

CONDITIONS OF SALE

MANCHESTER FLUID SYSTEM TECHNOLOGIES LIMITED

The acceptance of any order is conditional upon the Buyer agreeing to the following Conditions of Sale (Conditions):-

1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these Conditions.

Buyer: the person, firm or company who purchases the Goods (and/or the Services, where applicable) from the Supplier.

Consignment Goods: any goods agreed in the Consignment Stock Quantity Check to be supplied to the Buyer by the Supplier on a consignment basis where such goods are placed by the Supplier on the Buyer's premises and restocked by the Supplier in accordance with condition 17.

Consignment Stock Count Period: as defined in condition 17.4.

Consignment Stock Quantity Check: where applicable, the order acceptance issued by the Supplier to the Buyer setting out and confirming the order of Consignment Goods (including the stock code/part number, description and quantity of the relevant Consignment Goods).

Contract: the contract between the Supplier and the Buyer comprising the Order Confirmation (and/or the Consignment Stock Quantity Check, where applicable) and these Conditions.

Delivery Period: the period of 90 days commencing on the delivery date for the Goods specified in the corresponding Order Confirmation (or the Consignment Stock Quantity Check, where applicable).

Goods: any goods to be supplied to the Buyer by the Supplier (including any part or parts of them) agreed in the Order Confirmation and/or (where applicable) Consignment Goods as agreed in the Consignment Stock Quantity Check.

Non-Ground Vehicle Applications: those applications that do not involve a vehicle that operates while in contact with the ground with or without an on-board human presence.

Order Confirmation: the order acceptance issued by the Supplier to the Buyer setting out and confirming the sale and purchase of the Goods (except for orders of Consignment Goods, (where applicable) being set out in the Consignment Stock Quantity Check) and provision of the Services (if applicable) and any further terms agreed by the Parties.

Parties: the Buyer and the Supplier.

Services: any services agreed in the Order Confirmation to be supplied to the Buyer by the Supplier (including any part or parts of them), including (where applicable) a Training Course as defined in condition 18, unless specified otherwise.

Small Order Charge: fifty pounds sterling (£50.00).

Small Order Threshold: one hundred and fifty pounds sterling (£150.00) or such other threshold as the Supplier may notify or communicate to the Buyer.

Special Non Price List Goods: Goods which are not Standard Price List Goods.

Specification: any specification for the Goods (and/or the Services, where applicable), including any related plans, drawings and/or designs that are provided to the Supplier by the Buyer (and accepted by the Supplier).

Standard Price List Goods: Goods which are listed in the regional price list(s) of the Supplier's manufacturer at the time of order (as such price list(s) may be updated from time to time).

Supplier: Manchester Fluid System Technologies Limited, a company registered in England and Wales under company number 7132552, an authorised distributor for the Swagelok Company (of 29500 Solon Road, Solon, Ohio USA 44139) ("Swagelok").

Supplier Premises: 205 Cavendish Place, Birchwood, Warrington, WA3 6WU.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 References to "include" and "including" are to be construed without limitation.

1.4 Words in the singular include the plural and in the plural include the singular.

1.5 Condition headings do not affect the interpretation of these Conditions.

2. Application

2.1 A quotation for the Goods and/or Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, on or before which point the Buyer must provide the Supplier with a purchase order (or other documentation indicating the Buyer's intention to purchase the Goods and/or Services from the Supplier).

2.2 The purchase order (or other documentation described in condition 2.1 or any verbal order from the Buyer) constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the purchase order (or other documentation) and any applicable Specification submitted by the Buyer are complete and accurate.

2.3 The Buyer's offer (as described in condition 2.2) shall only be deemed to be accepted when the Supplier issues a written acceptance of it in the form of an Order Confirmation (or a Consignment Stock Quantity Check, where applicable), at which point the Contract shall come into existence and be binding on both Parties.

2.4 Subject to condition 2.5 and any variation under condition 2.6, the Contract shall incorporate the Order Confirmation (or the Consignment Stock Quantity Check, where applicable) and these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, Specification or other document) that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Where there is any conflict or inconsistency between these Conditions and the provisions of the Order Confirmation, the provisions of these Conditions shall prevail unless the Order Confirmation expressly varies these Conditions in accordance with condition [2.62-62.6](#).

