

# Terms & Conditions of Sale (UK)

[www.fabdec.com](http://www.fabdec.com)

**Fabdec Ltd**

Grange Road  
Ellesmere  
Shropshire  
SY12 9DG

**Tel: +44 (0) 1691 627200**

Fax: +44 (0) 1691 627222

Email: [sales@fabdec.com](mailto:sales@fabdec.com)

**Fabdec GmbH**

Gerhardstrasse 5  
45892 Gelsenkirchen  
Germany

**Tel: + 49 (0) 209 700 900**

Fax: + 49 (0) 209 70090-20

Email: [germany@fabdec.com](mailto:germany@fabdec.com)

**Fabdec LLC**

193091, Saint Petersburg  
October Embankment 12, corp. 2  
Russia

**Tel: +7 (812) 715 01 02**

Email: [russia@fabdec.com](mailto:russia@fabdec.com)



# Terms & Conditions of Sale (UK)

## 1. Interpretation

### 1.1 In these Conditions:

“BUYER” means the person whose Written order for the Goods is accepted by the Seller.

“GOODS” means the goods (including any instalment of the goods or any parts and components and/or materials incorporated in them) which the Seller is to supply in accordance with these Conditions.

“SELLER” means FABDEC LIMITED of Grange Road, Ellesmere, Shropshire SY12 9DG (registered in England under number 675981).

“CONDITIONS” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller.

“CONTRACT” means the contract for the purchase and sale of the Goods and includes these Conditions.

“WRITING” includes telex, letter, cable, facsimile transmission, email and comparable means of communication.

“PREMISES” means the site where installation is to take place.

“RETURNS POLICY” means the procedure and policy document issued by the Seller from time to time dealing with the return by the Buyer of Goods.

“INCOTERMS” means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.

“INSTALLATION COMPLETION FORM” means the form issued by or on behalf of the Seller to the Buyer confirming the completion of the installation of the Goods.

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

**1.3** The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Basis of the Sale

**2.1** The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Buyer's Written/Verbal Order (if accepted by the Seller), subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer.

**2.2** No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

**2.3** The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but

nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.

**2.4** Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendations which is not so confirmed.

**2.5** Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance offer, invoice, specification or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

**2.6** Any drawing or technical documents intended for use in the fabrication or installation of the Goods and submitted to the Buyer prior or subsequent to the formation of the Contract remain the exclusive property of the Seller. The Buyer shall not, without the Seller's prior Written consent, utilise such drawing or document for purposes outside of the Contract or transmit or communicate copies to a third party.

**2.7** The Goods are designed to meet the standards and the conditions specified in the Contract. Should it become necessary to meet additional design or operating codes or standards, any additional costs incurred by the Seller as a result shall be paid for on demand by the Buyer.

## 3. Orders and Specifications

**3.1** No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

**3.2** The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

**3.3** The quantity, quality and description of and any specification for the Goods shall be as set out in the Buyer's order (if accepted by the Seller).

**3.4** If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

**3.5** The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC regulatory or legislative requirements or, where the Goods are to be supplied to

the Seller's specification, which do not materially affect their quality or performance.

**3.6** No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4. Price of the Goods

**4.1** The price of the Goods shall be the Seller's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

**4.2** The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

**4.3** Except as otherwise stated in the Seller's Written quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

**4.4** The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

## 5. Terms of Payment

**5.1** Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

**5.2** Unless special terms are agreed in Writing between the Buyer and the Seller, the Buyer shall pay the price of the Goods within the date for payment specified on the invoice or if none within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. Where a milking parlour system or capital plant is sold to the Buyer, the time for payment of the invoice(s) issued for the supply and installation shall be payable as to 10% as a deposit on placing the order, 80% on the presentation of

the due invoice from the Seller to the Buyer at or around the date of delivery of the system, where not all the goods may be delivered, and before installation/commissioning takes place, and the remaining 10% on completion of the installation and commissioning has taken place to the satisfaction of the Seller. The time of payment of the price shall be of the essence of the Contract.

