

TERMS OF SUPPLY

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 10.

1. DEFINITIONS, INTERPRETATION AND GENERAL

1.1 In these Terms:

- (a)** 'Business Day' a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- (b)** 'Charges' charges payable by the Customer for the supply of Goods and/or Services by the Company, as set out in the Company's written quotation;
- (c)** 'Company' means Schiedel Chimney Systems Limited;
- (d)** 'Customer' means the individual, firm, company or other party with whom the Company contracts;
- (e)** 'Contract' the contract between the Company and the Customer for the sale and purchase of the Goods and, where applicable, the supply of services in accordance with these Terms;
- (f)** 'Contract Specification' the description or specification of the services provided in writing by the Supplier to the Customer in its written quotation;
- (g)** 'Goods' any goods or other deliverables supplied to the Customer by the Company;
- (h)** 'International Supply Contract' means such a contract as is described in section 28(3) of the Unfair Contract Terms Act 1977;
- (i)** 'Order' the Customer's order for the Goods and/or services as set out in the Customer's purchase order;
- (j)** 'Services' the services supplied by the Company to the Customer provided in connection with the Goods (including but not limited to installation and design services) as set out in the Contract Specification;
- (k)** 'these Terms' means the terms of sale set out or referred to in the Company's acknowledgment of Order; and
- (l)** 'Third Party Specification' has the meaning given in clause 3.

1.2 The headings in these Terms are for convenience only and are not for the purpose of interpretation.

1.3 Any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, reenacted or extended at the relevant time.

1.4 Failure by the Company to enforce strict compliance with these Terms by the Customer will not constitute a waiver of any of the provisions of these Terms.

1.5 References to clauses are to clauses of these Terms, unless stated otherwise.

2. *CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS*

2.1 No Order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such Order is accepted in writing by the Company. Any contract made between the Company and the Customer shall be subject to these Terms and, save as set out in the following sentence of these Terms, no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them. Any such term representation on contract will bind the Company only if in writing and signed by a director of the Company.

2.2 Unless otherwise agreed in writing by the Company (which shall include anything contained in any quotation delivered by the Company to the Customer) these Terms shall apply to the exclusion of any terms stipulated or referred to by the Customer in its Order (whether by written purchase order or otherwise) or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.

2.3 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate.

2.4 Where the Company has not given a written acknowledgment of Order, these Terms will nonetheless apply to the Contract provided that the Customer has had prior notice of them.

2.5 Where the Customer does not formally accept a quotation from the Company but the Customer continues to instruct the Company to supply the Goods or Services, the Customer's continued instructions will be deemed to be acceptance of these Terms.

2.6 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or website are produced for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the contract or have any contractual force.

2.7 The Company reserves the right to correct any clerical or typographical error made by its employees at any time.

2.8 For the avoidance of doubt, except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms shall be effective unless it is agreed in writing and signed by a director of the Company.

2.9 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

3. SPECIFICATION, INSTRUCTION OR DESIGN

3.1 If Goods are made to or Services supplied in accordance with a specification, instruction or design supplied by the Customer or any third party on behalf of the Customer ("Third Party Specification") then:

- (a)** the suitability and accuracy of that Third Party Specification will be the Customer's responsibility;
- (b)** the Company reserves the right to amend any such Third Party Specification if required by any applicable statutory or regulatory requirements;
- (c)** the Customer will indemnify the Company against all infringement or alleged infringement of any third party's intellectual property rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country in connection with such Third Party Specification; and
- (d)** the Customer will indemnify the Company against any loss, damage or expense in respect

of any liability arising in any country by reason of the Goods being made or the Services being provided to such Third Party Specification.

(e) the Customer undertakes to ensure that all necessary permissions or consents (including those of third parties) are obtained in order to permit the Company to supply Goods and/or Services in accordance with the relevant Third Party Specification.

