

SCHEDULE

CONDITIONS OF SALE

1. DEFINITIONS

In these Terms and Conditions -

- "Contract" means the contract between the Customer and L&M, the terms of which are set out in L&M's Acknowledgement of Order and of which these conditions form part;
- "Customer" means the person, firm or company named overleaf;
- "Goods" means the goods or equipment referred to in the Contract including, where the context permits, goods or equipment in respect of which Services are provided by L&M;
- "L&M" means L&M and Murray Limited having its registered office at Burnside, Inverleithing, Fife;
- "Premises" means L&M's principal place of business or such other location as L&M may specify;
- "Services" means the work or services referred to on the Contract.

2. ACCEPTANCE OF ORDERS AND PRICE

- (i) The Customer's order will not be deemed accepted by L&M unless and until L&M issue an Acknowledgement of Order;
- (ii) The prices for all Goods and/or Services shall be those specified in L&M's Acknowledgement of Order. Unless otherwise expressly specified, all prices are exclusive of VAT, delivery/collect charges and all other taxes, duties and charges.

3. PAYMENT

- (i) Unless otherwise specified, the price for Goods and/or Services will be due and payable by the Customer in the currency specified in the Contract within 30 days from the invoice date, time being of the essence, and shall be payable in full without any compensation, set-off or counterclaim;
- (ii) Without prejudice to any other remedy available to it, where any account or part thereof is overdue for payment by more than thirty (30) days, L&M shall be entitled but not bound to charge interest on the amount unpaid from the due date for payment until paid in full (whether before or after decree or judgement) at the rate of 5 per cent over Bank of Scotland Base Rate in force from time to time;
- (b) and to suspend any further deliveries of Goods and performance of Services whether under the Contract or otherwise;
- (iii) The price and any other sums due shall not be treated as paid until any cheque, bill of exchange or other instrument of payment given by the Customer has been met on presentation or otherwise honoured in accordance with its terms. Payment shall be applied to invoices in the order in which the invoices were issued and to Goods or Services in the order in which they were listed in invoices.

4. DELIVERY/COLLECTION

- (i) Unless otherwise specified, delivery dates specified in the Contract or otherwise are estimates only and shall not be construed as fixed;
- (ii) Delivery/collect of Goods will take place at the location specified in the Contract;
- (iii) In the case of export sales, delivery shall be made FOB seaport or airport specified in the Contract within the United Kingdom;
- (iv) Where delivery is made to a carrier other than a carrier nominated by L&M, the carrier will be deemed to be acting as the agent of the Customer and delivery to the carrier shall in all circumstances be deemed to be actual delivery to the Customer. Any receipt obtained by L&M from the Customer or any carrier or nominated agent of the Customer accepting or taking delivery of the Goods shall be conclusive evidence of such receipt by L&M to the Customer of the Goods and shall not be subject to challenge by the Customer;
- (v) L&M reserves the right to make deliveries or require collections by instalments in all cases. Where delivery/collect is by instalments, each part delivery shall be deemed to constitute a separate contract and default by L&M in relation to one such delivery shall not terminate the whole Contract.

5. PROPERTY AND RISK

- (i) Property in Goods shall not pass to the Customer until all sums due, whether arising under the Contract or otherwise, have been paid by the Customer to L&M in full;
- (ii) Until property in Goods passes, the Customer shall keep the Goods free from any lien, charge or encumbrance and L&M may at any time require the Goods to be returned to it by the Customer and, if any such requirement is not met within seven (7) days, L&M may retake possession of the Goods and may enter any premises of the Customer for that purpose. Such return or retaking of possession shall be without prejudice to the obligation of the Customer to purchase the Goods;
- (iii) Until property in Goods passes, the Customer shall so far as possible store the Goods in such a way that they are identifiable as the property of L&M and separate from all other goods in the possession of the Customer;
- (iv) Notwithstanding the foregoing, the risk of damage to or loss or destruction of Goods shall pass to the Customer at the time the Goods are delivered/collected (or deemed to be delivered/collected) in accordance with Condition 4 above.

6. SALES TO THIRD PARTIES

Subject always to paragraph 5 above, the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to L&M for the proceeds of any such sale of the Goods, whether such proceeds are tangible or intangible, and shall keep all such proceeds separate from monies or property of the Customer and third parties and in the case of tangible proceeds, properly stored, protected and insured.

