, admit or repudiate any claim without their written consent, and shall permit the insurers to take proceedings in the name of the Seller to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

29. **ACCEPTANCE TESTS**

29.1 If the Services include acceptance tests the Services shall be deemed not to be complete and (notwithstanding the provisions of Clause 1.16) the Initial Warranty Period shall not commence and the Buyer's right of rejection under Clause 8 shall be available and (notwithstanding the provisions of Clause 6.3) the risk in the Goods shall not pass to the Buyer until such acceptance tests have been completed to the reasonable satisfaction of the Buyer in accordance with this Clause 29.

29.2 Acceptance tests, which shall be in accordance with the provisions of the Contract, shall be carried out at a time to be agreed in Writing with the Buyer at least 14 days prior to the anticipated date of such testing.

29.3 When the installation of the Goods is complete and all tests to be made by the Seller have been passed to the reasonable satisfaction of the Buyer, the Buyer shall forthwith accept the Goods and shall certify accordingly.

29.4 If the Seller (not being in default of its obligations) is willing and able to proceed with the said acceptance tests and the Buyer directs that the said tests should not proceed at the time originally contemplated by the Contract then the tests shall be postponed for such period as shall be agreed (such agreement not to be unreasonably withheld).

29.5 The Buyer may accept any part of the Goods whether or not it has passed all its acceptance tests.

29.6 In the event of the Goods or any part thereof failing to meet the acceptance tests specified in the Contract, the Buyer will notify the Seller accordingly. If the Seller does not correct such failure within a reasonable period thereafter the Buyer may at the Buyer's discretion:-

29.6.1 assist in the rectification at the Seller's expense; or

29.6.2 accept the Goods conditional upon the Seller accepting a reduction in the Contract Price; or

29.6.3 reject the Goods in accordance with Clause 8.