3.2 Clauses 3.1 shall survive termination of the Contract.

4. CUSTOMER'S REPRESENTATIONS

4.1 If the Customer or a third party modifies the Goods, the Company shall have no liability in respect of any loss or damage arising from or in connection with any defect of failure in the Goods or any error regarding weight, dimensions, capacity.

4.2 The Customer shall store the Goods in clean, dry, well ventilated conditions and shall maintain and use the Goods in accordance with any recommendations made by the Company.

4.3 The Customer shall provide the Company with adequate instructions and accurate information regarding the Goods and Services it wishes to purchase from the Company. If the Company suffers any delay caused by the Customer' inadequate instructions or inaccurate information, or delay caused by the Customer's failure to give the Company adequate instructions or accurate information, the supply of the Goods and/or Services shall be extended for such period as the Company may reasonably require.

4.5 Where the Contract requires the provision of Services at the Customer's premises, the Customer hereby grants a licence to the Company, its employees and sub-contractors (together with appropriate transport) to enter upon the Customer's premises for the purpose of providing the Services. The Customer shall ensure that its premises and all plant and equipment which is used by the Company's employees or sub-contractors or with which they may come into contact or to which they may be exposed complies with the Health and Safety at Work Act 1974, all relevant statutory provisions (as defined in that Act) and all other obligations imposed by statute and common law relating to health and safety and will indemnify the Company against any loss, damage or expense in respect of any failure by the Customer to comply with its obligations.

5. QUOTATIONS AND PRICES

5.1 The Company's prices for the supply of Goods and the provision of Services shall be set out in the Company's written quotation. Unless otherwise agreed in writing, the Company shall be entitled to increase its Charges at any time to take account of any increase in the cost to the Company of purchasing any Goods or materials or manufacturing, working on or supplying any Goods or Services (including, but not limited to, any such increase arising from any error or inadequacy or change to any Third Party Specification, any delay caused by any instructions of the Customer or a third party or failure of the Customer or third party's failure to give the Company adequate or accurate information or instructions or any change in labour costs, taxes, customs duties, freight charges, insurance premiums or foreign exchange rates) and such increased prices ruling at the date of supply of the Goods and/or Services by the Company shall be substituted for the previous quoted Charges. In particular, but without prejudice to the generality of the foregoing, if the contract price is specified or payable in the Euro or in a currency other than pounds sterling ('the Payment Currency'), the Company shall be entitled to increase the Charges to take account of any change in the exchange rates between pounds sterling and the Payment Currency (as evidenced by the exchange rates quoted by National Westminster Bank plc) which is to the detriment of the Company and which occurs between the acceptance of the order and the actual payment of the Charges.

5.2 All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes, duties and other governmental charges payable in respect of the Goods or Services.

5.3 Without prejudice to the generality of clause 5.2, in respect of Goods which have been the subject of claims by the Company for Inward Processing Relief (as defined in HM Revenue and Customs Notice 221A), duty may be charged (in addition to the Company's Charges) in the event that the Customer is in the EC.

5.4 The Charges for any Goods are exclusive of the costs and charges of inspection, standard product packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

5.5 If the Customer requires the Company to provide Services outside its normal business hours (as shall be notified by the Company to the Customer from time to time), then the

Company may (but shall not be obliged to) provide such Services provided that the Services outside normal business hours shall be charged at the such overtime rates as shall be notified by the Company to the Customer from time to time.

6. DELIVERY OF GOODS

6.1 For all contracts other than International Supply Contracts and unless otherwise specified in writing by the Company, the Company shall deliver the Goods to the location set out in the agreed Order or to such other location as the parties may agree at any time after the Company notifies the Customer that the Goods are ready. Goods supplied in connection with International Supply Contracts shall be delivered in accordance with the Incoterms specified in the Order.

