

Terms & Conditions of Sale: 2022

Revised 13/04/2022

The definitions and rules of interpretation in the following Terms & Conditions apply as follows:

1. Definitions:

- The "Purchaser" means the company, firm, person, corporation, or public authority purchasing the goods and includes their successors or personal representatives
- The "Owners" means "serpecon Ltd" or "serpecon" and includes their successors and assigns
- The term "plant" shall be deemed to include any type of machine or equipment and accessories agreed to be purchased
- **Company:** "serpecon" or "serpecon Ltd" based at our Head office premises, 9 Downley Point, Downley Road, North Industrial Estate, Havant, PO9 2NA.
- **Contract:** The agreement between serpecon and the buyer for the supply of Goods and Services
- **Goods:** Purchased Goods (or any part of them) set out in the Customer Order or Purchase Order
- **Business Day:** A working day (other than a Saturday, Sunday or Public Holiday)
- **Buyer:** Person, Firm, or Company who purchases the Goods from serpecon
- **Conditions:** Terms and conditions as amended from time to time in accordance with clause 14.7
- **Contract Price:** Price of the Goods invoiced by serpecon to the Buyer in accordance with clause 9.3
- **Force Majeure Event:** has the meaning given to it in clause 14.1
- **Intellectual Property Rights:** All patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world
- **Order:** The Buyer's order for the supply of Goods, as set out in the Buyer's Purchase Order, or the Buyer's written acceptance of the serpecon quotation

2. Basis of Contract:

- 2.1 The Order constitutes an offer by the Buyer to purchase Goods in accordance with these Conditions.
- 2.2 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of serpecon which is not set out in the Contract.
- 2.3 Any samples, drawings, descriptive matter, or advertising issued by serpecon are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.
- 2.5 Any quotation given by serpecon shall not constitute an offer and shall be for the current price and strictly limited to the type and quantity of Goods as stated in the quotation.

3. Goods:

3.1 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Buyer, the Buyer shall indemnify SERPECON against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by SERPECON in connection with any claim made against SERPECON for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the SERPECON's use of the specification. This clause 3.2 shall survive termination of the Contract.

3.2 The SERPECON's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by SERPECON in writing. The Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

3.3 SERPECON is unable to advise the Buyer on the fitness of the Goods for any particular purpose, their storage or application. Unless SERPECON gives written advice or a written recommendation, the Buyer is entirely responsible for satisfying itself that the Goods are fit for the intended use either by relying on their own expertise or by obtaining professional advice.

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Certificate Number 12131
ISO 9001

3.4 SERPECON reserves the right to amend the specification if required by any applicable statutory or regulatory requirements. Dimensions and other physical properties of the Goods are subject to reasonable manufacturing tolerances.

4. DELIVERY OF GOODS

4.1 SERPECON shall ensure that: (a) each delivery of the Goods is accompanied by a delivery note; and (b) if SERPECON requires the Buyer to return any packaging material to SERPECON, that fact is clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as SERPECON shall reasonably request. Returns of packaging materials shall be at the SERPECON's expense.

4.2 SERPECON shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after SERPECON notifies the Buyer that the Goods are ready. Delivery shall be as near as possible to the Delivery Location, where SERPECON believes that such place is suitable for unloading during the normal working hours of SERPECON on a Business Day.

4.3 Where the Goods are delivered by SERPECON, delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The Buyer shall be solely responsible for the unloading of the Goods and SERPECON shall not be liable for any damage that occurs during such unloading. In the event that the same exceeds a period of one hour then demurrage may be charged by SERPECON to the Buyer.

4.4 Where the Goods are collected by the Buyer then delivery of the Goods shall be completed upon completion of the loading of the Goods. SERPECON shall not be liable for any damage that occurs during the loading or unloading of the Goods.

4.5 Any claims by the Buyer in respect of alleged shortage or damage or loss in transit must be notified to SERPECON within 24 hours of delivery and confirmed in writing within three days of delivery taking place. Any evident damage to external packaging must be the subject of an endorsement on the SERPECON's delivery note at the time of delivery. No claim can be made by the Buyer under this clause if an acceptance note relating to the Goods has been signed by the Buyer or his agent or employee without reference to the alleged damage, shortage or loss in transit.

4.6 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. SERPECON shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide SERPECON with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 If SERPECON fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. SERPECON shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Buyer's failure to provide SERPECON with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.8 If the Buyer fails to accept or take delivery of the Goods within seven Business Days of SERPECON notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the SERPECON's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the Business Day following the day on which SERPECON notified the Buyer that the Goods were ready; and

(b) SERPECON shall store the Goods until delivery takes place, and charge the Buyer on an indemnity basis for all related costs and expenses (including insurance).