7. FORCE MAJEURE

L&M shall not be responsible for any delay or failure to fulfill any of its obligations under the Contract

nor be liable for any loss or damage suffered or incurred by the Customer by reason of any delay in the supply of Goods or provision of Services caused directly or indirectly by strike, lockout, trade dispute, fire, accident (whether to personnel or machinery, material, equipment or apparatus), defective material, breakdown of machinery, power failure, fire, strike, lockout or availability of supplies or materials, action of infection by any government or authority, or any other cause which is beyond the control of L&M and which is not reasonably foreseeable by the Customer. L&M shall have the option either of cancelling the Contract in whole or in part or of extending the time of delivery by the length of the period for which such circumstances or any of them continue. The Customer shall have no claim whatsoever against L&M in the event of or arising out of such cancellation or extension and shall in no circumstances be entitled to repudiate the Contract.

8. INSPECTION & DEFECTS

- (i) The Customer will examine Goods as soon as reasonably practicable upon delivery or collection thereof and shall within fourteen (14) days from delivery or collection serve written notice upon L&M of any matter or thing by reason whereof the Customer alleges that the Goods so delivered/collected or Services provided are not conform to the Contract. In the event of the Customer alleging that the Goods are not conform to the Contract, the Customer shall keep the Goods separate from all other goods and shall store the same in such a manner as to prevent deterioration pending inspection by L&M or its agents. If the Customer fails to serve such notice and to store the Goods as aforesaid, the Goods (including any Services provided in connection therewith) shall be conclusively presumed to be in all respects conform to the Contract and free from any defect which would be apparent on reasonable examination of the Goods, and the Customer shall be deemed to have accepted the Goods or Services accordingly.

- (ii) Subject to the provisions of subparagraph (i) above, L&M may, at its sole option, replace any Goods which do not conform to the Contract and which have been rejected by the Customer provided always that the Goods are returned to the Premises if L&M so requires or, at the option of L&M, are made available at the Customer's premises for attention by L&M's engineers. The costs of carriage of allegedly defective Goods (and the costs of carriage of their replacement) shall be paid by the Customer but, if in the opinion of L&M the Goods do not conform to the Contract, L&M shall reimburse such costs to the Customer. L&M may at its option refund the Contract price to the Customer, in which event the Goods will become the property of L&M.

9. LIABILITY

- (i) L&M shall have no liability under the Contract or otherwise, for any or all of the following:-
- (a) defects in Goods where such defects are caused by installation, operation or maintenance carried out by the Customer or its employees, agents or contractors or by wear and tear, accident or misuse, improper operation or neglect or arising as a result of the fitting of any equipment which does not comply with L&M's recommendations or otherwise as a result of failure by the Customer to comply in full with the instructions (if any) supplied by L&M with the Goods; or
- (b) where the Goods have been used for an application other than that specified in the Contract or not used in accordance with L&M's instructions (if any); or
- (c) where the Goods or part thereof are not manufactured by L&M; or
- (d) defects in the Goods where the Goods or any part thereof are manufactured by reference to a sample provided by the Customer and the sample or any part thereof is in poor condition, incomplete or defective in any other respect.

- (ii) Where Goods have been ordered, obtained or manufactured wholly or partly conform to a design or specification provided by the Customer, the Customer shall indemnify L&M in respect of all liability, loss or damage suffered by L&M as a result of L&M following such designs or specifications including (without limitation) as a result of the infringement of any third party rights.

- (iii) Except as required by law, L&M does not warrant the suitability of the Goods for any particular use or purpose except where such use or purpose is specified in the Contract.

- (iv) L&M shall have no liability for any consequential loss (including, but not by way of limitation, loss of profits, revenue or contracts or damage to or destruction of any property) suffered by the Customer by virtue of or in respect of the Goods or the Services or any defect therein.

- (v) In the event that any blanks provided to L&M by the Customer are spoiled during cutting or machining, the liability of L&M in respect thereof shall be limited to recutting of the replacement blanks free of charge.

- (vi) L&M's liability (if any) to the Customer whether in contract, delict, or quasi-delict or otherwise in respect of any defect in the Goods or the Services or for any breach of the Contract or for any negligence, act or omission of L&M or its servants or agents of any duty owed to the Customer in connection with the Contract or with the Goods or the Services shall be limited to an amount equal to twice the invoice price of the defective Goods or Services in Question.

