

WALL COLMONOY

CONDITIONS OF PURCHASE

1. Definitions

In these conditions the following expressions shall have the meanings respectively assigned to them:

“The Purchaser” means Wall Colmonoy Limited and having its registered office at Alloy Industrial Estate, Pontardawe, Swansea SA8 4HL.

“The Vendor” means the person, firm or company who has agreed to supply the goods.

“The Contract” means the contract entered into between the Purchaser and the Vendor for the supply of the goods.

“The Goods” means the materials, equipment, services, supplied and other items supplied by the Vendor.

2. General

The Contract shall be subject to the following express terms and conditions and no variation thereto shall apply unless specifically agreed by the Purchaser in writing. All other conditions, warranties and representations whether express or implied, including any purported conditions of sale customarily attached or otherwise considered to be part of the Vendor’s standard documentation are hereby excluded.

3. Goods

The Goods shall:

- (a) conform in every respect with the Purchase Order;
- (b) be of sound design, materials and workmanship;

- (c) if the purpose for which they are acquired is indicated in the Purchaser Order, fit for that purpose and if not so indicated be fit for their ordinary purpose;
- (d) be in conformity with all laws and regulations pertaining thereto.

4. Inspection and/or testing

- (a) Quantities, weights and dimensions ascertained by the Purchaser in the course of inspection and/or testing shall, unless otherwise proven, be considered definitive for the purposes of this Contract. The goods may be inspected and/or tested by the Purchaser at the Vendor’s premises or within 3 working days of delivery and if found defective or inferior in quality, they may be rejected in whole or in part at the sole option of the Purchaser. For any such rejected goods, the Purchaser shall have the option either to have the goods replaced by the Vendor or to exclude same from the Purchaser Order, in which case any sums already made with respect to such rejected goods shall be forthwith reimbursed by the Vendor. The Purchaser shall be entitled to order such goods from another supplier and the Vendor shall reimburse the Purchaser for any additional costs thereby incurred. The foregoing shall be without prejudice to any other rights the Purchaser may have in connection with the goods and the making or failure to make any inspection of the goods shall in no way relieve the Vendor of this obligation to conform to all the requirements of the Purchaser Order.

- (b) Notwithstanding the provisions of this clause the Vendor shall remain fully responsible for the Goods and any such inspection

and/or testing shall not diminish or otherwise affect the Vendor's obligations under the contract.

5. Delivery Order

- (a) Unless otherwise agreed the price of the goods shall include packaging and free delivery to the Purchaser. The goods shall be properly packed and secured in such a manner as to reach their destination in good condition and accompanied by a delivery note. The Vendor shall deliver the goods at the time(s), place(s) and in the manner specified in the Purchaser Order. Time shall be of the essence unless otherwise specified.
- (b) If the Goods are not delivered on the due date then without prejudice to any other rights which it may have the Purchaser reserves the right to:
 - (1) cancel the Contract in whole or in part;
 - (2) refuse to accept any subsequent delivery of the Goods which the Vendor attempts to make;
 - (3) recover from the Vendor any expenditure reasonably incurred by the Purchaser which in obtaining the Goods in substitution from any other supplier; and
 - (4) claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Vendor's failure to deliver the Goods on the due date.
- (c) If Goods are delivered to the Purchaser in excess of the quantities ordered the Purchaser shall not be bound to pay for the excess and any excess shall be and shall remain at the Vendor's risk and shall be returnable at the Vendor's expense.

6. Property and Risk

- (a) Where the Vendor is in possession of goods belonging to the Purchaser for manufacture, repair or similar such purpose ownership in the goods shall remain at all times with the Purchaser. Otherwise property in the goods shall pass to the Purchaser at the first to occur of the following events.
 - (1) When the goods or part thereof are first identifiable as being appropriated to the Purchase;
 - (2) When the Purchaser pays for the goods or part thereof;
 - (3) When the Goods or part thereof are delivered to the Purchaser or to a destination instructed by the Purchaser.
- (b) Notwithstanding the foregoing, the risk in the goods shall remain vested in the Vendor until the goods are delivered (including off-loading).

