

# Sandhurst

## Standard Terms and Conditions of Sale or Hire

### 1. Interpretation

In these conditions:

“CONDITIONS” means these Standard Terms and Conditions of Sale and/or in case of contract for the hire or lease of any Goods the Contractors Plant Association (CPA) Model Conditions for the Hiring of Plant of July 2011 or of any later publication and the Warranty Terms and (unless the context otherwise requires) include any special terms and conditions agreed in writing between the Customer and the Seller

“CONTRACT” means the contract made between the Customer and the Seller on the terms set out in these Conditions.

“CUSTOMER” means the person who accepts a quotation of the Seller for the sale or hire and/or installation of Goods and/or Services or whose order for these is accepted by the Seller.

“GOODS” means the goods (including any installment of them or any parts for them), which the Seller is to supply, sell, repair, install, hire or lease to the Customer in accordance with these conditions.

“SELLER” means such of Sandhurst Manufacturing Company Ltd, Sandhurst Group Ltd, Sandhurst Ltd, T W Dean Enterprises LLP associated companies or any subsidiaries thereof as is identified as the Seller in the acknowledgement of order.

“Parties” means the Seller and the Customer.

“SERVICES” means the services (if any), which the Seller is to supply to the Customer in accordance with these Conditions.

“WRITING” includes telex, cable, facsimile, and e-mail transmission and comparable means of communication.

### 2. Applicability of Conditions

2.1 Subject to 2.2, supplies to the Customer by the Seller of Goods and/or Services shall be subject to the Conditions (and such other terms and conditions as the Seller may stipulate or confirm in writing) which shall prevail over any inconsistent terms which may appear on the Customer’s enquiry, order or other documents received by the Seller from the Customer or which may be implied by law or trade, custom, practice or a course of dealing between the parties, all of which are hereby expressly excluded.

Orders are accepted and executed on the understanding that the customer is bound by these Conditions.

2.2 All contracts for the hire or lease of Goods shall, if the Seller so requires, be also subject to the Model Conditions of The CPA, which Model Conditions shall prevail over any inconsistent terms in these Conditions.

### 3. Quotations

3.1 The Seller’s estimates and quotations (written or verbal) constitute invitations to treat and shall not be binding offers on the part of the Seller until or unless specifically confirmed by the Seller in writing.

3.2 Whilst every effort is made to ensure accuracy, all specifications, drawings, particulars of weights, capacities, dimensions, and other information published and or supplied to the Customer relating to the Goods are to be considered as non-binding, unless they have been specifically stated in writing to be binding. The Seller reserves all proprietary rights including copyright in all specifications, drawings and other data relating to the Goods. All such information is confidential and must not be reproduced in any literature or incorporated in any article belonging to the Customer and must not be disclosed to third parties.

### 4. Representations

The Customer shall not be entitled to rely or to seek to rely upon any statement, warranty or representation made by or on behalf of the Seller to the extent that such representation made by or on behalf of the Seller is inconsistent with these Conditions nor any advice or recommendation given by or on behalf of the Seller as to the storage, application or use of the Goods unless that advice or recommendation is confirmed in writing by the Seller.

### 5. Specifications

5.1 The quantity and the description of the Goods shall be those set out in the Seller’s quotation (if accepted by the Customer) or the Customer’s order (if accepted by the Seller). Subject to 3.2 and 4. the specification for the Goods shall be that set out in the literature supplied by the seller representing itself and or a third party manufacturer of the Goods (“Manufacturer”).

5.2 The Seller reserves the right to make any changes in the specification of the Goods which are instituted or approved by the Manufacturer or as may be required to conform with any applicable safety or other statutory requirements or to comply with a specification or modification agreed between the Seller and the Customer and confirmed by the Seller in writing.

### 6. Instructions to the Seller

The Customer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Seller any necessary information

relating to the Goods or the Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

### 7. Price of Goods

7.1 The price of the Goods and /or the Services shall be;

i/. the Seller’s quoted price as confirmed in writing in accordance with 3.1 or:

ii/. where no price has been quoted or confirmed or where a quoted price is no longer valid; the price listed in the Seller’s published price list current at the date of supply of the order.

7.2 Subject to any agreement to the contrary, the Seller’s price shall be exclusive of charges of packing and delivery to the Customer..

7.3 All prices are exclusive of value added tax and all other taxes of whatsoever nature that maybe applicable to the Contract.