2.6 These Conditions apply to all of the Supplier's sales of Goods and/or supply of Services and any variation to these Conditions and any representations about the Goods and/or the Services shall have no effect unless expressly agreed in writing by the Supplier. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

- 2.7 No Goods or Services shall be supplied to the Buyer without the corresponding executed Order Confirmation (or the Consignment Stock Quantity Check, where applicable).
- 3. Description**
- 3.1 The Specification and the quantity and description of the Goods and/or the Services shall be as set out in the Order Confirmation (or the Consignment Stock Quantity Check, where applicable).
- 3.2 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force unless expressly set out in the Order Confirmation (or the Consignment Stock Quantity Check, where applicable) and countersigned by the Buyer as being verified and accepted by it.
- 3.3 Where the Buyer requires, as part of the Services in accordance with the Order Confirmation (or the Consignment Stock Quantity Check, where applicable), the Supplier to add materials, parts and/or accessories of any kind to, or to carry out any other work upon, Goods or other property manufactured by a third party, the Buyer confirms that it shall obtain necessary consents and/or approvals from such third party manufacturers prior to instructing the Supplier to carry out such work.
- 3.4 When selecting Goods to be assembled together as part of a system or assembly, the total system design must be considered by the Buyer to ensure safe, trouble-free performance. Assembly and Goods component function, material compatibility and adequate ratings are the responsibility of the Buyer. Proper installation, operation and maintenance are the responsibility of the Buyer. The Buyer shall review all bills of materials, Goods information, drawings and any other documentation associated with any assembly of the Goods to verify that it meets the Buyer's needs.
- 4. Bespoke Systems**
- 4.1 Subject to the request of the Buyer and at the sole discretion of the Supplier, the Supplier may at times facilitate the assembly and/or design of bespoke systems incorporating the Goods for the Buyer (for guidance purposes only). Without prejudice to condition 3.4, the assembly of these systems will be in accordance with the corresponding Specification and/or instructions provided by the Buyer only, and the Buyer acknowledges that it will not, at any time, rely on any advice, suggestion, recommendation or any other form of contribution from the Supplier (whether direct or indirect, oral or written) on any aspect of the bespoke system including the design, functionality, safety, statutory or regulatory compliance or fitness for purpose of any such system.
- 4.2 The Buyer shall be solely liable for the design, functionality, safety, statutory or regulatory compliance or fitness for purpose of any such system referred to in condition 4.1 which is assembled by the Supplier. The Supplier will have no rights of ownership in any form over the bespoke system or any corresponding design provided by the Buyer and the Supplier accepts no responsibility or liability in any form for the bespoke system or its use (both during and following the Supplier's facilitation of the assembly of such system). Notwithstanding anything to the contrary contained herein, the foregoing Buyer's rights with respect to any bespoke system shall not change or limit Supplier's ownership of the Goods which constitute the component parts of such bespoke system (including the Supplier's ownership of the rights in the design of such Goods) or the Supplier's rights to sell such Goods to any other customer.
- 5. Delivery**
- 5.1 The Supplier shall deliver the Goods (in a single delivery or instalments, as it sees fit) during the Delivery Period to the location set out in the Order Confirmation (or in the Consignment Stock Quantity Check, where applicable) or such other location as the Parties may agree at any time after the Supplier notifies the Buyer that the Goods are ready for delivery.
- 5.2 The Buyer may alternatively, subject to the prior agreement of the Parties, elect to collect the Goods from the Supplier's Premises or such other location as may be advised by the Supplier within 5 days of the Supplier notifying the Buyer that the Goods are ready for collection.
- 5.3 Delivery of the Goods (or any instalment of the same) shall be completed on the completion of unloading the Goods (or such instalment of the Goods, as the case may be) at the location referred to in condition 5.1, or where the Buyer has elected to collect the Goods in accordance with condition 5.2, when the Supplier places the Goods at the Buyer's disposal at the Supplier's Premises or such other location as may have been advised by the Supplier. Any dates specified in the Order Confirmation (or in the Consignment Stock Quantity Check, where applicable) for delivery or collection of the Goods and/or provision or completion of the Services are estimates only and time for delivery/completion shall not be of the essence nor made of the essence by notice.
- 5.4 If the Buyer fails to take delivery of any Goods (or any part of them), then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00am on the date which the Goods were delivered to the location referred to at condition 5.1, or, where applicable, on the fifth day following the day on which the Supplier notified the Buyer that the Goods were ready for collection in accordance with condition 5.2; and
 - (b) the Supplier shall have the right, but not the obligation, to store the Goods until the Buyer takes possession, and charge the Buyer for all related costs and expenses (including insurance).
- 5.5 In the event that the Supplier is unable to deliver the Goods within the Delivery Period it shall notify the Buyer accordingly and the Supplier shall be entitled to, at its option, cancel the order (and corresponding Order Confirmation or the Consignment Stock Quantity Check, where applicable) to which such Goods relate provided such cancellation must be notified to the Buyer prior to the expiry of the Delivery Period. The Supplier shall have no liability to the Buyer arising from cancellation of any Goods order pursuant to this condition.
- 5.6 In the event that the Supplier fails to deliver the Goods within the Delivery Period (other than as a result of a force majeure event (as described in condition 15) or the Buyer's failure to provide the Supplier with adequate delivery, collection or any other relevant instructions ("Non-Supplier Fault")) and the Supplier does not exercise its right to cancel the order (and corresponding Order Confirmation or Consignment Stock Quantity Check, where applicable) to which such Goods relate pursuant to condition 5.5, the Supplier shall be liable for any delay beyond the Delivery Period in the delivery or collection of the Goods and/or provision of the Services only to the extent that the delay is the fault of the Supplier and is not as a result of a Non-Supplier Fault. Either party shall be entitled to cancel the order should the Goods not be delivered within 14 days after expiry of the Delivery Period and, in the case of cancellation by the Buyer only, such non-delivery is not as a result of a Non-Supplier Fault.