7. Warranties

- (a) If any of the Goods do not, in the reasonable opinion of the Purchaser, comply with the provisions of Clause 3 hereof or if any defect or fault originating with the design, materials or operating characteristics of any of the goods arises at any time within twelve months after the date when such item is placed in operation or twenty four months from the date of delivery whichever is the shorter, the Vendor shall at its own expense promptly carry out such operations including repairs and replacements, as may be necessary to ensure the goods comply with the provisions of Clause 3 hereof. If the fault or failure cannot be corrected, the goods shall be removed by the Vendor who shall promptly furnish satisfactory goods to the Purchaser.
- (b) If the faulty goods are not removed and satisfactory replacement goods furnished by the Vendor within such reasonable time as the Purchaser shall determine then the Purchaser shall be entitled to

carry out such remedial work or provide replacement goods all at the sole risk, cost and expense of the Vendor.

8. Payment

- (a) A single copy of the Vendor's invoice is to be sent to the Purchaser. It must not be included with the consignment of goods.
- (b) The Vendor's invoice shall be paid within sixty days of the end of the month of receipt by the Purchaser providing such invoice is properly drawn and is accompanied by the required supporting documents. If invoices require correction the time of payment will be computed from the date of receipt by the Purchaser of the Vendor's corrected invoice.
- (c) From any sum due to the Vendor under the Purchaser Order, the Purchaser may deduct any amount due by the Vendor to the Purchaser.
- (d) The price shown in the Purchase Order cannot be varied unless agreed in writing by the Purchaser before delivery.

9. Indemnity

The Vendor shall keep the Purchaser 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 the Purchaser as a result of or in connection with:

- (1) defective workmanship, quality or materials; and
- (2) any claim made against the Purchaser in respect of any liability, loss, damage, injury, cost or expense sustained by the Purchaser'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 Vendor.

10. Infringement of Patents

- (a) The Vendor shall fully indemnify the Purchaser against any claim, costs or expenses arising from or incurred by reason of any infringement of copyright, letters, patent, registered design, trademark or trade name in relation to the use or sale of the goods.
- (b) If the goods or part thereof involved in such claim etc. are prohibited from use the Vendor shall at his own expense either replace or modify the goods to remove the infringement to the satisfaction of the Purchaser.

11. Confidentiality

The Vendor shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Vendor by the Purchaser or its agents and any other confidential information concerning the Purchaser's business or its products which the Vendor may obtain and the Vendor 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 Vendor's obligations to the Purchaser and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Vendor.

12. Assignment or Sub-Contracting

The Vendor shall not, without the consent in writing of the Purchaser, assign or sub-contract the Purchase Order or any part thereof. Any such consent shall not relieve the Vendor of any of the obligations under the Purchase Order.

The Purchaser may at any time assign or sub-contract all or any part of its rights or obligations under the Purchase Order.

13. **Termination**

- (a) The Purchaser may terminate the Purchaser Order in whole or in part at any time at its option. The Vendor agrees that any termination charges made as a consequence shall be limited to costs of material and labour incurred to date of termination.
- (b) If the Purchaser terminates the Purchase Order due to the failure of the Vendor to comply with these conditions or due to the bankruptcy or winding up of the Vendor, the Vendor shall only be entitled to receive the amount of money due under the Purchaser Order to date of termination less any sums incurred by the Purchaser as a result of having the goods satisfactorily completed by another supplier. Furthermore, the Vendor shall reimburse the Purchaser for any sum already paid in relation to any goods refused or returned to the Vendor and all associated costs incurred by the Purchaser.

14. **Invalidity**

If any of the provisions contained in these conditions of sale become invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

15. **Applicable Law**

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

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.