

BARWELL GLOBAL LIMITED **12/2008**
TERMS & CONDITIONS OF PURCHASE – GOODS, WORK AND SERVICES

1. In the following Clauses
 - “the Company” is Barwell Global Limited;
 - “the Supplier” means the person, firm or company specified overleaf to whom this Order is addressed;
 - “Order” means a printed and numbered purchase order form duly signed and issued by an authorised representative of the Company;
 - the “Purchase Conditions” means the terms & conditions herewith set out and any Additional Terms;
 - “Additional Terms” means any further or alternative conditions of purchase specified by the Company on this Order or in any other documentation referred to in this Order, including any references by code letters and numbers.
 - the “Goods” means products, components or materials provided by the Supplier to the Company, Subject to these Purchase Conditions.
 - the “Work” means any work carried out on goods submitted to the Supplier by the Company, subject to these Purchase Conditions;
 - the “Services” means any services excluding Work provided by the Supplier to the Company, subject to these Purchase Conditions;
 - the “Output” means any information, reports, designs, drawings, data or documentation produced by the Supplier for the Company in the course of supplying Goods or carrying out Work and/or Services;
 - the “Supplies” means Goods, Work or Services and, where relevant, Output or any combination thereof.
2. a. Unless otherwise expressly agreed in writing, all contracts for the provision of Supplies to the Company by the Supplier shall be governed exclusively by these Purchase Conditions.
 - b. These Purchase Conditions may be varied only by a supplementary Order or in writing signed by the Company’s buyer or his authorised deputy and not by any act or statement by any other person acting or purporting to act on behalf of the Company.
 - c. The Supplier expressly agrees that these Purchase Conditions shall override and replace any other items and conditions contained in any document or communication issued by the Supplier at any point up to and including the Supplier’s acceptance of the Order.
 - d. Acceptance of the Order by the Supplier shall constitute a contract, which incorporates these Purchase Conditions. Without prejudice to any other mode of acceptance, the commencement by the Supplier of any work on Supplies following despatch to the Supplier of this Order, including work related to samples or tooling, shall comprise acceptance by the Supplier of the Order on these Purchase Conditions and therefore constitute a binding contract.
 - e. This contract shall be construed, governed and performed exclusively in accordance with English Law. The Supplier hereby submits itself to the non-exclusive jurisdiction of the English courts.
3. a. Unless otherwise stated, all prices in this Order are fixed and may not be altered for any reason whatsoever.
 - b. If the Company issues this Order on the basis of provisional or estimated prices the Supplier shall notify the Company of a definitive price as soon as possible thereafter so that the parties can agree a final contract price. Any delay on the part of the Supplier in so notifying the Company may delay payment to the Supplier under this contract.
 - c. The prices on this Order exclude Value Added Tax.
4. a. Unless otherwise previously agreed in writing, the Supplier will render a Statement of Account to the Company at the end of the month in which, as appropriate:
 - the Goods have been delivered to the Company;
 - the Work having been completed on goods, the goods have been delivered to the Company and any related Output delivered to the Company;
 - the Services have been performed and any related Output delivered to the CompanyWhere the contract concerns a combination of Goods, Work or Services, the later of the above events shall apply.
 - b. Unless otherwise previously agreed in writing, payment by the Company shall be made against a correct Statement of Account within two calendar months from the end of the month in which the Account is received. Any delay in payment due to the Supplier’s failure to render such Account or due to errors or omissions in such Account shall not prejudice the Company’s entitlement to any discounts that may be agreed.
5. a. The Supplier agrees that as conditions of this Order:
 - i) the Supplier has the right to sell the Goods, is properly qualified to carry out Work and/or to undertake Services as the case may be such qualifications to include the provision to the Company of any Output resulting from Work and/or Services;
 - ii) in relation to Goods and/or Output, the Supplier has and retains, until property passes to the Company, absolute title free of any lien, charge or other encumbrance and the Company shall enjoy quiet possession thereof;

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- iii) all Supplies shall correspond strictly with description and specification and with any sample, shall be in every respect fit for such purpose as the Company has made known expressly or impliedly to the Supplier, shall be of satisfactory quality which is of a standard not less than that of any supplies previously approved by the Company (if any);
 - iv) the Supplier's obligations under this Clause shall be in no way affected by whether or not the Supplies are ordered by description, patent or trade name, or the Company has examined samples thereof or any defect would have been apparent had it done so;
 - v) the Company shall not be bound to accept and pay for any supplies not specified in or in excess of its requirements as set out in the Order or in the Purchase Conditions nor shall the Company be responsible for such supplies or for tools and equipment therefore left on its premises;
 - vi) the Company will not accept any Goods and/or Output until it has had a reasonable opportunity to examine them to ascertain if they comply with the Order.