5.7 Any liability of the Supplier for non-delivery of the Goods or non-provision of the Services shall be limited to replacing the Goods or providing the Services within a reasonable time, subject to the right to cancel the order pursuant to Condition 5.6. The Goods shall be deemed to have not been delivered and the Services shall be deemed to have not been provided upon notification by the Supplier (and until such notification such Goods and/or Services shall be deemed to be delayed).

6. Risk/title/termination

6.1 The Goods are at the risk of the Buyer from the time of delivery as specified at condition 5.3, provided that where the Goods are delivered in instalments, the risk in each instalment of the Goods shall pass on completion of unloading such instalment. The Buyer shall thoroughly inspect the Goods and any instalment of the same upon delivery (both in respect of quantity and any damages or defects).

6.2 The Buyer shall give written notice to the Supplier of any shortfall in the quantity of the Goods within 3 days of completion of delivery of the Goods (or of the final instalment of the Goods, as the case may be) in accordance with condition 5.3 above. If the Buyer fails to give notice in accordance with this condition 6.2, the Goods shall be deemed to have been delivered in full and the Supplier shall have no liability in respect of any alleged shortfall in quantity.

6-26.3 Where the Goods suffer any damage or defect prior to delivery the Buyer is required to:

- (a) where the damage or defect is obvious (or would be obvious to the reasonable buyer), inform the Supplier of such damage or defect at the time of delivery; or
- (b) where the damage or defect is not obvious (nor would be obvious to the reasonable buyer) inform the Supplier within 3 days of becoming aware of any damage or defect that it reasonably believes was caused prior to delivery,

and any failure to comply with the above and condition 6.1 will negate any responsibility of the Supplier for any damage or defect suffered as a result of the process of delivery.

6-36.4 Where the Buyer complies with conditions 6.1 and 6.36.2 and the Supplier agrees that such damage or defect was caused prior to delivery of the Goods, the Supplier will, at its sole discretion, repair or replace such defective and/or damaged Goods within a timescale to be agreed by the Parties.

6-46.5 Title to the Goods shall not pass to the Buyer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) the Services (if applicable); and
- (c) any other goods or services that the Supplier has supplied to the Buyer in respect of which payment has become due.

6-56.6 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods (at no cost to the Supplier) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Supplier's property;
- (c) not destroy, deface or obscure any identifying mark on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Buyer shall promptly provide a copy of the policy of insurance to the Supplier; and
- (e) unless otherwise expressly stated in the Order Confirmation (or the Consignment Stock Quantity Check, where applicable), not carry out any work on or otherwise incorporate the Goods in any other products.

6-66.7 The Buyer may not resell the Goods until ownership of such has passed to it.

6-76.8 If the Buyer fails to make any payment in accordance with the Contract or commits any other breach of the Contract or if any distress, execution or other similar process shall be levied (whether legal or equitable) upon any of the Supplier's Goods or any of the Buyer's assets or if the Buyer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution, order or petition to wind up or appoint an administrator over the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, manager, administrator or administrative receiver shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law then (without prejudice to the Supplier's other rights and remedies):

- (a) the Buyer's right to possession of the Goods shall terminate immediately; and/or
- (b) the Supplier shall be entitled to terminate the Contract (and all other Contracts) with immediate effect by giving written notice to the Buyer.

