

TERMS AND CONDITIONS

THE BUYER'S ATTENTION IS SPECIFICALLY DRAWN TO CLAUSES 11 AND 12.

1. INTERPRETATION

1.1 In these terms and conditions the following words have the following meanings:

Buyer	the person(s) or company whose order is accepted by the Company
Company	Mitchell Diesel Limited (reg. no. 01179564).
Consumer	a person(s) who buys the Goods or Services for private use or consumption and not in the course of business.
Contract	a contract between the Company and the Buyer for the sale and purchase of the Goods or the performance of Services
Delivery Point	as defined in clause 4.1.
Goods	any goods which the Company is to supply to the Buyer (including any of them or any part of them).
Intellectual Property Rights	all patents, design rights, copyright, trademarks, know-how, rights in confidential information and all other forms of intellectual property whether registered or not and wherever enforceable in the world.
Price	as defined in clause 8.1.
Insolvency Event	as defined in clause 13.1.
Services	any work or services agreed to be provided by the Company.

1.2 Headings are for convenience only and shall not affect interpretation. Reference to a statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, modified or re-enacted. Any phrase introduced by the terms including, include, in particular, e.g. or any similar expression is illustrative and will not limit the sense of the words preceding those terms. Reference to writing or written includes emails.

2. ORDERS AND QUOTATIONS

2.1 An order can be placed by telephone, email or via the Company's online store. An order must contain Buyer's name and address, model number, serial number/VIN and full details of the Goods or Services required. All orders are subject to availability from suppliers, order lead times and acceptance by the Company. All orders must be accompanied by a valid purchase order and no orders will be fulfilled without one.

2.2 Subject to any variation under clause 2.5, the Contract will be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or otherwise).

2.3 Each order shall be deemed to be an offer by the Buyer to purchase Goods or Services subject to these terms and conditions. These terms and conditions shall govern any future contract of sale between the parties.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, specification, delivery acknowledgement or otherwise will form part of the Contract.

2.5 Any variation to these terms and conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by a director or manager of the Company.

2.6 Acceptance of delivery of the Goods or performance of the Services shall be deemed to be conclusive evidence of the Buyer's acceptance of these terms and conditions.

2.7 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.8 Quotations are given on the basis that no Contract will come into existence until the Company despatches the Goods or performs the Services or issues a written acceptance of order to the

Buyer. A quotation is valid for the period stated provided the Company has not previously withdrawn it.

- 2.9 Orders for Goods are subject to stock availability at the time of shipment and may be cancelled by the Company. Where the Buyer orders Goods or Services of a type, size or quality not normally supplied by the Company, the Company will endeavour to execute the order, but if it proves impossible, impractical or uneconomical to carry out or complete the order, the Company reserves the right to cancel the order (or Contract) or the uncompleted balance of it, in which event the Buyer will only be liable to pay for the part of it actually delivered or performed.
- 2.10 Sale or return will not apply. The Buyer may cancel an order only by mutual agreement and this may be subject to payment to the Company of cancellation/restocking charges. If the Buyer is a Consumer, statutory cancellation rights may apply but cancellation outside of these will require the Company's agreement.

3. DESCRIPTION

- 3.1 The description of the Goods shall be as quoted by the Company and confirmed in the Company's order acknowledgement and invoice.
- 3.2 All drawings, descriptive matter, weights, dimensions, specifications and advertising issued by the Company or third party manufacturer/provider of the Goods or Services (or its agent or representative) and any description or illustrations contained in the Company's or third party catalogues, price lists or brochures are by way of general description and are stated for the sole purpose of giving an approximate idea of the Goods or Services described in them and will not form part of the Contract. Statements of packing, measurements and gross weight are an approximate guide and not binding on the Company.
- 3.3 Goods and Services are subject to changes in specification, design, materials or finishes made by their manufacturer or supplier, or which are required to conform with any applicable law or safety requirement or which do not materially affect their quality or performance.
- 3.4 No variation in the specification or design of any Goods or Services which, in the Company's reasonable opinion, does not adversely affect their suitability for the particular purpose for which they are supplied by the Company will constitute a breach of contract or impose any liability upon the Company.
- 3.5 The Buyer shall be responsible for ascertaining whether the weights, dimensions, specifications, capacity and performance of the Goods and Services are sufficient and suitable for the intended use and acknowledges that the Company, in providing information or opinion regarding the same, is in no way acting as adviser to the Buyer in respect of the merits of using the Goods or Services to achieve any particular purpose. Proper installation, operation, and maintenance are solely the responsibility of the Buyer or its customer except where performed by the Company.

