

DEFINITIONS

1.1. In these Conditions the following expressions shall, unless the context otherwise requires, have the following meanings:-

“**Advice Note**” shall mean the Seller’s shipping pick-list which the Buyer shall receive with the Goods upon Delivery;

“**Buyer**” shall mean any person or persons, firm or firms, company or companies, authority or authorities who shall order or buy Goods from the Seller and shall include his or their successors, executors and personal representatives;

“**Business Day**” shall mean a day (other than a Saturday, Sunday or public holiday) when banks in Scotland are open for business;

“**Conditions**” shall mean these terms and conditions as may be amended from time to time by the Seller in accordance with condition 18 for the supply of Goods set out herein;

“**Contract**” shall mean the contract for the sale or supply of Goods between the Seller and the Buyer in accordance with these Conditions;

“**Delivery Acceptance Period**” shall mean the period of 7 days following the date on which the Seller notifies the Buyer that the Goods are available for delivery or collection;

“**Goods**” shall mean the equipment, goods and/or materials supplied or sold by the Seller in terms of the Contract (including all replacements and renewals thereof and all accessories and additions thereto whether added or made before or after the date of the relative order);

“**Intellectual Property Rights**” shall mean any and all intellectual property rights arising anywhere in the world, whether registered or unregistered, including but not limited to patents, trade marks, copyright, design rights (whether registered or unregistered) and database rights, together with any modification, improvements or developments thereto or any application for any of the foregoing and the right to apply for any of the foregoing;

“**Letter of Credit**” shall mean a document obtained from a bank (such bank to be approved by the Seller in advance) which provides that the relevant bank

will pay the Price to the Seller in the event that the Buyer fails to do so;

“**Price**” shall mean the charges to be paid by the Buyer in respect of the Goods, as set out in the Contract or as otherwise agreed between the Seller and the Buyer;

“**Quotation**” shall mean a quotation in the Seller’s standard form;

“**Seller**” shall mean Sunvic Controls Limited, a private limited company incorporated in England & Wales under the Companies Acts, with registered company number 00786405 and having its registered office at 13 Abell Way, Springfield, Chelmsford, Essex CM2 6WU and/or its successors, assignees; sub-contractors and agents;

“**Warranty Period**” shall mean the period of two years following the date of manufacture of the Goods.

1.2. In these Conditions the singular shall where the context so permits include the plural and vice versa.

1.3. Any phrase introduced by the words “including”, “include”, or “in particular” or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.

1.4. Headings are inserted for ease of reference only and shall not affect the construction or interpretation of these Conditions.

1.5. A reference to a statute or a statutory provision is a reference to such a statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.6. A reference to writing or written includes faxes and emails.

2. CONTRACT

2.1. A Quotation by the Seller shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.2. An order placed by the Buyer to the Seller shall not be binding on the Seller or be deemed to be accepted by the Seller unless and until a written unqualified acknowledgement and acceptance of such order is

issued to the Buyer by the Seller, at which point and on which date the Contract shall come into existence.

2.3. These Conditions apply to the Contract to the exclusion of any other terms or conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. PRICE

3.1. Quotations will normally be given by the Seller in pounds Sterling, but in the event of a Quotation being given in a currency other than Sterling and the exchange rate on the date of payment being different from that on (i) the date of the Quotation or (ii) the date of acceptance of the Buyer’s order, whichever is the earlier, then the Seller shall have the right to make such adjustments as it may reasonably consider necessary to take account of such difference.

3.2. All Prices are stated exclusive of value added tax or other sales tax, excise duty and any other government taxes, for which the Buyer shall be solely responsible.

3.3. Any price lists or catalogues issued or supplied by the Seller and all rates contained therein are subject to variations or withdrawal without notice.

4. DELIVERY

4.1. Unless otherwise agreed in writing between the Buyer and the Seller, the Seller may deliver the Goods in instalments.

4.2. Where Goods are delivered in instalments, each delivery shall (for the purposes of this condition 4) be treated as if it arose from a separate and independent contract but any delay or failure by the Seller in respect of any such part-delivery shall not entitle the Buyer to cancel the remainder of the Contract.

4.3. Where Goods are delivered in instalments, each instalment shall be invoiced for and paid for separately and any failure by the Buyer to make payment in accordance with condition 7 hereof, shall entitle the Seller to withhold delivery of the remainder of the Goods.