4.9 If 28 days after SERPECON notified the Buyer that the Goods were ready for delivery the Buyer has not accepted or taken delivery of them, SERPECON may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

4.10 SERPECON may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

4.11 SERPECON shall be under no obligation to make any delivery of Goods to the Buyer if the Buyer is in breach of any of these Conditions.

5. QUALITY OF GOODS

5.1 SERPECON warrants that on delivery, and for a period of 12 months from the date of delivery ("Warranty Period"), the Goods shall:

- (a) be as described in SERPECON's specification as appropriate;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3 if:

(a) the Buyer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) SERPECON is given a reasonable opportunity of examining such Goods; and

(c) the Buyer (if asked to do so by SERPECON) returns such Goods to the SERPECON's place of business at the Buyer's cost, then SERPECON shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 SERPECON shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Buyer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Buyer failed to follow the manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of SERPECON following any drawing, design or specification supplied by the Buyer;
- (d) the Buyer alters or repairs such Goods without the written consent of SERPECON;
- (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from the specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or (g) the Buyer has not paid in full for the Goods.

5.4 Except as provided in this clause 5.4, SERPECON shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by SERPECON under clause 5.2.

6. RETURNS

6.1 Goods returned at the Buyer's request not on the SERPECON's own vehicle shall be at the Buyer's risk regarding insurance for a value not less than the full invoice price.

6.2 Costs of collection and re-delivery of replacement items will be met by the Buyer unless attributable to the negligence of SERPECON. Only Goods returned in saleable condition can be accepted for credit. SERPECON reserves the right to levy a re-stocking and handling charge. All returns must be sanctioned by SERPECON prior to Goods being brought back.

7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Buyer on completion of delivery where the Goods are delivered by SERPECON. Where the Goods are collected by the Buyer, the risk in the Goods shall pass to the Buyer when the employees or agents of SERPECON have completed lading to the satisfaction of the vehicle's driver.

7.2 Title to the Goods shall not pass to the Buyer until SERPECON has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods that SERPECON has supplied to the Buyer.

7.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as the SERPECON's bailee;
- (b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the SERPECON's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the SERPECON's behalf from the date of delivery;
- (e) notify SERPECON immediately if it becomes subject to any of the events listed in clause 12.1; and
- (f) give SERPECON such information relating to the Goods as SERPECON may require from time to time, but the Buyer may resell or use the Goods in the ordinary course of its business provided that any such sale of the Goods shall take place as the SERPECON's bailee and that the entire proceeds of sale are held in trust for SERPECON and shall not be mingled with other monies or paid into any overdrawn bank account.

7.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 12.1, or SERPECON reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy SERPECON may have, SERPECON may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

8. BUYER'S OBLIGATIONS

8.1 The Buyer shall:

- (a) ensure that the terms of the Order and any specification are complete and accurate; and
- (b) in the event that the Goods do not accord with the Order, the Buyer must notify SERPECON within 24 hours from the date of delivery and be confirmed in writing to SERPECON within three days, failing which the Buyer will be deemed to have accepted the Goods.

9. CHARGES AND PAYMENT

9.1 The price for Goods shall be the price set out in the Order. Unless otherwise stated, the price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods which shall be paid by the Buyer when it pays for the Goods.

9.2 SERPECON reserves the right to increase the price of the Goods by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to SERPECON that is due to:

- (a) any factor beyond the control of SERPECON (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery date(s), the number of deliveries, quantities or types of Goods ordered, or any specification; or
- (c) any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give SERPECON adequate or accurate information or instructions in respect of the Goods.

9.3 SERPECON shall invoice the Buyer on or at any time after completion of delivery of the Goods.

9.4 SERPECON shall have the right to invoice the Buyer by e-mail where the Buyer has consented to invoices being submitted in this manner. Where invoices are sent out using electronic mail they will be deemed to have been received by the Buyer on the date when they are sent provided that the electronic mail is transmitted between the hours of 9.00am and 5.00pm on a Business Day. If the invoice is sent by e-mail from SERPECON to the Buyer outside of the above times then the Buyer will be deemed to have received the invoice on the next Business Day.

9.5 The Buyer shall pay each invoice submitted by SERPECON:

- (a) by the end of the month following the month of issue of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by SERPECON, and time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by SERPECON to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from SERPECON, pay to SERPECON such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

9.7 Without limiting any other right or remedy of SERPECON, if the Buyer fails to make any payment due to SERPECON under the Contract by the due date for payment ("Due Date"), SERPECON shall have the right to charge interest on the overdue amount at the rate of 2% per month of the Contract Price from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment.