4. DELIVERY AND RETURNS

- 4.1 Sale and delivery of the Goods and Services shall be made ex works, unless otherwise agreed ("Delivery Point"). In case of international transactions where Goods are delivered outside the United Kingdom, any INCOTERMS trade term used for the Contract shall be construed in accordance with the INCOTERMS in force at the date of the Company's invoice.
- 4.2 For ex works orders, the Buyer will take delivery of the Goods within 7 days of the Company giving it notice of readiness for delivery. Otherwise, delivery shall be accepted when tendered.
- 4.3 If carriage is arranged by the Company the Goods shall be delivered by such means as the Company thinks fit unless the Buyer has specified in its order the details of the carrier which it reasonably requires having regard to the nature of the Goods and the other circumstances of the case and the Company has agreed to this.
- 4.4 Delivery of the Goods or performance of Services shall be accepted at any time of day.
- 4.5 The Company may deliver the Goods by separate instalments. Delay or defect in an instalment shall not entitle cancellation of any other instalment.
- 4.6 Any dates/times specified by the Company for delivery of the Goods or performance of Services are approximate only and may not be made of the essence by notice.

- 4.7 Any delay will not entitle the Buyer to cancel the order or refuse the Goods. If no dates are so specified, delivery or performance will be within a reasonable time subject to stock and labour availability. Any item(s) which are out of stock on the day of ordering will automatically be placed on back order and will be dispatched when available.
- 4.8 The Company will use reasonable endeavours to deliver the Goods or perform the Services in accordance with the Contract. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery of the Goods or perform the Services on the specified date, the Company will be deemed not to be in breach of the Contract, nor will the Company have any liability whatsoever to the Buyer for direct, indirect or consequential loss, loss of profits, pure economic loss, loss of business, loss of revenue, loss of use, loss of anticipated savings, depletion of goodwill, wasted expenditure and like loss howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in this clause. Any delay in delivery will not entitle the Buyer to cancel the order unless and until the Buyer has given 90 days' written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period.
- 4.9 If the Buyer fails to take delivery of any of the Goods in accordance with this clause 4 or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Company's fault) the Goods will be deemed to have been delivered and (without prejudice to its other rights) the Company may:
- 4.9.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
- 4.9.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.
- 4.10 Unless otherwise agreed by the Company, the Buyer will provide at its expense adequate and appropriate equipment and manual labour for loading and off-loading the Goods.
- 4.11 The Company may refuse to make delivery of Goods to, or to perform Services at any Buyer or third party site if the Company is not satisfied as to the safety of that site and the absence of health and safety risks to its personnel.
- 4.12 The Buyer will indemnify the Company against any liability and expense (including under statute or common law) caused by the Buyer's failure to provide appropriate equipment and manual labour for off-loading (whether or not the off-loading is supervised by or on behalf of the Buyer) or, for delivery of Goods or performance of Services at any site other than the Company's site, for:
- 4.12.1 any personal injury to or death of any of the Company's employees, agents or sub-contractors or any third party; and
- 4.12.2 any damage to or loss of any property of the Company, its employees, agents or sub-contractors or any third party.
- 4.13 All shortages and/or overages must be reported within 14 days of the date of shipment. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.14 Returns of Goods not affected by defects will only be accepted with the prior written agreement of the Company. All items which are accepted as returns may be subject to a handling/restocking charge and/or reasonable compensation in favour of the Company. All returns must be delivered to the Company's U.K. location (to be advised) at the Buyer's expense and risk. No returns shall be accepted following 60 days after delivery. No returns of special order or made-to-order items are permitted. No credit will be issued for shipping charges or other expenses.
- 5. FORCE MAJEURE**
- 5.1 The Company shall not be liable in any manner or be deemed to be in breach of the Contract because of any delay in performing or any failure to perform any of the Company's obligations

under the Contract if the delay or failure was due to any cause beyond the Company's reasonable control ("Force Majeure"). The Company shall not be obliged to provide any cost reductions to the Buyer in an event of Force Majeure. In no event shall a Force Majeure be used by the Buyer to delay, suspend, or stop payments that are due to the Company for those Goods or Services already supplied to the Buyer.

