DAVIS DERBY

DAVIS DERBY LIMITED CONDITIONS OF SALE

1. DEFINITIONS

In these conditions "the Company" means Davis Derby Limited "the Buyer" means any company firm or individual with whom the Company contracts. " Goods" means the products, materials and/or services to be supplied by the Company. "International Supply Contract" means such a contract as is described in section 26(3) of the Unfair Terms act 1977.

2. ACCEPTANCE OF ORDERS

(a) No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. Unless otherwise agreed in writing by the Company, these conditions shall override any terms and conditions stipulated or referred to by the Buyer in his order or pre-contract negotiations.

(b) No liability whatsoever is accepted where an order has been acknowledged and the completion of the order is prevented or impeded as a consequence of conforming to any statute, rules, regulations orders or requests issued by any government department or other competent authority. This shall also apply to any case of failure, without default on the part of the Company to obtain necessary license, permit or approval for the use or purchase of materials, fuel, or power, the employment of labour, the sale or application of the goods ordered.

(c) Any modifications or changes to specification after full and final instructions to proceed have been given must be in writing and accepted by the Company in writing. Any costs arising from such changes or modifications will be charged to the Buyer.

3. QUOTATIONS

Subject to any agreement to the contrary, the Company's quotations are valid for a period not exceeding 30 days from the date of quotation. Thereafter, they are subject to alteration by reference to any changes in the price of raw materials, rates of wages and other costs of production that may have become known between the date of the Company's quotation and the acceptance of the Buyer's order.

4. PRICES

(a) Selling prices are subject to variations due to changes in wage levels and any other alterations in costs beyond the Company's control, which may take place between acknowledgement and despatch of order.

(b) Where applicable, in the event of the order covering part only of the quantity referred to in any quotation, the Company reserves the right to revise the prices accordingly.

(c) The Company imposes a minimum order charge (details available upon request) in respect of Goods and such charge as may be ruling at date of receipt of order will be applied.

(d) Contract Price Adjustment will be applicable on all service contracts where installation or commissioning work is to be undertaken. The amount of escalation, unless otherwise agreed, will be based upon the BEAMA (British Electrical and Allied Manufacturer's Association) price adjustment formula.

(e) Prices are exclusive of Value Added Tax which will be charged to the Buyer at the appropriate rate ruling at the date of despatch and the Buyer shall pay any and all taxes, duties and other government charges payable in respect of the Goods.

(f) Unless otherwise agreed in writing all prices are ex-works.

5. DRAWINGS AND INSTRUCTIONS

(a) Unless otherwise specified in the Company's quotation all specifications, drawings and particulars of weights and dimensions submitted with the quotation are approximate only, and the descriptions and illustrations contained in the Company's catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein and none of these shall form any part of the contract.

(b) Drawings and all intellectual property rights therein prepared by (or on behalf of) the Company shall remain the property of the Company.

(c) Such instruction books and/or drawings as may be provided for the Buyer's guidance in the use and maintenance of the goods will be in accordance with the Company's standard practice. The supply of specially prepared instruction books or drawings to the Buyer's own requirements is not included and will be charged for as an extra.

(d) The Buyer warrants that all information, specifications, designs and data supplied by him or his agent or representative to the Company shall be accurate and undertakes to indemnify the Company for any loss, damage or expense in respect of any liability arising under or by reason of the provisions the Consumer Protection Act 1987 in relation to the specification or design of Goods which have been manufactured in accordance with a design or specification of the Buyer.

6. TESTS

(a) Goods manufactured by the Company are inspected and are subject to its standard tests.

(b) If special tests, or tests in the presence of the Buyer or its representatives are provided for in the contract, these must be at the Company's works or at a place nominated by the Company and will be charged for as an extra. In the event of any delay by the Buyer

or its representative in attending such tests, after 7 days prior notice the test will proceed and shall be deemed to have been made in the Buyer's or representative's presence.

7. DELIVERY

(a) Should the Company be delayed in or prevented from making delivery of the goods due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, flood, explosions, labour disturbances, trade disputes, damage to or destruction of the Goods, breakdown of machinery, shortages of labour or of raw materials, or Act of God or due to any other cause whatsoever beyond the reasonable control of the Company, the Company shall be at liberty to cancel or suspend the order placed by the Buyer without incurring any liability for any loss or damage arising therefrom.

