



Registered Office: Unit 2, Atlantic Way, Black Country New Road,
Wednesbury, West Midlands. WS10 7WW
Registered in England No. 342072

CONDITIONS OF SALE

1. Definitions and Interpretation

(a) In these Conditions:-

"Associated Company" means all subsidiary or holding companies (as defined in Section 1159 of the Companies Act 2006) from time to time;

"Buyer" means any person, firm or company placing an order with the Company to whom the Goods are supplied under these Conditions;

"Company" means Monks & Crane Industrial Group Limited, Monks & Crane (Holdings) Ltd or any Associated Company of Monks & Crane (Holdings) Ltd;

"Conditions" means the standard terms and conditions set out in this document;

"Contract" means the contract between the Company and the Buyer for the sale and purchase of the Goods including these Conditions;

"FOB" shall have the meaning given to it in the INCOTERMS 2000.

"Goods" means the goods and/or services (including any instalment of the goods or part of them) which the Company is to supply to the Buyer in accordance with these Conditions;

"UK" means the mainland of Scotland, England and Wales.

(b) Headings used in these Conditions are for the purposes of convenience only and shall not affect the construction or interpretation of these Conditions.

(c) References in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2. Formation of Contract

(a) All quotations, offers and tenders are made and all orders are accepted subject to the following Conditions. Except as otherwise provided in the Conditions, all other terms, conditions or warranties are excluded from any Contract between the Company and the Buyer unless expressly accepted in writing by the Company.

(b) If there is a conflict or inconsistency between these Conditions and any other terms of the Company's quotation, offer, tender or acknowledgement of order, such other terms shall prevail (to the extent of the conflict or inconsistency only).

(c) Quotations issued by the Company shall be available for acceptance for a maximum period of 30 days from the date of issue and may be withdrawn by the Company at any time. The Buyer shall place an order on the basis of the quotation. Acceptance of such order by the Company will be effective where it is made on the Company's order acceptance form and signed by an authorised representative of the Company or on processing of the order by the Company.

(d) These Conditions and the Contract constitute the entire agreement and understanding of the parties in respect of the sale of the Goods by the Company and all and any prior statements, undertakings, documents or promises whether oral, express or implied made by either party shall have neither force nor effect.

(e) For the avoidance of doubt, any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk.

(f) The descriptions and illustrations contained in the Company's literature, price lists and advertisements or otherwise communicated to the Buyer are intended merely to present a general idea of the Goods described, and nothing contained in any of them shall form any part of the Contract.

(g) While every effort will be made to supply Goods in accordance with the quality of samples or description of goods submitted or quoted for, this cannot be guaranteed and no condition or warranty to this effect shall be implied.

(h) Prices are quoted by the Company on the basis of the limitations of liability set out in these Conditions. The Buyer may seek to negotiate a higher limitation of liability and the Company may then quote a revised price to take account of the increased risks to the Company but, for the avoidance of doubt, the Company shall not be obliged to agree any such higher limitation of liability.

3. Price

(a) Unless otherwise agreed in writing, all prices are quoted inclusive of carriage but exclusive of VAT and all other applicable taxes and duties shall be additionally paid by the Buyer.

(b) Where, at the Buyer's request, orders are forwarded by any conveyance involving a higher carriage charge than would be incurred by use of the Company's usual mode of conveyance then the Company reserves the right to charge the Buyer, at its absolute discretion, for such transportation, insurance costs and other charges incurred by the Company in making or arranging such delivery of the Goods to the designated place of delivery.

(c) Where the Company delivers or arranges delivery of the Goods, the Buyer shall be liable to the Company for carriage costs and any and other charges incurred by the Company if vehicles are unduly delayed at the place of delivery.

(d) Subject to Condition 3(e) below, where the words "fixed price" appears in the quotation the price shall be the price appearing therein. In any other case the price shall be deemed to be the Company's list price prevailing at the date of despatch.

(e) The Company, at its discretion, shall be entitled to impose a minimum charge of £50 on any particular order.

(f) The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Company.

(g) The Company reserves the right to amend its price lists, quotations, invoices, credit notes and other documentation to correct errors and no liability whatsoever shall attach to the Company by reason of such amendments or corrections.

4. Terms of Payment

(a) The Company reserves the right at its sole discretion to demand full or partial payment before producing or proceeding further with an order.

(b) Subject to paragraph (a) above and unless otherwise agreed in writing, for deliveries of Goods in the UK, payment of all invoices shall be made by the Buyer to the Company within 30 days of despatch of the Goods by or on behalf of the Company. Payment shall be made without any withholding, deduction, counterclaim or set off whatsoever. The time for payment shall be of the essence of the Contract.