- b. If the Company rejects any supplies under the provisions of Clause 5.a.v.) or any Goods and/or Output under Clause 5.a.vi) above, the Company shall not be bound to return them to the Supplier but may, at its option, require the Supplier to collect them promptly or may return them at the risk and expense of the Supplier.
- c. The Supplier shall not make any changes in the design, specification, composition or quantities of Supplies without the Company's prior written consent.
- d. The Company reserves the right by written notice to require changes in the design, specification, composition or quantities, method of carriage or delivery time applicable to Supplies for which changes the Supplier shall be entitled to an equitable adjustment in price and/or in time of delivery.
- e. If the Goods or the Work carried out on goods have a determinable shelf life or are otherwise subject to deterioration, the Supplier shall inform the Company before delivery of the storage conditions recommended for the longest possible shelf life and the minimum duration thereof.
6. a. The Supplier shall, where it reasonably can, transfer or make over to the Company the benefits of any guarantee or warranty given to the Supplier by a third party in respect of any part of the Supplies which is sourced externally. In addition the Supplier warrants that the Supplies fully conform to the specification set out in the Order and or in the Purchase Conditions. If, during the period of twelve months following delivery as defined in Clause 8. below (or such other period as may be specified in the Order), any part of the supplies is found to be defective in materials, workmanship or design (to the extent that the Supplier was responsible for design) the Supplier shall, subject to the provisions of Clause 7. below:
- i) in the case of Goods, at the Company's option, immediately repair or replace the defective part; and/or
 - ii) in the case of Work, Services and/or Output, immediately re-perform free of charge whatever part is defective so that the defect is removed.
- b. The provisions of Clause 6 a. shall also apply to any spare or replacement parts for Goods provided by the Supplier during this contract.
- c. Subject to Clause 7 below, the original warranty period specified under Clause 6 a. above shall continue to apply after any repair, replacement or re-performance have been carried out by the Supplier in response to a warranty claim.
7. a. The Supplier's liability under Clause 6 above shall not extend to defect arising from fair wear and tear, misuse, unauthorised modification, repair or replacement or improper storage, installation or maintenance.
- b. The Supplier shall be liable for any costs incurred by the Company and/or the Company's customers in removing, re-fitting or re-installing Supplies following a valid claim made by the Company under Clause 6 above.
- c. Where the Supplier recommends the use of particular materials, accessories, storage or maintenance procedures, the Company and/or its customers may use alternatives without affecting the warranty set out under Clause 6 above, provided it can be reasonably demonstrated that the use of such alternatives has had no adverse effect on the Supplies in question.
- d. The Supplier expressly agrees that the warranty it provides under Clause 6 above, may be transferred by the Company in the course of and as part of any transfer by the Company of title or possession in the Supplies to another party. Where such transfer concerns only part of the Supplies, the warranty relevant to that part (if any) shall be transferable.
8. a. Unless otherwise specified in the Order or Additional Terms, all Goods, Output and/or goods on which Work has been carried out shall be Delivered Duty Paid (DDP – as defined by Incoterms 1990) to the place of delivery indicated in the Order and/or Purchase Conditions.
- b. In the case of Services, delivery shall be deemed to take place when all the Services have been completed or performed and the relevant Output (if any) has been delivered to the Company in accordance with Clause 8.a. above, whichever date is the later.
- c. The time stipulated for delivery shall be of the essence of the order. Should the Supplier fail to deliver the Supplies within the period specified, the Company (without prejudice to any other remedies to which it may be entitled) reserves the right, subject to the provisions of Clause 9 below, to:
- i) cancel without liability that part of the Order which is undelivered at the end of the specified period, and

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- ii) charge to the Supplier any additional costs, losses or damages which the Company may incur due to the Supplier's failure to deliver at the specified time, including the costs of sourcing the Supplies from an alternative Supplier.
 - d. The Company shall be entitled to recalculate the rate of delivery of Supplies by means of schedules.