- 4.4. The Buyer shall accept delivery of the Goods before the expiry of the Delivery Acceptance Period and if the Buyer fails to do so, the Seller shall be entitled:-
- (i) to charge interest at a rate of 8% above the base rate from time to time of the Royal Bank of Scotland PLC;
 - (ii) to claim interest in terms of the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts (Rate of Interest) (Scotland) Order 2002, where applicable; and
 - (iii) to make a storage charge against the Buyer at a rate equivalent to 10% per annum; on all outstanding sums due to the Seller in terms of the Contract, in the period from the expiry of the Delivery Acceptance Period until delivery of the Goods is accepted by the Buyer.
- 4.5. On the expiry of the Delivery Acceptance Period, the Seller will be entitled to invoice the Buyer in respect of the Goods notwithstanding that delivery of the Goods has not been accepted by the Buyer.
- 4.6. The quantity of any consignment of Goods as recorded by the Seller upon dispatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery, unless the Buyer can provide conclusive evidence proving otherwise.

5. DELIVERY AND PASSING OF RISK

- 5.1. The Seller shall deliver the Goods to the Buyer at the place specified by the Buyer within mainland United Kingdom and delivery of the Goods shall be deemed to be completed when the Goods arrive at said place.
- 5.2. In the event of the Goods being for export, unless otherwise agreed between the Seller and the Buyer, the Buyer shall collect the Goods from the Seller. For the avoidance of doubt, once the Goods have been collected by the Buyer, the Seller shall have no responsibility for any charges incurred in moving or packing the Goods.
- 5.3. The risk of loss, damage or destruction of the Goods shall pass from the Seller to the Buyer upon:
- (i) completion of delivery of the Goods by the Seller to the Buyer; or

- (ii) collection of the Goods by the Buyer from the Seller.

- 5.4. The Seller will repair or replace (at the Seller's own and absolute discretion) free of charge to the Buyer, any Goods which are lost or damaged in transit, provided that the Seller and the carrier receive written notification of such damage within three days of delivery or in the event that the Goods are lost, within fourteen days from the date of Advice Note. For the avoidance of doubt, the Seller shall not be liable for repairing/ replacing Goods in terms of this condition 5.4 if delivery of the Goods is made at the Seller's place of business.

6. DELAY IN DELIVERY

Any delivery date given by the Seller is an approximate estimate of the date on which the Goods will be delivered to the Buyer and the Seller will make every reasonable endeavour to meet such delivery date. Delivery dates are not, however, subject to any condition, guarantee, warranty or representation and, unless otherwise agreed in writing between the Seller and the Buyer, time shall not be of the essence with regard to delivery and there shall be no liability (in contract or otherwise howsoever) upon the Seller in respect of any loss or damage (including consequential loss or damage) incurred by the Buyer arising from any delay in delivery of the Goods; nor shall the Buyer be entitled to refuse to accept delivery or to repudiate or cancel the Contract as a result of any delay in delivery of the Goods or any part thereof. For the avoidance of doubt, late delivery of the Goods shall not affect the obligation of the Buyer to pay the Price.

7. PAYMENT

- 7.1. The Seller shall invoice the Buyer for the Goods on or at any time after dispatch or collection.
- 7.2. Unless otherwise agreed in writing between the Seller and the Buyer and subject to condition 7.3 hereof, payment shall be made within 30 days of the date of the invoice and time shall, in respect of payment, be a material condition in and of the essence of the Contract.

- 7.3. In respect of any Goods to be delivered to the Buyer at an address overseas, unless otherwise agreed in writing between parties, payment of the Price and any additional overseas shipping and/or transportation charges, insurance, storage, standing charges or other additional costs, shall be paid by the Buyer prior to the despatch of the Goods by the Seller by means of a confirmed irrevocable Letter of Credit or by such other means as may be agreed in writing between the Buyer and the Seller.

- 7.4. Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller under the Contract, the Seller shall have the right to charge interest on all overdue amounts at the rate of 8% per annum above the base rate from time to time of the Royal Bank of Scotland PLC from the date of the invoice until the date of actual payment by the Buyer, whether before or after judgement and compounding quarterly.

- 7.5. In the event that the Buyer fails to pay all sums due to the Seller under the Contract in terms of condition 7.2 or condition 7.3 hereof, all sums to become due to the Seller by the Buyer in terms of any and all other contracts between the parties for the supply of Goods, including Goods which are ready for despatch but which have not yet been despatched, shall become immediately due and payable.

