**JMC PACKAGING LIMITED**

**TERMS AND CONDITIONS OF SALE**

 **1. General**

 1.1 JMC Packaging Limited is herein referred to as ‘the Company’.

1.2 ‘The Buyer’ is the person, firm or company contracting with the Company by placing an order for the purchase of equipment and/or services.

1.3 ‘The equipment’ shall mean the subject matter of the contract between the Company, and the Buyer and where the context permits shall include units, parts, accessories and repairs.

1.4 ‘The services’ means the services (if any) to be provided by the Company to the Buyer under the contract in respect of the installation of the equipment.

1.5 ‘The contract’ or ‘The order’ shall mean the written quotation of the Company accepted by the Buyer for the supply of equipment by the Company or the order by the Buyer accepted in writing by the Company.

1.6 ‘Default’ shall mean any breach of the Company’s obligations under the contract or any fundamental breach or breach of a fundamental term of the contract or any default, act, omission or statement of the Company, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this contract, and in respect of which the Company is legally liable to the Buyer.

1.7 All quotations are made and all orders are accepted on the conditions herein set out which form part of and govern the contract of sale and these conditions shall take precedence over the Buyer’s conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document).

1.8 Any variation to these conditions and any representations about the equipment or services shall have no effect unless expressly agreed in writing and signed by a Director of the Company.

1.9 No order placed by the Buyer shall be accepted by the Company until a written confirmation of order is issued by the Company.

 1.10 The Buyer must ensure that the terms of its order and any applicable specification are accurate.

1.11 Unless otherwise specified in writing the Company will not be bound by any quotation given and shall have power to vary or withdraw a quotation at its discretion.

1.12 No order which the Company has accepted my be cancelled by the Buyer except with the written agreement of the Company and on terms that the Buyer shall indemnify the Company in full against all losses (including loss of profit) costs, damages, charges and expenses incurred by the Company as a result of such cancellation.

 **2. Price**

2.1 The equipment is sold and the services provided at the prices set out in the contract but which will be subject to increase to take account of any adverse changes in the rates of exchange, VAT, prices of raw materials, wages rates, import duties, transport costs, etc.

2.2 The price set out in the contract is exclusive of any VAT or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the equipment and the service.

2.3 The Buyer agrees to be responsible for the reasonable additional costs and expenses of the Company incurred by the Buyer:

1. failing to take delivery when the equipment is ready for despatch or delivery to the Buyer; or
2. making changes to the contract after acceptance

2.4 Any particulars, instructions or materials to be supplied by the Buyer, before the Company can proceed with or complete the contract, must be furnished within a reasonable time to enable the Company to complete and deliver the equipment and provide the services by the agreed date.

 **3. Passing of Risk and Title**

3.1 If the contract provides for delivery to the Buyer’s premises or to a named destination then the risk in the equipment shall (unless otherwise agreed in writing) pass to the Buyer as soon as the equipment crosses the boundary of the Buyer’s premises or of that named destination. If the contract provides for the Buyer to collect the equipment the risk in the equipment shall (unless otherwise agreed in writing) pass to the Buyer as soon as the Company has notified the Buyer the equipment is ready for collection. The Buyer is accordingly put on notice to effect such insurance against such risks as is thought appropriate and, until the property in the equipment has passed to the Buyer, the Buyer agrees that the Company’s interest in the equipment shall be notified to the Buyer’s insurers.

3.2 The property, in the equipment (both legal and equitable) shall not pass to the buyer until the Company has received in full (in cash or cleared funds).

1. The price for the equipment and the services plus all carriage, insurance duties and value added tax payable in connection with the equipment and their delivery and the services and their performance; and
2. all other sums (whether payable under the contract or not) which are or afterwards become due or owing from the Buyer to the Company.