6.2 If the contract requires the Customer to take delivery of the Goods at the Company's premises or such other location as may specified by the Company then: (a) for the purposes of this sub-clause 'the Goods' shall mean the whole or any instalment of the Goods and 'the collection date' shall mean the date on which the Goods are or will be ready for delivery; and (b) the Company shall notify the Customer of the collection date and the Customer shall take delivery of the Goods within 5 days of the collection date.

6.3 If the Customer shall for any reason fail to take or accept delivery of the Goods, delays in doing so, fails to provide a delivery address pursuant to an Order on the agreed date or dates, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract, without prejudice to any other rights of the Company whether under these Terms or otherwise: (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Customer that the Goods were ready; and (b) the Company shall be entitled to make an additional charge in respect of any delay caused by such failure to take delivery of the Goods and for any costs incurred as a result of repeated delivery necessitated by such failure.

6.4 If the contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between the Incoterms and any express term of the Contract (including these

Conditions) the latter shall prevail. The Company shall be under no obligation to give the Customer the notice specified in section 32(3) of the Sale of Goods Act 1979.

6.5 Should the Company be delayed in or prevented from delivering the Goods due to a failure of the Company's (or its subcontractor's) computerised business or due to any cause beyond the reasonable control of the Company, the Company shall be at liberty to terminate the Order placed by the Customer without incurring any liability for any loss or damage arising from such termination (but without prejudice in any such case to rights accrued to the Company in respect of deliveries already made).

6.6 Subject to any agreement in writing by the Company, the risk in the Goods which the Company agrees to supply shall pass to the Customer on the date such Goods are delivered or made available for collection (as the case may be). Title in the Goods shall pass when the Customer pays for the Goods in accordance with clause 8.

6.7 All other Goods or materials shall be at the Customer's sole risk at all times, and the Company shall not be liable for any loss or damage sustained by any Goods or materials left with the Company, howsoever caused and whether or not attributable to negligence on the part of the Company or negligence or wilful default on the part of any employee or agent of the Company. The Customer shall adequately insure such Goods and materials in respect of loss or damage whilst the same are under the Company's control and/or in transit from and to premises occupied by the Company.

6.8 The packing the Goods shall be entirely at the discretion of the Company who shall have the right to pack all Goods in such manner and in such materials and in such quantities as it in its absolute discretion thinks fit and shall not be obliged to comply with any packaging instructions or requests or requests of the intending Purchaser.

7. SUPPLY OF THE SERVICES

7.1 The Company shall provide the Services to the Customer using reasonable skill and care and in accordance with the Contract Specification in all material respects. The Customer shall cooperate with the Company in all matters relating to the Services.

7.2 The Company shall use reasonable endeavours to meet any performance dates for the Services specified and agreed in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The Company shall be entitled to defer provision of the Services until any monies due from the Customer have been received.

7.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the quality of the Services, and the Company shall notify the Customer in any such event.

7.4 If the Customer shall for any reason prevent (or allow any other person to prevent) the Company (or its subcontractors) from providing the Services (or any part thereof) on the agreed date or dates except where such prevention is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract, without prejudice to any other rights of the Company whether under these Terms or otherwise, the Company shall be entitled to make an additional charge in respect of any costs incurred as a result of repeated provision of the Services necessitated by that failure.

7.5 The Customer shall be responsible for obtaining and maintaining all necessary licences, permissions and consents which may be required for the Services before the start date for the Services.

7.6 Where the Company supplies Services on any site of the Customer or any third party, the Customer shall ensure that any structures and foundations are suitable for the Goods and/or Services to be supplied and have adequate strength to bear the loadings advised by the Company and/or resulting from the use of installation of the Goods.

7.7 The suitability of all Goods supplied by the Company for combination with other plant and machinery shall be the responsibility of the Customer. The Company will advise and accept responsibility for confirmed dimensions weights ratings and capacities of its equipment but shall have no liability in connection with the fitting or use of its Goods with the machinery plant or equipment of the Customer or others

7.8 The Customer may, by giving the Company written notice, at any time during the term of the Contract, request a change to the Services. Within seven working days of receipt of such

notice, the Company shall, at their standard rates then in force, prepare for the Customer a written quote for any increase or decrease in the Charges, and of any effect that the requested change would have on any agreed timescale or completion date.

