

FIRE SAFETY MAINTENANCE

STANDARD TERMS OF SERVICE

1. DEFINITIONS

In these Conditions:-

1.1 the following words and expressions have the following meanings:-

"Agreement"	the agreement between Us and You for the provision of Services, on the Conditions;
"Agreement Date"	the date We sign the Schedule, when the Agreement is deemed to have come into effect;
"Call out"	an unscheduled Maintenance Visit You ask for (to inspect or reset Your System);
"Call Out Charges"	the charges to be paid by You in respect of a Callout;
"Certificate"	a certificate provided by Us showing the Equipment upon which We have worked, and any goods supplied by Us;
"Communications Centre"	the place where alarm signals from Your System are sent for monitoring;
"Communications Link"	the FireCare communications system operated by BT for sending alarm signals between Your System and the Communications Centre;
"Conditions"	the terms and conditions for the provision of Services, as set out in this document, together with any special terms and conditions set out in the Schedule;
"Connection Date"	the date We connect Your System to the Communications Centre;
"Equipment"	the equipment specified in the Schedule, together with any renewals or replacements of, or additions to, such equipment provided by Us;
"Extra Maintenance"	any work We need to do to bring Your Equipment up to the standards required by Legislation, and which does not form part of the Maintenance Service;
"Fire Authority"	the fire authority shown in the Schedule (or the fire authority appropriate to the Site);
"Fire Risk Assessment"	a fire risk assessment of the Site in accordance with the provisions of the relevant Legislation;
"Keyholder"	the person You nominate to be contacted by Us when We receive an alarm signal, as set out in the Schedule;
"Legislation"	appropriate British Standards (or EU equivalent) relating to fire prevention equipment, and all relevant health and safety legislation (including the Regulatory Reform (Fire Safety) Order 2005);
"Maintenance Service"	inspecting and testing Your System and Equipment and if necessary, replacing parts or items and refilling Your Equipment where necessary;
"Maintenance Visit"	a scheduled visit to Your Site to conduct the Maintenance Service;
"Minimum Charge"	the minimum charge You must pay Us for attending the Site on a Maintenance Visit (excluding the price of spares, refills and new Equipment);
"Minimum Term"	the minimum number of Years, as shown in the Schedule, during which the Agreement is to remain in force;
"Monitoring" "Monitor"	checking alarm signals We receive from Your System;
"Payments"	the payments to be made by You to Us for the provision of Services (dependent on the Service Level and types of services chosen by You);
"Quotation"	Our written statement including details of Our charges and other Agreement terms;
"Schedule"	the schedule set out overleaf containing (amongst other items) Your details, and of the System and Equipment, and any Special Conditions, signed by You and Us;
"Services"	the provision of the Maintenance Service (including Extra Maintenance), Monitoring and other services (such as risk assessments, auditing and training) as set out in the Schedule;
"Service Level"	has the meaning set out in Condition 4.2;
"Site"	the location set out in the Schedule at which We are to provide the Services to the System and Equipment;
"Spend Limit"	automatic permission by You to Us to provide replacement parts (unlimited unless stated otherwise in the Schedule);
"System"	the alarm system referred to in the Schedule;
"Us", "We", "Our"	the company stated in Section 1 of the Schedule (and referred to therein as "the Company") (and including Our authorised agents and employees);
"Year"	the period of 12 calendar months from the Contract Date, and each subsequent period of 12 calendar months, during the subsistence of the Contract;
"You", "Your"	the individual, firm, company, partnership, limited liability partnership, or unincorporated association who enters into the Agreement with Us, and who accepts performance of the Services, as set out in Section 2 of the Schedule (and referred to therein as "the Customer").

1.2 the singular includes the plural and vice versa, and words importing one gender include all genders.

1.3 headings are for ease of reference only.

2. CONTRACT

- 2.1 Your signature to the Schedule constitutes an offer to require provision of the Services
- 2.2 The Agreement comprises the Quotation (if any), these Conditions, and the Schedule (which forms part of the Agreement for all purposes).
- 2.3 No contract shall have been formed until the offer constituted by Condition 2.1 has been accepted by Our representative counter signing the Schedule. You will receive from Us a welcome pack, containing confirmation of the Agreement and its details, together with an Agreement number, shortly thereafter. You must notify Us within 7 days of the date of the welcome pack if any of the details are incorrect, otherwise the details set out in the Schedule and confirmation in the welcome pack shall be deemed to be correct.
- 2.4 Only these Conditions apply to the Agreement, and shall override any other terms, conditions or warranties which You may seek to impose. Your acceptance of the provision of the Services by Us shall be conclusive evidence that these Conditions apply to the Agreement.
- 2.5 No variation of the Agreement shall apply unless agreed in writing by Us.