- 5.2 Without prejudice to the generality of clause 5.1, Force Majeure will also include:
- 5.2.1 governmental action (including imposition of export or import restrictions, quota or prohibition, or failure by a government or public authority to grant a necessary licence or consent), armed conflict, war or threat of war, national emergency, riot, civil disturbance, terrorist attack, sabotage or requisition;
 - 5.2.2 act of God, fire, explosion, flood, epidemic, pandemic, accident, natural disaster, severe weather conditions, nuclear, chemical or biological contamination or sonic boom;
 - 5.2.3 import or export regulations, sanctions or embargoes or breaking off of diplomatic relations, arrest or detainment of goods;
 - 5.2.4 labour disputes not including disputes involving the Company's workforce; or
 - 5.2.5 inability to obtain or delay in obtaining supplies of adequate or suitable supplies, material, fuel, parts, machinery, equipment, transportation or labour or interruption or failure of a utility service, plant, machinery or vehicles.

6. RISK/OWNERSHIP

- 6.1 Unless the Contract otherwise stipulates, the risk in the Goods passes to the Buyer when the Goods are despatched from the Company's premises and the Company accepts no responsibility for any damage or loss in transit. Claims for damage or loss in transit should be made on the carrier and any conditions imposed by the carrier in relation to claims for damage or loss in transit should be complied with. Where the Contract provides for delivery elsewhere than at the Company's premises, risk will pass at the delivery address specified in the Contract.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods and the Services; and
 - 6.2.2 all other sums which are or become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
 - 6.3.5 hold the proceeds of the insurance referred to in clause 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.4.1 any sale shall be in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Company accordingly; and
 - 6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 Where the Company is unable to determine whether any goods are the Goods, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

- 6.7 If any payment is overdue or, before title passes to the Buyer, it becomes subject to an Insolvency Event, without limiting any other right or remedy, the Buyer's right to possess and use the Goods in the ordinary course of business will cease immediately.
- 6.8 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them. The Buyer shall pay the reasonable costs incurred by the Company in repossessing the Goods.
- 6.9 Where a repair is undertaken there is no liability accepted for damage to other items.
- 6.10 The Buyer is responsible for insurance whilst Buyer goods and equipment are on the Company's premises or in transit. The Company does not accept, and will not have, liability for loss or damage, however arising.
- 6.11 Where the Buyer supplies patterns, dies, tools, drawings or equipment, the Company shall be entitled to assume that the same are in good condition, true to drawing and entirely suitable for the work to be performed by the Company. If they are not, the Company may cancel the Contract (or affected part of it) and charge the Buyer for the time spent and any costs incurred to return them to the Buyer.

7. INSTALLATION, COMMISSIONING AND SITE WORK

- 7.1 The Company shall have no responsibility or liability for installing, erecting, commissioning, operating, repairing, maintaining or servicing the Goods unless otherwise agreed in writing by the Company. In the event of any such Services being provided by the Company the Buyer shall ensure that a safe, clear and suitable site and working area is available ready for the Services and that the site and working area are readily accessible to normal transport. The Buyer will also ensure that the site and working area are comply with all applicable statutory requirements. Except when otherwise specified by it, the Company does not supply labour or materials for any builder's work, foundations, structural alterations, plumbing or electrical work or supply lifting equipment, fuel, water or utilities supplies (all of which shall be supplied by the Buyer at its own cost, as required). Where any dismantling or removal of other equipment is necessary and not quoted for by the Company, this will be the responsibility of the Buyer and the cost of this incurred by the Company may be charged in addition to the Price.
- 7.2 Where the Goods are sold and/or installed or erected on the basis of Services being given during a stated period the Company will provide such Services during its normal working hours as shall in the opinion of the Company be necessary and the stated period shall run from the date of delivery of any Goods being supplied or from the date of completion, installation or erection if such goods are being installed or erected by the Company. Any delays caused by the Buyer will be subject to an additional charge as advised by the Company. Items must be freely accessible before any work can be undertaken.
- 7.3 Any failure by the Buyer to perform its obligations in this clause 7 and any failure as regards readiness of any matters outside the Company's scope of supply will entitle the Company to suspend its site Services, leave site and charge for waiting time and/or any return visit required to complete the Services, or to terminate the Services and charge for its Services up to termination.
- 7.4 The Buyer warrants that it is either the owner or the authorised agent of the owner of any equipment or property in respect of which the Company is to perform Services and that the Buyer is authorised to accept and does accept these terms and conditions for itself and all other interested parties. The Buyer shall indemnify and keep the Company indemnified against all claims or demands made in excess of the liability of the Company under these terms and conditions.