(c) In respect of deliveries of Goods outside the UK, payment of all invoices by the Buyer shall be made in cleared funds into the Company's bank account (as notified to the Buyer from time to time) upon presentation of the Company's invoice, despatch documents and proof of transit arrangements.

(d) Where Goods are delivered by instalments, the Company may invoice each instalment separately and the Buyer shall pay such invoices in accordance with these Conditions.

(e) If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the whole of the price of all Goods bought or agreed to be bought by the Buyer shall fall due and payable without demand, and the Company shall be entitled to:-

- (i) suspend any or all further deliveries without liability under the Contract and any other contract or contracts between the Company and the Buyer then current, without notice;
- (ii) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer);

- (iii) serve notice on the Buyer requiring immediate payment for all Goods supplied by the Company under this and all other contracts with the Buyer whether or not payment is otherwise due;
- (iv) charge the Buyer interest (both before and after any judgment) on the amount unpaid on a daily basis, at the rate of 5% per annum above HSBC Bank plc's base rate from time to time, until payment in full is made; and/or
- (v) treat such failure as a repudiation of the whole Contract by the Buyer and to recover damages for such breach of Contract.

5. Delivery

(a) For deliveries of Goods within the UK where the Company has agreed in writing to deliver the Goods to the Buyer, delivery of the Goods shall be given and taken at the designated place of delivery. In all other cases, delivery of the Goods shall be given and taken at the Company's premises.

(b) For deliveries of Goods outside the UK, unless otherwise agreed in writing, all prices are FOB. to the departure point indicated in the Buyer's order and the Company shall not be responsible for the Goods once the Goods have been delivered to the freight forwarders at the port of departure.

(c) Whilst the Company makes every effort to deliver the Goods on the dates or within the period mentioned in the Contract such dates or period shall be approximate only. The Buyer shall have no right to damages or to cancel the Contract for failure for any cause to meet the delivery time stated, nor shall the Buyer be entitled to make, nor purport to make, time for delivery of the essence of the Contract.

(d) On giving reasonable notice to the Buyer, the Company shall be entitled to deliver any or all of the Goods before the due delivery date.

(e) The Company, whilst making every effort to deliver exact quantities as mentioned within the Buyer's order, shall be entitled to deliver the Goods within a tolerance of plus or minus 10% of the order quantity with the price being amended on a pro rata basis.

(f) The Company shall be entitled to deliver the Goods in one or more consignments unless otherwise expressly agreed in writing. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract, and failure by the Company to deliver one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

(g) The Company shall endeavour to comply with reasonable requests by the Buyer for postponement of delivery of the Goods, but shall be under no obligation to do so. Where delivery is postponed, otherwise than due to default of the Company, then without prejudice to any other rights and remedies available to the Company, the Buyer shall pay all costs and expenses, including a reasonable charge for storage and transport so occasioned.

(h) If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions then, without prejudice to any other right or remedy available to the Company, the Company may:-

- (i) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

(i) Should the Company be prevented from delivering part of the Goods by reason of any cause beyond the Company's reasonable control (including, but not limited to, industrial action, and shortage of materials or labour) the Buyer shall take and pay for such part of the Goods as the Company shall be able to deliver in accordance with the Contract.

(j) The company reserves the right to charge a Small Order / Carriage Charge for orders with a value below a certain value.

6. Risk and Title

(a) Risk shall pass to the Buyer (so that the Buyer is then responsible for all loss or deterioration of the Goods or for any damage occurring):-

(i) if the Company is responsible for delivering or arranging for delivery of the Goods, at the time when the Goods arrive at the place for delivery; or

(ii) in all other circumstances, at the time when the Goods leave the premises of the Company.

(b) Title to the Goods shall only pass to the Buyer if the Buyer has paid to the Company all sums (including any default interest) due from it to the Company under this Contract and under all other contracts between the Company and the Buyer (including any sums due under contracts made after this Contract) whether or not the same are immediately due and payable.

(c) Until such time as the title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property. During such time as the Buyer possesses the Goods with the Company's consent and whilst the Buyer is not subject to an administration order or winding up petition, the Buyer may in the normal course of its business be entitled to use or re-sell the Goods as principal but without committing the Company to any liability to the person dealing with the Buyer.

(d) Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been re-sold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the goods are stored and repossess the Goods.

