

S.E. CONTROLS - CONDITIONS OF TRADING

DEFINITIONS

1. In these Conditions the following terms shall have the following meanings: "Company" means **LOANGUARD Limited trading as S.E. CONTROLS** "Customer" means the Customer of the Company

"Contract" means any Contract for the sale of Goods including where applicable the sale of any services by the Company in relation to those Goods by the Company to the Customer "Goods" means any goods including where applicable the sale of any services by the Company in relation to those Goods and any material supplied with such Goods as packaging forming the subject of this Contract including parts and components or materials incorporated in them. "Delivery" will be defined in any contract between the Parties in accordance with Clauses 7.1 to 7.9 of this Contract "Quotation" means any specification and/or rates or prices and/or special conditions communicated to the Customer whether orally or in writing. Any Quotation given by the Company shall be deemed to have these Conditions of Trading incorporated into the offer made by the Company unless confirmed in writing by a Director of the Company. "Work" means any service provided by the Company in performance of its obligations under the Contract including, but not limited to, design services, installation of goods/equipment/materials, commissioning, to the extent (if any) that such service is specified.

"Commissioning" means all work associated with the Goods after installation, including connection to electrical services at a point specified in the Quotation, testing equipment on completion of its installation, operating equipment (if applicable) for such time as is specified in the Quotation. "Special Conditions" means any term and/or condition set out in the Company's quotation or in any other document forming part of the Contract, whether or not such term and/or condition is so described therein.

QUOTATION

2. Any Quotation given by the company in writing or confirmed by the company in writing shall be open for acceptance by the Customer for a period of 90 days from the date of the Quotation unless otherwise stated in writing by the Company.

CONTRACT

3.1 A contract between the parties shall only come into existence when the Customer's order given either orally or in writing is received and accepted in writing by the company. Notwithstanding that the contract may be deemed to be an oral contract, these Conditions shall, unless otherwise agreed in writing with a Director of the Company be incorporated into any contract between the Parties. The date of the contract shall be ascertained by the earliest of the following dates:

3.1.1 The Company's written acceptance; or
3.1.2 Delivery of the Goods; or
3.2 Unless otherwise agreed in writing by a Director of the Company, these Conditions shall be incorporated into any Contract entered into by the Company to the exclusion of any terms or conditions stipulated or referred to by the Customer;

3.3 No variation or amendment of these Conditions or oral promise or commitment related to this Contract shall be valid unless evidenced in writing and signed by a Director on behalf of the Company and a representative having executive power and authority on behalf of the Customer.

3.4 Unless otherwise agreed in writing by a Director of the Company, any Special Conditions shall be incorporated into any Contract entered into by the Company to the exclusion of any terms or conditions stipulated or referred to by the Customer.

3.5 To the extent that there is any conflict or inconsistency between such Special Conditions and these Conditions of Trading, such Special Conditions shall take precedence.

3.4.1 To the extent that any thing or matter is stated by the Company in these Conditions of Trading or in Special Conditions to be assumed, if such assumption is found to be incorrect any additional or changed work necessary as a result of correcting the said assumption shall be treated as a variation under the Contract and shall be valued for payment on a fair and reasonable basis unless otherwise agreed.
3.4.2 To the extent that any thing is stated by the Company in these Conditions of Trading or in Special Conditions to be excluded, the Company shall not be liable either to carry out or to be otherwise responsible for that thing. Any unilateral instruction by the Customer purporting to incorporate such thing into the Contract shall be of no effect, but the Company may at its discretion submit a written quotation to the Customer in writing, written acceptance of which shall be treated as a variation under the Contract.

PRICES

4.1 The rates and prices given in any Quotation for the Goods are ex-works prices and exclude packing insurance and carriage, Value Added Tax, and all other taxes or duties unless otherwise stated.

4.2 Unless otherwise stated, the Prices Quoted herein are not fixed and the Company shall have the right to adjust its prices for any increase in costs of any kind arising for any reason after the date of the Contract.

4.3 Where the Contract includes for the supply and

installation/commissioning of any Work, the Customer should note that

the Company has allowed for all Goods to be fixed and installed after

work has previously been carried out either by or on behalf of the

Customer or by a third party or third parties and not by the Company.

