Terms and Conditions of Sale

Definitions

1. In these conditions the following terms shall have the following meanings:

- 'Company' means Forth Engineering Ltd
- 'Customer' means any legal person or body corporate whose Order is accepted by the Company
- 'Contract' means any contract for the supply of Goods or Services by the Company to the Customer
- 'Goods' means any goods forming the subject of this contract including parts and components of or materials incorporated in them
- 'Services' means any services forming the subject of this contract

Quotation

2. Quotations by the Company unless otherwise stated in them shall be open for acceptance in 30 days of the date of the quotation

Existence of Contract

3.1 No Contract shall come into existence until the Customer's order (however given) is accepted by the earliest of:

- The Company's written acceptance
- Delivery of the Goods or Services
- The Company's invoice

3.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer

3.3 No variation or amendment of this document or oral promise or commitment related to it shall be valid unless committed to

- Writing and signed by or on behalf of both parties
- Prices

4.1 The Prices for the Goods or Services are ex-works and exclude packing, insurance and carriage, VAT, and other taxes or duties.

- Prices invoiced are calculated in respect of the quantity of Goods or Services actually delivered and hours of Services provided irrespective of the quantity in respect of which any quotation was issued.

4.2 The Company shall have the right to adjust its prices for any increase in the price of materials, parts, labour, and transport, changes in work of delivery schedules or quantities or any other costs of any kind arising for any reason after the date of the

Contract.

4.3 Price clauses shall take effect on the date of service on the customer of notice of the change.

Payment

5.1 All invoices are payable without discount of any kind in pounds sterling on or before the date stated on the Company's invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all.

5.2 If the Customer fails to pay the invoice price by the due date the Customer shall not be allowed any discount given in that invoice or in any other way agreed and shall pay interest on any overdue amount from the date of which payment was due to that on which it is made (whether before or after judgment) on a daily basis at a rate of 8% p.a. or other such rate from time to

time specified by the Supreme Court Act 1981 and reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

Title

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

6.2 Notwithstanding the earlier passing of risk title in the Goods or Services shall remain with the Company and shall not pass to the Customer until the amount due under the invoice (including interest and cost) has been paid in full.

6.3 Until title passes the Customer shall hold the Goods or Services 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 – repossess and dismantle and use or sell all or any of the Goods or Services and by doing so terminate the Customer's right to use, sell or otherwise deal in them and (for that purpose or determining what if any Goods or Services 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 the sale of the Goods or Services shall be held in trust for the Customer and shall be held in a separate designed account and not mingled with other moneys or paid into any overdrawn 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 or Services notwithstanding that title in them has not passed to the Customer. Risk, Delivery and Performance

7.1 The Goods or Services 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 whoever pays its charges) at the Company's premises or other delivery point agreed by the Company.

7.2 Risk in the Goods or Services passes when they are delivered to the Customer.

7.3 The Company may at its discretion deliver the Goods or Services by installments in any sequence.

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

7.5 The Company may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser number than the number of Goods and Services ordered.

7.6 Any dates quoted by the Company for the delivery of the Goods or Services and performance of the Services are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery or performance dates.

7.7 If the Customer fails to take delivery of the Goods or Services or any part of them on the due date and to provide any instructions or documents required to enable the Goods or Services 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 or Services, and on the service of the notice risk in the Goods or Services shall pass to the customer, delivery of the Goods or Services shall be deemed to have been taken place, and the Customer shall pay to the Company all costs and expenses including storage and insurance changes arising from its failure.

7.8 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 of or repudiate the Contract.

Claims Notification

8.1 Any claim that any Goods or Services have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified by the Customer to the Company in 48 hours of their delivery.

8.2 Any alleged defect shall be notified by the Customer to the Company in 7 days of the delivery of the Goods or Services or in the case of any defect which is not reasonably apparent on inspection in 2 days of the defect coming to the Customer's attention and in any event in the following periods:

- For Goods or Services manufactured by the Company 6 months from the date of delivery;
- For second hand Goods or Services no period is applicable unless otherwise specified in the Contract; and
- For Goods or Services not of the Company's manufacture the warranty period given by the manufacturer.

8.3 Any claim under this condition must be in writing and must contain full details of the claim including the reference numbers of any allegedly defective Goods or Services.
8.4 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 return any Goods or Services the subject of any claim and any packing materials securely packed and paid to the Company for examination.

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

Scope of Contract

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

9.1 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 Services or neglect or from any instructions or materials provided by the Customer

9.2 Any Goods or Services which have been adjusted, modified or repaired except by the Company

9.3 The suitability of any Goods or Services for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company

9.4 Any substitution by the Company of any materials or components not forming part of any specification of the Goods or services agreed in writing by the Company

9.5 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 since they are merely intended to represent a general idea of the Goods or Services and not to form part of the contract or to be treated as representations

9.6 Any technical information, recommendations, statements or advice furnished by the Company its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made, or

9.7 Any variations in the quantities or dimension of any Goods or Services 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 or services, and the substituted materials or components are of a quality equal or superior to those originally specified.

Extent of Liability

10.1 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 or other duty on the part of the Company or in any way of or in connection with the performance of or failure to perform the Contract except for death or personal injury resulting from the Company's negligence, and expressly stated in these conditions.

