

1. DEFINITIONS

1.1 "The Company" means KELTON ENGINEERING LIMITED having its principal place of business at the 27 Albany Place, Aberdeen AB10 1DB.

1.2 "The Client" means the Client of the Company.

1.3 "The Contract" means any contract for the supply of the Services by the Company to the Client.

1.4 "The Services" means any Services forming the subject of this contract including soft- ware products, goods, parts and components of or materials incorporated in them.

2. QUOTATIONS and EXISTENCE of CONTRACT

2.1 Quotations by the Company unless otherwise stated in them shall be open for acceptance within 60 days of the date of the quotation.

2.2 No Contract shall come into existence until the Client's duly authorised Purchase Order is accepted in writing by the Company.

2.3 Typographical and clerical errors are subject to correction by the Company.

2.4 The Company reserves the right to amend the quotation at any time up to acceptance of the order in writing.

2.5 The Company reserves the right to alter all price lists and discount schedules without notice.

2.6 Small value orders are subject to minimum order charge which may vary and any such charge will be stated by the Company at the time of quotation.

2.7 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Client.

2.8 No variations or amendments of this Contract shall be binding on the Company unless confirmed by it in writing.

3. PAYMENT

3.1 All invoices are payable in the currency in which raised within 30 days of the date of the Company's invoice at the Company's premises stated on the invoice and in no circumstances shall the Client be entitled to make any deduction or withhold payment for any reason at all.

3.2 Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company, if the Client fails to pay the invoice price by the date due, the Company shall be at liberty to charge interest on any overdue amount from the date on which payment was due to the date on which it is made at the same rate as specified in The Late Payment of Commercial debts (Interest) Act 1998 and/or Late payment of Commercial Debts Regulations 2002 (as amended from time to time) and the Client shall reimburse the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amounts.

3.3 The Company reserves the right to withdraw without notice the facilities of any credit account which it may have allowed to a Client in the event of default by the Client in punctual payment of any monies due from him. All monies then owing by the Client shall thereupon become payable. However, in such event, the Company reserves the right to suspend the services or reduce the rate of supply of the Services on this or any other outstanding order until all monies then owing are paid.

3.4 The Client in submitting his first order to the Company should at the same time supply to the Company full details of his bank account together with the names of two trade referees. If the Company considers the references to be unsatisfactory, it reserves the right to require payment from the Client on a proforma basis or before commencement of the supply of the Services.

3.5 If the Client is unable or wrongly refuses to accept the supply of the Services or the delivery of the goods therein in compliance with the terms of the Contract, the Company reserves the right in addition to any other remedy to raise an invoice in respect of the Services and/or goods and demand payment thereon upon the same terms as if delivery has been accepted. Further, if the Client is unable or wrongly refuses to accept the supply of the Services or to take delivery of the goods within 14 days after he has been notified that they are ready for supply or

delivery, the Company shall be at liberty to charge the Client a reasonable amount for inter alia storing of goods and if necessary, to arrange for storage of the goods at premises other than at the Company's premises at the Client's expense and risk in all respects.

4. TITLE

4.1 For the purpose of Section 12 The Sale of Goods Act 1979 the Company shall transfer only such title or rights in respect of goods as the Company has and if goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Company.

4.2 Notwithstanding the earlier passing of risk, title in goods shall remain with the Company and shall not pass to the Client until the amount due under the invoice for them has been paid in full.

4.3 Until title passes, the Client shall hold goods for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.

4.4 The Company shall be entitled at any time before title passes to repossess and dismantle without being liable for any damage caused by so doing and use or sell all or any of the goods supplied and so terminate without liability to the Client the Client's rights to use, sell or otherwise deal in them and for that purpose of determining what if any goods are held by the Client and inspecting them to enter any premises of the Client.

5. RISK, DELIVERY and PERFORMANCE

5.1 Goods are delivered to the Client when the Company makes them available to the Client or any agent of the Client or any carrier (who shall be the Client's agent whoever pays his charges) at the Company's premises or other delivery points agreed by the Company.

5.2 Risk in goods passes when they are delivered to the Client.

5.3 The Company may at its discretion deliver goods by instalments in any sequence.

5.4 When goods are delivered by instalments, each instalment shall be deemed to be the subject of a separate Contract and no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the goods previously delivered or undelivered goods.

5.5 Any dates quoted by the Company for the supply of the Services or the delivery of goods are approximate only and shall not form part of the Contract and the Client acknowledges that in the performance expected of the Company no regard has been paid to any quoted supply or delivery date.