It is the responsibility of the Customer, and the Customer should satisfy

itself that such wiring has been carried out in accordance with the

Company's wiring diagrams, and instructions. In particular the

Customer is responsible for the installation of correct cables, the correct

termination of those cables (in accordance with relevant electrical

regulations), and the clear and accurate identification (by suitable

marking) of those cables to the Company. The price quoted herein

excludes any rectification required by the Customer to be made by the

Company in respect of any wiring or connecting or other errors

committed by or on behalf of the Customer or by such third party or

third parties, the provision of any requisite scaffolding, the costs of any

other work which may be necessary to be made to the premises of

which the installation of the Goods forms part and any other associated

costs due to additional or ancillary work needed to be carried out by

the Company.

4.4 Any work carried out by the Company in pursuance of these terms

and conditions will be carried out using reasonable skill and care and

shall be based upon the information supplied by the Customer. In the

event that information supplied by the Customer contains errors, such

errors and any effect thereof shall be corrected by the Customer at no

cost to the Company. In the event that correction of such errors

necessitates additional or changed work or supply shall be treated as a

variation under the Contract and shall be valued for payment on a fair

and reasonable basis unless otherwise agreed.

4.5 For the avoidance of doubt, where the Customer, or another with

the acquiescence of the Customer, or its agent provides a design to the

Company that has been carried out by the Customer or others, the

Company shall not be liable for the adequacy of such design. In the

event that any such design provided by the Customer contains errors,

such errors and any effect thereof shall be corrected by the Customer at

no cost to the Company. In the event that correction of such errors

necessitates additional or changed work or supply shall be treated as a

variation under the Contract and shall be valued for payment on a fair

and reasonable basis unless otherwise agreed.

5.1.1 The Company shall be entitled to submit an application for

payment or an invoice in respect of supply and work carried out, at

intervals of one month commencing one month after the date of the

contract or the start of performance of the contract whichever is the

earlier.

5.1.2 In the event that the Company shall have completed its

obligations under the contract, save in respect of commissioning and/or correcting latent defects, before the date on which it would be entitled to submit an application for payment or an invoice under clause 5.1.1, it shall be entitled to submit its application or invoice immediately on such completion.

5.1.3 All applications for payment or invoices shall be paid without deduction of discount of any kind in pounds sterling (unless otherwise stated) within the timetable stipulated by the Customer or within 30 days of the date of the Company's application or invoice, whichever is the earlier, or (if sooner) immediately prior to the commissioning of the Goods and/or installation by the Company. In no circumstances shall the Customer be entitled to make any deduction or withhold payment in respect of an application for payment or invoice properly submitted for any reason at all.

5.1.4 Where the Contract is for supply of Goods and Work and the Company agrees in writing to the retention by the Customer of part of monies then due, such retention will be released as follows; half of any retention deducted to be paid on completion of the Company's Work, and the remainder to be released either on the issue of confirmation that defects relating directly to the Company's Work and for which the Company is liable have been rectified, or the passing of 12 months from the completion of the Company's Work (other than the correction of such defects), whichever is the sooner.

5.2 Without prejudice to any other rights of the Company, if the Customer fails to pay the amount applied for or invoiced by the end of the period in which payment is due, the Customer shall not be allowed any discount allowed therein or in any other way agreed and shall pay interest on any overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (including, for the avoidance of doubt, any fixed fee as provided in the Act) as may have been amended at the time that payment becomes due, from the date on which payment was last due to that on which it is made.

5.3 The Company may at its discretion delay commissioning of the Goods and/or associated installation until the Customer has paid the Company for them in full subject only to any retention properly withheld by the Customer. In the event that the Customer fails to so pay within 2 months after such payment becomes due the Company may treat such commissioning as having been omitted from the contract as a variation.

TITLE

6.1 For the purpose of Section 12 of the Sale of Goods Act 1979 the Company shall transfer only such title or rights in respect of the Goods as the Company has and if the Goods are purchased from a third party shall transfer any such title or rights as that party had and has transferred to the Company.

6.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and shall not pass to the Customer until the amount due under the application for payment or invoice for them (including interest and costs) together with all other sums owed by the Customer to the Company has been paid in full.