10.2 If the Customer establishes that any Goods or Services 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 or

Services any Goods or services which are missing, lost or damaged or do not comply with their description, allow the Customer credit for their invoice value or repair any damaged Goods or Services.

10.3 If the Customer establishes that any Goods or Services are defective the Customer must return those Goods or Services forthwith, at its own cost, to the Company which will be repaired or replaced at the Company's discretion and according to manufacturer's warranty. If the Goods or Services cannot be replaced or repaired within 3 months of the Company's receipt thereof the Company may credit the Customer in part or in full at its own discretion.

10.4 If the Customer returns to the Company any Goods or Services for repair and some are found to be fault free then the Company may, at its own discretion, charge the Customer for its reasonable handling costs.

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

10.6 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods or Services the Contract shall remain in full force and effect in respect of the other or other parts of the Goods or Services 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 or Services.

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 adjustment's, alterations to other work has been done to the Goods or Services by any person except the Company.

10.8 The Company shall not be liable where any Goods or Services 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. Replacements for such or lost or damaged Goods or Services will, if available, be supplied by the Company at the prices ruling at the date of dispatch.

10.9 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods or Services.

General

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

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

- Ensure and be responsible for the compliance by any sub-contractor's with the terms of this contract;
- Include in the sub-contract provisions consistent with these conditions for the benefit of and enforceable by the Company; and
- 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 Customer's property in the Company's possession for all amounts due at any time from the Customer and may use, sell 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 28 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 and disposal the Company shall be discharged of 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 or Services if the Customer fails to make any payment when and as due or otherwise defaults in any its obligations under this 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 shall be discharged of any liability in respect of the Customer's property.

11.5 If the Goods or Services 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 and Services all tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain its property and all execution of any orders shall become the property of the Company.

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 method of carrying on business.

Cancellation

13 Orders for Goods or Services which have to be made especially for the Customer will be charged in full unless written notice of cancellation is received not later than 2 weeks before the expected delivery date quoted in the Company's order Acknowledgement and manufacture of them or any components for them has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time before the Goods or Services have been allocated to the Contract than a packing and handling charge will be payable by the Customer.

Force Majeure

14 The Company shall not be liable for any act or omission arising which shall render performance of the Contract impossible or shall in any way have the effect of frustrating the common cause where such act or omission is beyond the control of either the Company or the Customer or was not reasonably foreseeable by them. Such acts or omissions shall have the effect of automatically terminating the contract.

Law and Jurisdiction

15 These Terms and Conditions shall in all respects be construed and interpreted in accordance with the Law of Contract in England and Wales notwithstanding the effect of the law of the European Union. Where the Company and the Customer have contracted to perform in England and Wales or Scotland the competent Court of Jurisdiction shall be the High Court of England and Wales.

Where the Customer is resident in the European Union or EFTA, the Company may at its absolute discretion nominate the Court of the Customer's member state to be the Court of competent jurisdiction under the Brussels Convention. Where the Customer is resident elsewhere the Company shall possess the absolute discretion as to the competent court or jurisdiction.

Notices

16 Any notice given under this Contract shall be in writing and may be served personally, by registered or recorded delivery mail, by telex or facsimile transmission, by any other means which any party specifies by notice to the other.

A notice shall be deemed to have been served:

- If it was served in person, at the time service,
- If it was served by post, the day after the day after posting,
- If it was served by facsimile transmission, at the time transmission.

Divisibility Clauses

17.1 Sale of goods:

We may deliver goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable contract. Each instalment delivery will be a separate contract and no cancellation or termination by either party of any one contract relating to an instalment will entitle you to repudiate or cancel any other contract or instalment.

Each invoice raised by us to you will be payable in full, without deduction or set off, in accordance with our standard payment terms. You agree that you will not be entitled to set off any claim against an invoice:-

• Unless you have notified us in writing within 14 days of delivery of any defect or shortage in the goods delivered;

• Any claim arising out of the supply of goods under a contract other than that which gave rise to the debt forming the subject matter of the invoice.

17.2 Supply of services:

Each contract for the supply of our services will be performed, invoiced and paid for in accordance with the provisions of the applicable contract and independently of any other contract made between us. No cancellation or termination of any one contract will entitle you to repudiate or cancel any other contract.

Each invoice raised by us to you will be payable in full, without deduction or set off, in accordance with our standard payment terms. You agree that you will not be entitled to set off any claim against an invoice:

• Unless you have notified us in writing within 14 days of the performance of the relevant services of any dissatisfaction with our performance of the services

TO BE RETAINED BY THE CUSTOMER

Please retain this copy for your own reference and sign the other copy and return along with your Credit Application form (by email or by post) to:

Forth Engineering Ltd
Risehow Hydraulics Centre
Maryport
Cumbria
CA15 8PA

Full Name:……..

Trading Name:……..

Signed:……

TO BE SIGNED AND SENT BACK TO FORTH WITH YOUR CREDIT APPLICATION FORM

Sign this copy and return along with your Credit Application form (by email or by post) to:

Forth Engineering Ltd
Risehow Hydraulics Centre
Maryport
Cumbria
CA15 8PA

Full Name:……..

Trading Name:……..

Signed:……

Your account may be delayed if this form is not returned within a timely manner.