**5.3** If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

**5.3.1** cancel the contract or suspend any further deliveries to the Buyer and forfeit any deposit paid;

**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 Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

**5.3.3** charge the Buyer interest (both before and after any judgment) and late payment compensation charges on the amount unpaid, at the rates from time to time as determined by the Late Payment of Commercial Debts (Interest) Act 1998 as amended from the date of invoice until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) and the Buyer shall reimburse the Seller for all costs and expenses (including legal costs on an indemnity basis) incurred in the collection of any overdue amount.

## 6. Delivery

**6.1** Delivery of the Goods shall be made by the Buyer or an independent carrier (who shall be the Buyer's agent whoever pays his charges) collecting the Goods at the Seller's premises within 14 days of the Seller notifying the Buyer that the Goods are ready for collection, or if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

**6.2** Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

**6.3** Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

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

**6.5** If the Buyer 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 Buyer's reasonable control or by reason of the Seller's fault) or if the location for delivery is inaccessible or otherwise not suitable for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:

**6.5.1** invoice the buyer the price of the Goods; or store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

**6.6** If on delivery the order is fulfilled in part but not in whole the price in respect of the Goods delivered shall be payable in accordance with these Conditions notwithstanding that not all of the Goods have been delivered.

## 7. Risk and Property

Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, 14 days after the Seller has notified the Buyer that the Goods are ready for collection.

**7.2** Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the legal title and property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

**7.3** Until such time as the legal title and property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

**7.4** Until such time as the legal title and property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored (and the Buyer hereby gives the Seller irrevocable permission to so enter) and repossess the Goods.

**7.5** The Buyer 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 Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8. Warranties and Liability

**8.1** Subject to the

(a) conditions set out below, and

(b) providing the Goods have been used and maintained correctly and in accordance with any guidelines and operating manuals issued by the Seller, and

(c) the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in design, manufacture, material and workmanship.

**8.1.1** In respect of Fabdec DARI-KOOL bulk milk tanks and DARI-KOOL silos 1 year from the date of issue of invoice. This specifically covers and is limited to the stainless steel structure and construction of the milk vessel, including the evaporator plates provided:

- It has been maintained and serviced on an annual basis by an approved DARI-KOOL dealer, using genuine Fabdec spares in accordance with the manufacturer's service schedule.
- Washing water supplied to the vessel is potable and contains < 250mg/L chloride.
- Only chemical approved by the manufacturer has been used to clean the tank.
- It has been correctly installed and operated as per the manufacturer's installation and operating manuals and all relevant regulations and codes of practice in force at time.
- It has not been modified in any way, other than by Fabdec.
- It has only been used for the storage of fresh milk, and not been misused, tampered with or subject to neglect or frost damage.
- Within 60 days of the date of the invoice for the supply of the vessel(s) the Buyer completes and returns a DARI-KOOL warranty card.

The warranty guarantee does not cover any consequential losses caused by the failure or malfunction of the unit, nor any labour charges associated with replacing the unit or parts. These conditions are also subject to 8.2 below.

This warranty can be extended (subject to agreement) to up to 25 years by completing and returning to Fabdec the Warranty Registration Card. Upon receipt of the completed Registration Card the Warranty Certificate will be issued, thus validating the extended warranty.

**8.1.2** In respect of ice builders for a period of 5 years from the date of issue of invoice provided it is serviced annually by an approved Fabdec Dealer and subject to 8.2 below.

**8.1.3** In respect of bulk milk tanks spares, moving parts and electronics and also condensing units for a period of 1 year from the date of issue of invoice.