6-86.9 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.

6-96.10 Until ownership of the Goods has passed to the Buyer, the Buyer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any 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.

6-106.11 On termination of the Contact, howsoever caused, the Supplier's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

6-116.12 For the avoidance of doubt, any property belonging to the Buyer which is in the possession of the Supplier to enable it to carry out the Services (for example, the Specification plans and/or drawings) shall be at the Buyer's risk at all times.

7. Price

7.1 The price for the Goods and the Services shall be the price set out in the Order Confirmation (or in the Consignment Stock Quantity Check, where applicable) plus any Small Order Charge pursuant to condition 8 below.

- 7.2 If additional expense is incurred by the Supplier as a result of the Buyer's instructions or lack of instructions, the Supplier shall be entitled to recover such additional expense from the Buyer as part of the price payable for the Goods and/or the Services.
- 7.3 Prices quoted are subject to revision for errors and/or omissions at any time.
- 7.4 The prices for the Goods and the Services are based on British Pounds Sterling and/or Euros. Should the exchange rates for such currency (as applicable) change against any other appropriate currency appreciably at any time before the date of the Supplier's invoice, the Supplier reserves the right to adjust its prices by an amount proportional to such change.
- 7.5 Unless otherwise agreed in the Order Confirmation (or the Consignment Stock Quantity Check, where applicable), the price for the Goods and/or the Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, labour charges, carriage, insurance, import duties and overhead expenses applicable at the date of delivery or deemed delivery (and as such shall incorporate any increases in the cost of such items prior to such date), all of which amounts the Buyer shall pay in addition when it is due to pay the price of the Goods and/or the Services.
- 8. Small Order Charge**
- 8.1 Where the total price for the Goods and/or the Services (excluding for these purposes any value added tax thereon and all costs or charges in relation to packaging, loading, unloading, labour charges, carriage, insurance, import duties and overhead expenses applicable at the date of delivery or deemed delivery) in any one Order Confirmation is less than the Small Order Threshold, the Small Order Charge shall be payable by the Buyer.
- 8.2 The Buyer shall pay the Small Order Charge in addition to the price, and the provisions of conditions 7 and 10 shall apply to the Small Order Charge as though it is part of the price.
- 9. Carriage**
- 9.1 Without prejudice to the generality of condition 7.5, all carriage of the Goods shall be arranged by the Supplier but shall be at the sole cost of the Buyer unless expressly stated otherwise in the corresponding Order Confirmation (or Consignment Stock Quantity Check, where applicable).
- 9.2 Where Goods are insured during carriage prior to delivery at the Buyer's express request (in accordance with condition 7.2) by the Supplier at the Supplier's discretion, the Supplier shall invoice the Buyer for the costs of such insurance and such costs shall be payable by the Buyer in addition to the price of the Goods. The Supplier's liability in respect of the risks insured shall be limited to the amount received by it under such insurance policy, from which deductions may be made for expenses incurred by the Supplier in relation to the claim.
- 10. Payment**
- 10.1 The Supplier may invoice the Buyer for the Goods after the Order Confirmation (or the Consignment Stock Quantity Check, where applicable) has been issued, before, on or at any time after the completion of delivery.
- 10.2 The Buyer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the Supplier by BACS or a similar method to the account notified by the Supplier to the Buyer. In certain cases, at its sole discretion, the Supplier may accept payment in cash or by cheque or credit card (and the Supplier hereby reserves the right to charge to the Buyer any additional fees incurred as a result, including merchants' fees). Time for payment is of the essence.
- 10.3 Notwithstanding any other provision of the Contract, all payments payable to the Supplier under the Order Confirmation (or the Consignment Stock Quantity Check, where applicable) shall become due immediately on the termination of the Contract.
- 10.4 The Buyer shall make all payments due under the Order Confirmation (or the Consignment Stock Quantity Check, where applicable) in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 10.5 If the Buyer fails to pay the Supplier any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment. The Supplier reserves the right to alternatively claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 10.6 Without prejudice to any other rights or remedies which the Supplier may have, if the Buyer fails to pay the Supplier any sum due pursuant to the Contract, the Supplier may at its option cancel or suspend further deliveries of the Goods or supplies of the Services as required by the Contract without liability to the Supplier.
- 11. Quality of Goods**
- 11.1 Unless otherwise notified in writing by the Supplier to the Buyer prior to the Buyer submitting an order for the Goods (and as subsequently specified in the corresponding Order Confirmation (or the Consignment Stock Quantity Check, where applicable), the Supplier (and Swagelok Company as manufacturer of the Goods) hereby warrant to the Buyer of the Goods that the non-electrical components of the Goods shall be free from defects in material and workmanship for the lifetime of the Goods. All electrical components installed in or on the Goods by the Supplier are warranted to be free from defects in material and workmanship for twelve months from the date of delivery. If the Order Confirmation (or the Consignment Stock Quantity Check, where applicable) contains Goods which are outside the Swagelok range or which the Buyer has requested the Supplier to procure or source from an entity other than Swagelok ("**Non-Swagelok Goods**") then the foregoing warranties shall not apply in respect of any Non-Swagelok Goods, and the Supplier shall use reasonable endeavours to procure, where reasonably possible, that the original manufacturer's warranty for such Non-Swagelok Goods shall apply (to the extent that such warranty is agreed to be passed on to the Buyer).
- 11.2 If any of the Goods do not conform to any of the warranties set out in condition 11.1, the Buyer shall notify the Supplier immediately in writing. The Supplier shall subsequently investigate such Goods as it sees fit and, if it agrees that the Goods do not conform to the warranties set out at condition 11.1, it shall at its sole discretion replace such Goods or the defective part of such Goods (or, in the case of Non-Ground Vehicle Applications only, re-install any parts of such Goods that do not conform to any of the warranties set out in condition 11.1 due to a defect in material or workmanship) provided that, if the Supplier so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is alleged to be defective to the Supplier. Further, any costs or expenses arising directly in relation to such re-installation