3. CONTRACT TERM

The Agreement comes into force on the Agreement Date, and continues in force (subject to Condition 9) until the last day of the Minimum Term (or any later date), when You or We may end it by giving the other a minimum of 60 days written notice. That notice must expire before the Agreement will end. Please note that for the Platinum level of Maintenance Service, the Minimum Term will be at least three Years.

4. OUR COMMITMENT TO YOU

- 4.1 **Maintenance**
- 4.1.1 We will carry out a Maintenance Visit, on the frequency set out in the Schedule, during the currency of the Agreement. Our first Maintenance Visit will occur on the date set out in this Schedule.
- 4.1.2 For fire extinguishers, fire blankets and hose reels only- We shall carry out a Maintenance Service on each of these items of Equipment located at the Site, unless You specifically tell Us not to do so.
- 4.1.3 We will attend the Site in response to any Callout We receive.
- 4.1.4 Following any Maintenance Service, or in response to any Callout, We will undertake any work that may be necessary to ensure that Your System and Equipment comply with all Legislation. This may be covered by the work We undertake as part of the Maintenance Service, or it may require Extra Maintenance. If the latter is the case, We will notify You before commencing such work, but will replace the appropriate parts to ensure compliance is maintained up to the Spend Limit without requiring Your permission. We need only obtain permission from You to conduct that Extra Maintenance if the repair work and/or parts exceed any cap on the Spend Limit, as set out in the Schedule.
- 4.1.5 All Maintenance Visits will be conducted at times during the working day agreed between You and Us.
- 4.1.6 After each Maintenance Visit or Callout, We will leave a Certificate with You, which will state that We have left the System and/or Equipment which We have inspected or tested in proper working order to the standards required by Legislation, or else We will tell You if any of Your System or Equipment is faulty and cannot be put into satisfactory condition as part of the Maintenance Service (or by Extra Maintenance). In that event, Condition 8 will apply.

4.2 Levels of Maintenance Service Available

For certain Services, You may choose from four levels of Maintenance Service (Bronze, Silver, Gold and Platinum) ("Service Level"). Each Service Level comprises a different package of Payment rates, Services provided, and materials included. Bronze is provided as standard for all Equipment. The Service Level which You have chosen (and the level of Payment related to it) is set out in the Schedule.

4.3 Monitoring

- 4.3.1 As from the Connection Date, We will continuously Monitor signals We receive from Your System at the Communications Centre.
- 4.3.2 If We receive a signal from Your System (including any line fault signal), We will notify You (or Your Keyholder) of the type of signal received.
- 4.3.3 We will notify the Fire Authority of receipt of an alarm signal, if applicable, (unless it has not authorised Us to send alarm signals from Your Site direct from the Communications Centre to the Fire Authority control room, or it has withdrawn its authorisation for any reason).

4.4 Fire Risk Assessment/Training Audit

- 4.4.1 We will carry out an initial Fire Risk Assessment on the Site to ensure it is compliant with the Legislation. The Payment for that initial Fire Risk Assessment is set out in Section 8 of the Schedule. Thereafter, We will conduct four Yearly Fire Risk Assessments to ensure that the Site continues to remain compliant with the Legislation. The Payment for each such review is set out in Section 8 of the Schedule under "Annual Review". We reserve the right to amend the Payment due in respect of each such annual review, in line with increases to Us in the cost of provision of that Service. We will give You reasonable notice of any such amendments to the Payments due in respect of an annual Fire Risk Assessment Review.
- 4.4.2 Each Fire Risk Assessment review will be conducted on a pre-arranged mutually convenient date. If You cancel any such appointment without giving Us a minimum of seven days prior written notice, We reserve the right to improve a charge equivalent to 50% of the cost of that annual Fire Risk Assessment Review.
- 4.4.3 If the Site is altered substantially in any way (such that We deem that, for the purposes of complying with Legislation, it has different degrees of fire risk or it has different requirements from the Site when previously assessed), then We reserve the right to treat the subsequent annual Fire Risk Assessment as an initial Fire Risk Assessment, and charge accordingly.