- 7.6 Payment shall be deemed to have been received when the Seller has received clear funds.

- 7.7 The Buyer shall make all payments due under the Contract in full without any deduction or withholding, whether by way of set-off, counterclaim, discount, compensation, retention, abatement or otherwise unless the Buyer has a valid court decree, interlocutor or order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

- 7.8 If any invoice rendered by the Seller is not paid within the time limit set in condition 7.2 hereof, or the Buyer fails for any reason to accept delivery of the goods or any part thereof (save in the case of a breach of the Seller of these Conditions or the Contract) then:

- (i) the Seller may suspend performance of the Contract and any other contract between the

Seller and the Buyer (but without affecting the Buyer's obligations under the Contract and such other contracts); and

(ii) the Seller may appropriate any payment made by the Buyer to any sum due under this Contract or under any other such contract between the parties as the Seller thinks fit and may for this purpose disregard any purported appropriation by the Buyer; and

(iii) the Seller may resell or otherwise deal with or dispose of the Goods or any part thereof for its own account in such manner as the Seller may think fit.

7.9. The Seller reserves the right to charge to the Buyer all costs, charges or expenses (including, without limitation, any legal and other professional costs, charges or expenses) which may be incurred or involved in the collection of any account should the account become overdue for payment.

8. PASSING OF PROPERTY

8.1. Property in and title to the Goods shall not pass to the Buyer until the Seller has received payment in full of all amounts due and payable by the Buyer (in cash or cleared funds) under the Contract. Until title in the Goods passes to the Buyer, the Buyer will hold and store the Goods (in so far as the Goods or any part of the Goods have not been sold by the Buyer) as agent for the Seller and in a manner which clearly distinguishes the Goods from all other property of the Buyer and readily indicates that they are owned by the Seller and not by the Buyer.

8.2. In the event that:-

(i) the Buyer fails to make any payment timeously in accordance with condition 7 and/or the Contract; or

(ii) the Buyer ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed over the whole or any part of its assets or business (or is the subject of a filing with any court for the appointment of any such officer), makes any composition or arrangement with its creditors,

takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction and the same is not dismissed or discharged within 20 Business Days thereafter;

the Seller shall be entitled to require the Buyer (at the Buyer's own expense) to return to the Seller all of the Goods that have not been paid for in full and should the Buyer fail to do so, the Seller shall be irrevocably authorised by the Buyer (without notice) to enter any premises in which the Goods are situated for the purpose of collecting and removing such of the Goods and the Buyer shall be responsible for (and shall, on demand, reimburse the Seller with) all the Seller's cost and expenses in connection with such collection and removal.

9. TECHNICAL DATA

All information, details, measurements, descriptions and illustrations contained in the Seller's catalogue and sales manual, and all drawings, descriptive statements, weights, dimensions, power consumptions, price lists and advertisements issued by the Seller are intended to be and may be construed only as of a generally informative nature and no such information, details, measurements, descriptions and illustrations shall form any part of or be incorporated in any way into the Contract or these Conditions. Further, no statement, description, warranty or recommendation made verbally by the Seller shall be construed to enlarge, vary or override the Contract or these Conditions.

10. WARRANTY AND UNDERTAKING

10.1 The Buyer is deemed to have satisfied itself as to the suitability of the Goods for the purpose for which the Buyer requires them.

10.2 The Seller warrants that for the duration of the Warranty Period, the Goods, if used under normal operating conditions (to be determined at the Seller's sole and absolute discretion), shall:

(i) conform in all material respects with their description;

(ii) be free from material defects in design, material and workmanship; and

(iii) conform to the specifications set out in the Quotation and/ or the Buyer's order.

10.3 Subject to conditions 10.4, 10.5, 10.6 and 10.7 below, if:

(i) the Buyer gives notice in writing to the Seller during the Warranty Period (within a reasonable time of discovery) that the Goods do not comply with the warranty as set out in condition 10.2 above; and

(ii) the Seller is given a reasonable opportunity to examine the defective Goods (whether the Seller chooses to examine the Goods or not shall be at the sole and absolute discretion of the Seller); and

(iii) the Buyer has strictly adhered to the terms of payment provided for in the Contract and in these Conditions; and

(iv) the Buyer returns the Goods to the Seller at the Buyer's sole cost;

The Seller shall replace or repair (such decision to replace or repair to be made at the Seller's own and absolute discretion) the defective Goods at the Seller's own cost.