8. PRICE

- 8.1 The price for the Goods and/or Services ("the Price") shall be the price quoted by the Company or, if no price is quoted, the price set out in the Company's published price list as at the date of delivery. All prices quoted or published by the Company are subject to correction or change without notice at any time and agreed Prices are subject to adjustment, as agreed, for any

additional or substitute Goods or Services requested. Where a repair is undertaken, additional charges may apply due to the condition of the Buyer's item.

- 8.2 The Price is exclusive of any value-added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods and/or Services. Customs and other duties and costs will be payable as quoted by the Company.
- 8.3 Unless otherwise agreed in writing the Price is ex works and if the Company arranges or undertakes the carriage, freight, insurance, loading, unloading and any other transport costs beyond the Delivery Point such costs shall be payable by the Buyer in addition to the Price and shall not affect the provisions of the Contract as to the passing of risk.
- 8.4 The Company reserves the right, by giving notice to the Buyer any time before delivery, to increase the Price of the Goods to reflect any change to the order requested by the Buyer or any additional cost which is due to any factor beyond the control of the Company, including foreign exchange fluctuation, currency regulation, alterations of duties, transport costs, significant increase in the costs of materials or manufacturing or any change in delivery dates.
- 8.5 All orders must be paid for in full, in advance, unless an alternative agreement has been made, regardless of whether or not the Goods or Services are in stock/immediately available.
- 8.6 If performance by the Company is delayed or prevented by the Buyer, additional charges may apply (including for waiting time or abortive site visits) at the Company's published rates or as may be notified by the Company.

9. TAXES

- 9.1 Unless otherwise stated by the Company, the Price quoted does not include: (i) Value Added Tax or other taxes; (ii) carriage, packing, storage or insurance; (iii) customs, import and export duties, levies, tariffs, quotas or costs. Each of these shall be paid by the Buyer as an addition to the Price at the rate current at the tax point, if applicable. If Goods are to be delivered to an address outside of Great Britain, the Company may also charge for assistance with customs formalities (which otherwise will be for the Buyer to complete).
- 9.2 The Buyer shall be responsible for: (i) all costs, charges, duties and other taxes imposed or arising on the Goods and/or Services after delivery unless quoted as included in the Price; and (ii) costs, charges and expenses for missed or redelivery caused by the Buyer.

10. PAYMENT

- 10.1 Depending on the nature of the Goods and Services, or type of transaction (e.g. telephone or online orders, call-out charges, special service work), payment may be required at order placement or prior to delivery. Advance payments may be non-refundable as stated by the Company at time of order. The Company may invoice the Buyer for the Goods and/or Services at or at any time after order placement or delivery.
- 10.2 Payment of the Price is due on delivery of the Goods or completion of the performance of the Services (as applicable) and shall be paid as provided in the quotation or on such other date as stipulated in writing by the Company.
- 10.3 Time for payment is of the essence. If payment is not made when due, without prejudice to any other rights or remedy available to it, the Company shall be entitled to suspend or cancel, in whole or in part, the Buyer's order, any other contract between the parties without any liability to the Buyer and if the Goods or Services have been delivered but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 10.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 10.5 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 10.6 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