shall only be paid or due where they have been approved in advance by the Supplier in writing and to the extent they are reasonable. For the avoidance of doubt, the foregoing shall represent the Buyer's sole and exclusive remedy for a breach of the warranties at condition 11.1, and the Buyer will not be entitled to any other payment in the form of compensation or otherwise.

11.3 If the Supplier complies with condition 11.2 it shall have no further liability for a breach of any of the warranties in condition 11.1 in respect of such Goods.

11.4 The Supplier shall not be liable for any Goods' failure to comply with the warranties set out in condition 11.1 in any of the following events:

- (a) the Buyer makes any further use of such Goods after such time as the Buyer ought reasonably to have known that the Goods did not comply with the warranties set out in condition 11.1;
- (b) the defect arises because the Buyer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and/or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design, specification, instructions or the Specification supplied by the Buyer or any third party acting under the Buyer's direction (including as referred to in condition 4.1);
- (d) the Buyer alters or repairs such Goods without the written consent of the Supplier;
- (e) the relevant defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description and/or the Specification as a result of changes made by Buyer (or Supplier to ensure they comply with applicable statutory or regulatory requirements).

12. Supply of Services

12.1 The Supplier shall supply the Services to the Buyer in accordance with the Specification in all material respects.

12.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

12.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Buyer in any such event.

12.4 The Supplier warrants to the Buyer that the Services will be provided using reasonable care and skill.

12.5 The Buyer shall:

- (a) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (b) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (c) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (d) comply with all applicable laws, including health and safety laws; and
- (e) keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Buyer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

12.6 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 12.6;
- (c) the Buyer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Buyer Default; and
- (d) the Supplier shall be entitled to payment for the Services in accordance with the Order Confirmation despite any such prevention or delay.

12.7 Any and all intellectual property rights for all purposes throughout the world in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Buyer) shall be the property of the Supplier and any copying, adaptation and/or other use of such intellectual property rights without the prior written consent of the Supplier is strictly prohibited.

12.8 The Buyer shall not, without the prior written consent of the Supplier, at any time from the date of an Order Confirmation to the expiry of 24 months after performance of the Services:

- (a) solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee of the Supplier in the provision of the Services; or
- (b) solicit or entice away from the Supplier any person or entity who is, or has been, engaged as a consultant to or supplier of services to the Supplier if such solicitation or enticement causes or is reasonably likely to cause such consultant or supplier to cease supplying or reduce its supply of Services to the Supplier or vary adversely the terms on which it conducts business with the Supplier.

13. Cancellation and Returns

13.1 Standard Price List Goods may, at the Supplier's sole discretion, be returned by the Buyer to the Supplier within 60 days of the delivery of such Goods for a refund of the price paid by the Buyer subject to:

- (a) prior approval for the return of such Goods being obtained from the Supplier's customer service department;
- (b) the Goods being returned in the original undamaged and sealed packaging in which they were delivered to the Buyer;

- (c) the Supplier being satisfied with the state of such Goods following inspection upon return by the Buyer (in line with the Supplier's Quality Assurance Procedures and the requirements of the Goods manufacturer's quality system, each of which are available from the Supplier on request); and
- (d) the Buyer paying a minimum re-stocking/re-inspection charge of 25% of the price of the Goods or £100 whichever is the greater.