5. YOUR RIGHTS

- 5.1 If we fail to carry out any Maintenance Visit within 30 days either side of the scheduled month of such visit (as notified to You), then You must notify Us of such failure within a reasonable period of Our default (and in any event no later than 15 days from Our becoming in default of the appointment). We will carry out the Maintenance Visit in question within 10 days of receipt of Your notice (or on a later date if you so require), but if We miss that later Visit, You may (subject to Condition 5.3) terminate the Contract immediately by giving Us written notice of Our failure under this Condition.
- 5.2 If you can demonstrate to Our reasonable satisfaction that We have failed to maintain Your System and Equipment to the standards set out in Condition 4.1.4, then You will permit Us to reperform the Maintenance Service to the appropriate level, and We will do so within 15 days of Our agreeing that We were in default. If thereafter You can demonstrate to Our reasonable satisfaction that Our work has not complied with the requirements of Legislation, You may (subject to Condition 5.3) terminate the Agreement immediately by giving Us written notice of Our failure under this Condition.
- 5.3 If You are in breach of any of Our obligations under the Agreement, or We were prevented from carrying out any of the Services because of an event beyond Our reasonable control, We shall not have broken Our obligations to You, and You will not be entitled to terminate the Agreement pursuant to Condition 5.1 or 5.2.

6. YOUR OBLIGATIONS

- 6.1 You must give Us access to your Site at all reasonable times, so We can perform the Services required of Us under the Agreement. We will tell You if We need ladders, scaffolding or other access equipment to carry out the Services, and You are to supply such access equipment to Us at no charge, and make sure it is safe to use and meets health and safety regulations.
- 6.2 You must tell Us about any changes at the Site which may affect Your Equipment or System (such as extensions, alterations in internal layout, or

the layout of the System). You must ensure We have this information a minimum of 30 days prior to any Maintenance Visit.

For Monitoring, You must complete Our Keyholder information form and send it to Us, and must notify Us promptly in writing of any change in this information. If Your System is connected to the Communications Centre, it must be installed, maintained and used in accordance with the current British Standard. If the Fire Authority asks You to complete their indemnity form in respect of false (or unwanted) alarm signals, You must return it to the Fire Authority and pay their charges resulting from such false or unwanted signals. You must indemnify Us against any loss, penalty, fine or other claim We may suffer if the Fire Authority enters Your Site as a result of any genuine, false or unwanted fire alarm signal.

7. PAYMENT

7.1 Maintenance and Extra Maintenance

- 7.1.1 If the level of Service We provide is Bronze, then (for both Maintenance Services and Extra Maintenance) You must pay Us the Minimum Charge for the work We perform (in respect of fire extinguishers, fire blankets and hose reels only) and if applicable, Our charges for replacing these items, spares and refills. For Systems only, We will charge You for the Callout charge, together with any extra labour charges not covered by the Callout Charge, and Our charges for spares or replacement parts.
- 7.1.2 If the level of Service We provide is superior to Bronze, then You must pay Us for at least the Minimum Charge for the work We do for Maintenance and Extra Maintenance. You must also pay Our charges for any replacement fire extinguishers, spares or refills We supply as part of Extra Maintenance, but You do not have to pay for those items if provided as part of the Maintenance Service, unless they are extinguishers which have been tempered with, neglected or used for the wrong purpose, or must be replaced pursuant to Condition 8.
- 7.2 **Call Out**
- You will pay Our basic rate Callout Charge if We attend Your Site during normal working hours, and Our premium rate Callout Charge if We attend Your Site outside normal working hours. These charges exclude the provision of spares, which will be charged in addition.
- 7.3 **Monitoring**
- 7.3.1 You must pay BT charges for installing a new telephone line, or a block terminal (if an existing line can be used for Monitoring), and all line and call charges for Monitoring.
- 7.3.2 You must pay Our charges:-
- 7.3.2.1 for connecting Your system to the Communications Link;
- 7.3.2.2 for any work We need to do on Your System to meet any new conditions set by BT or the Fire Authority;
- 7.3.2.3 for re-setting Your System if it has not been properly used;
- 7.3.2.4 that are equal to the amount We have to pay the Fire Authority if the charge is to do with Monitoring Your System.

7.4 Our Charges

The charges We will levy under this Agreement are those prevailing at the time when We provide the relevant Service. We will notify You of Our Minimum Charge, basic firecall charge, premium rate fire call charge, and other applicable charge rates as at the Agreement. These will remain valid for 12 months. Thereafter, We reserve the right to increase or alter any of Our charges by giving You reasonable written notice of such changes.

