LH PLC. TERMS AND CONDITIONS OF SALE

1. In these conditions the "seller" means LHplc. The "buyer means the person, firm or company purchasing the equipment. "The equipment" means the goods or any part thereof specified overleaf and any repaired replaced or spare parts.

2. These conditions are the only terms or conditions upon which the seller sells or supplies the equipment and/or provides services unless specifically agreed by the Seller in writing and the Buyer, no other terms or conditions shall apply and no agent or representative of the seller has any authority to omit these conditions. Subject as aforesaid all other terms, conditions, warranties and exceptions whatsoever whether express or implied and whether by description of the equipment or otherwise are hereby excluded.

3. Notwithstanding any prior agreements, arrangements or discussions between the Seller and the Buyer, no binding contract shall be or be deemed to be concluded for the sale of the equipment until the seller has issued a written acknowledgement of the Buyers order.

4. Unless otherwise stated in the written acknowledgement issued by the Seller, the agreed sale price shall in all cases, include the costs of all packaging insurance and transport of the equipment until delivery (but not off loading or hoisting) to an address within the United Kingdom. The costs of any war risk or other special packaging insurance or deliveries outside normal hours or special transport requested by the buyer shall be for the account of the Buyer. Unloading and hoisting shall be arranged by the buyer at its own cost.

5.(i) Unless otherwise stated by the Seller quotations and estimates shall be valid for acceptance for 30 days from the date shown on the quotation or estimate after which the Seller reserves the right to alter the price or specification of equipment.
(ii) The prices quoted are based on the cost of materials, wages, overhead costs, statutory obligations and foreign currency exchange rates and taxes, duties and levies ruling at the date of quotation. All prices shall be net and exclusive of VAT. The seller reserves the right to increase the prices charged without notice in the event of any increases in any of the foregoing prior to completion of the order
(iii) If work is suspended or delayed because of the buyers instructions, lack of instructions, or failure to supply proper specifications or parts, additional charges will be payable at the discretion of the seller.
(iv) Failure to deliver at the time stated will not be sufficient cause for cancellation and the seller will not be liable for any losses, costs, damages or expenses consequential or otherwise suffered by the buyer.

6. (a) The seller will use its best endeavours to deliver at the time stated but delivery dates shall be regarded as approximate only.
(b) Where delivery is made in instalments, delay in delivering one or more instalments shall not entitle the buyer to refuse to accept any remaining instalments.
(c) The buyer shall not refuse to accept delivery of any consignment or instalment on account of any shortage or defect in any other delivery.
(d) Delivery of the equipment shall be deemed to take place when the equipment arrives on a carrier outside the address in the United Kingdom specified overleaf (or if none outside the buyers premises in the United Kingdom) or delivered to the buyer's carrier as the case may be.

TITLE AND RISK

7. (a) Risk in equipment shall pass to the buyer on delivery (i.e. in any case before being off- loaded or hoisted) and the buyer shall insure the equipment for its full value from that time.
(b) Notwithstanding 7(a) legal and beneficial ownership of the equipment the subject of this contract shall remain with the company until payment in full has been received by the company;-
- (i) for the equipment
- (ii) for any equipment or goods supplied by the company
- (iii) for any monies due to the company from the buyer on any account

(c) Each sub clause of 7(b) is separate, severable and distinct from the others.
(d) Until property in the equipment passes to the buyer under 7(b) the buyer shall:-
- (i) be bailee of the equipment
- (ii) keep the equipment separately and readily identifiable as the property of the company

