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Fort Vale Engineering Limited

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FORT VALE ENGINEERING LIMITED ("the Company")

CONDITIONS OF SALE: FV4 DATED 1st OCTOBER 2010

1. INTERPRETATION

1.1 In these Conditions:-

Buyer	is the person who accepts a written quotation of the Company for the sale of the goods or whose order (whether placed in writing or via the Company website) for the Goods, is accepted in writing by the Company;
Goods	are the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions;
Conditions	are these terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions on the face of the company's quotation or written acceptance of the Buyer's order (as the case may be);
Contract	means the contract between the Supplier and the Buyer for the sale and purchase of the Goods in accordance with these Conditions;
In Writing	shall refer to communication by letter, facsimile and electronic mail;
Order	the Buyer's order for the Goods as set out in the Buyer's purchase order form or the Buyer's written acceptance of the Company's quotation.

1.2 Headings are for convenience only and do not affect interpretation.

1.3 In these Conditions, references made to the masculine include the feminine and the neuter and references made to the singular include the plural and vice versa, as the context admits or requires.

1.4 Any references in these Conditions to any provisions of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.5 The Order may contain "Incoterms" and, if so, this is a reference to the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce 2000.

2. BASIS OF THE SALE

2.1 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions.

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Directors : E.S. Fort O.B.E. (Founder & Chairman), I. Wilson (Managing), M. Drury (Group Financial), S. Laycock (General Manager), S. Hendleman (Financial), A. Bishop (Sales & Marketing), D. Bailey (Design), J. Horsfall (I.T.), P. Staveley (Quality), A. Bryce (Innovation).
Registered in England No. 902920. Registered Office : as above.

- 2.2 All Goods are sold subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, whether contained in the Order or howsoever otherwise, or which are implied by trade, custom and practice or course of dealing. No variation to these Conditions shall be binding unless agreed in writing by a director of the Company.
- 2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless set out in the Contract. The Contract constitutes the entire agreement between the Company and the Buyer. In entering into the Contract, the Buyer acknowledges that it does not rely on and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any representations which are not set out in the Contract.
- 2.4 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the application, use or storage of the Goods not set out in the Contract is followed or acted upon entirely at the Buyer's own risk.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or on its website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Company and the Buyer for the sale of the Goods.
- 2.6 Any typographical, clerical or other error or omission in any specification, quotation, acceptance of offer, delivery note or invoice issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.7 A quotation for the Goods given by the Company shall not constitute an offer.

3. ORDERS AND SPECIFICATIONS

- 3.1 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 3.2 The Buyer is responsible for ensuring the accuracy of the terms of any Order (including any applicable specification) and for giving the Company any necessary information within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.3 The quantity and description of and any specification for the Goods shall be those set out in or expressly referred to in the Company's acceptance of the Order.
- 3.4 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or European Union requirements or where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.5 No Order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4. PRICE OF THE GOODS

- 4.1 The price of the Goods shall be the price set out in the Company's written acceptance of the Order, or, if no price is quoted, shall be the price set out in the Company's published price list in force at the date of delivery of the Goods. Prices stated in any quotations are (except where the contrary is stated in writing) valid for 30 days from their date. Contracts for Goods formed after expiry of any quoted price shall be deemed to be at the prices ruling at the date of delivery of the Goods.
- 4.2 The Company reserves the right to alter prices by giving notice to the Buyer at any time before delivery to reflect any increase in the cost of the Goods which is due to:-
- 4.2.1 variations in the cost of raw materials or labour and other manufacturing costs; or
 - 4.2.2 the Buyer's change of design, quantities or specification; or
 - 4.2.3 delay caused by any failure of the Buyer to give the Company adequate or accurate information or instructions.

When Goods comprised in any Contract are despatched in more than one consignment, the price of the Goods comprised in each consignment will be the price ruling at the date of delivery of that consignment. In the event of variation to any Contract or suspension of work on any Contract on the Buyer's instructions, any price quoted by the Company may be adjusted accordingly.