13.2 Special Non Price List Goods (including any Special Non Price List Goods ordered on a consignment basis) are at all times non-returnable and all orders for Special Non Price List Goods are non-cancellable.

14. **Limitation of Liability**

14.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer arising from the provision of the Goods and/or the Services in respect of:

- (a) any breach of the Contract;
- (b) any use made or resale by the Buyer of any item which incorporates any product of the Services;
- (c) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (d) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

14.2 ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW WHETHER IN RESPECT OF THE GOODS AND/OR THE SERVICES (SAVE AS OTHERWISE STATED IN CONDITION 11.1 AND CONDITION 12.4) ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.

14.3 Nothing in the Contract excludes or limits the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability.

14.4 Subject to condition [14.214.214.2](#) and condition [14.314.314.3](#), in relation to the provision of the Goods and/or the Services:

- (a) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Goods and/or the Services (where applicable) under the Contract as at the date of such liability arising; and
- (b) neither the Supplier nor Swagelok shall be liable to the Buyer or any third party for: (i) any indirect or consequential losses; or (ii) loss of profit, loss of business, or depletion of goodwill, in each case whether direct, indirect or consequential or otherwise.

15. **Indemnity**

15.1 The Buyer shall indemnify on demand and keep indemnified the Supplier from and against all actions, damage, losses, costs (including legal costs), expenses, demands or liabilities arising out of:

- (a) the assembly and/or supply by the Supplier of any Goods and/or the provision of any Services to the specific design, Specification, instructions and/or order of the Buyer;
- (b) any and all claims made against the Supplier as a result of a breach by the Buyer of condition 3.3;
- (c) any and all claims in connection with any bespoke systems incorporating the Goods as referred to in condition 4.1 which are assembled by the Supplier;
- (d) any damage or loss caused to the Supplier's or any third party's premises or the Supplier's or its employees', agents' or sub-contractors' goods or property, by any Participant or any employee, agent, officer or sub-contractor of the Buyer.

16. **Force Majeure**

The Supplier shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control including without limitation, strikes, failure of a transport network, acts of God, war or national emergency, terrorism, governmental actions, protests or other similar circumstances.

17. **Consignment**

17.1 Where Consignment Goods detailed in the Consignment Stock Quantity Check are supplied to the Buyer, in addition to the provisions of the Contract, the provisions of this condition 17 shall also apply. Where there is any conflict or inconsistency between any other term of these Conditions and this condition 17, the provisions of this condition 17 shall take precedence in respect of the supply of Consignment Goods.

17.2 The Buyer shall store the Consignment Goods in a storage container (such as a cabinet) provided by the Supplier to the Buyer or in such other storage container that the Buyer may itself possess which in the Supplier's opinion is suitable for the storage of the Consignment Goods. In any event the Buyer shall at all times store the Consignment Goods in a clean and secure area and in accordance with any instructions of the Supplier which may be communicated to the Buyer from time to time.

17.3 Where a storage container is provided by the Supplier to the Buyer as set out under condition 17.2, the Buyer agrees that:

- (a) such container shall be used by the Buyer solely for storage of the Consignment Goods and not for storage of any other goods of the Buyer or any third party, without the Supplier's prior written consent;
- (b) such container shall at all times remain the property of the Supplier and shall be promptly returned to the Supplier in the event the Supplier is for any reason no longer supplying the Consignment Goods to the Buyer; and
- (c) the Supplier reserves the right to charge the Buyer for use of such storage container.

17.4 Management of the stock/quantity levels of the Consignment Goods ("**Stock Management**") held at the Buyer's premises shall be carried out quarterly (or more frequently as may be agreed in the Consignment Stock Quantity Check) (the period between such planned or agreed checks being the "**Consignment Stock Count Period**") and shall be carried out by either the Supplier or the Buyer as set out in the Consignment Stock Quantity Check. The Parties agree that the quantity of the Consignment Goods to be supplied by the Supplier to the Buyer may be revised and adjusted by the Parties by mutual agreement in writing at any time on the basis of the Buyer's usage levels of the Consignment Goods in any Consignment Stock Count Period.