**8.1.4** In respect of other Fabdec manufactured vessels:

Fabdec domestic water heaters carry a 25 year guarantee, Fabdec commercial water heaters carry a 5 year guarantee, agricultural water heaters including UNI-HEAT and DARI-HEAT carry a 5 year guarantee, Brewery vessels carry a 3 year guarantee and SMART-HEAT carry a 3 year guarantee against faulty materials or manufacture from the date of issue of invoice provided:

- It has been correctly installed as per the installation manual and all relevant regulations and codes of practice

in force at the time.

- It has not been modified in any way, other than by the Seller.
- It has not been misused, tampered with or subject to neglect.
- It has only been used for the storage of potable water (Max. 250mg/l chloride).
- It has not been subject to frost damage.
- The unit has been serviced annually.
- The log book has been filled in after each annual service (domestic water heaters only).
- Within 30 days of the date of the invoice for the supply of the vessel(s) the Buyer completes and returns the certificate supplied to register the product (domestic water heaters only).

Exclusions – the guarantee does not cover:

- The effects of large scale build up.
- Any labour charges associated with replacing the unit or parts.
- Any consequential losses caused by the failure or malfunction of the unit.
- A procedure of flushing of the system not in accordance to the WRAS guidelines pertaining to B.S.6700.

**8.1.5** In respect of all components they carry a 1 year warranty from the date of issue of invoice.

### 8.1.6 Cow Management Systems

H-Tags are battery controlled devices and we offer a graded warranty as follows:

For this warranty to be valid the tag must be removed from the belt and returned to the Seller only after thorough cleaning and disinfecting. Warranty will be refused for any tags not removed or disinfected.

The belt, buckle and weight have 2 years warranty only.

Tag warranty table

Year	Replacement price % of new tag	
	H Tag	HR Tag
1-2	0	0
3	30%	40%
4	45%	60%
5	60%	80%
6	75%	
6 and beyond		90%
7 and beyond	90%	
Second hand	6 mths	6 mths

The replacement price will be calculated based on the serial number on the tag and the valid price of the new tag at the time of the claim.

H & HR tag warranty: purchases from 1st September 2013 carry a full 5 year warranty. HR-LD tags carry a full 5 year warranty.

Second hand Heatime and Heatime Vocal readers and control box carry 3 months warranty.

Other components carry a 12 month warranty from date of invoice.

**8.1.7** Liner warranty: all liners carry a warranty of 2500 milkings or one year from date of invoice, whichever is the shorter.

**8.1.8** All other products carry a one year warranty from date of invoice.

**8.2** In relation to the above warranties each is given by the Seller subject to the following conditions:

**8.2.1** 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 Buyer;

**8.2.2** the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse, failure to properly maintain the Goods, or alteration or repair of the Goods by any third party);

**8.2.3** the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

**8.2.4** the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, 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 Seller;

**8.2.5** the above warranty is exclusive of the costs of shipping and the cost of field labour for removing or reinstalling any parts or equipment;

**8.2.6** the above warranty is not transferable if sold to the third party.

**8.2.7** the above warranty shall only be of effect and shall be actioned (in terms of repair/replacement/maintenance work by the Seller) when and if the Goods have been properly returned to the Seller's premises.

**8.3** The Seller makes no warranty or representation as to a) the quality of milk or b) that any substances placed in the Goods other than milk will be removed during the wash cycle.

**8.4** Subject as expressly provided in these Conditions, 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.

**8.5** The statutory rights of any Buyer acting as a consumer are not affected by these Conditions.

**8.6** Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

**8.7** Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to repair the Goods or, at the Seller's sole discretion, replace the Goods (or the part in question) free of charge but the Seller shall have no further liability to the Buyer.

**8.7.1** If warranty work is authorised by the Seller to be carried out by the Buyer an order detailing such work will be issued. The labour rate will not exceed £30.00 per hour. The Seller will only be liable to cost incurred after the issue of the order and will be strictly limited to the value of the order.