(b) The delivery stated is for despatch from the Company's works from the date of full and final instructions to proceed and receipt of all necessary information, drawings and specifications to commence manufacture. It is based upon currently prevailing conditions and the Company will endeavour to despatch within this period but cannot accept any liability for failure to do so. Moreover, the Company shall be entitled to defer delivery until any monies due from the Buyer have been received.

(c) Unless otherwise agreed in writing by the Company, the Company shall deliver the Goods by the means most convenient to the Company to the address or addresses specified by the Buyer or (in the event that the Buyer fails to specify any address) to any address at which the Buyer resides or carries on business; the Company shall be entitled to add to the Contract price a reasonable charge for packaging, carriage and delivery; off-loading shall be at the Buyers risk and expense. If the Company agrees that the Buyer may take delivery of the Goods at the Company's premises, the Buyer shall do so within 7 days after receiving notification from the Company that such Goods are ready.

(d) If the contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms at the date of the contract save that in the event of any inconsistency between the Incoterms and any express term of the contract the latter shall prevail. The Company shall be under no obligation to give the Buyer the notice specified in section 32(3) of the Sale of Goods Act 1979.

(e) Partial deliveries may be made at the discretion of the Company and Buyers agrees to accept such deliveries.

8 STORAGE

If the Company does not receive forwarding instructions sufficient to enable despatch to be made within 7 days after notification that the Goods are ready for despatch, or if the Buyer fails to take delivery of the Goods as specified in Clause 7(c) (as the case may be) the Buyer shall be deemed to have taken delivery and risk in the goods shall pass to the Buyer immediately in such event, the Company shall be entitled to invoice the buyer for the goods immediately and the contract price shall become due and payable in accordance with the provisions of clause 10(a).

Without prejudice to the foregoing, the Company may arrange for storage of the Goods at the premises of the Company or elsewhere as the Company may so determine at the cost of the Buyer. The Company's storekeeper's receipt or that of any third party warehouse or a similar depository shall be deemed valid for all purposes including, without limitation, claiming payments under any relevant letter of credit as if it were the Buyer's receipt for a clean bill of lading or such other document as is called for to evidence or effect delivery of the Goods.

9.CLAIMS

(a) Where work has been carried out on material supplied by the Buyer and found to be faulty, the Buyer shall reimburse the Company for the work carried out on the defective material and any other loss the Company may incur as a result of such material being faulty.

(b)(i) No claim for damage in transit or shortage of delivery will be entertained unless the Buyer shall have given to the carrier and the Company written notice of such damage, shortage or loss with reasonabl particulars there of within 4 days of receipt of the Goods.

(ii) No claim for none delivery will be entertained unless the

Buyer reports the same to the

Company within 14 days of the date of despatch of goods. In the case of International Supply Contracts no claim can be entertained unless notification of non-delivery is given in writing within the time period laid down in the terms and conditions of the insurers of the Goods.

The Company's liability, if any, shall be limited to replacing or (in its discretion) repairing such Goods and it shall be a condition precedent to any such liability that the Buyer shall, if so requested, have returned damaged Goods to the Company carriage paid within 14 days of such request. The Buyer shall not be entitled to make any claim against the Company for consequential loss or any other direct loss arising out of such damage, shortage or loss as aforesaid.

(c) Where Goods are purchased for export, the buyer or his representative may inspect the goods at the Company's works before despatch but the Company reserves the right to make a reasonable charge to the Buyer for such inspection.

10. TERMS OF PAYMENT

(a) Unless otherwise agreed, payment shall be Nett and shall be made by the Buyer within 30 days from the date of invoice notwithstanding that property in the goods may not have passed to the Buyer; time for payment shall be of the essence of the contract. In the event of any default by the Buyer in making payment of any amount payable to the Company under any contract with the Company, or any payment not being received when due, the Company reserves the right to either suspend further deliveries in respect of any contract with the Buyer until such payment has been received or, at its option, decline to make any further deliveries and treat the contract as having been repudiated by the Buyer without prejudice to any other rights the Company may have.