17.5 Where the Supplier is responsible for Stock Management, the Buyer agrees that:

- (a) the Buyer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises on reasonable notice where the Consignment Goods are or may be stored in order to inspect the Consignment Goods and count the quantities of the Consignment Goods held by the Buyer;
- (b) where the Supplier is prevented from accessing the Buyer's premises for any reason to carry out Stock Management and/or where the Consignment Goods are found by Supplier to be damaged, the Supplier shall be entitled to recover the full value of the Consignment Goods supplied as set out in the Consignment Stock Quantity Check in respect of the relevant Consignment Stock Count Period;
- (c) following completion of the Stock Management for the relevant Consignment Stock Count Period, the Supplier shall remit to the Buyer details of the number of the Consignment Goods used by the Buyer during such Consignment Stock Count Period. Following receipt of such details, the Buyer shall submit a purchase order to the Supplier to restock the Consignment Goods to the maximum quantity level agreed between the Buyer and the Supplier in the Consignment Stock Quantity Check and the Supplier shall supply such additional Consignment Goods to the Buyer on the same terms of this Contract (and the Buyer shall acknowledge receipt of such additional Consignment Goods upon delivery); and
- (d) the Supplier reserves the right to charge the Buyer a management fee in respect of each Consignment Stock Count Period (such fee shall be set out in the Consignment Stock Quantity Check and shall where payable, be payable in addition to the price of the Consignment Goods).

17.6 Where the Buyer is responsible for Stock Management, the Buyer agrees that:

- (a) the Buyer shall monitor all usage of the Consignment Goods and prepare and retain for the duration of the Contract detailed records of its usage of the Consignment Goods;
- (b) provide the Supplier with a purchase order setting out the quantity of the Consignment Goods used by the Buyer in each Consignment Stock Count Period and the quantity of Consignment Goods to be restocked to the maximum quantity level agreed between the Buyer and the Supplier in the Consignment Stock Quantity Check. Following receipt of such details, the Supplier shall supply such additional Consignment Goods to the Buyer to the maximum quantity level agreed between the Buyer and the Supplier in the Consignment Stock Quantity Check on the same terms of this Contract (and the Buyer shall acknowledge receipt of such additional Consignment Goods upon delivery); and
- (c) the Supplier and its authorised representatives shall have the right, on reasonable notice to the Buyer for the duration of the Contract to visit any relevant premises of the Buyer during normal business hours to inspect and take copies of and extracts from any records held by the Buyer in relation to the Consignment Goods to: (i) determine the level of the Buyer's usage of the Consignment Goods; and (ii) to verify the accuracy of any statements provided by the Buyer in relation to the Consignment Goods pursuant to this Contract.

17.7 Irrespective of whether Stock Management is carried out by the Supplier or the Buyer, upon completion of Stock Management in any Consignment Stock Count Period, the Supplier shall invoice the Buyer for the amount of the Consignment Goods used by the Buyer in the relevant Consignment Stock Count Period (such invoice to be paid by the Buyer in accordance with Conditions 10.2 to 10.6).

17.8 The Supplier reserves the right at any time and for any reason on reasonable notice to the Buyer to enter any premises where the Consignment Goods are or may be stored in order to repossess the Consignment Goods or at the Supplier's discretion to replace the Consignment Goods with alternative stock which in the Supplier's opinion is similar or equivalent to the type of stock previously supplied by the Supplier (and the Buyer hereby grants the Supplier a licence to enter any such premises on this basis).

17.9 Where any of the Consignment Goods are not taken out of consignment by the Buyer within twelve months from the date of delivery of the Consignment Goods, or the Buyer does not afford the Seller access to inspect the Consignment Goods in accordance with Condition 17.6, the Supplier shall be entitled to invoice the Buyer for such Consignment Goods.

17.10 The Parties shall meet at least once each quarter (or more frequently at the Supplier's request) to discuss the Buyer's usage of the Consignment Goods.

18. Training Services

18.1 Where the Services agreed in the Order Confirmation are for the provision of training by the Supplier to the Buyer (a "**Training Course**"), in addition to the provisions of the Contract, the provisions of this condition 18 shall also apply. Where there is any conflict or inconsistency between any other term of these Conditions and this condition 18, the provisions of this condition 17 shall take precedence in respect of the supply of the Training Course.

18.2 The price for the Training Course shall be the price set out in the Order Confirmation and such amount shall be payable in full by the Buyer upon booking the relevant Training Course.