6.3 Until the title passes the Customer shall hold the Goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.

6.4 The Company may at any time before title passes and without any liability to the Customer:

6.4.1 repossess and dismantle and use or sell all or any of the Goods and/or by doing so terminate the Customer's right to use, sell or otherwise deal in them; and

6.4.2 for that purpose or determining what if any Goods are held by the Customer and inspecting them, enter any premises of or occupied by the Customer.

6.5 Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Company and shall be held in a separate designated account and not mingled with other monies or paid into any overdraft bank account and shall be at all times identifiable as the Company's money.

6.6 The Company may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Customer.

RISK, DELIVERY AND PERFORMANCE

7.1 The Goods are delivered to the Customer when the Company makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customer's agent whether or not the Customer pays its charges) at the Company's premises or other delivery point agreed by the Company.

7.2 Risk in the Goods passes when they are delivered to the Customer or handed to the carrier for delivery to the Customer.

7.3 The Company may at its discretion deliver the Goods by instalments or in any sequence but will use its best endeavours to make such delivery in accordance with any agreed schedule or programme of works. The Company does not however accept any liability for any failure to make such delivery to an agreed schedule or programme of works.

7.4 Where the Goods are delivered by instalments, no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of any of the Goods previously delivered or undelivered.

7.5 Any dates quoted by the Company for the delivery of the Goods and/or performance of any Work are approximate only and shall not form part of the Contract; the Customer acknowledges that the Company shall not be liable for any loss suffered or likely to be suffered by the Customer arising directly or indirectly as a result of failure by the Company to deliver or perform to such dates.

7.6 If the Customer fails:

7.6.1 to take delivery of the Goods or any part of them on the due date; and

7.6.2 to provide any instructions or documents required to enable the Goods to be delivered on the due date, the Company may on giving written notice to the Customer store or arrange for the storage of the Goods, and on the service of the notice:

7.6.3 risk in the Goods shall pass to the Customer;

7.6.4 delivery of the Goods shall be deemed to have taken place and

7.6.5 the Customer shall pay to the Company all costs and expenses including storage and insurance charges arising from its failure.

7.7 The Company shall not be liable for any penalty loss injury damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance or to repudiate the Contract.

7.8 The Customer shall indemnify the Company against all claims for damages and liability whatsoever or howsoever arising out of compliance by the Company with the Customer's delivery instructions.

7.9 The Customer shall provide all necessary assistance to the Company in unloading the goods at the point of delivery and in the event of the Customer failing to do so then the Company shall be entitled to charge the Customer with the amount of any expenses incurred by the Company resultant therefrom.

CLAIMS NOTIFICATION

8.1 Any claim for non-delivery of any of the Goods shall be notified in writing by the Customer to the Company within 7 days of the date of the Company's application for payment or invoice.

8.2 Any claim that any of the Goods have been delivered damaged, are not of the correct quantity, or do not comply with their description, shall be notified in writing by the Customer to the Company within 3 days of the delivery of the Goods.

8.3 Any alleged defect shall be notified by the Customer to the Company within 3 days of the delivery of the Goods or in the case of

any defect which is not reasonably apparent on inspection within 3 days of the defect coming to the Customer's attention and in any event within the following periods:

8.3.1 For Goods manufactured by the Company within 3 months from the date of delivery;

8.3.2 For Goods not of the Company's manufacture within the warranty given by the manufacturer or a period of 3 months whichever is the lesser period;

8.4 No claims in respect of Goods allegedly damaged in transit or lost will be accepted if the carrier has been given a clear receipt for the Goods, or if the carrier is not notified in writing of such loss or damage and of the relevant particulars within the same time limits as those appropriate to the claim under the standard terms and conditions of carriage for the time being in force of the carrier concerned. Such notification through the carrier shall be given by the Customer and the Company shall be duly advised thereof.

8.5 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers or other proper identification of any allegedly defective Goods.

8.6 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Customer shall (if so requested in writing by the Company) promptly provide any of the Goods the subject of any claim and any packing materials securely packed in their original container and carriage paid to the Company for examination.

8.7 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims or payment procedures in these Conditions.

SCOPE OF CONTRACT

9.1.1 The Customer may request in writing any variation to the scope of Goods and/or Work to be supplied by the Company under the Contract, but the Company shall not be obliged to vary such scope of Goods and/or Work.