7.5 Payment Terms

Our invoices are payable in full in cleared funds within 30 days of the date of issue. Time of payment is of the essence. If You fail to make any payment to Us on the due date, then (without prejudice to Our other rights and remedies), We can:-

7.5.1 cancel the Agreement so far as any Services remain to be performed under it, or suspend any further performance of any of the Services; and

7.5.2 charge You interest (both before and after any judgment) on the amount unpaid at the rate of 8% above the Bank of England base rate per annum compounded daily, until payment in full is made, under the Late Payment of Commercial Debts (Interest) Act 1998.

8. EQUIPMENT THAT CANNOT BE SERVICED

- 8.1 If we notify You that any of Your Equipment is faulty and cannot be put into satisfactory condition as part of the Maintenance Service or by Extra Maintenance, We will tell You on the Certificate and give You a quotation for replacing it. Equipment which We state is faulty on the acceptance certificate or on the Certificate will not be covered by the Maintenance Service, and We may terminate the Contract by written notice if You do not accept Our quotation and let Us carry out the necessary work.
- 8.2 You should be aware that You may be in breach of fire regulations for Your Site if We have marked any Equipment as faulty on the Certificate, or (for fire extinguishers only) marked these as unfit for service, condemned or not maintained, and You do not allow Us to replace those faulty or unfit items.

9. TERMINATION

- 9.1 We are entitled to terminate the Agreement immediately and/or suspend all further performances of the Services, without liability on Our part by giving You written notice of such termination, if You:-
- 9.1.1 are in breach of any of Your obligations (including, but not limited to the terms of payment pursuant to Condition 7.6, and the failure to allow Us to rectify faulty Equipment pursuant to Condition 8);
- 9.1.2 have given Us fraudulent, misleading or incorrect information;
- 9.1.3 become insolvent, bankrupt, go into liquidation, have a winding up order made against You, or make any voluntary arrangement with creditors or You cease to threaten to cease to carry on Your business.
- 9.2 You may terminate the Agreement immediately pursuant to Condition 5.1 or 5.2.
- 9.3 Either You or We can end the Agreement by giving the other written notice under Condition 3.

10. CONSEQUENCES OF TERMINATION

- 10.1 If You try to end the Agreement before the expiry of the Minimum Term, or without giving sufficient notice pursuant to Condition 3, and We accept such termination, or We end the Agreement for a reason set out in Condition 9.1, then You must pay Us the amounts shown in Condition 10.2 and 10.3 to compensate Us for Our loss. These payments are not a fine or penalty but are genuine pre-estimate of Our likely loss of income.
- 10.2 For Maintenance and Monitoring Services:
- The Yearly Payments You would have had to pay Us if the Agreement had not ended ahead of time, discounted by 50%, or (if it applies and if more) the minimum charge You could have had to pay Us if the Agreement had ended on the last day of the Minimum Term, discounted by 50%.
- 10.3 For Services other than Maintenance and Monitoring-
- The percentage of Our yearly charges set out below:-
- Number of months before next visit
- Three or more- - None
- Between two and three - 5%
- Less than one - 50%
- 10.4 On termination (howsoever arising) You will, in addition to the sums referred to in Conditions 10.2 and 10.3, have to pay all arrears of sums due for Services performed, and with the charges for Equipment, spares or refills supplied to You by Us, together with interest on outstanding sums due under Condition 7.6.2.
- 10.5 The sums due under this Condition are separate and severable, and if it is found that any sum stipulated in any of Condition 10 is invalid, unenforceable or unlawful, then its invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of Condition 10, which shall continue in full force and effect.