 3.3 Until the property in the equipment has passed to the Buyer, the Buyer shall:

1. hold the equipment on a fiduciary basis as the Company’s bailee;
2. store the equipment (at no cost to the Company separately from all other equipment of the Buyer of third parties and identify them as the Company’s property;
3. not destroy or deface any identifying mark on the equipment;
4. not sell or otherwise dispose of the equipment;
5. keep the equipment insured on the Company’s behalf for the full price of the equipment against ‘all risks’ to the reasonable satisfaction at the company and upon request produce the policy of insurance to the Company; and
6. hold all proceeds of the insurance referred to in condition 3.3(e) on trust for the Company and shall not mingle them with any other money nor pay the proceeds into an overdrawn bank account.
	1. At any time before the property in the equipment has passed to the Buyer the Company may by written notice end the Buyer’s right to use the equipment and the Buyer shall immediately return the equipment to the Company (at the Buyer’s cost). After giving such notice the Buyer shall no longer be in possession of the equipment with the consent of the Company and the Company and/or its representative(s) may enter any premises where the equipment is or is reasonably believed to be and remove the equipment.
	2. Nothing in this Condition 3 shall change the Buyer’s obligation to pay for the equipment.

###  **4. Payment**

4.1 Payment shall be made by the Buyer to the Company in the manner provided in the contract. In the event of the Buyer failing to make any payment within 30 days of the due date then the Buyer shall be liable to pay the Company interest at 3% per annum above the Barclays Bank Plc’s base rate subsisting during the period of such default, calculated from the date of the original invoice until payment both before and after judgement. If the Buyer fails to comply with its obligations under clause 5.4 then payment should be made by the Buyer to the Company on the date of which delivery of the goods or installation of the goods would have taken place (as the case may be) had the Buyer so complied.

4.2 If the contract provides for delivery of equipment by instalments, payments on the due date in respect of each such instalment delivered under the contract shall be a condition precedent as regards the Company’s obligations to deliver further instalments and accordingly the Company shall not be liable for any loss thereby resulting to the Buyer and shall be entitled to withhold such further instalments under the contract as

counter claim or otherwise: aforesaid and have further right (without prejudice to any other available remedies) to cancel any outstanding orders with the Buyer

 4.3 Time for payment shall be of the essence.

4.4 The Buyer shall make all payments due under the contract without any deduction whether by way of set-off, (a) except for any liquidated sum and payable by the Company to the Buyer; or

1. The defect arises because the Buyer fails to follow the Company’s or Manufacturer’s oral or written instructions as to the storage, use or maintenance of the equipment or (if there are none) general trade practice; or
2. unless such deduction has been agreed in advance with the Company, or

unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

 (d)

 **5. Delivery, Completion and Instalments**

5.2 Delivery of the equipment shall be made at the Buyer’s place of business or, if some other place for delivery is agreed by both parties in writing, by delivery of the equipment to that place. Delivery of the equipment may be made at any time of day. The equipment may be delivered by the Company before any specified delivery date upon giving reasonable notice to the Buyer.

5.3 The equipment shall be delivered by such means as the Company thinks fit unless the Buyer has specified in its order the details of the contract with the carrier which it reasonably requires having regard to the nature of the equipment and the other circumstances of the case.

5.4 The Company shall arrange for carriage of the equipment to the delivery point. The carrier shall be deemed to be the Buyer’s agent except for the purposes of the section 44, 45 and 46 Sale of Equipment Act 1979.

5.5 Where the contract provides for the Company to be responsible for the erection, starting up or commissioning of the equipment, the Buyer shall be responsible for off-loading, preparation of the site, siting and connecting the equipment to all requisite mains services and provide suitable protection and storage facilities therefore until completion. Thereafter, the Buyer shall notify the Company that the equipment is ready for commissioning and the Company shall arrange for its employees to attend at the Buyer’s premises as soon as practicable for such purpose.

5.6 The Buyer shall provide unimpeded access for the employees and vehicles of the Company (or its carriers or sub-contractors as the case may be).

5.7 The Buyer shall supply all materials requisite for production tests at the Company’s nominated manufacturing facility(s) or for commissioning of the equipment at the Buyer’s premises and the Company shall be entitled to retain for its own use or further examination such number of samples as it may reasonable require in connection therewith.