**8.8** The Seller's Returns Policy, which is subject to these Conditions, must be followed by the Buyer when making claims under this clause 8 and generally. For the avoidance of any doubt, if there is any conflict between the terms of the Returns Policy and these Conditions, these Conditions will apply.

**8.9** Except in respect of death or personal injury caused by the Seller's negligence, 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 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

**8.10** The Seller shall be under no liability for the actions of, or any loss or damage caused by the actions of, any sub-contractor employed by the Buyer, or for any loss or damage to the Goods caused by the Buyer.

**8.11** The Seller 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 Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

**8.11.1** Act of God, explosion, flood, tempest, fire or accident;

**8.11.2** war or threat of war, sabotage, insurrection, civil disturbance or requisition;

**8.11.3** acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

**8.11.4** import or export regulations or embargoes;

**8.11.5** strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

**8.11.6** difficulties in obtaining raw material, labour, fuel, parts

or machinery;

**8.11.7** power failure or breakdown in machinery.

## 9. Indemnity

**9.1** If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided:

**9.1.1** the Seller is given full control of the proceedings or negotiations in connection with any such claim;

**9.1.2** the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

**9.1.3** except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

**9.1.4** the Buyer shall do nothing to vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

**9.1.5** the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

**9.1.6** without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

## 10. Insolvency of Buyer

**10.1** This clause applies if:

**10.1.1** the Buyer makes any voluntary arrangement or similar with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

**10.1.2** an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

**10.1.3** the Buyer ceases, or threatens to cease, to carry on business; or

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

**10.2** If this clause applies then, 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 Buyer, 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.

**10.3** On termination in accordance with this clause the Seller shall be entitled to forfeit any deposit paid.

## 11. Installation

**11.1** If the Seller provides installation or installation supervision as part of the Contract, the Buyer shall ensure that the Premises are entirely at the Seller's disposal during the period of such installation.

**11.2** In the event of any delay or interruption of installation which is beyond the Seller's control, any extra expenses incurred by the Seller as a result of such delay or interruption shall be borne by the Buyer and the performance dates for such installation shall automatically extend by an equivalent amount of time.

**11.3** The Buyer shall store the Goods in a suitable place protected from the elements and if such place shall be a site other than the Premises, the Buyer shall be responsible for moving the Goods to the Premises for installation.

**11.4** The Buyer shall furnish all utilities required during installation such as electric power, steam, water, light, heat and compressed air.

**11.5** Where the price of Goods includes installation it shall not include any alteration to or the moving of existing plant, the cost of wiring to the main supply of electricity, any excavation or structural alterations, building work or such other similar work.

## 12. Export terms

**12.1** Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

**12.2** Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.

**12.3** The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them and the Buyer warrants that if an Import Licence or permit is required for importation of the Goods into the country of destination that such Import Licence or permit has been obtained or will be obtained prior to shipment.

**12.4** Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered fob the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of

Goods Act 1979.

**12.6** The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

**12.7** Payment of all amounts due to the Seller shall be paid against presentation of the shipping documents and shall be made in Sterling or in Euros, by such method of payment as may be provided in the Contract or, if no such method is provided, by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank acceptable to the Seller.

## 13. General

**13.1** Where the Buyer is a natural person, the Seller confirms that the information and data ("the Personal Data") which is provided by the Buyer to the Seller in relation to the Contract will be held on the computers and manual records of, and will be used by, the Seller. The Personal Data may be supplied by the Seller to third parties for the purposes of the Seller's own credit management and marketing the Sellers' products and services to the Buyer. The Personal Data will not without the Buyer's consent be supplied to third parties for any other use.

**13.2** Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party 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.

**13.3** No waiver by the Seller 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.

**13.4** 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.

**13.5** The Contract (Rights of Third Parties) Act 1999 shall not apply to these Conditions. No person who is not a party to the Contract shall have the right under the said Act or otherwise to enforce any term of the Contract or these conditions.

**13.6** The Contract shall be governed by the Laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.