- 4.3 The price quoted for the Goods is ex works and exclusive of the costs of insurance and carriage of the Goods. The cost of carriage shall be charged to the Buyer as an addition to the quoted price on all Goods where the Company has agreed to arrange carriage. Unless otherwise agreed, the cost of carriage by the most cost effective manner, dependent upon weight and volume of the Goods shall be selected by the Company (if weight is under 25 kilos carriage of the Goods will be made by air to mainland Europe) according to the rates ruling at the date of delivery and shall be paid by the Buyer when it pays for the Goods.
- 4.4 All prices are quoted, whether in the Company's published price list or in any contract, exclusive of any applicable value added tax, import or export duties or other taxes or duties. The Buyer shall on receipt of a valid VAT invoice from the Company pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

5. TERMS OF PAYMENT

- 5.1 Payment for the Goods (and if appropriate carriage costs) shall be made in full by the Buyer on the placing of an Order unless the Buyer has a credit account with the Company, when the Company may invoice the Buyer for the price of the Goods (plus the cost of any agreed carriage) at any time after the Company has notified the Buyer that the Goods are ready for collection by the Buyer.
- 5.2 On the establishment of a credit account, the Buyer shall pay the Company's invoices without any deduction, set off or withholding within 30 days of the end of the month of their date. The Company may recover the amount invoiced notwithstanding that delivery may not have taken place and title in the Goods has not passed to the Buyer. The time of payment shall be of the essence of the Contract. Any variation to these terms must be agreed in writing by a Director of the Company.
- 5.3 If the Buyer fails to make any payment when due or breaches any provisions of the Contract or any other contract with the Company, the Company may:-

- 5.3.1 cancel the Contract and any other contract with the Buyer or suspend any further deliveries under the Contract and any other contract with the Buyer without any liability to the Buyer;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company as the Company may think fit (notwithstanding any purported appropriation by the Buyer)); and
- 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at a rate not exceeding 8 per cent per annum over the Bank of England dealing rate until payment in full is received. The Company may further charge the Buyer for collection costs in accordance with the provisions of the Late Payment of Commercial Debts 2002.

6. DELIVERY

- 6.1 Unless otherwise agreed in writing, the Goods shall be delivered ex-works and the Company shall have no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 6.2 If the Company shall agree to organise carriage for the delivery of the Goods, the Company shall arrange such carriage to the location set out in the Order or such other location as the parties may agree ("Delivery Location") within a reasonable time after the Company notifies the Buyer that the Goods are ready. Delivery of the Goods shall be completed at the time of collection of the Goods by the carrier from the Company. If no delivery location is specified by the Buyer, then delivery will be deemed to take place at the Company's premises.
- 6.3 Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.4 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in any instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated or cancel any other instalment.
- 6.5 If the Company fails to deliver the Goods for any reason other than any Force Majeure event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, the Company's liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality (in the cheapest available market) less the price of the Goods.
- 6.6 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery, then the Company may:-
- 6.6.1 store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage;
- 6.6.2 sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer for the excess over sums owing by the Buyer or charge the Buyer for any shortfall.

7. SHORTAGES, DAMAGE AND LOSS IN TRANSIT

- 7.1 No claim for non-delivery of the whole or part of any consignment nor for damage in transit, shortage of delivery, deviation, delay or detention will be entered unless separate notices in writing are given to the Carrier designated to the Buyer as responsible for delivery of the Goods and to the Company within 5 working days of the receipt of the Goods, or in the case of the non-delivery of a complete consignment within 14 days of notification by the Company that the Goods are ready for despatch and in either case a complete claim is made in writing within a further 10 working days. The Goods in respect of which such claim for damaged goods is made shall be preserved intact for inspection. The Company and the designated Carrier of the Goods shall have the right to attend at the Buyer's place of business or otherwise the Delivery Location to investigate the claim.
- 7.2 The Buyer shall inspect the Goods on delivery and unless the Buyer notifies any defects within 7 days of delivery, shall be deemed to have accepted them as in accordance with the Contract. After acceptance, the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract. In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject the Goods.
- 7.3 The Goods are sold as a batch. Without affecting any rights which the Buyer may have to reject all the batch, the Buyer may not accept some and reject some only of the Goods.