9.8 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against SERPECON in order to justify withholding payment of any such amount in whole or in part. SERPECON may, without limiting its other

rights or remedies, set off any amount owing to it by the Buyer against any amount payable by SERPECON to the Buyer.

9.9 Non-payment by the Buyer by the Due Date shall entitle SERPECON to demand payment of all outstanding balances under the Contract or any other contract or agreement between the parties whether due or not and to cancel forthwith any outstanding orders and credit facilities without prejudice to all other rights SERPECON may have.

9.10 The Buyer must pay to SERPECON all and any reasonable expenses and legal costs incurred by SERPECON in taking any steps, including Court action, to enforce the Buyer's obligations under the Contract for the payment of any monies owed by the Buyer to SERPECON.

10. CONFIDENTIAL INFORMATION

Neither party shall during and after termination of this Contract, without the prior written consent of the other party use or disclose to any other party any information of the other party which is identified as confidential or which is confidential by its nature. This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

11.1 Nothing in these Conditions shall limit or exclude the SERPECON's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

11.2 Subject to clause 11.1:

- (a) SERPECON shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and (b) the SERPECON's total liability to the Buyer in respect of all other
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losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Contract Price.

11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, SERPECON may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the Buyer defaults in any of its payment obligations;
- (b) the Buyer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 days after receipt of notice in writing of the breach;
- (c) any distress or execution is levied upon any assets of the Buyer;
- (d) a winding up petition is filed in relation to the Buyer, or where the Buyer is an individual, they become subject to a bankruptcy petition or order;
- (e) the Buyer makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a Court of competent jurisdiction for protection from its creditors or an administration or winding up order is made or an administrator or receiver is appointed in relation to the Buyer;
- (f) the financial position of the Buyer deteriorates to such an extent that in the opinion of SERPECON the capability of the Buyer adequately to fulfil its obligations in accordance with the Contract has been placed in jeopardy; or
- (g) the Buyer suspends, or threatens to suspend, payment of its debts and/or threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business.

12.2 Without limiting its other rights or remedies, SERPECON may terminate the Contract:

- (a) by giving the Buyer 14 days' written notice; or
- (b) with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, SERPECON shall have the right to suspend all further deliveries of Goods under the Contract or any other contract between the Buyer and SERPECON if:

- (a) the Buyer fails to pay any amount due under this Contract on the due date for payment; or
- (b) the Buyer becomes subject to any of the events listed in clause 12.1 or SERPECON reasonably believes that the Buyer is about to become subject to any of them.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason: (a) the Buyer shall immediately pay to SERPECON all of the SERPECON's outstanding unpaid invoices and interest; (b) the accrued rights and remedies of SERPECON as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. GENERAL

14.1 Force majeure:

(a) For the purposes of this Contract, "Force Majeure Event" means an event beyond the reasonable control of SERPECON including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or by any failure of the SERPECON's subcontractors to supply SERPECON.

(b) SERPECON shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents SERPECON from providing any of the Goods for more than 14 days, SERPECON shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

14.2 Assignment and subcontracting:

(a) SERPECON may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

(b) The Buyer shall not, without the prior written consent of SERPECON, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.3 Data and Data Protection:

(a) SERPECON may use any information that the Buyer has provided to SERPECON to enable a search to be made with credit reference agencies to assess the creditworthiness of the Buyer and to search against any personal credit records of all directors and/or proprietors of the Buyer (in respect of which the Buyer confirms that all necessary consents from the individuals have been obtained) where the Buyer has sought or has entered into credit terms with SERPECON. Such searches may include a search against current or previous addresses in the last three years

(b) For the purposes of credit referencing, fraud prevention and any money laundering regulations that may apply, SERPECON may share the account information and trade history with other lenders and credit reference agencies. SERPECON may from time to time review the account of the Buyer, and further searches of credit reference agencies and/or personal credit record searches may be undertaken by SERPECON.

(c) Under the Data Protection Act 1998 those individuals referred to in clause 14.3(a) above have the right to apply for a copy of the information about them held by SERPECON, for which SERPECON may charge a small fee, and have the right to correct any inaccuracies in any such information held.

14.4 Waiver and cumulative remedies:

(a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by SERPECON in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.5 Severance:

(a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

14.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by SERPECON.

14.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

Terms & Conditions of Purchase

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Company: SERPECON Systems Limited.