7.9 Within 7 working days of receipt of the written quote referred to in clause 7.2, the Customer shall inform the Company in writing of whether or not they wish the requested change of scope to be made. If the change is required, the Company shall not make the requested change until the parties have agreed in writing or by email any changes to the Charges and any agreed timescale or completion date.

7.10 Notwithstanding the generality of the other provisions in these Terms, the provisions of clause 26 shall also apply to the Services rendered by the Company.

8. PAYMENT

8.1 Subject to clause 8.2, payment to the Company shall be made by the Customer in full in Pounds Sterling before any Goods are delivered or Services are rendered. Once payment has been received in full, the Company shall provide an estimated delivery date for dispatch of the Goods or provision of the Services. The parties hereby agree that the Company's obligations under these Terms are wholly conditional upon such payment being made.

8.2 The Company may in its sole discretion, designate to the Customer approved credit terms and in any such case, (unless otherwise specified in writing by the Company) the Company may invoice the Customer for the Goods on or at any time after the completion of delivery and the Customer shall pay each invoice submitted by the Company:

- (a)** within 30 days of the date of the invoice notwithstanding that property to the Goods has not passed to the Customer; and
- (b)** in full, in pounds sterling and in cleared funds to a bank account nominated in writing by the Company, and
- (c)** time for payment shall be of the essence of the Contract.

8.3 To the extent that the Company designates credit terms to the Customer pursuant to clause 8.2 and in the event of the provision of the Services taking longer than one (1) month to complete, the Company reserves the right to render interim accounts on a monthly basis (which

are payable on the same terms as set out in clauses 8.2(a) and 8.2(b)). The interim payments shall be of the value of 95% of the works undertaken with the balance being payable on completion of the Services.

8.4 Time of payment shall be of the essence of the contract. Without prejudice to any other rights it may have the Company reserved the right to charge interest at National Westminster Bank plc base rate plus 4% or at the rate specified from time to time under the provisions of Late Payment of Commercial Debts (Interest) Act 1988 (whichever is the higher) on all overdue accounts and for the purposes of clauses 9 and 12 the full purchase price for the Goods and/or Services shall include all interest payable hereunder.

8.5 The Customer shall not in any circumstances be entitled to withhold payment for monies due whether as a means of setting off monies owed to it by the Company or otherwise. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer

8.6 The Customer shall pay to the Company an amount equal to any costs and expenses incurred (on a full indemnity basis) by the Company in recovering from the Customer any monies due and payable by the Customer to the Company and for the purposes of clauses 9 and 12 the full purchase price of the Goods or Services shall include all costs and expenses payable hereunder.

8.7 In the event that the currency in which the Company has specified payment is to be made is fully replaced by the Euro, the Charges shall be exclusively owed in Euro and this shall not have the effect of terminating the contract between the Company and the Customer.

9. FAILURE TO PAY, CANCELLATION OR DEFERMENT

9.1 For the purposes of this clause 9 “an Intervening Event” shall be any of the following:

(a) failure by the Customer to make any payment when it becomes due;

(b) breach by the Customer of any of the Terms of the Contract;

(c) the Customer's proposal for or entry into any composition or voluntary arrangement with creditors;

(d) the presentation against the Customer of any petition for a bankruptcy order, administration order, winding-up order or similar process;

(e) the appointment of an administrative receiver or receiver in respect of the business of any part of the assets of the Customer;

(f) the Company forming the reasonable opinion that the Customer has become or is likely in the immediate future to become unable to pay his, her or its debts (adopting, in the case of a company, the definition of that term set out in section 123 of the Insolvency Act 1986); and

(g) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(c) to clause 9.1(f) (inclusive).