9.1.2 Upon receipt of a written request for a variation referred to in clause 9.1.1 the Company may at its discretion provide a quotation. The Company may in its quotation include any effect on the time for performing its obligations under the Contract.

9.1.3 Upon written acceptance by the Customer of a quotation provided under clause 9.1.2, the parties shall each comply therewith.

9.1.4 If at its discretion the Company carries out a variation requested under clause 9.1.1 in the absence either of a quotation or an accepted quotation, the Company shall be paid a fair price for such variation.

9.1.5 Save as expressly provided, the Company and the Customer do not confer or intend to confer any right to enforce the terms of the Contract on any person who is not a party to it.

EXTENT OF LIABILITY

10.1 Under no circumstances shall the Company have any liability of whatever kind for:

10.1.1 Any defects resulting from wear and tear, accident, improper use by the Customer, or use by the Customer except in accordance with the instructions or advice of the Company or the manufacturer of any Goods or neglect or from any instructions or materials provided by the Customer.

10.1.2 Any of the Goods which have been altered, adjusted, modified or repaired except by the Company.

10.1.3 The suitability of any of the Goods or the choice thereof for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company.

10.1.4 The suitability of any of the Goods for the intended purpose where the selection of the Goods has been made by the Customer, or others on its behalf.

10.1.5 Any substitution by the Customer of any materials or components not forming part of any specification of the Goods agreed in writing by the Company.

10.1.6 Any descriptions, illustrations, specifications, figures as to performance, drawings, and particulars of weights and dimensions submitted by the Company, contained in the Company's catalogues price lists or elsewhere. Any information of this kind is merely intended to represent a general idea of the Goods and not to form part of the Contract or be treated as representations;

10.1.7 Any technical information, recommendation, statement, or advice furnished by the Company its employees or agents not given in writing in response to a specific request from the Customer before the Contract is made or

10.1.8 Any variations in the quantities or dimensions of any of the Goods or changes of their specifications or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the Goods and substituted materials or components are of a quality equal or superior to those originally specified.

10.1.9 Any reasonable non conformity of goods supplied with samples previously submitted.

10.1.10 Any minor colour variations in coloured materials when compared with samples previously submitted.

10.2 The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence breach of statutory duty or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except:

10.2.1 for death or personal injury resulting from the Company's negligence; and

10.2.2 as expressly stated in these Conditions.

10.2.3 FOR THE AVOIDANCE OF DOUBT nothing in these Conditions shall be construed as limitation or exclusion of liability for death or personal injury resulting from negligence.

10.3 If the Customer establishes that any of the Goods have not been delivered, have been delivered damaged, are not of the correct quantity, or do not comply with their description, the Company shall at its option replace with similar Goods any of the Goods which are missing lost or damaged or do not comply with their description, allow the Customer credit for their value as applied for or invoiced, or repair any damaged Goods. Any action undertaken by the Company with regard to clause 10.3 shall be at the sole discretion of the Company.

10.4 If the Customer establishes that any of the Goods are defective the Company shall at its option replace with similar Goods or repair any defective Goods, allow the Customer credit for their value as applied for or invoiced or to the extent that the Goods are not of the Company's manufacture, assign to the Customer (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods to the Company.

10.5 The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.

10.6 Where the Company is liable in accordance with this Condition in respect of only some or part of the Goods, the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.

10.7 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments alterations or other work has been done to the Goods by any person except the Company.

10.8 The Company shall not be liable where any of the Goods the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacement for such lost or damaged Goods will if available be supplied by the Company at the prices ruling at the date of despatch.

10.9 In no circumstances shall the liability of the Company to the Customer under this condition 10 exceed the value applied for or invoiced.

GENERAL

11.1 The Company may sub-contract the performance of the Contract in whole or in part.

11.2 The Customer will not assign, novate or (without first obtaining the Company's written consent) sub-let the Contract in whole or in part and it shall be a condition of any such consent to any sub-letting of this Contract that the Customer shall:

11.2.1 ensure and be responsible for the compliance by any sub-contractor with the terms of this Contract;

11.2.2 include in the sub-contract provisions consistent with these Conditions for the benefit of, and to be enforceable by, the Company; and

11.2.3 furnish the Company with copies of any sub-Contract upon the Company's request at any time.