11. OUR LIABILITY

- 11.1 We do not know the value of the contents of Your Site, but You do (or should) know their value. Since the loss or damage You might suffer will probably be more than the amounts We can reasonably charge You, and because We are giving You the chance to discuss and agree different amounts from those set out in the following Conditions 11.2 to 11.9, We limit Our liability to those amounts (unless We agree in writing to change those limits). Because of this, We recommend:-
- 11.1.1 You should insure against all loss which You could suffer as a result of Your System or Equipment not working, or if We do not respond to any signal We receive from Your System at the Communication Centre;
- 11.1.2 You should use, maintain and store Your Equipment according to the instructions supplied with it. We will not be responsible for any consequences of failing to follow these instructions.
- 11.2 You can ask Us not to enforce any of the limitations in Condition 11.4 to 11.9, but We will only do this if We can make a suitable change to the charges in the Contract.
- 11.3 We accept liability for death or personal injury which is caused by Our negligence, or breaking Our legal duties whilst working at the Site in the course of Our work.
- 11.4 We will not provide any guarantees or warranties relating to the quality of materials, parts of workmanship, or whether the parts or materials are fit for their particular purpose, unless You are a private individual (not a business) or We have agreed to meet any quality standards in this Agreement. If You are a private individual, then You have legal rights, and We agree to keep to them.
- 11.5 We will not be liable for loss of profit or for any indirect loss or damage, such as loss of data, contracts or business interruption, or loss of savings which you may suffer (unless You claim for this type of damage under Condition 11.3).
- 11.6 If you have any claim against Us under this Agreement, You must give written notice to Us as soon as reasonable possible, and in as much detail as is reasonably possible. However, if Your claim is based only on quality of Service, You must provide Us with written details of Your complaint within 30 days of the date the work was carried out (and time of notification is of the essence).
- 11.7 If We are liable for any claim under the Contract, unless You can claim more under Condition 11.2, 11.5 or 11.6, then We will not pay more than £10,000 for each claim, or £10,000 in total for all claims.
- 11.8 For Monitoring Services, the Communications Line between Your System and the Communications Centre is provided by BT. The Communications Centre and BT are not under Our supervision or control. Under the terms of the Agreement, starting on the Connection Date, We must tell the Fire Authority of the chosen Keyholder when We receive a signal at the Communications Centre that shows Your System has gone into an alarm condition. There is a risk that alarm signals from Your System at the site might not reach Us at the Communications Centre because of failure or other problems with the Communications Link, so We strongly advise You to insure against damage or destruction of property or valuables.
- 11.9 Save as set out above, all conditions and warranties (whether express or implied) concerning the Services, or any equipment or goods supplied by Us, are excluded to the fullest extent permitted by law.
- 11.10 You confirm that You have read and fully understand the terms of this Conditions 11, and accept the limitation of liability contained in it. The limitations of liability in Condition 11 continue to apply if You make any claim against Us after the end of the Agreement.

12. EXCUSABLE EVENTS

We make all reasonable efforts to keep to Our obligations to You. However, if We are unable to do so because of events or circumstances beyond Our reasonable control, We will give You written notice of those circumstances within a reasonable time of their occurrence. If We are still unable to keep to Our obligations for six months from the date of Our first notice to You, You or We can end the Agreement by giving 7 days written notice to the other. If this happens, You will only have to pay any outstanding charges for Services actually performed.

13. GENERAL

- 13.1 You cannot transfer Your rights or obligations under this Agreement without Our written permission.
- 13.2 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Agreement. That means no-one except You or Us can take action to enforce its terms but that does not affect the rights that any third party might have apart from that Act.
- 13.3 If We decide not to enforce any of the provisions of this Agreement, or We delay in so doing, that will not prevent Us from enforcing that, or any other provision, at a later date.
- 13.4 All notices given under this Agreement will be treated as delivered if they are properly addressed and sent by post to, in Our case, Our address shown in the Schedule, and in Your case, Your postal address, as also shown in the Schedule.
- 13.5 The documents that make up the Agreement are set out in Condition 2.2. However, if You seek to rely on something which You can reasonably assume from the facts, You must give Us written details and We reserve the right to accept or reject such an addition to the Agreement.
- 13.6 The Agreement is governed by English law, and the English Courts will deal with any dispute arising under it.
- 13.7 If You comprise more than one legal person, then Your liability is joint and several.
- 13.8 If any of the provisions of this Agreement are held by any competent authority to be invalid or unenforceable, in whole or in part, the validity and enforceability of the other provisions shall not be affected thereby.

TERMS OF SALE

The following standard terms and conditions apply to every agreement entered into by Us for the sale of Equipment.