8. TITLE AND RISK

- 8.1 Risk in the Goods shall pass to the Buyer upon collection by the Buyer or where the Company is to arrange delivery, upon collection by the designated carrier.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title to the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full for the price of the Goods and all other goods (including carriage costs) agreed to be sold by the Company to the Buyer for which payment is then due.
- 8.3 Until title to the Goods has passed to the Buyer, the Buyer shall:-
- 8.3.1 hold the Goods on a fiduciary basis as the Company's bailee; and
 - 8.3.2 store the Goods separately from those of the Buyer and all third parties and properly stored, protected and insured so that they remain identifiable as the Company's property;
 - 8.3.3 notify the Company if it becomes subject to any of the events listed in clause 11.2;
 - 8.3.4 give the Company such information relating to the Goods as the Company may require from time to time;

but the Buyer may resell or use the Goods in the ordinary course of its business.

- 8.4 If, before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 11.2 or the Company reasonably believes any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods remain in existence and have not been resold or irrevocably incorporated into another product, the Company may at any time without limiting any of its other rights and remedies, require the Buyer to deliver up the Goods and, if the Buyer fails to

do so forthwith enter upon any premises of the Buyer or any third party where the Goods are stored and recover the Goods.

- 8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness the Goods which remain the Company's property but if the Buyer does so all monies owing by the Buyer to the Company shall without limiting any other right or remedy the Company has, forthwith become due and payable.
- 8.6 The Buyer shall keep the Goods insured in the amount of the price at which the Goods are sold to the Buyer against all insurable risks.
- 8.7 If Goods are destroyed by an insured risk prior to the same being paid for by the Buyer, the Buyer shall receive the proceeds of the insurance as trustee for the Company.
- 8.8 The Company shall be entitled to a contractual and special lien on any Goods including raw materials and tooling ("Buyer's Materials") which the Buyer may have supplied to the Company for the purposes of the Contract which are in the Company's possession until the Company shall have received in cash or cleared funds payment in full for the price of the Goods and all other goods agreed to be sold by the Company (including insurance and carriage costs) for which payment is then due and the Company may use or dispose of the same to set against sums owing by the Buyer and at such price as the Company sees fit.

9. WARRANTIES

- 9.1 The Company warrants that it holds unencumbered title to the Goods.
- 9.2 Subject to the conditions set out below, the Company warrants that the Goods will on delivery and for a period of 12 months from the date of delivery ("the Warranty Period"):-
- 9.2.1 correspond in all material respects with their description as set out in the Company's written acceptance of the Order; and
- 9.2.2 be free from material defects in design, material and workmanship.
- 9.3 The Company shall not be liable for the Goods failure to comply with the warranty set out in clause 9.2:-
- 9.3.1 in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 9.3.2 in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage, improper installation or maintenance, abnormal working conditions, failure to follow the Company's oral or written instructions) misuse or alteration or repair of the Goods without the Company's approval;
- 9.3.3 if any sum owing by the Buyer to the Company has not been paid;
- 9.3.4 to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

9.4 Subject to clause 9.3 and if:-

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9.4.1 the Buyer gives notice in writing to the Company (and in any event before expiry of the Warranty Period) within a reasonable time of discovery that some or all of the Goods do not comply with the warranty in clause 9.2; and

9.4.2 the Company is given a reasonable opportunity of examining such Goods,

then, the Company shall replace or repair free of charge those Goods which do not meet the warranty in condition 9.2 or, at the Company's sole discretion, refund to the Buyer the price of those Goods but the Company shall have no further liability to the Buyer.

9.5 Except as expressly provided in these Conditions, all warranties, conditions, representations and other terms implied by statute or common law and all the laws of the country where the Buyer is located are excluded from the Contract to the fullest extent permitted by law.

9.6 Save as specified by the Company in the written acceptance of Order, or as stated in any test certificate supplied by the Company in respect of the Goods, the Company does not guarantee that the Goods will comply with any industry codes of practice or specific industry standards.

9.7 These Conditions shall apply to any repairs or replacement Goods supplied by the Company and to any Orders for refurbishment of Goods supplied previously by the Company, save that refurbishments, replacements or repairs shall be warranted for an additional period of three months or until the expiry of the original Warranty Period for the Goods, whichever is the longer.