(e) Notwithstanding 7(b) the buyer may as principal in the ordinary course of its business sell the equipment by bona fide sale at full market value or in the ordinary course of its business use the equipment.
(f) Equipment shall be deemed sold or used in the order delivered to the buyer
(g) Any resale by the buyer of equipment in which property has not passed to the buyer shall (as between the company and the buyer only) be treated as if made by the buyer as agent for the company
(h) If equipment in which property has not passed to the buyer are mixed with or incorporated into other equipment or goods the property in that other equipment or goods shall be held on trust by the buyer for the company to the full extent of the sums recoverable by the company under clause 7(b)
(i) The proceeds of sale of any equipment and any other equipment or goods referred to in 7(g) shall be held by the buyer in
(j) The buyer shall keep any proceeds of sale as referred to in 7(i) in a separate account but in any event the company shall have the right to trace such proceeds (according to the principles in Hallets estate (1880) 13 Ch D 696)
(k) The buyer assigns to the company all rights and claims the buyer may have against his own customers and others in respect of equipment specified in 7(g), equipment or goods specified in 7(h) and proceeds of sale specified in 7(i)
(l) At any time prior to property in equipment passing to the buyer (whether or not any payment to the company is then overdue or the buyer is in breach of any obligation to the Company) the Company may (without prejudice to any of its other rights):
- retake possession of all or any part of the equipment and enter any premises for that purpose (or authorise others to do so) which the buyer hereby authorises
- require delivery up to it of all or any part of the equipment
- terminate the buyers authority to re-sell or use forthwith or by written notice to the buyer which authority shall automatically terminate (without any notice upon any insolvency of the buyer of it going into liquidation (as defined in the Insolvency Act 1986) or it having a receiver appointed or calling a meeting of its creditors or any execution or distress being levied of equipment of goods in its possession

(m) The company may at any time appropriate to such indebtedness as it thinks fit sums received from the buyer not withstanding any purported appropriation by the buyer
(n) Each clause and sub clause of this clause is separate severable and distinct

TO APPLY IF TITLE TO GOODS IS SUBJECT TO THE LAWS OF SCOTLAND

(a) Property and title in the equipment shall not pass to the buyer until the price due in terms of the contract have been received by the seller. Where the items to be supplied in terms of the contract are delivered in instalments this clause will apply to the instalment as if it formed the subject matter of a separate and independent contract
(b) Until the price of the equipment has been paid the buyer will hold and store the equipment as agent for the seller and in a manner which clearly distinguishes from other equipment and products of the buyer and indicates that they are in fact owned by the seller and not by the buyer
(c) The buyer shall not sell or dispose of any individual of or delivery of the equipment save as agent for the seller until the price due in terms of the contract has been received by the seller
(d) The seller may recover the equipment at any time if still in the buyers possession if the seller goes into liquidation or suffers a receiver to be appointed and the seller its agents or servants will be entitled to remove any equipment for which the price has not been paid
(e) Notwithstanding the provisions of this clause risk in all equipment supplied shall pass to the buyer on delivery whereupon the buyer shall be liable for the insurance of such equipment
(f) Sub clauses (a), (b), (c) and (d) of this clause shall each be construed and receive effect as a separate clause of these conditions

8.(a) No claim by the buyer for damage in transit or shortage will be entertained unless written notification of the claim is received by the seller within 7 days from the delivery of the equipment concerned. In the absence of such notification the buyer shall be deemed to have accepted the equipment. In the event of the equipment delivered to the buyer's own carrier all claims shall be made to that carrier.
(b) If any equipment supplied by the seller is defective or does not conform to the order the buyer shall notify the seller within 10 days after delivery and the seller shall have the option of inspecting the equipment at the buyer's premises.
(c) In the event of the seller becoming or found liable to pay to the buyer compensation or damages arising out of the sale or supply of equipment (whether payable to the buyer or any third party) such compensation or damages shall not in total exceed a sum equal to the invoice price of the equipment
(d) The seller shall not be liable in respect of the quality or fitness for a particular use of the equipment nor for any damage injury or loss suffered by the Buyer or any third party whether direct or consequential as a result of the use of the equipment

9. (a) Payment for the equipment shall be made in full within 30 days of the date of the invoice (interest will be charged at 4% per month on the balance outstanding) the date of the invoice being the date of delivery or availability for delivery as requested by the buyer whichever is the earlier.
(b) In the event of non payment of any sum by the due date of all monies owing (whether due or not) by the buyer to the seller shall become due and the seller without any prejudice to any of its rights under these conditions withdraw any discounts and charge interest on the aggregate of such sums then outstanding at the rate of 4% per annum above the base rate of National Westminster Bank plc or the prevailing rate under statute (whichever is the greater) from time to time such interest to accrue on a daily basis until the date of actual payment, after as well as before any judgement
(c) All payments are to be made on a before the due date as a condition precedent to future deliveries and where the equipment is delivered in instalments payment for each instalment shall be a condition of delivery of subsequent instalments