9.2 If there shall be an Intervening Event, the Company may within a reasonable time thereafter, defer or cancel any further provision of Services, stop any Goods in transit and treat the Contract as determined but without prejudice to its rights to the full purchase price for Services rendered or Goods (which shall become immediately due) and damages for any loss suffered in consequence of such determination.

9.3 Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting in the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing and signed by a director of the Company. Where cancellation is accepted by the Company in respect of Goods, the Company shall be entitled to charge a restocking charge equal to 35% of the value of the Goods relating to the cancelled Order. The parties confirm that this sum represents a genuine pre-estimate of the Company's losses in restocking cancelled Goods.

9.4 Any costs or expenses incurred by the Company due to suspension or deferment of any Order by the Customer or in the event that the Customer defaults in collecting, or giving instructions for the delivery of any Goods or the performance of any Services will be payable by the Customer forthwith on demand.

9.5 Without prejudice to the Company's other rights under this Clause 10, the Company shall be entitled to suspend the Contract for a period of up to sixty days in the event an Intervening Event occurs. If the period of suspension reaches sixty days the Company shall either end the suspension or terminate the Contract.

10. LIMITATION OF LIABILITY

10.1 Nothing in these Terms shall limit or exclude the Company's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable):

(b) fraud or fraudulent misrepresentation; **10.2** Subject to Clause 10.1:

(a) the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, goodwill or business opportunity or any indirect or consequential loss arising under or in connection with the Contract; and

(b) the Company shall not be liable for any damage to the Customer's property save for damage that arises as a direct result of the Company's negligent performance of the Services.

(c) the Company shall not be liable for any liabilities expressly excluded by the Company under this Contract (including, without limitation, those liabilities excluded pursuant to clauses 3.1, 4.1 and 11.4)

(d) the Company's total liability to the Customer in respect of all 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 Charges paid for the Goods and/or Services under the agreed Order.

10.3 Any and all liability of the Company under or in connection with this Contract shall cease with the expiry of the Warranty Period specified in Clause 11.2.

10.4 The limitations and exclusions of liability applying to the contractor under this Contract shall likewise apply to the Company's directors, personnel, sub-contractors and sub-suppliers of any tier and their personnel.

11. WARRANTY

11.1 In respect of the Goods, The Customer shall be entitled to pass on to its end customers the benefit of the Company's manufacturer guarantee, which is displayed on the installation instructions for the Goods.

11.2 Subject always to Clauses 11.3 and 11.4, the Company warrants that on delivery of the Goods and for a period of 12 months from the date of delivery ("Warranty Period") the Goods shall be free from material defects in materials and workmanship. The Company shall at its sole discretion repair or replace or pay reasonable costs for the repair or replacement of the defective Goods which the Company's examination confirms are defective in accordance with this Clause 11.2. Goods supplied or installed within the United Kingdom will be delivered (at the Company's discretion) to the UK delivery or installation address. Where the Goods are supplied or installed outside the United Kingdom, the Goods replaced under guarantee will be delivered within the UK to the consignment address or F.O.B. to a UK Port.

11.3 The parties acknowledge and agree that:

- (a)** the Customer shall make a full inspection of the Goods immediately upon receipt and the Customer shall make a full inspection of the Services upon completion; and
- (b)** the Customer shall notify the Company with a written notice containing full particulars of any defects and the circumstances in which defects occurred, within 14 days of delivery in the case of defects apparent upon inspection and in the case of defects not so apparent provide such notification within a reasonable time of discovery (in any event within the Warranty Period); and
- (c)** the Customer shall provide the Company with working access to examine the Goods or product of the Services without costs to the Company; and
- (d)** the Customer shall take all appropriate steps to mitigate damage caused by the defective Goods; and
- (e)** the Customer shall provide the Company with adequate time and opportunity in which to repair or replace any part of the defective Goods.