10.4 If the Seller examines the Goods in accordance with condition 10.3(ii) above and is of the opinion that the Goods are not defective (such decision to be made at the Seller's sole and absolute discretion) the Seller shall replace or repair the Goods, but the Seller's liability to replace or repair Goods in such circumstances in any one quarter shall be capped at a limit being equal to 1% of the total value of Goods purchased by the Buyer in the previous quarter.

10.5 For the avoidance of doubt, all warranty claims under this condition 10 shall be subject to inspection by the Seller to determine whether or not there has been misuse, abuse or failure to properly maintain the Goods by the Buyer. Should the Seller determine that the Buyer has abused, misused or failed to properly maintain the Goods, this may invalidate the warranty set out in condition 10.2.

10.6 The Seller reserves the right to replace the Goods with an alternative product of a similar value if the Goods are no longer in production or are otherwise unavailable for any reason whatsoever.

10.7 If the Goods are delivered in instalments, any defect with any of the Goods that are delivered by the Seller in any one instalment, shall not entitle the Buyer to cancel the remainder of the instalment deliveries due under the Contract and the Buyer shall be bound to accept delivery thereof.

10.8 Except as provided for in this condition 10, the Seller shall have no liability to the Buyer in respect of the failure of the Goods.

11. LIMITATION OF LIABILITY

11.1. The Seller shall in no event be liable for any loss of data, production, interest, revenues, profits, business, contracts, anticipated profits or goodwill or business opportunities or for any other consequential or indirect loss or damage howsoever caused or arising, even if the loss or damage was reasonably foreseeable.

11.2. Nothing in these Conditions shall limit or exclude or be construed as attempting to limit or exclude the Seller's liability for fraud, or for death or personal injury resulting from the negligence of the Seller or any of its partners, agents, employees or other representatives.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 The Buyer acknowledges that, any and all Intellectual Property Rights (including for the avoidance of doubt any design rights or registered design rights) arising in the Goods or otherwise in the work carried out by the Seller in supplying the Goods shall be retained and exclusively owned by the Seller notwithstanding completion of supply of the Goods and payment of the Price. The Buyer further acknowledges that supply of the Goods by the Seller is in no way intended to confer a licence in respect of the Intellectual Property Rights.

12.2 The Buyer acknowledges that Intellectual Property Rights are important to the Seller's business, that an award in damages may be insufficient to protect the same in the event of breach hereof, and that the

Seller may seek an action for interdict or injunction or of specific implement or such other action as the Seller deems appropriate if it suspects any breach.

13. CONFIDENTIALITY

The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature (including any sketches, drawings, designs, specification details and articles) and have been disclosed to the Buyer by the Seller, its employees, agents or subcontractors, and any other confidential information concerning the Seller's business or its products or services which the Buyer may obtain. The Buyer will not pass any such information aforementioned in this condition 13 to any third parties without the written permission of the Seller. The Buyer shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Buyer's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Buyer. This condition 13 shall survive termination of the Contract.

14. FORCE MAJEURE

14.1 If performance of the Contract shall be delayed by any circumstances or conditions beyond the control of the Seller including (but without prejudice to the generality of the foregoing) any war, industrial dispute, strike, lockout, riot, malicious damage, fire, storm, flood, act of god, accident, non-availability or shortage of material or labour, failure by any subcontractor or supplier to perform, failure of production equipment, any statute, rule, byelaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority, then the Seller shall have the right to suspend further performance of the Contract until such time as the cause of the delay shall no longer be present.

14.2 If performance of the Contract by the Seller shall be prevented by any such circumstances or conditions

beyond the control of the Seller, then the Seller shall have the right to be discharged from further performance of and liability under the Contract. If the Seller exercises such right, the Buyer shall thereupon pay all sums due in terms of the Contract less a reasonable allowance for such part of the Contract as has not then been performed by the Seller.