1. DEFINITIONS

In these Conditions:-

1.1 the following words and expressions have the following meanings:-

"Conditions"	the terms and conditions for the provision of the Equipment, as set out in this document, together with any special terms and conditions agreed in writing by You as set out in the Schedule;
"Contract"	the contract for the sale of the Equipment entered into between You and Us, subject to the Conditions;
"Delivery Address"	the address to which the Equipment is to be delivered as set out in the Schedule;
"Equipment"	the fire extinguishers and fire protection equipment specified in the Schedule to be sold by Us to You (including any instalment of the Equipment or any part of it);
"Person"	any individual, partnership, firm, body corporate, government department, local authority, unincorporated association or educational institution;
"Price"	the monies payable by You to Us for the provision of the Equipment pursuant to the Contract, as set out in the Schedule;
"Quotation"	any quotation submitted by Us to You for the supply of the Equipment;
"Schedule"	the schedule set out overleaf containing (amongst other items) Your details, the Equipment to be purchased, the Warranty Period and any special Conditions, signed by You and Us;
"Us", "We", "Our"	the Person stated in section 1 of the Schedule (and referred to therein as "the Company");
"You", "Your"	the Person who enters into the Contract with Us and who agrees to purchase the Equipment, as set out in section 2 of the Schedule (and referred to therein as "the Customer");
"Warranty Period"	the period set out in the Schedule, during which the provisions of Condition 8 apply.

- 1.2 the singular includes the plural and vice versa, and words importing one gender include all genders.
1.3 headings are for ease of reference only.

2. CONTRACT

- 2.1 Your signature to the Schedule constitutes an offer to require provision of the Equipment by Us.
2.2 The Contract comprises the Quotation (if any), these Conditions, and the Schedule (which forms part of the Contract for all purposes).
2.3 No contract shall have been formed until the offer constituted by Condition 2.1 has been accepted by Our representative counter signing the Schedule. You will receive from Us a welcome pack, containing confirmation of the Contract together with a Contract. You must notify Us within 7 days of the date of the welcome pack if any of the details are incorrect, otherwise the details set out in the Schedule and confirmation in the welcome pack shall be deemed to be correct.
2.4 Only these Conditions apply to the Contract, and shall override any other terms, conditions or warranties which You may seek to impose. Your acceptance of the Equipment shall be conclusive evidence that these Conditions apply to the Contract.
2.5 No variation of the Contract shall apply unless agreed in writing by Us.
2.6 Any advice or recommendation given by Us to You as to the Equipment which is not confirmed in writing by Us is followed or acted upon entirely at Your own risk, and accordingly We shall not be liable for any such advice or recommendation which is not so confirmed. You confirm to Us that You have not relied on, nor been induced to enter into the Contract by, any representation not recorded in the Conditions.
2.7 The quantity, quality and description of and any specifications for the Equipment shall be those set out in the Schedule. We reserve the right to make any changes in the specification of the Equipment which do not materially affect the quality or performance of the Equipment.

3.0 THE PRICE

- 3.1 The Price is stated in the Schedule We reserve the right, at Our option, to require payment of the Price in full or in part, or the payment of a non-refundable deposit, prior to despatch of the Equipment, and We reserve the right to withhold delivery of the Equipment or any part of it until such payment is received.
3.2 We reserve the right, by giving notice in writing to You at any time prior to completion of the Contract, to increase the Price to reflect any increase in the cost to Us in executing the Contract due to any factor beyond Our control (including, without limitation, any increase in the cost of labour, raw materials or overheads, currency fluctuations, any change in delivery dates, quantities or specifications for the Equipment arising as a result of any error or omission or changes deemed necessary by You, or any delay or interruption in the Contract not attributable to Us).
3.3 All Prices are exclusive of VAT and similar taxes, which You shall be additionally liable to pay to Us upon presentation of a suitable invoice from Us.

4. PAYMENT

- 4.1 Unless otherwise stated in the Schedule (and subject to Condition 3.1), We may invoice You for the Equipment on or at any time after delivery of the Equipment (unless You wrongfully fail to take delivery of the Equipment, in which case We can invoice You at any time following such failure). Invoices are payable in full within 30 days of the date of invoice (notwithstanding that delivery may not have taken place, and title to the Equipment has not passed to You).
4.2 If You fail to make any payment for the Equipment by the due date, then (without prejudice to Our other rights or remedies), We can:-
4.2.1 cancel the Contract so far as any Equipment remains to be delivered under it, or suspend any further delivery of the Equipment (or any part of it); and
4.2.2 charge You interest (both before and after any judgment) on the amount unpaid at the rate of 8% above the Bank of England base rate per annum, compounded daily, until payment is made in full, under the Late Payment of Commercial Debts (Interest) Act 1998.
4.3 You agree to reimburse Us with all costs and expenses (including legal costs on a full indemnity basis) incurred in the collection of any overdue account.
4.4 No right of set off shall exist in respect of any claims by You against Us unless and until such claims are accepted in full by Us in writing, and You shall not be entitled to withhold all or any part of any sum which has become due for payment under the Contract.
4.5 If the Equipment is to be delivered in instalments, then notwithstanding the provisions of Condition 4.1, We reserve the right to invoice You on the delivery of each instalment separately, and You shall pay each such invoice in accordance with these Conditions. If You fail to pay any instalment of the Price when due, then (without prejudice to Our other rights or remedies) the whole of the Price for each remaining instalment of Equipment shall become immediately due and payable (irrespective of non-delivery).

