

# GENERAL TERMS AND CONDITIONS OF SALE

## Definition

"The Company" - means Hayley 24/7 Engineering Services Ltd and/or its subsidiary or associated companies for the time being.

"The Customer" – means the person, firm or company which contracts with the Company for the purchase of the goods or the supply of services hereinafter defined.

"The Goods" – means products of any kind manufactured or sold by the Company.

"The Services" – means work of any kind done by the Company.

**1. General.** These terms and conditions apply to the sale of the goods and the supply of the services by the Company and no variation or modification or substitution for these terms and conditions (even though included in or referred to in the document placing the order) shall be binding on the Company unless specifically accepted by the Company in writing.

**2. Duration of quotation and tenders.** The Company reserves the right to withdraw or cancel any quotation or tender without notice at any time prior to acceptance and quotations and tenders shall be deemed to be withdrawn if not accepted by orders from customers within 30 days from the date thereon stated or such longer period as is stated in the quotation and are subject to confirmation at the time of such acceptance.

**3. Acceptance.** The acceptance by the Customer of a quotation or tender must be accompanied by sufficient information to enable the Company to proceed with the execution of the order forthwith in default of which the Company shall be at liberty to amend the same to cover any increase in cost which has taken place after acceptance. The Company reserves the right at any time by notice in writing to the Customer to cancel the contract for the supply of the goods or the services the subject of any quotation in the event of the customer failing to approve forthwith any plans specifications or other matter submitted to the Customer for such approval.

**4. Price variation.** The Company reserves the right to vary the price quoted for the goods or the services to conform with the Company's prices for the goods or services ruling or determined by the Company at the date of despatch or to take account of increase in overheads, cost of production, wages, salaries or cost of materials between the date of order and the date of delivery or to take account of expenses incurred in or resulting from any modification in design made in accordance with the Customers request or from delays caused by the Customers instructions or failure to give instructions.

**5. Drawings etc.** Whilst every effort is made to ensure that descriptions, drawings and other information in correspondence catalogues and all other literature supplied by the Company are accurate the Company shall not be liable for the consequences of any error or omission therein.

**6. Inspection and Tests.** The goods and the services are carefully inspected and where practicable submitted to standard tests at the company works before despatch. If tests other than those specified on the quotation or tender or tests in the presence of the Customer or his representative are required these will be charged for. If after 7 days notice that the Company is ready to conduct the tests there is any delay on the Customers part in attending such test, the test will proceed in the Customers absence and shall be deemed to have been made in his presence and conducted to his satisfaction.

**7. Performance.** The Company will accept no liability for failure to attain any performance figures quoted unless it has specifically guaranteed them, subject to any tolerance specified or agreed to by the Company. Before the Customer becomes entitled to reject the goods or the services the Company is to be given reasonable time and opportunity for rectification of performance. If the Customer becomes entitled to reject the goods or the services the Company will repay to the Customer any sum paid by the Customer to the company on account of the contract price thereof and any sum that may have accrued due to the customer in respect of delay in despatch under the next clause (liability for delay) but that shall be the limit of the Company's liability and the Company shall not be liable for the consequences of any failure to perform.

**8. Free issue materials.** The Company shall be under no liability whatsoever to the Customer for any loss and/or expense arising from the carrying out by the Company of work on the Customers own materials or parts.

**9. Liability for Delay.** Any times quoted for despatch or delivery are from the date of receipt by the Company of a written order to proceed and of all necessary information and drawings to enable the company to put the work in hand and are estimates only and are not of the essence. The time for despatch or delivery shall be extended by a reasonable period if delay in despatch or delivery is caused by instructions or lack of instructions from the Customer or by industrial dispute or by any cause beyond the Company's reasonable control. The Company shall not be liable for the consequences of any delay.

**10. Storage.** If through instructions or lack of instructions from the customer the Customer is unable to despatch the goods or goods to which the services apply to the Customer within 7 days after the date of notification that they are ready for despatch the Company shall be entitled to arrange insurance and storage either at its own works or elsewhere on the Customers behalf and the Customer will pay to the Company its reasonable charge for such insurance or storage.

**11. Damage to or loss of the goods in transit.** No claim for damage in transit or shortage in delivery will be entertained unless a separate notice in writing is given to the carrier concerned and to the Company within three days of delivery followed by a detailed and complete claim in writing within 5 days of delivery. In the event of loss or destruction of the goods in transit, advice of non-delivery must be submitted in writing to the carrier and to the company within 10 days of the date consignment was advised by the Company to the Customer. Subject to claims being made in accordance with this condition being accepted the Company will repair or replace free of charge the goods lost or destroyed or damaged in transit but shall be under no further liability in respect thereof to the Customer.

**12. Consequential loss or damage.** Save as herein expressly provided, the Company shall not be liable for any loss or damage, direct or consequential, whether in contract tort or otherwise of whatsoever nature or to whomsoever or whatsoever caused, arising out of or through the use of any of the goods or arising out of or as a result of the services supplied by it. The Customer shall indemnify the Company against all claims made against the Company by any third party in respect thereof.

## 13. Price and Payment

1. The price quoted is ex-works unless otherwise stated and does not include Value Added Tax. The price payable by the customer will be increased by the Value Added Tax payable in respect of the supply of the goods or services hereunder.
2. The whole of the price is due on the date on which the company gives notice to the customer that the goods or goods to which the services apply are ready for despatch or failing such notice, on the day of delivery. If the Customer does not pay the total price within 30 days of the relevant date, or on the date stated in the quotation, interest shall be payable on the amount outstanding for the period beginning with the expiry of the 30 days and ending with the date of payment at the rate of 4% above the Bank of England base rate per month for the time being.
3. Payments shall be made at the Company's offices in sterling or at such other place in such other currency as the Company may direct.
4. So long as any payment due from the Customer to the Company is outstanding, whether under the same contract or any other contract or transaction the company shall be entitled to withhold delivery of the goods (even if the property therein has passed to the Customer or they have been paid for), to exercise their

lien on any goods to which the services apply, and/or to suspend work on any contract.