 5.8 The contract shall be deemed completed by the Company as follows:

1. in the case of equipment sold for delivery and erection when the equipment has been assembled and (if required) all production and commissioning tests have been completed in accordance with any specifications stipulated in advance by the Buyer, all connections made to the power and other services specified and a person which the Company shall reasonable believe to be duly authorised by the Buyer shall have signed the Company’s installation report confirming the Buyer’s satisfaction with the equipment;

1. in the case of equipment sold for delivery at a name destination: when the equipment has been delivered to that destination, at which time the Buyer is responsible for unloading the equipment and assembling them unless otherwise agreed in writing;
2. in the case of equipment sold ex-works: when the company delivers them to the Buyer’s carrier.
	1. Where the contract provides for delivery by instalment, each instalment shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery of any instalment shall not affect the balance of order or entitle the Buyer to cancel such balance.
	2. If the Buyer fails to take delivery of the equipment when it is ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the equipment to be delivered on time (except because of the Company’s fault):
3. risk in the equipment will pass to the Buyer (including for loss or damage caused by the Company’s negligence);
4. the equipment will be deemed to have been delivered; and (e) (without prejudice its other rights) the Company may:
	1. store or arrange for the storage of the equipment until actual delivery or sale and charge the Buyer for all related cost and expenses (including storage and insurance); and/or
	2. sell the equipment at the best price reasonably obtainable in the circumstances and (after deducting all amounts payable by the Buyer to the Company) 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.

 **6. Specification, Performance, Warranties and Liabilities**

1. Particulars, details, drawings, specifications and other descriptions issued by the Company are intended to be accurate and are so issued in good faith but on the basis of facts supplied to the Company by the ultimate manufacturers. The performance specification in the contract relates to what the equipment can reasonably be expected to achieve in production runs on the basis of proper and consistently careful control and maintenance.
	1. The equipment cannot be tested in every possible combination and operating environment and the company does not represent or warrant that its operation will be uninterrupted or error-free. Accordingly, the Buyer accepts that it is reasonable for the Company to limit its liability under the contract and the Buyer agrees that, except as provided herein, all conditions or warranties, express or implied, statutory or otherwise are hereby excluded but this Condition 6.2 does not in any way purport to exclude the implied condition and warranty contained in Section 12 of the Sale of Equipment Act 1893.
	2. The Company warrants that (subject to the other provisions of these conditions) upon delivery or (if the Company is commissioning the equipment) immediately after commissioning the equipment will: (c) be of merchantable quality; and

(d) be reasonably fit for any particular purpose for which the equipment is being bought if the Buyer has made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Buyer, and the Company will perform the services with reasonable skill.

* 1. The Company shall not be liable for a breach of any of the warranties in Condition 6.3 unless:

(a) The Buyer gives written notice of the defect to the Company and (if the defect is as a result of damage in transit) to the carrier within 7 days of:

* + - * 1. the date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or
				2. the date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection); and

(b) the Company is given a reasonable opportunity after receiving the notice of examining such equipment or workmanship.

* 1. The Company shall not be liable for a breach of any of the warranties in Condition 6.3 if:
		1. The Buyer makes any further use of such equipment after giving such notice; or
		2. The defect arises because the Buyer fails to follow the Company’s or Manufacturer’s oral or written instructions as to the storage, use or maintenance of the equipment or (if there are none) general trade practice or,
		3. The Buyer alters or repairs such equipment without the written consent of the Company or,
		4. The defect in such equipment or services arises from any design defect in any drawing, design or specification supplied by the Buyer.
	2. If the Buyer makes a valid claim against the Company based on a defect in the quality of the equipment or services the Company shall at the Company’s option either:
		+ 1. repair or replace the equipment (or the defective part) or rectify the defective workmanship or refund the price of the equipment at the pro-rata contract rate; or
			2. as the Company has not manufactured the equipment or any part of the equipment which is defective assign to the Buyer such assignable rights (if any) as the Company has against its own supplier of or ultimate manufacturer of the equipment or the relevant part of the equipment.
	3. If the Buyer has ordered equipment incorrectly the Buyer must contact the Company and obtain a ‘Returned Materials Authorisation’ reference which must be quoted on all documentation returning the goods and the Buyer shall make the goods available for collection by the Company and the Company will be entitled to charge 20% of the contract price of the goods for handling.
	4. If the Company complies with Condition 6.6 it shall have no further liability arising out of a defect in the quality of the equipment or services.
	5. Nothing in the contract (including these conditions) shall exclude or limit the liability of the Company’s negligence of any one for whom it is liable.
	6. Except as set out in Conditions 6.2 and 6.9:

* + - 1. the Company shall not be liable to the Buyer for any consequential loss (including loss of profit), costs, production capacity, damages, charges or expenses arising out of the delivery, non-delivery, supply or use of the equipment or performance or non- performance of the services (even if caused by the Company’s negligence); and
			2. the Company’s liability under the contract shall not exceed the amount paid to it for the equipment and services (excluding VAT) by the Buyer.
	1. The Buyer shall indemnify the Company against all claims for infringements or alleged infringements of third parties patented copyright or other industrial property rights, and all costs and expenses incurred in connection therewith, arising from the execution of the Buyer’s order in accordance with the Buyer’s specifications.

 **7 Delays and Force Majeure**

7.1 Delivery dates quoted by the Company are given in good faith but are only intended to be approximate and are for guidance only. Time shall not be of the essence of the contract and the Company shall not be under any liability (whether for consequential loss or otherwise) or whether in contract or in negligence for failing to complete the contract either in whole or in part by any particular date (whether arising out of the Company’s negligence or otherwise) unless expressly agreed in writing, in which case it is agreed that such liquidated damages shall be a genuine pre-estimate of the loss suffered by the Buyer.

7.2 The Company shall make every reasonable effort to complete the contract (but without incurring additional expense) shall not be under liability whatsoever to the Buyer if its due performance is prevented by circumstances reasonably outside its control including (but not limited to) strikes, lock- outs, (including any form of industrial action involving its own employees), war, civil strife, fire, flood, accidents, reduction in or unavailability of power at manufacturing plant, breakdowns of plant or shortage or unavailability from normal sources or channels of supply of raw materials and where the equipment is acquired by or through the Company from other manufacturers or suppliers, wherever located.

 **8. Insolvency. Cancellation, Recovery of Equipment**

8.1 The Company shall be entitled to cancel the contract with the Buyer by written notice (without prejudice to any other rights then accruing) if the Buyer shall

1. suffer a distress or execution to be levied against its equipment
2. have a winding up order made against it or pass a resolution to wind up (other than for the purpose of amalgamation and reconstruction as a solvent company)
3. stop any payment or cease or threaten to cease to carry on its business
4. have a Receiver or administrator appointed to its undertaking or any of its property or assets
5. fail to pay sums due under the contract within 30 days of the due date.
	1. Nothing in this Condition 8 shall prejudice the right of the Company in any such circumstances or in the event of non-payment for the equipment from the Buyer where title has not passed and for this purpose the Buyer expressly gives the Company (and its employees, agents and sub-contractors) all necessary rights and licence to enter the Buyer’s property for the purpose of removing the equipment.
	2. Any termination of the contract pursuant to Condition 8.1 shall be without prejudice to any other rights or remedies a party may be entitled to under the contract or at law and shall not affect any accrued rights or liabilities of either party.

 **9 General**

9.1 Any provision of the contract which is held by any competent authority to be invalid, void, voidable or unenforceable (in whole or in part) shall, to the extent of such invalidity, voidness, voidability or unenforceability be deemed serverable and the other provisions of the contract and the remainder of such provision shall not be affected.

9.2 Failure by the Company to enforce any provision of the contract will not be construed as a waiver of any of its rights under the contract.

9.3 The Company may assign, licence or subcontract all or any part of its rights or obligations under the contract without the Buyer’s consent.

9.4 This Contract is personal to the Buyer who my not assign, licence or sub-contract all or any of its rights or obligations under the contract without the Company’s consent.

9.5 The formation, existence, construction, performance, validity and all aspects of the contract or any term of it are governed by English law and the parties submit to the exclusive jurisdiction of the English courts.