10. (a) Without prejudice to any other condition hereof if delivery of the whole or any part of the equipment shall be delayed or shall become impossible owing to the manufacture supply or despatch of the whole or any part of the equipment contracted for be interrupted prevented or hindered by any circumstances beyond the sellers control then the purchase of the equipment then the purchase of the equipment shall at the discretion of the seller be cancelled or time for any delivery or deliveries postponed or suspended for such time as the seller shall deem reasonable having regard to the circumstances giving rise for the delay the seller shall be under no liability whatsoever in respect of such postponement or suspension.
(b) If delivery is delayed for more than three months the seller has the option (without incurring any liability for loss or damage arising thereafter) of cancelling the contract and refunding any payment to the buyer.
(c) Without limiting the generality of the cause or causes referred to above the same shall include war, fire, accident breakdown of plant or machinery, industrial action disputes (including strikes and lockouts) unavailability of and restriction on supplies, non delivery or delay in delivery of any materials or any other circumstances (of whatsoever nature and not limited to the foregoing) which directly or indirectly interrupt or hinder the due performance of the contract.

11. If before delivery of any equipment to the buyer has been made, the buyer shall commit any breach of these conditions, or, if the buyer shall suffer any execution to be levied on any of its property or assets, or, it the buyer shall suspend payment of its debts or make any arrangements with its creditors, or, being a company, have a receiver or administrative receiver appointed over the whole or any part of its assets, or a winding-up order is made, or, being a person shall die or commit an act of bankruptcy, or have any bankruptcy petition presented against the buyer, then and in any such event, the seller shall without prejudice to any other rights and remedies it might have, be at liberty forthwith (by notice in writing between the seller and the buyer) to terminate any contract to cancel all orders and contracts of any part thereof remaining unfulfilled between the seller and the buyer for the delivery of the equipment and to recover damages in the event of any breach by the buyer of its obligations hereunder and the seller shall not be liable in damages (in respect of the giving of any such notice).

12.(a) Equipment quoted for and supplied by the seller is supplied in accordance with the specification and design as known to the seller at the date ruling by the "stated" manufacturer.
(b) Changes may be made without notice to the buyer for alterations or improvements in design materials or methods of manufacture from time to time and may substitute other reasonable similar parts for any proprietary or special art ordered by the buyer which the seller considers may be unprocurable in sufficient quantities or procurable with difficulty or at an excessive price
(c). If in the opinion of the seller there is not design or type which could reasonably be substituted under sub-clause (a) of this clause the sellers obligations to complete performance under the contract shall be suspended until such time as a substitute therefore can be found and becomes available.
(d) If the manufacturer ceases to manufacture such equipment or it should not be available the seller shall use reasonable endeavours to supply a substitute at an extra price where applicable, the order shall be treated as cancelled, and the seller shall be under no liability for loss incurred by the buyer

13.(a) The seller will endeavour to pass on to the buyer the benefit of any guarantee, condition, warranty or servicing agreement received by the seller from the manufacturer of such equipment supplied and shall not be liable for any extension or variation to the standard terms as given by such manufacturer. Where no warranty terms accepted they shall in no circumstances exceed those in 13(b) below. Save as provided in 13(b) below and permitted by statute all warranties conditions, guarantees or representations, express or implied, statutory or otherwise are hereby excluded , and the seller shall not be liable for any loss, damage, expense or injury of any kind whatsoever consequential or otherwise arising out of or due to or caused by any defects or deficiencies of any sort in the equipment supplied by the seller and whether such defects or deficiencies are caused by the negligence of the seller or its servants or agents or otherwise
(b) In the event of any proven defect in workmanship or materials only within (12) months from initial start-up or (15) months from the date of delivery whichever is the earlier, the seller will provide at its option either free replacement of parts ex-warehouse in UK or free repair of component parts only provided the seller is immediately notified in writing of the defect and the equipment is promptly returned
(c) As regards motor compressors, the delivery date shall be presumed to be the date of start up unless the start up form is returned within 10 days of actual start up to the seller duly completed notifying the seller otherwise and any warranty protection shall expire (15) months from that date
(d) Without prejudice to 13(a)(b) & (c) the amount of any damages recoverable by the buyer from the breach of contract or negligence of the seller arising from defects in equipment workmanship or materials whether manufactured by the seller or otherwise shall not in any case exceed the purchase price of the equipment and is subject to the following conditions:-
- (i) that the buyer will make no further use of the equipment alleged to be defective after the time at which the buyer discovers that is it defective
- (ii) that the buyer shall give written notice to the seller specifying the nature of the defects in the part or parts of the equipment alleged to be defective within 10 days from date of delivery
- (iii) that the equipment has been used and maintained properly and carefully and in accordance within any instructions issued by the appropriate manufacturer
- (iv) that the buyer shall afford the seller proper facilities to inspect and repair the equipment alleged to be defective
- (v) that the buyer shall at its own cost observe all of the sellers requirements as to the return of the defective equipment or the defective part or parts thereof to an address specified by the seller within the UK and as to the collection there from of the repaired or replaced product or part or parts thereof as the case may be or as to facilities for repair on site or otherwise