(b) Payment of Goods delivered to site is subject to the same terms of payment as specified in sub-clause (a) of this clause.
(c) On those contracts where installation and/or commissioning work is to be undertaken, progress payments will be claimed on the basis of each 25% of the value of the work completed. The progress payment invoice is subject to the same terms if payment as specified in sub-clause (a) of this clause.
(d) Unless otherwise agreed, in writing, the contract price shall be paid in Pounds Sterling.
(e) If the Buyer is base overseas the Buyer shall, if so required by the Company arrange for payment to be made by irrevocable letter of credit established in favour of the Company at the time of placing of the order by the Buyer and confirmed by a first-class British clearing bank acceptable to the Company and maintained valid for cash drawings against presentation of the Company's invoice(s) until final contract payment, but in any case for at least 3 months after scheduled completion of the contract taking into account any agreed extensions. If so required by the Company the Buyer shall arrange extension of such a letter of credit for such period as may be requested by the Company from time to time. All bank charges shall be to the account of the buyer except in the case where the Company requests extension to account for any delay on its part for reasons within its control, in which case the Company shall bear the reasonable cost of such extension.
(f) Without prejudice to any other right it may have, the Company reserves the right to charge interest on late payment of 4% per annum above the base rate quoted by Lloyds TSB from time to time of the daily balance from the due date until payment is made.
(g) No claim by the buyer shall entitle the Buyer to any deduction, retention or withholding of any part of any sums due for payment hereunder. The Buyer shall not be entitled to any set-off of obligations within or between contracts with the Company.

11. CANCELLATION

Cancellation will only be accepted by the Company on the condition that all costs and expenses incurred by the Company up to the time of the cancellation and all loss or damage by reason of such cancellation will be reimbursed by the Buyer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing. The Company reserves the right to charge for any costs incurred due to suspension or deferment of an order.

12. RISK

Save in the case of International Supply Contracts and subject to any agreement in writing by the Company, the risk in Goods which the Company agrees to supply shall pass to the Buyer upon delivery or the date (if earlier) on which the Goods being ready for despatch, delivery is postponed or cancelled as a result of the Buyer's default or at the Buyer's request.

13. TITLE

(i) Title to the goods shall not pass to the Buyer until the Company has received payment in full (in case or cleared funds) for:

(a) the goods; and

(b) any other goods or services that the Company has supplied to the Buyer in respect of which payment has become due.

(ii) Until title to the Goods has passed to the Buyer, the Buyer shall:

(a) Hold the Goods on a fiduciary basis as the Company's bailee;
(b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;
(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
(d) maintain the Goods in satisfactory condition and keep them insured against all risk for their full price from the date of delivery;
(e) notify the Company immediately if it becomes subject to any of the events listed in clause 16.2; and
(f) give the Company such information relating to the Goods as the Company may require from time to time,

But the Buyer may resell or use the Goods in the ordinary course of its business;

(iii) if before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 16.2, or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

(iv) The Buyer shall maintain all appropriate insurances in respect of the Goods from the date or dates on which the risk therein passes to it. In the event of any loss or damage occurring while the Goods remain the property of the Company the Buyer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

(v) The licenses granted under sub-paragraphs (ii) and (iii) above shall be terminable forthwith at any time upon notice by the Company to the Buyer,

(b) In the case of International Supply Contract property in the Goods shall pass to the Buyer upon Delivery.

14. PERFORMANCE

(a) The Buyer assumes responsibility for the capacity or performance of the goods being sufficient and suitable for their intended use.
(b) Any figures quoted by the company for performance are based on the experience of the Company and are such as are expected to be gained on test. The Company accepts no liability for failure to attain any such figures unless they have been specifically guaranteed by the Company in writing in relation to the specific contract (subject to any tolerances specified or agreed to by the Company) and unless such liability has been limited to an agreed sum as liquidated damages without prejudice to the validity and continuation of the contract, provided always that the Company is given reasonable time and opportunity to rectify the performances of the Goods prior to the Buyer becoming entitled to claim such liquidated damages.

15. LIABILITY FOR DEFECTIVE GOODS

(a) Save as otherwise provided in these conditions the Company's liability in respect of any defect in or failure of Goods is limited to replacing or (at its discretion) repairing or paying for the repair or replacement of Goods which, within 12 months of despatch to the Buyer in the case of Goods supplied new and 4 months of despatch in the case of repaired or refurbished Goods, are found to be defective by reason of faulty or incorrect design (other than a design furnished or specified by the Buyer in which event the Company accepts no liability for such design) workmanship, parts or materials (save for materials supplied by or on behalf of the Buyer) and carrying out again any services which the Company has failed properly to perform in accordance with the contract conditions precedent to the Company's liability hereunder shall be that, as soon as reasonably practicable to the Buyer.