- 10.7 The Company may appropriate any payment made by the Buyer to the Company to such of the Goods and/or Services as the Company thinks fit despite any purported appropriation by the Buyer.
- 10.8 Where credit terms have been agreed, the Buyer shall pay the Price within 30 days of the date of the Company's invoice ("due date"). Credit terms are provided at the Company's sole discretion and may be withdrawn at any time (in which case issued invoices will become immediately due and payable).
- 10.9 If the Buyer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) the Company may, at its sole discretion: (i) cancel the Contract or suspend any further deliveries under any contract with the Buyer; and (ii) charge the Buyer interest on the unpaid amount according to the Late Payment of Commercial Debts (Interest) Act 1998 on any overdue payments. Additionally, the Company shall be entitled to recover all direct expenses reasonably incurred in collecting or attempting to collect overdue amounts.
- 10.10 Any credit balance issued must be used within one (1) year of its issuance. If not used within one (1) year, the balance remaining shall be cancelled.
- 10.11 The Company reserves the right by written notice to suspend or cancel any order or require full or partial payment or adequate assurance of performance from the Buyer in the event: (i) of any deterioration in the Buyer's credit rating; (ii) an Insolvency Event affecting the Buyer; or (iii) that the Buyer is in arrears of payment or has a pattern of late payment. The Company reserves the right to suspend its performance until payment or adequate assurance of performance has been received. The Company will have a lien on all the Buyer's goods and materials in the possession of the Company for Services in respect of all sums owing to the Company for such Services.
- 10.12 All invoiced price discrepancies must be notified to the Company within 14 days of the date of the invoice.

11. WARRANTY

- 11.1 The Company will, free of charge, within a period of 12 months from the date of delivery (or deemed delivery under clause 4.9) of Goods which are proved to the reasonable satisfaction of the Company to be damaged or defective due to defects in material or workmanship of the Company, at its option repair, replace or refund the purchase price of such Goods.
- 11.2 Warranty obligations will not apply and the Company will have no liability whatsoever:
- 11.2.1 for misuse, unauthorised repair or alterations by the Buyer or others;
- 11.2.2 for improper installation, connection, repair, maintenance, (dis)assembly, servicing or use by the Buyer or others;
- 11.2.3 for non-compliance with installation, operation or maintenance instructions or requirements;
- 11.2.4 for non-compliance with any instructions as to storage, commissioning, installation, use and maintenance or (if there are none) good trade practice regarding the same;
- 11.2.5 where the Buyer has failed to notify the Company of any defect or suspected defect within 7 days of the delivery where the defect should be apparent on reasonable inspection, or within 7 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 12 months from the date of delivery;
- 11.2.6 where damage occurs because use has continued after a defect has been identified;
- 11.2.7 where the defect arises due to accident, wilful damage, neglect, improper use, mishandling, inadequate fuel/water supply, external contamination or damage, incorrect installation or maintenance by others, metal ingress, lining failure, fair wear and tear, misuse, abnormal storage or working conditions or abuse;
- 11.2.8 where the defect arises as a result of the use of materials or drawings, designs or specifications supplied by the Buyer; or
- 11.2.9 where the Buyer has specified the specific processes to be applied or components to be used against the advice of the Company or the defect is due to the Buyer's assembly or incorporation into any other products.