14. The following items are not included in this warranty and are charged for as extra:-
labour charges to remove or replace parts refrigerant fluids, oils, filters and other expendable items provision of or facilities for hoisting, lifting, access requirements, drainage and refilling of systems, re-commissioning of directly connected or affected systems (be they mechanical or electrical) or supply of special equipment or services

The seller does not exclude its liability for death or personal injury and accepts liability for any breach as the part of the seller of any undertaking as to title quiet possessions and freedom from encumbrance which may be implied by section 12 of the Sale of Goods Act 1979.

The clause shall not deprive the buyer dealing as a consumer pursuant to Section 12 of the Unfair Trading Act 1977 of his statutory rights

Where the contract includes erection and/or commissioning of the equipment the following terms shall apply:-

Save where otherwise agreed in writing erection does not include commissioning
The date of commencement of erection shall be as notified by the seller to the buyer in writing and the buyer shall make available at the site all electricity, gas, water and other facilities as may be required
The date for any commissioning shall be notified to the buyer in writing
The time of completion of erection is not guaranteed
The buyer hereby indemnifies the seller in respect of all costs, claims and liabilities of whatever nature incurred by third parties as a result of service erection or maintenance work and agrees to hold the seller harmless in respect thereof save only in the case of the sellers own negligence.

15. The seller shall under no circumstances be liable for damages or costs arising from infringement of patent rights by equipment supplied and not directly manufactured by the seller.

16. All drawings, photographs, illustrations, specifications, performance data, dimensions, weight and the like, whether referred to in the order or made by way of representation, shall not constitute a description of the equipment, shall not be taken to be such by the buyer and, are not warranted to be accurate unless certified as such. All drawings patterns tools and other things produced by the seller or the stated manufacturer shall be and remain the property of the seller or its respective supplier the buyer shall not utilise or reproduce or communicate knowledge or information without the prior written consent of the affected party.

17. The buyer will on or before delivery of he equipment as herein provided if so requested by the seller, enter into a written undertaking to take such steps as may be specified to the buyer by the seller and set out in such undertaking relating to the safe and proper use of the equipment without risk to health. The buyer shall indemnify the seller in respect of any liability penalty or fine in respect of or in connection with the equipment incurred by the seller under the Health & Safety at Work Act 1974 or any statutory modification or re-enactment thereof or any regulations or offers made there under. It is a condition of the supply of equipment that the buyer acquaints itself with all appropriate Health & Safety information provided or recommended by the stated manufacturer as all equipment can constitute a hazard if used incorrectly.

18. (a) If any of these conditions or any part of one of these conditions is rendered void by any legislation to which it is subject, it shall be void to that extent and no further
(b) A waiver by the seller of any of the Terms and Conditions and/or any breach thereof shall apply only to the particular instance or instances in which such waiver occurs and shall not affect or impair the further continuance in force of such terms and conditions or the right of either party to avail itself of such terms and conditions upon any subsequent breach or breaches thereof.

19. The seller is entitled at any time to sub contract all or any part of the contract if they see fit at their own absolute discretion.

20. If at any time, any question, dispute or difference shall arise between the seller and the buyer in relation to the supply of the equipment, or anything happening in connection therewith which the seller and the buyer shall not be able to resolve themselves satisfactorily, then the matter shall be referred to a single arbitrator to be appointed by agreement between the parties or, failing agreement, by an arbitrator to be appointed by the president, for the time being, of the London Chamber of Commerce. The decision of any such arbitrator shall be final and binding on the buyer and seller.

21. The contract for the supply of the equipment and all matters arising in connection therewith shall be governed by and construed according to English Law and the parties hereto submit to the non-exclusive jurisdiction of the English Courts