### 8. Use of hired or leased Goods (Hired Goods):

8.1 The Customer may use Hired Goods only for the purposes of its business. Hired Goods are not to be used, and the Customer will not permit them to be used, for any purposes for which they are not expressly designed or for any illegal purpose.

8.2 The Customer agrees that it will not: -

8.2.1 effect any mechanical or other modification to Hired Goods without the prior written consent of the Seller;

8.2.2 remove or interfere with any identification marks or plates affixed to Hired Goods nor attempt or purport to do so nor permit the same; or

8.2.3 deface the paintwork or body work of Hired Goods nor add or erect any painting, sign writing, lettering or advertising on Hired Goods.

### 9. Duties of the Customer with regard to Hired Goods:

The Customer shall, during the continuance of the contract: -

9.1 ensure that hired Goods are operated properly and safely by the operators;

9.2 pay for all consumables and other costs incidental to the proper running and maintenance of Hired Goods;

9.3 not take or allow Hired Goods to be taken out of Great Britain except with written permission of the Seller;

9.4 bear the full cost of the repair and rectification of any damage to Hired Goods resulting from use of Hired Goods during the hire period;

9.5 pay all the costs incurred by the Seller in respect of supply and fixing of any accessories, extras or additions which may be required by law or which are fitted to Hired Goods at the request of the Customer;

9.6 not sell, assign, mortgage, let on hire or

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otherwise deal in or dispose of any Hired Goods or part thereof or charge the benefit of the contract nor attempt or purport to do so;

9.7 take all necessary steps at its own expense to retain, recover possession and control of any Hired Goods;

9.8 permit the Seller or its authorized representatives at all reasonable times to enter upon premises where the Hired Goods may from time to time be employed or stored to verify the condition of the Hired Goods;

9.9 notify the Seller of any change in its address and upon request by the Seller to promptly inform the Seller of the whereabouts of the Hired Goods; and

9.10 fully indemnify the Seller against all losses incurred by the Seller through damage or loss to hired Goods. Additionally the Customer shall pay the Seller the sum equal to 100% of the potential for hire revenue for the period between loss and compensation for loss(es) .

## 10. Ownership of Hired Goods

Hired Goods shall at all times remain the property of the Seller and the Customer shall have no right to the Hired Goods other than as a hirer and the Customer shall not do nor permit or cause to be done any matter or thing whereby the rights of the Seller in respect of the hired Goods are or may be prejudicially affected.

## 11. Terms of Payment

11.1 Subject to any special terms agreed in writing between the Customer and the Seller, the Seller shall be entitled to invoice the Customer for the price of the Goods and/or Services on or at any time after receipt of the Customer's purchase order or the issue of the Seller's written confirmation (whichever the earlier) or at some other time agreed between the parties.

11.2 The Customer shall pay the price of the Goods and/or Services in full upon receipt of the Seller's invoice (or within such credit period as may be agreed in writing between the Seller and the Customer), notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the contract. Payments paid by post shall be at the risk of the Customer.

11.3 Payments shall be made at the office of the Seller or at any other place notified to the Customer by the Seller.

11.4 Payments shall only be deemed to have been made upon the receipt by the Seller of cleared funds..

11.5 If there is any breach of these Conditions on the part of the Customer then: -

11.5.1 all sums owed to the Seller by the Customer, whether invoiced or not, shall become immediately due (with VAT where applicable);

11.5.2 any discount given or offered to the Customer on any account may be withdrawn..

11.6 Any costs, charges and expenses incurred by the Seller in recovering sums from the Customer in consequence of a breach of these Conditions on the part of the Customer shall be paid and shall be recoverable from the Customer.

11.7 Personal payments may only be made to representatives of the Seller who have Seller's written authority to receive payment.

11.8 Where the contract is to be or may be fulfilled in separate installments each shall be made as if the same constituted a separate contract.

11.9 Any costs incurred by the Seller (including storage charges) due to the Customer's neglect or default or lack of instructions or refusal or failure to take delivery of the Goods during normal business hours or to take special deliveries or part deliveries or any other variation of the original order shall be paid by the Customer in addition to the contract price.

11.10 Unless otherwise agreed, the Customer shall not be entitled to exercise any right of set-off or counterclaim in respect of monies owed by the Seller in respect of goods or services invoiced and delivered to the Seller.