- 11.3 Any Goods which have been replaced will belong to the Company. Any repaired or replacement Goods or Services will be warranted for the remainder of the applicable warranty period.
- 11.4 The Company warrants that the Services performed by the Company will be provided with reasonable skill and care and will be free from material defects in workmanship for the period stated in the Company's quotation provided always that in respect of goods, materials, parts or components supplied but not manufactured by the Company, or services performed by others, the warranty will be as provided by the manufacturer or supplier of such goods, materials, parts or components or service provider. In the event that the Services provided do not conform to this warranty, the Company shall at its own option and as the Buyer's sole remedy: (i) take such steps as it deems necessary to remedy the shortcomings; or (ii) refund such part of the Price as is appropriate. This will not apply where the Buyer has failed to notify the Company of any non-conformity within 7 days of performance of the relevant Services, or within 7 days of the non-conformity becoming apparent where it was not apparent upon reasonable inspection, and in any event no later than 12 months from completion of performance of the Services.
- 11.5 No warranty is given by the Company in respect of third party manufactured goods or third party services and the Company shall have no liability whatsoever for this. Where no independent warranty is provided to the Buyer by such third party, the Company will endeavour to pass on to the Buyer the benefit of any warranty or guarantee given to the Company. The Company will not be liable for any costs arising under or related to any third party warranty, guarantee or similar assurance and to the extent that a claim is only under a third party warranty, guarantee or similar assurance the Company will have no liability to honour that warranty, guarantee or similar assurance. Although care is taken to recommend the use of appropriate items and components and to advise and assist in the correct installation, the Company will have no liability whatsoever for advice or recommendations or the incorrect functioning of items and components not manufactured by the Company or for any loss, or damage whatsoever which may result from their use and the Company's liability is strictly limited to the replacement value of components which are shown to have been faulty when despatched.
- 11.6 The Company's obligations will be suspended while payment by the Buyer is overdue and until payment of the overdue amount is made in full. Once payment is made, in full, warranty support by the Company will resume for the remainder of the original warranty period.

12. LIMITATION OF LIABILITY

- 12.1 In the event of any breach of the Company's obligations the remedies of the Buyer will be limited to damages.
- 12.2 The Company does not exclude its liability (if any) to the Buyer:
- 12.2.1 for breach of the Company's obligations arising under section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 12.2.2 for personal injury or death resulting from the Company's negligence;
- 12.2.3 under section 2(3) of the Consumer Protection Act 1987;
- 12.2.4 for any matter which it would be illegal for the Company to exclude or to attempt to exclude its liability; or
- 12.2.5 for fraud which induced the Contract.
- 12.3 Subject to clause 12.2, the Company will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of revenue, loss of use, loss of anticipated savings, depletion of goodwill, wasted expenditure and like loss) howsoever caused arising out of or in connection with:
- 12.3.1 any of the Goods, performance of the Services, or the manufacture or sale or supply, or failure or delay in supply of performance, of the Goods and/or Services by the Company or on the part of the Company's employees, agents or sub-contractors;
- 12.3.2 any breach by the Company of any of the express or implied terms of the Contract;
- 12.3.3 any use made or resale by the Buyer of any of the Goods, or of any goods incorporating any of the Goods; or

- 12.3.4 any statement made or not made, or advice given or not given, by or on behalf of the Company or otherwise under the Contract.
- 12.4 Except as set out in clauses 11 and 12.2, there are hereby excluded to the fullest extent permissible in law, all conditions, warranties and stipulations, express or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 12.5 Subject to clause 12.2 the Company's aggregate liability under the Contract whatsoever (whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, restitution or otherwise) and howsoever arising will be limited to the Price.
- 12.6 Each of the Company's employees, officers and representatives may rely upon and enforce the exclusions and restrictions of the Company's liability in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those clauses.
- 12.7 Goods and Services sold by the Company are not intended for use in connection with any nuclear facility or any other application or activity which the Company, in its sole discretion, determines to be safety critical, high risk or hazardous, or where failure of a single component could cause substantial harm to persons or property (a "High Risk Application"). The Company and its suppliers shall not be liable to the Buyer or its insurers based on agreement, warranty, tort (including negligence or indemnity), or other grounds for onsite damage due to a High Risk Application.
- 12.8 Any energy/fuel savings or any payback period indicated by the Company shall only be indicative in nature and shall not be construed in any way as a commitment, warranty or guarantee by the Company. In any case, such energy/fuel savings or any payback period are contingent upon continued maintenance of necessary plant parameters, operating conditions, production capacity and correct usage of items.
- 12.9 Where the Company undertakes any Services involving work on the Buyer's goods and equipment, the Company shall have no liability in respect of any distortion, fault, defect or deficiency arising from the use of such goods or equipment or due to their pre-existing condition or state of repair and the Company shall not in any circumstances be liable for damages, compensation, costs, expenses, losses or other liabilities, whether direct, indirect or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited. The Company will be entitled to be reimbursed by the Buyer for additional time and costs incurred by the Company due to the condition of the Buyer's goods or equipment being worked on, or any worksite provided by the Buyer.
- 12.10 The Buyer acknowledges that the above provisions in these terms and conditions are reasonable and reflected in the Price which would be higher without those provisions, and the Buyer will accept such risk and/or insure accordingly.