18.3 Should the Buyer wish to cancel a Training Course that the Buyer has booked for any of its employees, agents, representatives or otherwise (an attendee on behalf of a Buyer being a "**Participant**"), written notice of cancellation is required from the Buyer (this includes by letter or email) to the address of the Supplier set out at the front of these Conditions or to the following email address (training@swagelokmanchester.co.uk) and where the Supplier receives such cancellation notice from a Buyer, the following refund policy shall apply:

- (a) upon cancellation within 28 days before the date of the Training Course (not including the date of the Training Course), the Buyer shall be entitled to a 75% refund of the price of the Training Course or may select to book a Training Course on an alternative date, subject to availability;
- (b) upon cancellation within 14 days before the date of the Training Course (not including the date of the Training Course), the Buyer shall be entitled to a 50% refund of the price of the Training Course or may select to book a Training Course on an alternative date, subject to availability;
- (c) upon cancellation within 7 days before the date of the Training Course (not including the date of the Training Course), the Buyer shall not be entitled to any refund of the price of the Training Course and neither shall an alternative Training Course on an alternative date be selected by the Buyer.

For the avoidance of doubt, the Buyer shall not be entitled to any refund of the price of a Training Course in the event of a Participant's absence on the day of the Training Course.

- 18.4 Where a Training Course involves a test or assessment element and a Participant fails such test or assessment and the Participant wishes to repeat the part of the Training Course which he/she failed in order to achieve the relevant Training Course certification, then the Supplier shall be entitled to charge the Buyer for retesting/reassessment of the relevant Participant in such scenario (irrespective of whether such retesting/reassessment takes place on the same day as the Training Course or on an alternative day).
- 18.5 In the event a Participant arrives at any time after a Training Course has started, the Supplier (or its nominated representative) reserves the right not to permit the Participant to participate on the Training Course and no refund of the price of the Training Course shall be made to the Buyer/Participant in such case.
- 18.6 The Supplier reserves the right at its sole discretion to amend the format of a Training Course (including the location and time) or to cancel a Training Course for any reason which it considers necessary including due to circumstances beyond its reasonable control in accordance with condition 16 and/or where the number of attendees booked on a Training Course renders it unviable for the Supplier to run the Training Course.
- 18.7 In the event the Supplier cancels a Training Course prior to its commencement, it shall in the first instance offer the Buyer the opportunity to select another Training Course on an alternative date. Only if the Buyer is unable to select an alternative date, shall the Supplier provide the Buyer with a full refund of the price of the Training Course as soon as reasonably practicable, with no further liability whatsoever arising from such cancellation. For the avoidance of doubt, the Supplier accepts no responsibility for travel, accommodation or other costs which may have been incurred by the Buyer/a Participant in connection with the cancellation of a Training Course by the Supplier.
- 18.8 The Buyer shall procure that each Participant acknowledges and agrees at all times to abide by the directions and instructions of the Supplier (or its nominated representative) whilst attending the Training Course and that they shall not take any photograph, digital record or recording or capture in any way any images whilst at the Supplier's premises. The Supplier reserves the right at any time to remove any Participant from a Training Course if in the Supplier's sole discretion, it considers such action necessary for safety reasons or for the proper delivery of the Training Course or for any other reasonable reason. No refund of the price of the Training Course shall be made to the Buyer if the Participant has acted negligently, maliciously, with wilful misconduct or otherwise without due care and attention for the Supplier or other attendees of the Training Course, so as to cause his/her removal.
- 18.9 Whilst the Supplier takes every care with the provision of a Training Course, the Buyer acknowledges and agrees (and shall procure that each Participant acknowledges and agrees) that the Supplier shall have no responsibility whatsoever for personal accidents, damage, loss and/or theft of personal belongings of any Participant whilst attending a Training Course.
- 18.10 Any and all intellectual property rights for all purposes throughout the world which vest in, derive from or are connected to any materials provided by the Supplier to the Buyer/a Participant in connection with a Training Course shall as between the Buyer/Participant and the Supplier be the property of the Supplier and any copying, adaptation and/or other use of such materials without the prior written consent of the Supplier is strictly prohibited.
19. **General**
- 19.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or otherwise.
- 19.2 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to the Contract shall not affect in any way the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist. The Parties agree that should any term or provision of the Contract be invalid or unenforceable then they shall forthwith enter into good faith negotiations to amend such provision in such a way that, as amended, it is valid and legal and to the maximum extent possible carries out the original intent of the Parties as to the point or points in question.
- 19.3 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 19.4 The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 19.5 The Contract constitutes the entire agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and arrangements of any nature, whatsoever, whether or not in writing relating thereto.
- 19.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law, and the Parties submit to the exclusive jurisdiction of the English courts.