5.6 If the Client fails to accept the supply of the Services or to take delivery of the goods or any part of them on the date due and fails to provide any instructions, documents, licences, consents or authorizations required to enable the goods to be delivered on the due date, the Company shall be entitled upon giving written notice to the Client to store or arrange for the storage of the goods and then risk in the goods shall be deemed to have passed and the Client shall pay the Company all costs and expenses including storage and insurance charges arising from his failure.

5.7 The Company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall such delay or failure entitle the Client to refuse to accept any delivery or performance of or repudiate the Contract.

5.8 Should shipment of any goods be delayed beyond the original scheduled shipping date for the convenience of the Client or because of lack of shipping instructions from the Client, or non-receipt of Client's material for mounting, such goods will be referred to as "held" goods.

5.9 Charges will be made on "held" goods for storage and any other expenses occasioned by the delay. Invoices will be issued immediately on all "held" goods. Material on "held" goods will be stored at the Client's risk and subject to the same prices, schedule and conditions as applied to a new Contract entered on the date the "held" goods contract is continued.

5.10 Unless stated to the contrary in the Company's quotation, the Client will be charged for carriage, packing cases, crates and other packing materials as are necessary.

6. CLAIMS NOTIFICATION

6.1 Any claim for non-delivery of any goods shall be notified in writing by the Client

to the Company within two working days of the date of the Company's invoice.

6.2 Any claim that any goods have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified in writing by the Client to the Company within 7 days of their delivery.

6.3 Any alleged defect shall be notified by the Client to the Company within 7 days of the delivery of the goods or in the case of any defect which is not reasonably apparent on inspection within 7 days of the defect coming to the Client's attention and in any event within 3 months from the date of delivery. Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective goods.

6.4 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Client shall, if so requested in writing by the Company, promptly return any goods, subject to claim and any packing, securely packed and carriage paid to the Company for examination.

6.5 The Company shall have no liability with regard to any claim in respect of which the Client has not complied with the provisions of this condition.

7. SCOPE of CONTRACT

7.1 Under no circumstances shall the Company have any liability of whatever kind for:-

7.1.1 any defects arising from wear and tear, accident, improper use by the Client or use by the Client otherwise than in accordance with the instructions or advice of the Company or the manufacturer of any goods or neglect or from any instructions or materials provided by the Client.

7.1.2 any goods which have been adjusted, modified or repaired otherwise than by the Company.

7.1.3 the suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company.

7.1.4 any substitution by the Client of any materials or components not forming part of any specification of the goods agreed in writing by the Company.

7.1.5 any descriptions, illustrations, specifications, figures as to performance, drawings and particulars or weights and dimensions submitted by the Company contained in the Company's catalogues, price lists or elsewhere since they are merely intended to represent a general idea of the goods are not to form part of the contract or to be treated as representations.

7.1.6 any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Client before the Contract is made.

7.1.7 any variations in the quantities or dimensions of any goods or changes of their specifications or substitution of any materials or components if the variation or substitution does not materially affect the characteristics of the goods and the substituted materials or components are of a quality equal or superior to those originally specified.

8. EXTENT of LIABILITY

8.1 The Company shall have no liability to the Client (other than liability for death or personal injury resulting from the Company's negligence) for any loss or damage of a nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance or failure to perform the Contract.

8.2 If the Client establishes that any goods have not been delivered, have been delivered damaged, are not of the correct quantity or do not comply with their description, the Company may at its option, replace with similar goods any goods which are missing, lost or damaged or do not comply with their description, allow the Client credit for their invoice value or repair any damaged goods.

8.3 If the Client establishes that any goods are defective the Company may, at its option, replace with similar goods or repair any defective goods, allow the Client credit for their invoice value or to the extent that the goods are not of the

Company's manufacture, assign to the Client (so far as the Company is able to do so) any warranties given by the manufacturer of the goods to the Company.

8.4 The delivery of any repaired or replacement goods shall be at the Company's premises or other delivery point specified for the original goods.

8.5 Where the Company is liable in accordance with this condition in respect of only some or part of the goods, the Contract shall remain in full force and effect in respect of the other or other parts of the goods and no set off or other claim shall be made by the Client against or in respect of such other or other parts of the goods.

8.6 No claim against the company shall be entertained for any defect arising from any design or specification provided or made by the Client or if any adjustments, alterations or other work has been done to the goods by any person other than the Company.