13. TERMINATION

- 13.1 The Contract will terminate immediately upon the happening of any one or more of the following events (each an "Insolvency Event"): the Buyer suspends or ceases, or threatens to suspend or cease, carrying on its business (or any part of it) or payment of its debts or is unable to pay its debts as they fall due, becomes insolvent or bankrupt, makes an arrangement or composition with its creditors or otherwise, obtains a moratorium for payment of debts, makes a composition, compromise or an arrangement to reschedule or restructure its indebtedness, takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up or dissolution of the Buyer or for the granting of an administration order in respect of the Buyer or any steps are taken in preparation for, or proceedings are commenced relating to, the insolvency or possible

insolvency of the Buyer (whether voluntarily or otherwise) or any event occurs in any jurisdiction to which the Buyer is subject that has an effect equivalent or similar to any of the foregoing.

- 13.2 The Contract may be terminated by the Company in whole or in part upon service of written notice of termination on the Buyer (either immediately or on such period of notice specified in the termination notice) on or after the happening of any one or more of the following: the Buyer suffers or allows any execution whether legal or equitable to be levied on its property or obtained against it, or fails to observe or perform any of its obligations or duties under the Contract or any other contract between the Company and the Buyer or a Force Majeure delay persists for such time as the Company considers unreasonable.
- 13.3 The Company's rights contained in clause 6 (but not the Buyer's rights) shall continue beyond the discharge of the Buyer's and the Company's primary obligations under the Contract consequent upon its termination.
- 13.4 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Company accrued prior to termination and the Company in any event shall be entitled to payment for all Goods supplied and Services performed prior to termination.

14. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 14.1 Prices, specifications, data, drawings and/or documentation furnished by the Company which are confidential in nature, or any other information furnished by the Company that is considered to be confidential by the Company shall not be reproduced or used for any purpose other than the purpose for which it is or was furnished and shall not be disclosed to third parties or published in any manner without the prior written permission of the Company.
- 14.2 The Company agrees to keep confidential any specifications, data, drawings, and/or documentation furnished by the Buyer of a confidential nature ("Buyer Information") and only to use Buyer Information for the purposes of the Contract. The Buyer acknowledges that the Company may require to disclose Buyer Information to a sub-contractor or third party manufacturer or supplier in respect of the Buyer's order but will do so on terms which preserve confidentiality. The Company may refer to the Buyer (where it is not a Consumer) as a customer of the Company (and may use the Buyer's name and logo for this purpose). The Buyer may withdraw consent to this by writing to the Company at any time.
- 14.2 Where work is carried out in accordance with or using the Buyer's Intellectual Property Rights or Buyer Information, the Buyer authorises the Company to do so and the Buyer shall indemnify the Company against damages, penalties, costs, and expenses to which the Company may become liable arising out of any claim or action for infringement of any Intellectual Property Rights, resulting from such work.
- 14.3 If any software is provided by the Company, its use shall be governed exclusively by the Company's and/or applicable third-party owner's licence terms.
- 14.4 Each Party shall retain ownership of all Intellectual Property Rights it had prior to the Contract. Except for any pre-existing Intellectual Property Rights in Buyer Information, the Intellectual Property Rights in any item, document or information given or made available (by visual inspection or otherwise) by the Company or applied to, embodied in or arising in the course of performance of the Contract shall be and remain the exclusive property of the Company (or any third party manufacturer, supplier or subcontractor, as applicable).
- 14.5 Breach of the obligations under this clause 14 may cause irreparable harm for which monetary damages would be inadequate. Accordingly, in the event of such a breach or suspected breach, each party shall be entitled to seek injunctive or other equitable relief to enforce the provisions of this clause 14 without the necessity of proving the inadequacy of damages, in addition to any available legal remedies.