11.4 The Company shall not be liable for the defective Goods if:

- (a)** the Customer makes any further use of such Goods after giving a notice in accordance with clause 11.2;
- (b)** the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the product of the Goods or (if

- there are none) good trade practice;
- (c)** the defect arises as a result of the Company following any Third Party Specification;
 - (d)** the defect arises as a result of a third party component used or incorporated into the Goods;
 - (e)** the Customer or a third party alters or repairs such Goods;
 - (f)** the defect is due to circumstances which existed before the transfer of risk occurred and is not as a result of fair wear and tear;
 - (g)** the Goods have been subjected to improper use, accident or improper installation or maintenance by the Customer or a third party;
 - (h)** the Customer prevents the Company from remedying the defect.

11.5 The repair or replacement of defective Goods during the Warranty Period in accordance with Clause 11.2 shall not as regards to such Goods extend the period of warranty therein provided.

11.6 The Customer's remedies under this clause shall be in place and to the exclusion of any other remedy to the Customer in relation to the defects (including latent defects) in the Goods and/or Services including damage arising therefrom (whether the claims are based in contract, tort, negligence, indemnity or any other legal theory whatsoever). Any and all other warranties, terms and conditions, express or implied which may have otherwise applied in relation to such matter are excluded to the extent allowed under law.

11.7 Where the Company repairs or re-supplies Goods in accordance with the foregoing provisions of this Clause 11 or otherwise, any time specified for delivery shall be extended for such period as the Company may reasonably require.

12. RETENTION OF TITLE

12.1 The following provisions shall apply to all Contracts other than International Supply Contracts and to all Goods which under the Contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliances by the Customer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice limit or extinguish the Company's rights under this clause:

- (a)** Upon delivery of the Goods the Customer shall hold the Goods solely as bailee for the Company and the Goods shall remain the property of the Company until such time as the

Customer shall have paid to the Company and the Company shall have cleared funds for the full purchase price of all Goods and supplies, whether under the Contract or otherwise. Until this time the Company shall be entitled to recover the Goods or any part thereof and, for the purpose of exercising such rights, the Customer hereby grants a licence to the Company its employees and agents (together with appropriate transport) to enter upon the Customer's premises and any other location where the Goods are situated and remove the Goods.

(b) The Customer is hereby granted a licence by the Company to incorporate the Goods in any other products.

(c) The licence granted under sub-clause 12.1(a) shall extend to detaching the Goods from any property to which they are attached or into which they have been incorporated or from any other products or Goods to which they have been incorporated or from any other products or Goods to which they have been attached pursuant to the licence granted under sub-clause 12.1(b) hereof.

(d) The Customer is hereby licensed to agree to sell on the Goods (and any products incorporating any of them on condition that the Customer shall inform its customer of the provisions of sub-clauses 12.1(a) to 12.1(c)). The Customer acts as the Company's bailee in respect of any such sale and shall immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 9 hereof remit to the Company the full purchase price of the Goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

(e) The Customer shall maintain in appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to him. In the event of any loss or damage occurring while the Goods remain the property of the Company the Customer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company. For the avoidance of doubt the provisions of this sub-clause do not affect the Customer's obligations under clause 9.

(f) The licences granted under such sub-clause 12.1(b), 12.1(c) and 12.1(d) shall be terminable forthwith at any time upon notice by the Company to the Customer.

12.2 In the case of International Supply Contracts property in the Goods shall pass to the Customer on delivery.

13. INTELLECTUAL PROPERTY

Unless otherwise agreed in writing by the Company any and all intellectual property rights in the Goods or Services and in any tooling and in any drawings of other documentation supplied or produced by the Company shall vest in and remain vested in the Company, the Customer agrees to execute any documents the Company deems necessary to give effect to this clause.

14. TOOLING

All tooling purchased or produced by the Company for the Contract shall be and remain the property of the Company unless otherwise agreed in writing, notwithstanding that the Customer may have made payment or part payment therefor.