11.3 The Company shall have a lien on all the Customer's property in the Company's possession for all amounts due at any time from the Customer and may use or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 7 days notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to the Company and the costs of sale or disposal the Company shall be discharged from any liability in respect of the Customer's property.

11.4 The Company may at its discretion suspend or terminate the supply of any Goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other contract with the Company or becomes insolvent, has an administrative receiver appointed of its business, or is compulsorily or voluntarily wound up or the Company bona fide believes that any of those events may occur, and in the case of termination may forfeit any deposit paid.

11.5 If the Goods are manufactured in accordance with any design or specification provided or made by the Customer, the Customer shall compensate the Company in full on demand for all claims expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party.

11.6 Except for any which is expressly agreed to be included in the Goods, all tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain the property of the Company and all technical information patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall become the property of the Company.

11.7 It is the responsibility of the Customer or its architect, engineer, agent or other advisors to ascertain whether the Goods supplied by the Company comply with any relevant building regulations by-laws, specifications or other rules and regulations in force in the locality where the Goods are to be used. The Company shall not be responsible for any loss or damage howsoever arising and whether sustained by the Customer or any third party arising out of any non compliance with any such building regulations by-laws or other rules or regulations.

11.7.2 It shall be the responsibility of the Customer to ensure that the Goods ordered by the Customer and supplied by the Company are suitable for the locations in which the Goods are to be fixed.

11.8 Fixing details and instructions for the Goods are available on request from the Company's office. The Company accepts no responsibility for any damage to the Goods or to the premises to which they are to be installed which may be caused through compliance or non compliance with such details or instructions or by any mishandling during installation of the Goods. If the Goods are to be fixed by the Company then it shall be the Customer's responsibility at its own expense to ensure that the premises are prepared and ready for the Goods to be installed in them and to provide all necessary lifting tackle, scaffolding and supports, and lighting and power facilities for the fixing of the Goods, and to ensure a satisfactory and continuous means of access to the premises where the Goods are to be fixed and adequate storage and protection for the Goods from the time of their delivery on site to those premises. The Customer shall be solely responsible to ensure that the Goods and any other materials related thereto, whether installed by the Customer or others on its behalf or by the Company, are installed in a location and in such a manner as not to be a source of danger to any person.

11.9 If materials are issued by the Company to the Customer or others for whom he is responsible for fixing by the Customer or others, then it is the responsibility of the Customer to make sure all goods are protected until such time as they are handed back to SE Controls to continue their work

CONFIDENTIALITY

12. The Customer shall not at any time whether before or after the termination of this Contract divulge or use any unpublished technical information deriving from the Company or any other confidential information in relation to the Company's affairs or business or method of carrying on business.

CANCELLATION

13. Subject to these Conditions of Trading, no order placed with the Company shall be cancelled, or deferred, except by agreement in writing between the Customer and the Company. Any agreement by the Company to cancel or defer this agreement shall only be made by a Director of the Company.

FORCE MAJEURE

14. The Company shall not be liable for any failure in the performance of any of its obligations under the Contract caused by factors outside its control, non-exclusive examples of which are instructions or interference by any government or other authority, act of God, lock-out of work people, fire, accident, war, blockade, civil commotion, strikes, epidemics, labour disputes, shortage of fuel, power, labour or raw materials, breakdown of machinery, or inability to obtain permission to export or import; any deliveries or provision of service of any kind suspended as a result of any such circumstances shall be made as soon as possible thereafter consistently with due performance of other deliveries and services under the Contract and in the order and at intervals approximating to the intervals before such suspension.

LAW AND JURISDICTION AND DISPUTE RESOLUTION

15.1 The Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in all matters.

15.2 The parties agree that this Contract shall be considered to be a construction contract in writing for the purposes of the Housing, Grants, Construction and Regeneration Act 1996.

NOTICES

16.1 Any notice required by these Conditions shall be in writing and shall be served on the Company Secretary either at the main place of business or the Registered Office of the recipient party:

a) personally; or b) by registered or recorded delivery mail; or c) by facsimile transmission

16.2 A notice shall be deemed to have been served: a) if it was served in person, at the time of service b) if it was served by post, forty eight hours after it was posted c) if it was served by facsimile transmission, at the time of transmission.