15. EXPORT CONTROL/COMPLIANCE WITH LAWS

- 15.1 The Buyer warrants that it is not subject to any economic or trade sanctions administered by His Majesty's Treasury (U.K.), the Office of Foreign Assets Control of the United States of America (OFAC), the European Union, or any other relevant government authority or regulatory body, and

- has not and will not receive, supply or use Goods and/or Services in violation of such sanctions or conduct business with any party subject to such sanctions (whether directly or by association to a sanctioned person). The Buyer will from time to time, at the request of the Company, confirm in writing that it has complied with its obligations under this clause 15.1 and will provide any information reasonably requested by the Company in support of such compliance.
- 15.2 The Buyer acknowledges that the export of Goods or technology supplied by the Company may be subject to export regulations, controls or restrictions. Where the Buyer exports or re-exports any Goods or technology supplied by the Company, it agrees to comply with the relevant export regulations, controls and/or restrictions. Furthermore, the Buyer agrees to keep the Company accurately informed of all regulations, controls or restrictions relevant to export or import of the particular Goods or technology which the Company is supplying to the Buyer. Where Goods or Services or the Buyer (or any person associated with, controlling or controlled by it) are subject to any import or export regulations, controls and/or restrictions, or the Company believes that they may be, the Company may, without liability to the Buyer, cancel or suspend the Contract and/or any deliveries of Goods or Services.
- 15.3 The Buyer shall comply with all applicable sanctions and export control laws, anti-money laundering laws, anti-corruption laws, modern slavery laws, prevention of fraud and tax evasion laws, environment laws and labour laws in any jurisdiction in connection with its activities pursuant to these terms and conditions laws including the Bribery Act 2010, Modern Slavery Act 2015, Part 3 of the Criminal Finances Act 2017, Sanctions and Anti-Money Laundering Act 2018 and section 199 of the Economic Crime and Corporate Transparency Act 2023.
- 15.4 The Company may terminate the Contract immediately if it is not satisfied that the Buyer is complying with its legal obligations.

16. GENERAL

- 16.1 If party processes personal data relating to the other party under or in connection with these terms and conditions, each party agrees to process the personal data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments including the Data Protection Act 2018 and the General Data Protection Regulation as forming part of UK law.
- 16.2 The Contract, including any documents referred to in it and any documents attached to it, constitutes the entire agreement between the Buyer and the Company, and supersedes all previous agreements, correspondence and understandings. The Buyer acknowledges it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) save as expressly set out in the Contract.
- 16.3 Nothing shall be construed as establishing or implying any partnership or joint venture or relationship of agent and principal. All employees, officers and representatives of the Company whether, or not directly involved in any negotiations, acknowledgements and/or contract discussions as well as signing, and acting for the Company shall be free from any personal duty, obligation and/or liability which might arise due to the execution of the transactions and any related document, activity, procedure and/or process.
- 16.4 Time for performance of all obligations of the Buyer is of the essence.
- 16.5 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.6 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provisions shall not be affected.
- 16.7 Failure by the Company to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 16.8 The Company may assign, license or sub-contract all or any part of its rights or obligations under the Contract without the Buyer's consent.
- 16.9 The Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

- 16.10 Except as set out in clause 12.6 the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 16.11 The formation, construction, performance, validity and all aspects of the Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

17. COMMUNICATION

- 17.1 All formal communications between the parties about the Contract must be in writing and may be delivered by hand or sent by pre-paid first class post or sent by email:-
- 17.1.1 (in case of communications to the Company) to its registered office or such other address as shall be notified to the Buyer by the Company;
- 17.1.2 (in the case of the communications to the Buyer) to its registered office (if it is a company) and/or to the most recent postal or email address of the Buyer set out in any document which forms part of the Contract or known to the Company; or
- 17.1.3 (in the case of emails to the Company) to sales@mitchells.co.uk.
- 17.2 Communications pursuant to clause 17.1 shall be deemed to have been received:
- 17.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- 17.2.2 if delivered by hand, on the day of delivery;
- 17.2.3 if sent by email on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day (unless a rejection of delivery is notified to the sender by the recipient's email system).
- 17.3 Communications addressed to the Company shall be marked for the attention of the person agreeing the Contract on behalf of the Company.
- 17.4 This clause 17 shall not apply to the service of legal proceedings.

18. CONSUMER

- 18.1 Where a Consumer's statutory rights apply, they will take precedence over these terms and conditions.

Updated July 2024.