11.11 Without prejudice to any other rights or remedies, which may be available to the Seller, if the Customer fails to pay to the Seller any amount on the due date, the Seller shall be entitled to: -

11.11.1 cancel any contract made with the Customer and/or to suspend or cancel any further deliveries of the Goods or provision of the Services.

11.11.2 charge the Customer interest from the date of invoice or breach (whichever is earlier) to the date of payment, both before and after Judgment, on the unpaid sum at the rate of 2% per calendar month or part thereof, compounded with monthly interest; and

11.11.3 to appropriate any payment made by the Customer to such of the Goods or Services (or the goods or services supplied under any contract between the Customer and the Seller) as the Seller may think fit (not withstanding any purported appropriation by the Customer).

## 12. Retention of Title in Goods invoiced for sale

12.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Customer until the Seller has received in cleared funds payment in full of the price of the Goods and all other Goods agreed to be supplied by the Seller to the Customer for which payment is then due.

12.2 Until such time as the property in the Goods passes to the Customer, the Customer shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Customer shall not be entitled to resell or use the Goods in the ordinary course of its business.

12.3 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Customer to deliver up the Goods to the Seller and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods may be stored and re-possess the Goods including the dismantling or disconnection of any machinery or equipment into which the Goods have been incorporated for that purpose. All costs incurred by the Seller in re-possessing the Goods shall be borne by the Customer. The Seller shall not be liable for any reasonably unavoidable damage caused in exercising its rights hereunder.

12.4 The Customer shall not be entitled to pledge

or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Customer does so, all moneys owing by the Customer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 13. Transfer of Risk

13.1 Subject to the following paragraphs, risk in the Goods will pass to the Customer upon delivery of the Goods to the address specified by the Customer (" the delivery address ") or upon collection of the Goods by the Customer (" Collection ").

13.2 All items delivered must be examined by the Customer immediately on receipt at the Delivery Address or on collection (as the case may be) and the Seller shall not be liable: -

13.2.1 for damage in transit or shortage of delivery unless a claim in writing is made within seven days of the receipt of the Goods; or

13.2.2 for loss of the Goods unless a claim in writing is made within seven days of the invoice date.

13.3 The Customer will be deemed to have accepted the Goods unless he rejects them for a valid and justifiable reason within seven days after their delivery to the Delivery Address or Collection.

## 14. Delivery

14.1 Any dates quoted for delivery and/or installation of the Goods or Services are approximate only and the Seller shall not be liable for any delay in delivery or installation of these howsoever caused. Time for delivery shall not be of essence. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Customer.

14.2 Where the Goods and/or Services are to be supplied in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions shall not entitle the Customer to treat the contract as a whole in default..

14.3 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable Control or the Customer's fault, and the Seller is accordingly liable to the Customer, the Seller's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

14.4 If the Customer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may, upon giving written notice to the Customer do any or all of the following: -

14.4.1 store the Goods until actual delivery;

14.4.2 charge the Customer for the reasonable costs (including insurance) of storage;

14.4.3 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the

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Customer for any shortfall below the price under the Contract; or 14.4.4 take the Goods back into stock at cost price or value (whichever is less).

## 15. Warranties and Exclusion of Liability

15.1 The Seller shall notify the Customer of the terms of any warranty ("Warranty Terms") that may be given by the Seller in respect of Goods supplied pursuant to these Conditions. The provision of a Warranty and the Warranty Terms shall be at the sole discretion of the Seller.

15.2 Subject as expressly provided in these Terms and except where the goods are sold to a person dealing as a Consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by Statute or Common Law are excluded to the fullest extent permitted by law.

15.3 Where the Goods are sold under a Consumer Transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 statutory rights of the buyer are not affected by these terms.

15.4 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer.

15.5 The Customer will return the allegedly defective Goods to the Seller's premises at such location as the Seller may nominate and collect from same location or such other as may be agreed between the Parties. Delivery and Collection shall always be at the Customer's cost and expense.

15.6 Where the Customer sends Goods to the seller for repair or inspection and testing under the terms of a Warranty the Seller may in its sole discretion disassemble in order to inspect and test the Goods. If upon disassembly the reported fault is judged by the Seller in its sole discretion not to be covered under the terms of the Warranty the Customer shall pay the Seller its charges for receiving and disassembling the Goods and shall not be entitled to receive back the goods reassembled except by agreement with the Seller.