15. CONFIDENTIALITY

A party (receiving party) 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 receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and Services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 15 shall survive termination of the Contract.

16. TEST AND MARKING

16.1 If the Customer requires testing, certification, marking or Goods to be passed to an insurance company or other inspector for inspection, it shall notify the Company of such requirements in advance of placing its Order. The Company may (but shall not be obliged) to

carry out any tests, certification or marking provided that it shall be entitled to charge for the same.

16.2 The Customer shall pay to the Company an amount equal to any costs payable to third parties in respect of any tests, independent design review or report carried out by that third party in respect of the Goods at the request of the Customer together with an administration fee (equal to 10% of the third party costs) in respect of the Company procuring the same.

16.3 If the Company agrees that any tests shall be carried out in the presence of the Customer or his representative the Company shall notify the Customer of the date from which it is or will be ready to carry out such tests. The Customer undertakes that he or his representative will, by prior appointment, attend at the premises where the Goods are situated within 3 days after such date for the purpose of witnessing such tests and agrees that in default of such attendance the Company may proceed with the tests in his absence and he shall be bound by the results thereof.

17. USE AND SAFE HANDLING

The Customer warrants that it will pass on to all third parties to whom it may supply the Goods or any of them all information as to the use and safe handling of such Goods as may have been provided to the Customer by the Company.

18. LICENCES

The Customer acknowledges that Goods for delivery outside of the United Kingdom may be subject to United Kingdom export controls as well as import controls at their destination. The Customer will be responsible for ensuring that all necessary clearances and licences are obtained prior to the despatch dates for the Goods to be supplied and for obtaining all necessary documentation and lodging the same with the Company prior to despatch of the Goods.

19. LAW AND JURISDICTION

The proper law of all Contracts shall be English law which shall govern in all respects the construction and effect of such Contracts and of these Terms. The Customer agrees that in the

event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.

20. FORCE MAJEURE

20.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A 'Force Majeure Event' means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

20.2 Where the Company is delayed due to a Force Majeure Event in accordance with this Clause 20 any time specified for delivery of the Goods or performance of the Services shall be extended for such period as the Company may reasonably require.

21. SUBCONTRACTING AND ASSIGNMENT

21.1 The Company 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.

21.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract

22. NOTICES

22.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or

its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or email (provided that if a notice is required to be given under this Contract is served by email it must also be confirmed by post).

22.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 22.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, at the time of transmission.

22.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

23. SEVERANCE

23.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

23.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. WAIVER

A waiver of any right under the Contract or law 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 a party 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 prevent or restrict its further exercise of that or any other right or

remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

25. *THIRD PARTIES*

A person who is not a party to the Contract shall not have any rights to enforce its terms.

26. *INSTALLATION SERVICES*

26.1 The Company Products: Specifications and installation of the Company products will be in accordance with that detailed in the appropriate product manual unless otherwise stated in writing.

26.2 Free Standing Systems: All types of supporting structures are designed and constructed in accordance with BS 4076 1978 specification for steel chimneys and BS 449 Part 1/2, as applicable.

26.3 Quotations (Inclusions): Standard Company installation quotations include the following:

- (a) Supply, delivery and erection of specified materials;
- (b) Supply, delivery and installation of standard support bracketry and fixings, as detailed in the appropriate Company product manual (unless otherwise stated); and
- (c) upon receipt of an Order, one site visit and subsequent preparation of working drawings.

26.4 Quotations (Exclusions): Standard Company installation quotations do not include the following (unless specifically stated in writing by the Company):

- (a) Builders work (i.e. cutting holes, foundations, making good etc.).
- (b) Scaffolding.
- (c) Dismantling and removal from site of existing flue, installation etc.

26.5 Contract Procedures

Upon receipt of an Order, Contract Specification and any other relevant information, a site survey will be arranged at a mutually convenient time. It is the Customer's responsibility to ensure that:

- (a) the boilers must be fixed in position.
- (b) unobstructed access is given for the Company surveyor to take all necessary dimensions.