9. a. The Supplier shall immediately advise the Company in writing of any delay in the completion of the contract directly arising from force majeure or from other circumstances beyond the Supplier's reasonable ability to foresee and control.
- b. Subject to the Supplier complying with Clause 9.a. above, the Supplier shall not be liable for any costs, losses or damage suffered by the Company directly due to such delay in the completion of the contract.
 - c. If, in the opinion of the Company, the completion of the contract is rendered impracticable because of the events notified to it under Clause 9.a. above, the Company may without liability terminate the contract or extend the time for completion by a period equivalent to the delay caused by such events.
 - d. The Company shall be entitled to rescind any contract for Supplies which have not been delivered in whole or in part or to require the Supplier to suspend delivery for any period if the activities of the Company for which the Supplies were ordered are stopped or seriously disrupted by any causes beyond the Company's control.
10. a. Risk in goods submitted to the Supplier for Work shall pass to the Supplier on receipt of the goods at the Supplier's premises. Risk in the same goods shall pass back to the Company as defined by (DDP) (Incoterms 1990).
- b. The Supplier shall maintain effective insurance cover against loss or damage of the goods submitted for Work up to a value of £100,000 per item while risk in such goods remains with the Supplier as per Clause 10.a. above.
 - c. Without prejudice to any other rights or remedies the Company may have, the Supplier shall, on written demand from the Company, pay to the Company the full sales value of goods submitted for Work or any part thereof which are lost or damaged while subject to Clause 10.a. above, up to a maximum of £100,000 per item.
11. a. It is the responsibility of the Supplier to verify that any goods submitted for Work are in a safe condition. The Supplier shall be wholly responsible for any loss, damage, death or personal injury resulting directly or indirectly from its failure to comply with this Clause.
- b. The Company makes no representation as to and takes no responsibility for any advice it offers and the Supplier is solely responsible for the use of such advice.
12. The Supplier, its employees and agents enter and remain on the Company's premises at their own risk and shall not make any claim against the Company or its employees or agents in respect of any loss or damage howsoever arising, except in the case of death or personal injury wholly attributable to the wilful action, inaction or negligence of the Company, its employees or agents. Whilst on the Company's premises, all employees or agents of the Supplier shall at all times comply with the Company's normal regulations and conditions applying to those premises and shall obey all reasonable instructions given by the Company's authorised personnel.
13. a. The Company reserves the right, on serving reasonable notice to the Supplier, to inspect all or part of the Supplies before delivery to the company but such inspection shall neither relieve the Supplier of any obligation under the contract nor impose any obligation on the Company.
- b. If required by the Company, the Supplier shall submit samples of Supplies to the Company for approval and shall not proceed further with the contract until the Company communicates such approval. The Company may retain the samples until the whole of the Supplies are delivered.
 - c. The Supplier shall not unreasonably refuse permission for the Company's authorised representative to enter any premises under the Supplier's control to inspect any tools, plant, equipment, materials or processes used or to be used by the Supplier in carrying out the contract.
 - d. Any person duly authorised by the Company shall be entitled to remove samples of tools and Supplies and if any changes, adaptations, modifications or improvements are required by the Company to bring the Supplies up to the specification set out in the Order or Purchase Conditions the Supplier shall carry out the same as soon as reasonably possible.
14. a. Where cases or packing of a durable nature are charged extra by the Supplier, they will be invoiced separately at no more than their actual value at the date of the contract and will be credited in full upon their return by the Company to the Supplier or to its carrier. Such cases or packing are to be clearly marked "Returnable" with the Supplier's name.
- b. The Company reserves the right by written notice to require changes in the method or type of packing.
15. The property in the Supplies shall pass to the Company on payment of the price invoiced or on acceptance, whichever first occurs. If the Supplies or any part thereof are rejected by the Company, the property and risk therein shall remain with or thereupon revert to the Supplier.
16. a. The Supplier shall not assign or sub-let this contract or any part of it without the prior written permission of the Company, such permission not to be unreasonably refused. The Supplier shall be wholly responsible for any work

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- assigned or sub-let under this Clause and shall not use the existence of any sub-contract or any terms thereof as a defence to any legal proceedings.
- b. The Company may assign the contract to its subsidiary or associated companies or to other unconnected companies or persons.