10. LIMITATION OF LIABILITY

10.1 Save as otherwise expressly provided in these Conditions, the following provisions set out the Company's entire liability in contract, tort (including negligence), misrepresentation (other than fraudulent misrepresentation) or otherwise howsoever arising.

AND THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING PROVISIONS OF THIS CONDITION

10.2 The Company's liability to the Buyer for death or injury resulting from its own or that of its employees', agents' or sub-contractors' negligence shall not be limited or excluded.

10.3 The Company shall not be liable to the Buyer whether in contract, tort (including negligence, breach of statutory duty or otherwise) for any increased costs or expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special, indirect or consequential loss (including loss or damage suffered by the Buyer as a result of a claim by a third party) arising under or in connection with the Contract even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Buyer incurring the same.

10.4 Subject to clauses 10.2 and 10.3, the Company's entire aggregate liability to the Buyer in respect of all other losses arising under or in connection with the Contract shall be limited to damages of an amount not exceeding the price of the Goods.

10.5 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations, if the delay or failure was due to any cause beyond the Company's reasonable control including (without limitation) Act of God, flood, fire, war, act of terrorism, governmental action, industrial disputes, or difficulty in obtaining supplies, import or export regulations or embargoes ("Force Majeure").

11. BUYER'S INSOLVENCY

11.1 If the Buyer becomes subject to any of the events listed in clause 11.2 or the Company reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Company without incurring any liability to the Buyer and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

11.2 For the purposes of clause 11.1, the relevant events are:-

- 11.2.1 the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 11.2.2 the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with its creditors other than where these events take place for the purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- 11.2.3 a creditor or encumbrancer of the Buyer attaches or takes possession of or a distress, execution, sequestration or other such process is levied or enforced on or sued against the whole or any part of its assets and such attachment or process is not discharged within 7 days;
- 11.2.4 an application is made to court or an order is made for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
- 11.2.5 a floating charge holder over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver;
- 11.2.6 a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
- 11.2.7 any event occurs or proceeding is taken with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent to or similar to any of the events mentioned in clause 11.2(a) to 11.2(f) (inclusive);
- 11.2.8 the financial position of the Buyer deteriorates to such an extent that in the opinion of the Company the capability of the Buyer adequately to fulfil its obligations under the Contract has been placed in jeopardy.

12. CONFIDENTIALITY

12.1 Save as otherwise required by law, the Company shall regard as confidential the source of supply of all raw materials, component parts and other items sourced by the Company in the manufacture of the Goods.

13. INTELLECTUAL PROPERTY

13.1 All copyright and other intellectual property rights in and to all drawings, designs, sketches, prototypes and prototype designs suggested or submitted by the Company to the Buyer are vested in and shall remain the property of the Company. Unless specifically agreed otherwise in writing by a Director of the Company. All intellectual property rights in and to any products displayed in the Company's catalogue, website or other trade literature including all photography are owned by and/or registered in the name of the Company. Any infringement of the Company's rights will be vigorously contested.

14. GENERAL

14.1 The Company may at any time assign, transfer, charge or sub contract its rights and obligations under the Contract. The Buyer may not assign any of its rights and obligations without the prior written consent of a Director of the Company.

14.2 Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

14.3 No delay or failure by the Company in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Company shall be effective unless in writing.

14.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall be deemed severable of such provision or provisions and the remaining provisions of the Contract and the remainder of any such provision shall continue in full force and effect.

14.5 The Company's rights under the Contract are cumulative and in addition to any rights available to it at common law.

14.6 Save in respect of bespoke Orders for Goods, the Company shall provide to the Buyer without charge, one set of such documentation as the Company considers appropriate for the Buyer to facilitate correct installation, utilisation and maintenance of the Goods supplied. These include (but are not limited to) Test Certificates, Materials Certificates and Operating Instructions. Subsequent requests by the Buyer for additional copies of these documents will incur a charge to the Buyer not exceeding £25.00 (twenty five pounds Sterling) (or equivalent in the currency invoiced). Such charges shall be levied by way of invoice to the Buyer and be payable in advance.

15. GOVERNING LAW

15.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.