Contract: the Order and the Seller's acceptance of the Order.

Goods: any goods agreed in the Contract to be bought by SERPECON Systems from the Seller (including any part or parts of them).

Order: the SERPECON Systems written instruction to supply the Goods, incorporating these Conditions.

Seller: the person, firm or company who accepts SERPECON Systems Order.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.5, these conditions are the only conditions upon which SERPECON Systems is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by SERPECON from the Seller shall be deemed to be an offer by SERPECON to buy Goods subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.3 All Orders must be in writing on SERPECON's official order form, bearing an order number and signed by an authorised signatory of SERPECON.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.5 These conditions apply to all SERPECON's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of SERPECON.

3. QUALITY AND DEFECTS

3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by SERPECON to the Seller.

3.2 The Goods shall conform to any of SERPECON's and/or Seller's industry specific governing specifications as to quantity, quality, standards or descriptions.

3.3 SERPECON's rights under these conditions are in addition to the statutory conditions implied in favour of SERPECON by the Sale of Goods Act 1979.

3.4 At any time prior to delivery of the Goods to SERPECON, we shall have the right to inspect and test the Goods at all times.

3.5 SERPECON shall at any time prior to delivery of the Goods have the right to inspect:

- (a) any goods acquired by the Seller for the purpose of the Order
- (b) any production process used by the Seller for the purpose of the Order

Any information received by SERPECON during such inspections shall be treated as confidential, unless it can be shown that such information was already in the public domain or SERPECON had prior knowledge of such.

3.6 If the results of such inspection or testing cause SERPECON to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by SERPECON to the Seller, SERPECON shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition SERPECON shall have the right to require and witness further testing and inspection.

3.7 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations or SERPECON's remedies under the Contract.

3.8 If any of the Goods fail to comply with the provisions set out in condition 3 SERPECON shall be entitled to avail itself of any one or more remedies listed in condition 12.

4. INDEMNITY

4.1 The Seller shall keep SERPECON indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by SERPECON as a result of or in connection with:

- (a) defective workmanship, quality or materials;
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(b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and

(c) any claim made against SERPECON in respect of any liability, loss, damage, injury, cost or expense sustained by SERPECON's

employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in

performance of the terms of the Contract by the Seller.

(d) any claims for death or personal injury, against SERPECON, to any employees of the Seller or any agent or sub-contractor of the Seller while in or about SERPECON's place of business.

4.2 The Seller will effect and maintain at its own expense adequate insurance in respect of the above indemnity and shall upon request of SERPECON produce the certificate of such for inspection.

5. DELIVERY

5.1 The Goods shall be delivered, carriage paid, to SERPECON's place of business or to such other place of delivery as is agreed by SERPECON in writing prior to delivery of the Goods. The Seller shall off-load the Goods at its own risk as directed by SERPECON.

5.2 SERPECON reserves the right to collect the Goods in its own vehicles. If SERPECON collects the Goods pursuant to this clause, the Seller will grant to SERPECON a discount on the amount payable under this order in respect of carriage cost not incurred by the Seller.

5.3 Any carrier appointed by the Seller or specified by SERPECON shall be agent to the Seller and not SERPECON.

5.4 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 14 days of the Order.

5.5 Subject to clause 2.6, the Seller shall invoice SERPECON upon, but separately from, despatch of the Goods to SERPECON. This invoice shall contain the order number and part number.

5.6 Without prejudice to clause 5.5, the Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, part number, number of packages, contents and contains a suppliers advice note and, in the case of part delivery, the outstanding balance remaining to be delivered.

5.7 Time for delivery shall be of the essence.

5.8 The Seller shall effect and maintain at its own expense adequate insurance over the Goods whilst in transit.

5.9 Unless otherwise stipulated by SERPECON in the Order, deliveries shall only be accepted by SERPECON in normal business hours.

5.10 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, SERPECON reserves the right to:

- (a) cancel the Contract in whole or in part and refuse or return any Goods already delivered under this contract;
- (b) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make, acceptance or full or partial payment for any Goods under this contract does not remove this right;
- (c) recover from the Seller any expenditure reasonably incurred by SERPECON in obtaining the Goods in substitution from another supplier; and
- (d) claim damages for any additional costs, loss or expenses incurred by SERPECON which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

5.11 The Goods must be suitably preserved and packed by the Seller. The cost of which will be borne by the Seller.

5.12 If the Seller requires SERPECON to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to SERPECON and any such packaging material shall only be returned to the Seller at the cost of the Seller.