8.7 The Company shall not be liable where any goods the price of which does not include carriage are lost or damaged in transit and all claims by the Client shall be made against the carrier. Replacements for such lost or damaged goods will, if available, be supplied by the Company at the prices ruling at the date of dispatch.

8.8 When goods are supplied to the Client's design, the Company shall not be liable for infringement of any patents or other rights and the Client shall keep the Company fully indemnified against loss, damage and expense incurred by it as a result of any claim made against it by any person claiming patent rights in respect of any such goods or any part thereof.

8.9 In no circumstances shall the liability of the Company to the Client under this condition exceed twice the invoice value of the goods.

9. GENERAL

9.1 The Company shall not be liable for any failure in the performance of any of its obligations under the Contract caused by strikes, lockout, war, fire, flood, accident, defective material, delay in obtaining materials not manufactured by the Company or any other cause (whether or not similar to any of the foregoing) outside its control.

9.2 The Company may sub-contract the performance of the Contract in whole or in part.

9.3 The Contract is between the Company and the Client as principals and shall not be assignable by the Client without the express written consent of the Company.

9.4 The Company shall have a lien on all the Client's property in the Company's possession for all sums due at any time from the Client and shall be entitled to use, sell or dispose of that property as agent for and at the expense of the Client and apply the proceeds in and towards the payment of such sums on 14 days' notice in writing to the Client. Upon accounting to the Client for any balance remaining after payment of any sums due to the Company and the costs of sale or disposal, the Company shall be discharged of any liability in respect of the Client's property.

9.5 The Company may, at its discretion, suspend or terminate the supply of the Services and the delivery of any goods if the Client fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other agreement with the Company or becomes insolvent, has a receiver appointed of its business or is compulsorily or voluntarily wound up or the Company bona fide believes that any of these events may occur, and in case of termination shall be entitled to forfeit any deposit paid.

9.6 If any goods are manufactured in accordance with any design or specification provided or made by the Client, the Client shall indemnify the Company from and against all claims costs expenses and liability of any nature in connection with them, including any claim whether actual or alleged that the design or specification infringes the rights of any third party.

9.7 All tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain its property and all technical information, patentable or un-patentable, copyright and registered designs arising from the performance of the Services shall remain the property of the Company.

9.8 The Contract and its subject matter are confidential and shall not be disclosed or used for any unauthorised purpose.

10. CANCELLATION

10.1 Orders for the Services once accepted in writing by the Company cannot be cancelled by the Client nor can performance or delivery dates be deferred upon the request of the Client except with the Company's written consent and upon the Client agreeing to indemnify the Company against all loss it may incur as a result.

11. CLIENT'S GOODS

11.1 All goods sent by the Client to the Company must be delivered at the Client's expense and be duly advised to the Company. All such goods sent for assembly must be in good condition and ready for assembly.

11.2 Whilst the Company will take every care in all work to Client's goods, it shall not be liable for any damage to or loss of such goods whilst on its premises, nor for any consequential loss, damage or injury arising therefrom.

12. SAMPLES AND DRAWINGS

12.1 Any samples delivered to the Client from the Company must be returned by the Client to the Company's premises at the Client's expense within one month from the date of delivery or be paid for.

12.2 No conditional warranty shall be implied by reason of the submission of such sample.

12.3 Drawings, descriptive matter, weights, dimensions and shipping specifications submitted by the Company to the Client, and the descriptions and illustrations contained in the Company catalogues, pamphlets, price lists and other advertising material are approximate only and shall not be binding upon the Company unless expressly so stated.

13. LAW AND CONSTRUCTION

13.1 The Contract shall be governed by Scots Law and the Client consents to the exclusive jurisdiction of the Scottish Courts in all matters regarding the Contract except to the extent that the Company evokes the jurisdiction of the courts of any other country.

13.2 The headlines of conditions are for convenience of reference only and shall not affect their interpretation.

14. NOTICES

14.1 Any notice to be given under the Contract shall be in writing and emailed, sent by facsimile transmission or forwarded by first class, prepaid, registered or recorded delivery, letter/post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date of the email or facsimile transmission or on the date following that on which the notice was posted.

15. NON-SOLICITATION

15.1 The Parties undertake to another that they will not throughout the course of this Order and for a period of six months thereafter, solicit or attempt to entice away from their engagements/employments any staff contracted to or employed by the other Party