(e) The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so, all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

(f) The Buyer or any director(s) thereof shall not apply to the Court under paragraph 22 of Schedule B1 ("**BI**") of the Insolvency Act 1986 for the appointment of an administrator without giving immediate notice to the Company. From the date of the said notice the Buyer shall not be entitled to use or re-sell the Goods or remain in possession of any of the Company's Goods and the Company may recover or resell the Goods and enter upon the premises where the Goods are stored in accordance with sub-clause (c) above. The appointment of an administrator without the aforesaid notice or the appointment of an administrator by any other person so entitled to appoint (i.e. a creditor or holder of a qualifying floating charge pursuant to paragraph 14 of B1) shall be deemed to be a fundamental breach of the Contract and, as such, give the Company the immediate right to terminate the Contract without any liability.

7. Warranties

(a) Provided it is entitled to do so, the Company assigns to the Buyer all warranties and guarantees applicable to the Goods which have been given to it by the manufacturer or supplier of the Goods. The Company shall provide such assistance as is reasonable to assist the Buyer to enforce the terms of any such warranties or guarantees against the manufacturer/supplier but (except as provided for under Condition 7(f)), the Company shall have no further liability whatsoever to the Buyer in relation to the Goods.

(b) The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.

(c) The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions or any instructions of the manufacturer or supplier of the Goods (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval.

(d) Except as expressly provided in these Conditions, all warranties, conditions or other terms express, implied, statutory, customary or otherwise are excluded to the fullest extent permitted by law.

(e) The Buyer shall inspect the Goods immediately upon delivery of the Goods. In the event that the Buyer has any complaint relating to a defect in the quality or condition of the Goods or their failure to correspond with any specification, the Buyer shall notify the Company within 5 working

days of the date of delivery of the Goods or where the defect or failure was not apparent on a reasonable inspection of the Goods within 5 working days of the date of discovery of the defect or failure.

(f) Where the Buyer has a valid complaint in relation to the Goods which is notified to the Company in accordance with these Conditions, the Company shall be entitled to repair or replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability whatsoever to the Buyer. For the avoidance of doubt, the Company shall not be obliged to provide any of the aforementioned remedies to the Buyer in respect of defects not apparent on a reasonable inspection if the Buyer has failed to notify any such complaint to the Company within 6 months of the date of delivery of the Goods in question.

(g) Loss, shortages or damage in delivery or any instalment delivery shall not be a ground for termination of the Contract or the remainder of the Contract.

(h) The Buyer agrees to provide the Company with all reasonable assistance necessary to procure the recall of Goods if the Company notifies the Buyer of any concern or defect affecting the Goods. For the avoidance of doubt, the Buyer shall be responsible for its own costs in relation to such circumstances.

(i) The Company shall not be liable for and the Buyer shall indemnify the Company against all costs, claims, liabilities and expenses incurred by the Company arising from any use by the Buyer of the Goods after the Buyer might reasonably to have been aware of a defect.

8. Liability

(a) The Company does not exclude liability arising under Section 12 of the Sale of Goods Act 1979 (good title) (as amended) or for death or personal injury caused by its negligence or for fraudulent misrepresentation.

(b) Notwithstanding clause 8(a) above, the Company shall have no liability to the Buyer (whether for breach of contract, tort (including, but not limited to negligence), or for any breach of statutory duty) for any of the following losses or damages suffered or incurred by the Buyer:-

- (i) any loss of profit;

- (ii) any loss or damage to goodwill;
- (iii) any loss of anticipated savings;
- (iv) any increased costs;
- (v) any loss of revenue; and
- (vi) any special, indirect or consequential losses or damages.

(c) Without prejudice to clauses 8(a) and 8(b) above, the Company's total aggregate liability for all claims made by the Buyer in relation to the Contract (whether arising through a breach of contract, tort (including, but not limited to, negligence) or any statutory duty) shall not exceed the price payable by the Buyer for the Goods giving rise to the claim.

(d) The Buyer shall indemnify the Company for all actions, claims, costs, losses, damages and proceedings (including, without limitation, costs and expenses for legal actions in which the Company may be involved) which the Company may incur, if any claim or claims shall be made against the Company, pursuant to the Consumer Protection Act 1987 ("Act") or otherwise, in which the Goods supplied by the Buyer are either (i) not the defective part of the other product, or (ii) are only rendered the defective part or became defective by reason of acts or omissions of the Buyer or a third party or (iii) are supplied in accordance with a specification or drawings furnished by, or on behalf of, the Buyer. For the purpose of this clause only, "defective" shall be interpreted in accordance with the definition of "defect" contained in Part 1 of the Act.