17. As required by the Health and Safety at Work Act 1974 all Supplies must be safe and without risk to health when used at work and all necessary instructions for the safe and proper use of Supplies must be provided to the Company prior to delivery. Any exemption to the foregoing must be requested in writing and confirmed by a statement on the Order. In particular, the Supplier must specify any operational or health risk which may arise during handling, storage, use or disposal after use, including any known misuses of the Supplies.
18. The Supplier agrees to indemnify and hold harmless the Company against all losses, expenses and damages which the Company might suffer as a result of any claim or allegation that the Supplies infringe the patents, copyright, registered design or other like protection of any other person or do not comply with a statute, statutory instrument or regulation for the time being in force unless and only to such extent as the Supplies are provided in accordance with a design or specification stipulated by the Company, in which case the Company agrees to indemnify and hold harmless the Supplier against all such losses, expenses and damages which the Supplier might suffer as a direct consequence of following the aforesaid design or specification.
19. a. Unless otherwise provided in the Order or Additional Terms, all inventions, copyrights, design rights and other intellectual property rights arising from the contract are generated by the Supplier in the sole interest of the Company, are fully compensated for by the price of the contract and shall be exclusively owned by the Company. If such rights originate with an employee or sub-contractor of the Supplier, the Supplier shall have these rights transferred to the Company.
- b. The Company shall have the right to publish any Output.
20. a. The Company hereby gives notice that its business is such that any defect in the Supplies may cause serious financial loss and/or physical injury.
- b. The Supplier will at all times maintain product liability insurance cover in respect of the Supplies of a kind and in an amount satisfactory to the Company. The Company shall on demand be entitled to inspect and receive copies of all documents relating to the said insurance cover.
 - c. If any claim is made against the Company by any of its customers or employees or by any third party in respect of injury, liability, claim proceedings, loss or damage of any kind due or alleged to be due to a defect in the materials, workmanship or (save where the same has been stipulated by the Company) design of the Supplies, the Supplier will provide all facilities, assistance or advice required by the Company for the purpose of contesting or dealing with such claim and the Supplier will indemnify and hold harmless the Company against the same and against any damage, loss, cost or expense incurred in connection therewith.
 - d. If any claim in respect of Supplies is made against the Supplier under Clause 20.c. above, the Supplier shall promptly notify the Company and the Company shall have full power and authority (if it thinks fit) to take over the conduct of the matter and to make any disposal or settlement thereof as agent of the Supplier as may seem to the Company in its absolute discretion to be met, proper or convenient.
 - e. The Supplier shall, if so requested by the Company, accept as final and binding the decision of any English or foreign court in relation to such liability, claim, proceeding, loss or damage.
21. a. If the parties to this contract have previously signed the Company's standard Supplier Confidentiality Agreement, that Agreement shall form part of this contract.
- b. In the absence of such an Agreement, each party agrees that it shall hold in strictest confidence any technical, financial or commercial information it acquires from the other party under this contract as well as any information acquired during negotiations prior to this contract. The parties shall use such information solely for the purposes of this contract and shall not disclose such information to any third party, unless:
 - i) such information is in or comes into the public domain; or
 - ii) has been independently developed by the receiving party; or
 - iii) has been received from a bona fide third party entitled to disclose such information; or
 - iv) disclosure is required by law or some similar over-riding obligation.The receiving party agrees to return all information subject to this Clause 21.b. and copies thereof to the supplying party on demand provided always that such return does not hinder the fulfilment of that party's obligations under this contract.
22. a. The Company may by notice in writing to the Supplier terminate this contract forthwith either in its entirety or to the extent that Supplies are undelivered and in any event without prejudice to any other rights the Company may have if:
 - i) the Supplier commits any breach of this or any other contract with the Company PROVIDED that if such breach is remediable the Company has given written notice thereof to the Supplier and the same has not been

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- remedied within seven days of receipt of such notice or, if immediate remedy is not practicable, the Supplier has not taken substantive action within the same seven day period to remedy the breach;
- ii) the Supplier is, or for statutory purposes is deemed or appears to be, unable to pay its debts as they become due or otherwise becomes insolvent;
 - iii) steps are taken to propose any composition with the Supplier's creditors, a receiver is appointed in respect of the whole or any part of the Supplier's assets, or the Supplier enters into liquidation whether voluntary or compulsory;
 - iv) where the Supplier is an individual or a partnership, he or any partner dies or any steps are taken with a view to making a bankruptcy order against him or any partner;
 - v) the Supplier becomes subject to the de facto or de jure control of a third party (other than any such control already in place at the commencement of this contract), the Company having reasonable grounds for regarding such third party control as unacceptable or incompatible with the Company's interests: or
 - vi) outside England and Wales, anything corresponding to any of the above occurs.