15. TERMINATION

15.1 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:

- (i) the Buyer commits a material breach of its obligations under the Contract or these Conditions and (if such breach is remediable) fails to remedy that breach within 20 Business Days after receipt of notice in writing of the breach;
- (ii) the Buyer fails to make any payment due under the Contract and/or these Conditions within 30 days following the date of the invoice;
- (iii) the Buyer ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business (or is the subject of a filing with any court for the appointment of any such officer), makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction and the same is not dismissed or discharged within 20 Business Days thereafter; or
- (iv) the Buyer fails to take delivery of any of the Goods within the period stipulated for in the Contract.

15.2 The Buyer shall not be entitled to cancel the Contract unless the Seller and the Buyer firstly agree upon the

Buyer indemnifying the Seller against any loss, damage or expense (including loss of profit) which the Seller may suffer or incur as a result of the cancellation.

15.3 Upon termination of the Contract for any reason:

- (i) the Buyer shall immediately pay to the Seller any and all sums (including any accrued interest) which have fallen due and are payable under the Contract and which remain unpaid. In the event that Goods have been supplied but an invoice has not yet been rendered by the Seller to the Buyer in respect of the same, the Seller shall submit an invoice to the Buyer and said invoice shall be payable by the Buyer immediately on receipt;
- (ii) the Buyer shall return to the Seller any property, including (but not limited to) any copies of any confidential information or know-how of the Seller in its possession or under its control in connection with the Contract. If the Buyer fails to do so, the Seller may enter the Buyer's premises and take possession of the relevant property;
- (iii) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (iv) this condition 13 (Confidentiality), and condition 11 (Limitation of Liability), condition 12 (Intellectual Property Rights), condition 19 (Entire Agreement) and condition 20 (Governing Law and Jurisdiction) shall survive the expiry or earlier termination for any reason of the Contract.

16. ASSIGNATION

The Buyer may not assign, transfer, or charge, or deal with in any other manner (in whole or in part) any of its rights and obligations under the Contract, without the prior written consent of the Seller.

17. NOTICES

17.1 Unless otherwise specified in these Conditions, any notice to be given under or in connection with the

Contract shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or guaranteed delivery or by facsimile or email; in the case of the Seller to the address, facsimile number or email address detailed in condition 17.2 and marked for the attention of the individual/s set out in condition 17.2 or as otherwise notified in writing by the Seller to the Buyer; and in the case of the Buyer to the address, facsimile number or email address detailed in the Contract and marked for the attention of the individual/s identified in the Contract or as otherwise notified in writing by the Buyer to the Seller. Any such notice shall be deemed to have been received:

- (i) if delivered personally, at the time of delivery;
- (ii) in the case of recorded or guaranteed delivery post, 48 hours from the date of posting;
- (iii) in the case of facsimile, at the time of completion of transmission, as evidenced by a transmission report confirming that all of the pages of the facsimile were successfully transmitted; and
- (iv) in the case of email, forty eight (48) hours from when the email was sent.

17.2 Notices addressed to the Seller shall be sent to:

Sunvic Controls Limited

For the attention of:

Sales Operations Manager

Units 1 & 2, Block 1

251 Low Waters Road

Cadzow Industrial Estate

HAMILTON

ML3 7QU

Facsimile number:

01698 813583 or 01698 813637

Email: enquiries@sunvic.co.uk or

sales@sunvic.co.uk

18. AMENDMENTS, WAIVERS AND REMEDIES

18.1 No amendment or variation of the Contract shall be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.

18.2 The rights of each party under the Contract:

- (i) may be exercised as often as necessary;
- (ii) are cumulative and not exclusive of its rights under the general law; and
- (iii) may be waived only in writing and specifically.

18.3 Delay in exercising or non-exercise of any right is not a waiver of that right.

19. ENTIRE AGREEMENT

The Contract and these Conditions constitutes the entire agreement between the parties relating to the subject matter of the Contract and supersedes all previous agreement in relation thereto.

20. GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in all respects in accordance with the Law of Scotland and each of the parties hereby submits to the exclusive jurisdiction of the Commercial Court at the Sheriff Court of Glasgow and Strathkelvin at Glasgow as regards any matter, dispute, or claim arising out of or in connection with the Contract and its implementation and effect, although the Seller expressly reserves the right to commence proceedings against the Buyer anywhere in the world.

21. SEPARATE AND SEVERABLE

If any provision of the Contract is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (i) the legality, validity or enforceability in that jurisdiction of any other provision of the Contract; and
- (ii) the legality, validity or enforceability in any other jurisdiction of that or any other provision of the Contract.