- (vii) Exclusions of liability in this Condition 9 do not apply insofar as (a) a breach of duty (as defined in Part II of the Unfair Contract Terms Act 1977, as amended from time to time) causes death or personal injury or (b) liability cannot lawfully be excluded.

10. DRAWINGS, INFORMATION, ETC.

- (i) Unless otherwise specified in the Contract all specifications, drawings and particulars of weights and dimensions provided to the Customer by L&M are approximate only and shall not form part of the Contract.

- (ii) The Customer shall be responsible (to the exclusion of L&M) for ensuring that all relevant specifications, drawings, information and the like are provided to L&M to enable it to provide to the Customer satisfactory Goods and Services.

- (iii) Where the Contract concerns the manufacturing of Goods by reference to a sample, the Customer shall be responsible to the exclusion of L&M for ensuring that the sample provided is in good condition, satisfactory and complete in all respects.

11. REMEDIES/DEFAULT

- (i) L&M shall have a general lien and right of retention of the Goods and all goods and documents belonging to the Customer in L&M's custody or under its control for all sums due or which may become due to L&M by the Customer, whether such sums are due in relation to the Goods or Services or under the Contract or otherwise.
- (ii) L&M shall have the right to set off any sum owing to it by the Customer against any sum owing by it to the Customer, whether any such sum is owing in relation to the Goods or under the Contract or otherwise.

- (iii) If the Customer shall default in or commit a breach of any term of the Contract or, if the Customer shall be in default under any other Contract between L&M and the Customer or if any diligence, distress or execution shall be levied or enforced or sued out upon or against any of the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition with creditors, or become apparently insolvent or in liquidation, or if any petition for sequestration shall be presented or made against him, or the Customer is a company and any resolution or petition for winding up of the Customer shall be passed or presented or a receiver, administrative receiver, manager, administrator, judicial factor or committee shall be appointed or any part thereof, then and in any of those events L&M shall be entitled to exercise any or all of the following rights and remedies:-

- (a) to treat the Contract or any part thereof as repudiated and recover from the Customer by way of damages any loss or expenses which L&M may suffer or incur thereby;

- (b) to rescind forthwith, or suspend for a definite or indefinite period performance by L&M of the Contract or any other contract between L&M and the Customer (but so that L&M shall not be liable to the Customer in damages or otherwise in respect of such rescission or suspension and so that the Customer shall not be entitled to treat any such suspension as a repudiation by L&M);

- (c) to withhold performance of the Contract by L&M or delivery of the Goods or any part thereof, stop any Goods in transit or recover any Goods from the Customer's premises until payment is made in full thereof; or

- (d) to store the Goods at the expense and risk of the Customer.

- (iv) The rights and remedies of L&M set out in these Conditions shall be in addition and without prejudice to any other right or remedy which may be available to L&M at common law or under statute.

12. WAIVER

No failure or delay by L&M to exercise any right, remedy, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges expressly provided under or by virtue of the Contract and these Conditions are cumulative and not exclusive of any rights, powers, remedies or privileges which L&M would otherwise have.

13. ASSIGNATION

The Customer shall not be entitled to assign or transfer in whole or in part the benefit or burden of the Contract without the prior written consent of L&M.

14. WHOLE AGREEMENT

- (i) The Contract constitutes the Whole agreement between L&M and the Customer. These Conditions shall over-ride any general or standard conditions put forward by the Customer whether or not such general or standard conditions are or were incorporated expressly or by reference or implication in any communication between L&M and the Customer. If the Customer's general or standard terms and Conditions contain the same or a similar overriding provision, these conditions shall prevail.

- (ii) If any paragraph or sub-paragraph of these Conditions shall be found to be invalid ineffective or unenforceable, such invalidity, ineffectiveness and unenforceability shall not affect any other paragraph or sub-paragraph thereof.

15. ALTERATIONS

No variation of or alteration to the Contract or any part thereof shall be binding on L&M unless made with its consent and signed on its behalf by one of its officers.

16. NOTICES

Any notice or other communication to be sent in connection with the Contract shall be deemed to be sufficiently served if it is sent by recorded delivery post, in the case of L&M to the Premises and in the case of the Customer to any place of business of the Customer, and shall be deemed to have been received 48 hours after posting.

17. GOVERNING LAW

The construction validity and performance of the Contract (including, for the avoidance of doubt, these Conditions) shall be governed by and construed in accordance with the Law of Scotland.