5. The title of the goods supplied under the terms of this agreement shall not pass to the Customer until it has paid the whole of the price therefore to the Company. Until such payment,
  - a) The Customer shall be entitled to sell the goods only on condition that it does so as the Company's agent,
  - b) The Customer shall keep the goods as the Company's bailee and shall store them separately from all other goods in its possession in such a way that they are immediately identifiable as the Company's property.
  - c) The Company may by notice in writing terminate the Customer's right to sell the goods or any part thereof and if the Customer is then in possession of the goods or any part thereof the Customer shall forthwith return them to us free of charge and in any event shall cease to be in possession of them with the Company's consent.
  - d) The Customer hereby irrevocably authorises the Company to enter upon its premises for the purpose of repossessing the goods or any part thereof.

**14. Default or Insolvency of the Customer.** If the Customer shall fail to take delivery OF the goods when required or make default or commit a breach of any obligations under this contract or any other order or contract with the Company or if any distress or execution or other legal process shall be levied upon any of the Customers property goods or assets or if the Customer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or being and limited company the Customer shall go into liquidation or suffer appointment of a receiver of its undertaking property or assets or any part thereof, the Company shall at any time thereafter be entitled to determine this contract and without prejudice to its other rights hereunder recover from the Customer any loss on sale of the goods or supply of the services comprised in the contract. Without prejudice to the foregoing the Company may in the event of default on the part of the Customer in paying any sum due under this or any other contract or order suspend delivery of the goods or the execution of the services until such default has been made good. In the case of a contract for the sale of goods by instalments, each instalment shall be deemed to be sold under a separate contract and in the event of the Customer's default in respect of any such instalments the Company shall be entitled to determine the contract with regard to any instalments remaining deliverable.

## 15. Restrictions on Employment of Company Staff.

- 1) During the currency of the supply of services and for a period of one (1) year after the supply of services, neither the Customer nor any associated company or firm of the Customer shall in any capacity whatsoever employ any employee provided by the Company under the supply of services unless the Company has first given its consent to such employment in writing.
- 2) If the Customer gives its consent under paragraph 14(1) hereof, or if the Customer breaches its obligation contained in that paragraph, the Customer shall by way of compensation pay to the Company a sum equal to two hundred and fifty (250) times the hourly rate paid.

**16. "Our Ref."** This column is for our own internal accounting reference only. C & P covers carriage and packing, all packing being not returnable.

**17. Force Majeure.** Should the Company be delayed in or unable to make delivery or execute its servicing owing to any cause whatsoever beyond the Company's control, the Company shall be at liberty to cancel or suspend the contract without incurring any liability for any loss or damage resulting there from.

## 18. Guarantee

- 1) All terms warranties and conditions as to quality, fitness for purpose or otherwise, whether express or implied, statutory or otherwise are excluded.
- 2) In substitution therefore the Company gives the following guarantee:
  - a) For the goods. If the Customer within six (6) calendar months after placing the goods in service or within one (1) year following receipt thereof by the Customer whichever occurs first (receipt is deemed to be five (5) days later than invoice date) gives written notice to the Company that a defect exists in the goods, the Company shall upon being satisfied by examination that such a defect arose solely from faulty workmanship make good such a defect by the replacement or repair (at the Company's sole discretion) of the defective goods.
  - b) For Services. If the Customer within six (6) calendar months following receipt of goods to which the services apply (receipt to be deemed as in a) above gives notice to the Company that the services are defective, the Company shall upon being satisfied by examination that such a defect arose solely from faulty workmanship make good such a defect by the replacement or repair (at the Company's sole discretion).
- 3) The above guarantee does not extend or apply to the goods or part or parts thereof or goods the subject or the services which shall have been repaired, altered, used or neglected so as in the judgement of the Company (whose decision shall be final) to affect the quality, fitness or serviceability. Nor shall the Company be liable for any defect in the design of the goods or the execution of the services to the Customers specification.
- 4) The Company gives no guarantee in respect of any goods or part or parts thereof that are placed in storage for a period in excess of 3 calendar months from date of dispatch unless a recognised storage process has been undertaken and agreed.
- 5) The Company gives no guarantee in respect of any goods or part or parts thereof which shall not be manufactured by the Company but the Customer shall in such cases be entitled to the benefit of such guarantee (if any) as shall be given by the manufacturer.
- 6) Any repaired or new parts supplied by the Company in accordance with the guarantee contained in the above condition will be delivered FOB United Kingdom port unless otherwise agreed and for the purpose of giving notice in accordance with that condition only, delivery shall be deemed to have taken place on the arrival of the goods at their port of destination. In the event of it being necessary for the Company to send any representatives to site to carry out repairs to the goods in accordance with the terms and conditions of the guarantee, the Customer shall be liable to defray reasonable hotel and travelling expenses of any such representatives from the time when they leave their normal place of employment until their return.

**19. Legal Construction.** Unless otherwise agreed in writing the conditions of sale and the contract to which they relate shall in all respects be construed and operate as an English contract subject to English Law.

Hayley 24/7 Engineering Services Ltd  
June 2011