9. Orders and Specifications

(a) In cases where the Buyer provides drawings, designs, models or specifications for the purposes of enabling the Company to provide Goods according to the Buyer's design, the Buyer shall indemnify the Company and keep the Company indemnified against all actions, claims, costs, expenses, damages or losses arising from any infringement of any patent, trademark, design, copyright or other industrial or intellectual property right of any other person. Furthermore, the Company shall have no responsibility or liability for any defects in the Goods caused by any deficiency in any specification provided by the Buyer.

(b) The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to

enable the Company to perform the Contract. The Buyer shall also be responsible for checking the accuracy of the Company's acknowledgement of order form and shall immediately notify the Company if the acknowledgement of order form is inaccurate in any way.

(c) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements and, in addition, where the Goods are to be supplied to the Buyer's specification, shall be entitled (but not obliged in any way) to make any changes to the specification which do not materially affect their quality or performance.

10. Cancellation and Amendment

(a) No order which has been accepted by the Company may be cancelled or amended by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation or amendment.

11. Intellectual Property

(a) All drawings, documents, confidential records, computer software and other information supplied by the Company, whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to the Company (or the third party) and that the Buyer will not, without the written consent of the Company, give away, loan, exhibit or sell any drawings, documents, records, software or other information or extracts from them or copies of them or use them in any way except in connection with the Goods in respect of which they are issued. In addition, any Intellectual Property Rights including, but not limited to, any design right or copyright created in relation to the Goods will vest in the Company where the Goods are commissioned by the Buyer, whether or not for a separate fee.

12. Insolvency of Buyer

(a) This clause applies if the Buyer, being an individual becomes bankrupt or makes a composition arrangement with his creditors or, being incorporated:-

- (i) goes into liquidation or has an administrator appointed; or

- (ii) becomes insolvent (including without limitation being unable to pay its debts within the meaning of s123 Insolvency Act 1986) or makes a composition or arrangement with its creditors; or
- (iii) has an administrative receiver or a receiver appointed over all or any part of its assets or undertakings; or
- (iv) ceases or threatens to cease, to carry on business; or
- (v) if the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
- (vi) anything analogous to any of the events in 12(a) (i) to (v) inclusive occurs in relation to the Buyer under the law of any jurisdiction in relation to which the Buyer is subject.

(b) In the event of any of clauses 12(a)(i)-(vi), the Company shall be entitled, without prejudice to any other right or remedy available to the Company, to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. Law and Dispute Resolution

(a) The Contract shall be governed by and construed in accordance with the laws of England and, subject to condition 13(b) the parties submit to the exclusive jurisdiction of the English Courts in relation to any matter or dispute connected with the Contract.

(b) Should a dispute arise, the parties shall use reasonable endeavours to promptly negotiate in good faith and settle amicably any dispute that may arise in relation to the Contract or breach thereof within 14 days of notification by one party to the other of such dispute. This shall not be construed as restricting, in any way, the Company's right to take legal action against the Buyer for any amounts outstanding under invoices delivered by the Company to the Buyer.

14. Force Majeure

(a) The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any

failure to perform, any of its obligations under the Contract, if and to the extent that the delay or failure was due to any cause beyond the Company's control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's control; Act of God, explosion, flood, fire or accident; war or threat or war, sabotage, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

15. Bribery

(a) The parties undertake to each other that they:

- i. will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Anti-Bribery Law");
- ii. will maintain an anti-bribery policy;
- iii. will ensure that any person (including but not limited to an employee, agent or subsidiary) who performs or has performed services for or on its behalf ("Associated Person") in connection with this Agreement will comply with this Clause 15;
- iv. have and will maintain in place adequate procedures as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under Anti-Bribery Law;
- v. shall notify the other as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.

16. General

(a) The Contract is entered into between the Company and the Buyer as principals and the Buyer shall not be entitled to assign the benefit or burden of it or of any interest in it without the prior written consent of the Company. The Company shall be entitled to sub-contract the whole or

part of its obligations under the Contract and to assign its interest in the Contract.

(b) No variation to these Conditions shall be binding unless agreed in writing between authorised representatives of the Buyer and the Company.

(c) A failure by the Company to exercise, or a delay in exercising, any right or remedy under this Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which the Company may otherwise have and no single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

(d) Any waiver by the Company of a breach of any of the terms of this Contract or of any default under this Contract shall not be deemed a waiver by the Company of any subsequent breach or default and shall not affect the other terms of this Contract.

(e) If these Conditions shall become void in whole or in part, the other provisions shall remain valid and enforceable and the void provisions shall, where appropriate, be replaced by other corresponding provisions corresponding as closely as possible with the void provisions.

(f) A person who is not a party to the Contract (a "third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any of these Conditions. Any right or remedy of a third party which exists or is available apart from the Act is not affected.