(c) any items likely to obstruct the route of the chimney must be in situ at the time of the site survey. Failure to do this could necessitate additional charges for extra materials and installation times.

26.6 Site Variations

Should actual site conditions vary from those originally indicated on the drawings and information supplied from which the original quotation was based then the Company reserves the right to amend the Charges set out in its quotation accordingly. Any revisions to the Charges would be advised in writing by the Company and the Customer's acceptance of the revised Charges will be required prior to commencement of the supply of the Goods and/or Services. Failure to comply with any term of this Contract which results in the need for additional site survey, or additional items will be regarded as chargeable in addition to the quoted Charges.

26.7 Procedure Prior To manufacture

Upon completion of site survey, working drawings will be prepared together with any calculations for structure (where applicable) and submitted to the client for approval in writing. It is only upon receipt of written approval that manufacture of chimney components will be scheduled and installation programme arranged. Upon receipt of written approval confirmation will be given to the client of anticipated completion date.

26.8 Installation

The Customer will comply with the following conditions to enable the installation to be completed by the Company:

(a) the Customer will make the site available so that, where feasible for the Company to do so, the installation can be carried out in one continuous site visit.

(b) the Customer to accept delivery of materials if required.

(c) the access to the area where the chimneys are to be erected should provide working space unimpeded by pipework, overhead wires or other obstruction.

(d) it is the Customer's responsibility to ensure that walls or ceilings to which support bracketry of any kind is to be secured, be suitable and capable of taking the loads imposed upon them and that the method of bolting and fixing is suitable. Unless otherwise agreed we have not included for fixing to or for cutting apertures through any decorative fixing or cladding, be it

brickwork or any other materials.

(e) it is the Customer's responsibility to ensure suitable access, offloading and parking facilities are available at all times. Should any of the above conditions not be met, this could result in additional charges and delay in completion.

26.9 Special Notes For Free Standing Chimneys

As indicated above, all freestanding structures are designed fully in accordance with BS 4076 1978. These will be in general, produced in mild stainless steel not less than 6mm thick rolled to a suitable diameter in suitable flanged lengths. Free standing Open Masts to be designed in accordance to BS 449 Part 2 and BS 5950 Part 5:1987.

After completion of the supply of the relevant Services, a duly authorised representative of the Customer shall deliver to the Company written notice confirming that the Services have been completed. Where the work to be undertaken exceeds the scope of the Contract Specification, any additional work requested by the Customer shall be quoted for in accordance with clauses 7.8 and 7.9.

26.10 Installation of Freestanding Chimneys

It is important to note the following:

(a) The Company quotation is based on there being clear access over firm and level ground to the area where the chimneys and masts are to be installed by our transport and crane. Unless otherwise stated in writing, we have allowed for a crane with a 'maximum jib radius of 40 feet (12.5m)'.

(b) The Company would supply, included in the price of contract, holding down bolts and template for setting into foundation provide by others. It is our customer's responsibility to ensure that these bolts are cast accurately in position to ensure sufficient time has been allowed for the curing of the concrete foundations.

(c) Unless otherwise agreed, all freestanding will be prepared to the necessary British Standard specification. Included in the price are, base plate, holding down bolts, support plates, hoop bands and base template. Paint finish and treatment to the Company standard specification (details on application). Special finishes such as grit blasting, spraying and galvanising etc are usually carried out prior to delivery to site and therefore liable to receive damage in handling, transit and erection. The usual method of rectifying such damage on site is by hand and it

therefore, cannot be guarantee that shading or texture of such remedial work will be consistent with the original finish.

26.11 COSHH

The client must inform the Company in writing of any hazardous substances that may affect personal working on the premises. If special protective clothing respiratory equipment or any other special safety equipment is required, this will be charged for, if required the client must carry out air monitoring trials to ensure the work area is safe for Company personnel.