15.7 For the avoidance of doubt Uncovered by Warranty without exception are: replaceable wearing parts; rubber and plastic seals; hydraulic hoses; parts and assemblies that are worn due to wear and tear, are damaged, have not been serviced by the Seller upon dates or within periods (such dates or periods as may or may not have been notified to the Customer) that in the Seller's reasonable judgment the services should have been effected, that have been serviced by others or fitted with parts supplied by others; Goods where the Customer is in breach of the Seller's payment terms and does not rectify the issue; Goods whose Warranty has expired or has lapsed due to any reason including these above mentioned reasons and has not been revalidated in writing.

15.8 Revalidation: In its absolute discretion: The Seller may revalidate a warranty for an extended period in same, similar or different terms as for the Warranty. Revalidation may be offered if: the initial Warranty period has not expired; Goods have been comprehensively serviced under the Warranty terms; the Warranty Terms have been fully complied with; the Customer has instructed and paid the Seller to carry out all works to the

Goods as may be recommended following an end-of- Warranty service, report and quotation. Always excluded from Revalidation are items that are parts, assemblies and or wear parts supplied by the Seller but not incorporated by the Seller into the Goods or any of the excluded items in 15.7.

15.9 The Seller shall be under no liability under any warranty or the Warranty Terms if the total price for the Goods has not been paid. .

15.10 Goods returned to the Seller in exchange for replacement Goods or replaced by Goods shall become the Seller's property. Where The Seller agrees to repair or replace Goods the Seller will pay the costs arising thereof including, where appropriate, the costs of replacement Goods, delivery of those Goods (except as provided in paragraph 15.5) and all reasonable charges which may be incurred in fitting the same.

15.11 If defects develop in Goods installed elsewhere than in the United Kingdom, the Seller shall be under no liability to deliver replacement Goods free of charge. In such cases the Seller's liability to pay for the costs of delivering replacement Goods by virtue of clause 15.10 shall extend only to the cost of delivering such Goods to the office of the Customer in the United Kingdom. Where the Customer has no such office, replacement Goods will be delivered at the Customer's expense.

15.13 Except in respect of death or personal injury caused by the Seller's negligence or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term or any duty at Common Law or under the express terms of the contract, for the loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by negligence of the seller, its employees, agents or otherwise) which arise out of or in connection with the supply of goods in accordance with the contract or at all or their use or resale by a buyer and the entire liability of the Seller and/or in connection with the contract shall not exceed the price of the goods except as expressly provided in these terms.

## 16. Force Majeure

The Seller shall not be liable for any delay or failure in carrying out its obligations which is due to any cause beyond the Seller's reasonable control, including, without limitation, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Parties or of a third party).

## 17. Intellectual Property Rights

The Customer will hold the Seller harmless against any expense, judgment or loss for infringement of any Patents, design rights, copyright or trade marks which result from the Seller's compliance with designs, specifications or instructions supplied by the Customer.

## 18. Descriptive matter and illustrations

Illustrations, descriptions, advertisements, product literature and similar materials issued by the Seller are for information only and no

particulars therein shall be binding on the Seller.

## 19. Insolvency

19.1 This clause applies if: -

19.1.1 The Customer proposes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

19.1.2 an encumbrancer takes possession, or a receiver is appointed, or any of the property or assets of the Customer is taken in execution; or

19.1.3 the Customer ceases, or threatens to cease, to carry on a business; or

19.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

19.1 If this clause applies, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 20. Confidentiality

The Customer agrees to maintain in confidence and not to disclose, reproduce or copy any materials, documents or specifications which are provided to the Customer hereunder. The Customer shall take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations endure beyond any termination of employment with the Customer.

## 21. General

21.1 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

21.2 The Customer shall not be entitled to assign this contract without the prior written consent of the Seller.

21.3 No delay or omission of either party in exercising any right hereunder shall impair such right to be construed as a waiver thereof and any single or partial exercise of any such right shall not be preclude the further exercise of any other right. If either party shall agree to waive any default that shall not act as a waiver of any other default whether or not similar or contemporaneous or on a future occasion.

21.4 These Conditions and any contract between the Customer and the Seller shall be governed by and construed according to English law. The Parties submit to the non-exclusive jurisdiction of the English Courts.

21.5 The statutory rights of the Customer are not affected by these Conditions where the Customer is a consumer for the purposes of the Sale of Goods Act 1979 (as amended) and the Supply of Goods and Services Act 1982 (as amended).