5. DELIVERY

- 5.1 Delivery shall mean delivery of the Equipment to You at the Delivery Address.
5.2 Whilst we shall use all reasonable endeavours to deliver the Equipment within the period of 14 days from the date the Contract comes into force, time is not of the essence and We have no liability to You in respect of any delay in delivery or any loss (including consequential loss) or damage thereby arising.
5.3 We may charge for abortive delivery costs, storage, insurance and other associated costs if You are available for, or refuse, or defers, delivery of the Equipment when We attempt so to do. This provision is in addition to and not in substitution for any other payment for which You may become liable in respect of Your failure to take delivery at the appropriate time.
5.4 We will commission the Equipment upon delivery to ensure that it is in working order and is compliant with all relevant legislation.
5.5 You must notify Us if You have not received delivery of Equipment within three days of the date agreed with You for such delivery. We shall be deemed to have fully complied with Our obligations to supply the Equipment in accordance with the terms of the Contract unless notification to the contrary is received by Us within that time.
5.6 We reserve the right to deliver the Equipment in instalments, and failure by Us to deliver any one or more of the instalments shall not entitle You to treat the Contract as a whole as terminated.

6. RETENTION OF TITLE CLAUSE & RISK

- 6.1 The risk of any loss, deterioration or damage to the Equipment shall pass to You on delivery of the Equipment to You at the Delivery Address.
6.2 The Title to all Equipment (or any part of it) supplied by the Us to You shall remain with the Us until We have received payment in full for all goods for which payment is due (and any other monies owed by You to Us in relation to the Equipment pursuant to these Conditions has been paid in full).

- 6.3 Until title has passed pursuant to Condition 6.2, You shall:-

- 6.3.1 keep the Equipment in good condition and properly stored. Without prejudice to the generality of that obligation, You shall not interfere with or deface the Equipment, or any of Our labels on it;
6.3.2 maintain adequate insurance in respect of the Equipment, in an amount which is not less than the Price payable, and You shall hold all proceeds of such insurance policy on trust for Us;
6.3.3 grant to Us (or Our employees or agents) an irrevocable license to enter Your premises to recover the Equipment. You agree not to hinder any such repossession, and You shall be liable to pay all Our reasonable costs incurred on account of such repossession. This right is in addition to all Our other rights and remedies under these Conditions;
6.3.4 not dispose of, or allow the disposal, of any of the Equipment.
6.4 Notwithstanding the provision of Condition 6.2 and 6.3, and section 49 of the Sale of Goods Act 1979, We may bring any action for the Price (and all other monies due to Us under the Contract) at any time after those monies have become due under these Conditions.

7. SPECIFICATIONS

- 7.1 Unless otherwise stated in the Schedule, the selection and choice of Equipment and (except as to compliance with specific technical specifications contained in Our current literature) the assessment of the Equipment's suitability and fitness for purpose, is Your responsibility.
7.2 Any specifications and statements as to suitability, performance or otherwise given by Us in connection with the Equipment are offered in good faith but are intended to be approximate only and do not constitute representations.
7.3 Equipment is supplied on condition that it should only be used in connection with the relevant risk, as set out in Our accompanying written safety and usage instructions. We have no liability to You whatsoever for any loss (including consequential loss) damage or expense which You may suffer, which is caused (wholly or in part) by Your failure to use the Equipment properly and also in accordance with Our instructions.
7.4 The copyright and all other intellectual property rights in Our designs, data sheets, packaging, Equipment (including formulae), and literature remain Our absolute property.