5.13 Where SERPECON agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment.

Nevertheless failure by the Seller to deliver any one instalment shall entitle SERPECON at its option to treat the whole Contract as repudiated.

5.14 Where SERPECON has agreed, pursuant to clause 5.13, to accept delivery by instalments subject to a delivery or works schedule or not, SERPECON reserves the right, upon reasonable notice to the Seller, to fix or vary delivery times for one or more of the instalments.

5.15 If the Goods are delivered to SERPECON in excess of the quantities ordered SERPECON, unless otherwise agreed in writing, shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense including transport both ways and all handling charges.

5.16 In any inspection under clause 5.15 SERPECON's count shall be final and conclusive on all shipments.

5.17 SERPECON shall have the right to reject the Goods as though they had not been accepted for 7 days after any latent defect in the Goods has become apparent.

6. RISK/PROPERTY

The Goods shall remain at the risk of the Seller until delivery to SERPECON is complete (including off-loading and stacking) when ownership of the Goods shall pass to SERPECON.

7. PRICE

7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by SERPECON shall be exclusive of value added tax but inclusive of all other charges.

7.2 No variation in the price nor extra charges shall be accepted by SERPECON, unless with previous written consent from SERPECON and at least 3 months' notice from the Seller of such change.

7.3 If prior to delivery of the Goods the Seller sells the same or similar goods in the UK for a lower price than under this contract, SERPECON shall be entitled to pay such lower price.

7.4 If in breach of clause 7.1, the price of the Goods was not stipulated in the Order, the price charged by the Seller to SERPECON shall be the lower of:

- (a) the current published price;
- (b) the last quoted price from the Seller to SERPECON for the same or similar goods;
- (c) the last price paid by SERPECON to the Seller for the same or similar goods.

8. PAYMENT

8.1 SERPECON shall pay the price of the Goods within 60 days of the month end of the date of the invoice issued, but time for payment shall not be of the essence of the Contract.

8.2 Without prejudice to any other right or remedy, SERPECON reserves the right to set off any amount owing at any time from the Seller to SERPECON against any amount payable by SERPECON to the Seller under the Contract.

8.3 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgement, at 2% per annum over HSBC plc base rate from time to time. The Seller is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

9. CONFIDENTIALITY

The Seller shall keep in strict confidence all technical or commercial knowhow, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by SERPECON or its agents and any other confidential information concerning SERPECON's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees,

agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to SERPECON and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

10. SERPECON'S PROPERTY

10.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by SERPECON to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of SERPECON but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to SERPECON and shall not be disposed of other than in accordance with SERPECON's written instructions, nor shall such items be used otherwise than as authorised by SERPECON in writing.

10.2 Goods of SERPECON's design, or which are designed by the Seller for or at SERPECON's special requirements, may not be supplied by the Seller to anyone other than SERPECON without prior written consent.

10.3 Any materials supplied by SERPECON to the Seller for the purpose of the Order (whether charged to the Seller or not) shall remain the property of SERPECON and may only be used in fulfilling SERPECON's Order. The Seller shall, on the request of SERPECON, provide true and accurate records of consumption of such material.

11. TERMINATION

11.1 SERPECON shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and SERPECON shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 SERPECON shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

(a) the Seller commits a material breach of any of the terms and conditions of the Contract; or

(b) any distress, execution or other process is levied upon any of the assets of the Seller; or

(c) the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or

(d) the Seller ceases or threatens to cease to carry on its business; or

(e) the financial position of the Seller deteriorates to such an extent that in the opinion of SERPECON the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of SERPECON accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

12. REMEDIES

Without prejudice to any other right or remedy which SERPECON may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract, SERPECON shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by SERPECON:

- (a) to rescind the Order;
- (b) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
- (c) at SERPECON's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods but without any liability to the Seller;
- (e) to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and
- (f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

13. ASSIGNMENT

13.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of SERPECON, and even after such assignment the Seller shall remain liable for due fulfilment of all obligations under this contract.

13.2 SERPECON may assign the Contract or any part of it to any person, firm or company.

14. FORCE MAJEURE

14.1 SERPECON reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of SERPECON including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

14.2 If delivery or completion of the Goods is delayed by circumstances beyond the reasonable control of the Seller, including without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, SERPECON may, in its absolute discretion, grant an extension of time for delivery or completion of the Goods to the Seller, so long as SERPECON is notified by the Seller of such events immediately.

15. GENERAL

15.1 Each right or remedy of SERPECON under the Contract is without prejudice to any other right or remedy of SERPECON whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by SERPECON in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by SERPECON of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