- b. Subject to the provisions of Clauses 9.a. and 9.b. above, the Company shall be entitled to recover damages for any disruption to the Company's business due to Supplies delivered to the Company which do not comply strictly with the Order and which consequently require sorting, return, alteration, repair or replacement.
 - c. Should the Company choose to accept rather than reject Supplies that do not comply with the Order, it reserves the right to make an equitable adjustment to the price paid to the Supplier in respect of such Supplies.
 - d. If the Supplier delivers only part of the Supplies due under the Order, the Company may choose not to reject such partial delivery and shall pay only for that part of the Supplies delivered and accepted by the Company, without prejudice to any rights or remedies the Company may retain in respect of undelivered or rejected Supplies.
 - e. If the Company has reasonable grounds for believing that the Supplier may be unable to fulfil its obligations under this contract, the Company may require the Supplier to provide reasonable written evidence that the Supplier can and will fulfil such obligations. If the Supplier fails to provide such evidence within 14 days of receipt of the Company's request, the Company may treat that failure as a material breach and cancel the Order summarily and without liability by notice in writing to the Supplier. The exercise of this Clause 22.e. shall not prejudice the rights of the Company under the Purchase Conditions or the law concerning insolvency.
23. a. Any tools, patterns, plates, designs, drawings, specifications, free issue materials or documents or other items supplied by the Company to the Supplier, or for which the Company has provided the whole or a part of the cost, to enable the Supplier to execute this Order shall become and/or remain the property of the Company (or that of any customer of the Company under whose contract the Company is acting), shall be kept in good condition and be returned to the Company on demand at the Supplier's risk (in the case of items for which the Company has provided only a part of the cost, upon payment of the remainder of such cost) and shall not be used by the Supplier without the Company's prior written agreement for any purpose other than the provision of Supplies to the Company.
- b. The Supplier agrees to insure and indemnify the Company against any loss or damage to such items whilst they are in the custody of the Supplier and to procure that the interest of the Company or the Company's customer, as the case may be, is noted on any insurance policy covering such items.
 - c. The Supplier shall ensure that all such tooling is maintained in good condition and shall immediately replace any such tooling or part thereof which is lost or damaged.
 - d. The Supplier waives any lien it might have, whether at the date hereof or subsequently, on any of the property of the Company or of the Company's customers, as the case may be. This paragraph shall not be construed as a waiver of any other right of recovery which may be available to the Supplier.
 - e. The Supplier shall not without the prior written authority of the Company sell, hire, use or otherwise dispose of, to or for any other person, any Goods produced by the Supplier in accordance with designs, drawings or specifications furnished by the Company or based upon them, or any tooling designed for use in the production of Goods or in the carrying out of Work. The Supplier shall refer to the Company, all enquiries received for such Goods or tooling.
 - f. The Company shall have an option exercisable by written notice to pay not more than the balance of the replacement cost for the outright ownership of any materials, samples, jigs, patterns, tooling or any other item essential to the manufacture of Goods to designs, drawings or specifications furnished by the Company. At the request and cost of the Company the Supplier shall deliver any such essential items to the Company in accordance with the Company's instructions. Within 30 days of receipt of the option notice the Supplier will notify the Company of the amount claimed as the said unrecovered balance and the Company will within 30 days of receipt of such notification pay the amount agreed or, if it is not agreed, the amount fixed by an independent Chartered Accountant acting as expert and selected by the President for the time being of the Institute of Chartered Accountants in England and Wales.
24. The Supplier shall not without the Company's prior written consent advertise or publish the fact that it is or has become a supplier to the Company nor shall it use the Company's logos, tradenames or trademarks without such prior written permission.
25. Failure by either party to enforce any of their rights under this contract shall not be construed as a waiver of those rights.

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26. If the whole or part of the Supplies is required to fulfil a contract for a British or foreign government department that whole or part shall be deemed to be the subject of a sub-contract made under such terms and conditions as may be in force from time to time under the contract for the said government department and any right of determination exercisable by the government department in question as main contractor shall be equally exercisable by the Company in relation to the Supplier as sub-contractor.