8. WARRANTIES AND LIABILITY

- 8.1 We warrant to You that the Equipment will be of satisfactory quality for the Warranty Period.
8.2 If, during the Warranty Period, the Equipment (upon examination by Us) is found to be defective solely due to faulty materials, workmanship or design, We may (at Our option) repair or replace the defective Equipment free of charge.
8.3 The following conditions (each of which must be fulfilled before any warranty claim shall arise) are that:-
8.3.1 the claim is not attributable to fair wear and tear or any fault or damage arising from impact, modification, inappropriate use or treatment, incorrect handling or exposure to corrosive conditions, or being kept or installed other than under normal conditions.
8.3.2 that the Equipment must not be or have been recharged repaired or serviced by anyone other than a qualified person for the time being employed by Us;
8.3.3 that Our instructions to the use of the Equipment have been strictly complied with;
8.3.4 that the claim is made by You as Our original customer for Your benefit;
8.3.5 that the claim is notified, in detail, in writing to Us within 30 days of the date of discovery thereof.

9. LIMITATION OF LIABILITIES AND INDEMNITY

- 9.1 You agree with Us that if You shall suffer loss or damage as a result of any breach of any of the terms of the Contract by Us, or as a result of the negligence of Us, then Our liability in respect of such loss or damage shall be limited to the smallest of the following:-
9.1.1 the actual amount of any loss or damage suffered by You;
9.1.2 a sum which is equal to the Price;
9.1.3 the sum of £5,000,000.
This limitation shall continue to subsist indefinitely.
9.2 The foregoing states Our entire liability, whether in contract or tort, for defects in the Equipment, other than liabilities referred to in Condition 10.
9.3 The express terms set out above are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing, in no circumstances shall We be liable for any loss of profit, business, contracts, revenues or anticipated savings or for any special, indirect or consequential damage of any nature whatsoever save as provided in this Condition 10.
9.4 You agree and accept that with regard to the limitations of liability set out in Conditions 9.1 to 9.3 (inclusive) that such limitations are perfectly fair and reasonable having regard (amongst other things) to the following circumstances:
9.4.1 that the potential losses which could or might be caused as a result of the breach or negligence as referred to in Conditions 9.1 to 9.3 inclusive are greatly in excess and wholly disproportionate to the amount which is being charged by Us in respect of the Equipment;
9.4.2 that We have no information or knowledge as to the value of any contracts to be entered into by You which may involve the Equipment in anyway;
9.4.3 that We are anxious to keep to as low a level as reasonably possible for Your benefit, and all Our other customers, its charges in respect of the equipment and services provided by it.
9.5 You confirm that You have read and fully understood the terms of Conditions 9.1 to 9.4 (inclusive), and accept the limitations of liability in this Condition 9.

10. LIABILITY FOR DEATH OR PERSONAL INJURY

We shall indemnify You against any injury to or death of any Person or damage to property (as defined in the Consumer Protection Act 1987) caused by any negligent act or omission or wilful misconduct of Us, or by any defect in the Equipment.

11. TERMINATION

Without prejudice to any other provision of these Conditions. We shall be entitled to terminate the Contract for the sale of the Equipment and/or suspend all further deliveries of Equipment without liability on Our part if You:-

- 11.1 commit any material breach of the Contract;
11.2 fail to make payment for the Equipment on the due date for payment;
11.3 make any voluntary arrangement with Your creditors or become subject to an administration order or (being an individual or a firm) becomes bankrupt or (being a company) goes into liquidation; or
11.4 permit an encumbrancer to take possession or a receiver to be appointed over any of Your property or assets.

12. ASSIGNMENT

You shall not assign the Contract or any part of it without Our prior written consent.

13. FORCE MAJEURE

We shall not be liable for any delay in performing or failure to perform Our obligations under the Contract if such delay or failure results from an act of God, war, strike, lock-out, industrial action, default or suppliers or sub-contractors, fire, flood, drought, tempest or other event beyond Our reasonable control. Such delay or failure shall not constitute a breach of the Contract and We shall be entitled to a reasonable extension of time for performing its obligations under the Contract in the event of an occurrence as referred to in this Condition.

14. NOTICES

- 14.1 Any notices required or permitted to be given by either party to the other shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice. In proving that a notice has been validly given, it shall be conclusive evidence to provide that delivery was made by hand, or that the envelope containing the notice was properly addressed and posted.
14.2 The Contract shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts in the interpretation of this Contract or the resolution of any dispute arising under its terms.

15. SEVERABILITY

These Conditions are separate and severable and enforceable accordingly, and considered reasonable by You, but in the event that any Condition shall be bound or held to be void, or illegal, or unenforceable by a court of competent jurisdiction, then that Condition shall be severed from the Contract, and the remainder of the Contract shall continue in full force and effect, and shall not be prejudiced or affected by the unenforceability or illegality of the Condition in question.