(i) shall have given to the Company reasonable notice of the defect failure or error.

(ii) shall have either promptly returned the Goods to the Company at the Buyer's expense or provided authority for the Company's servants or agents to inspect them, as the Company may request.

(b) Goods not manufactured by the Company whether supplied in accordance with the Buyer's specification or otherwise, are specifically excluded from the provisions of sub-clause (a) and the Company accepts no liability for their satisfactory operation. So far as it may the Company will pass on to the Buyer the benefit of such warranties as are given to the Company in respect of such Goods.
(c) Goods which under normal operating conditions may be expected to be replaced within twelve months of commencement of usage are specifically excluded from the provisions of sub-clause (a) hereof and the Company accepts no liability for defects therein save for those which are notified to the Company within four working days of delivery; in such event, the Company's liability shall be limited to repair or replacement of the same.
(d) In particular, but without prejudice to the generality of the foregoing, the Company shall not be liable for the cost of removal of defective goods or the cost of fitting new or repaired Goods.
(e) The Company shall have no liability of whatsoever nature for defects in Goods which are due to fair wear and tear, neglect or improper use, tampering, wrong application or improper handling operation or storage.
(f) Save as provided in these conditions the Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any such defect failure or error as aforesaid.
(g) Where the Company agrees to repair or replace Goods in accordance with the foregoing provisions of this paragraph any time specified for delivery under the contact shall be extended for such period as the Company may reasonably require.
(h) Save for such terms as may be implied in the contract by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 all conditions warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing PROVIDED that if and insofar as any legislation or any order made there under shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term the foregoing provisions of this paragraph will not apply to any such term.

16. BUYER'S INSOLVENCY OR INCAPACITY/TERMINATION BY THE COMPANY

16.1 If the Buyer shall fail to make payment when it becomes due or becomes subject to any of the events listed in clause 16.2, or the Company reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, or if there shall be any breach by the Buyer of any of the terms and conditions hereof, then, without limiting any other right or remedy available to the Company, the Company may defer, cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Company without incurring any liability to the Buyer, and may treat the Contract as determined but without prejudice to the Company's rights to the full purchase price for the Goods delivered and damages for any loss suffered in consequence of such determination. All outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

16.2 For the purposes of clause 16.1, the relevant events are:

(a) The Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

(b) The Buyer commences negotiations with all or any class of its Creditors with a view to rescheduling any of its debts, or makes a Proposal for or enters into any compromise or arrangement with Its creditors [other than (where the Buyer is a company) where these

events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other Companies or the solvent reconstruction of the Buyer];

(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with on or more other companies or the solvent reconstruction of the Buyer;

(d) (being an individual) the Buyer is the subject of a bankruptcy petition or order;

(e) a creditor or encumbrance of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [7] days;

(f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;

(g) (being a company) the holder of a qualifying charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;

(h) A person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;

(i) Any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2(a)to clause 16.2(h) (inclusive);

(j) The Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

(k) The Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

(l) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation

16.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

17. INDUSTRIAL PROPERTY RIGHTS

The Buyer shall indemnify the Company against:

(a) all claims whatsoever in respect of infringements of any letters patent, registered designs, design rights, trade marks, service marks, copyrights or any other right of any kind arising out of any drawings, designs or instructions supplied, given or approved by or on behalf of the buyer.

(b) Any claim for patent infringements based on the use of the Goods for a purpose other than that stated in, or reasonably to be inferred from, the contract.

The Company warrants that to the best of its knowledge and belief the use of the Goods for the purpose other than those excluded by sub-clause (b) above will not infringe any industrial property right as aforesaid but makes no other warranty. The Buyer warrants that it will give the Company the earliest possible notice in writing of any claim being made or action threatened and that, should the Company so request, the Buyer will permit the Company at its own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

18. LIABILITY FOR NEGLIGENCE

(a) The Company shall indemnify the Buyer against liability for personal injury or death of any person and loss of or damage to property caused by the negligent act or omission of the Company or or its employees in the course of their employment provided always that the liability of the Company in respect of loss or damage to property shall not exceed the price payable under the contract for any one event or connected series of events.

(b) Save as hereinafter provided and subject to the provisions of Section 2(1) of the Unfair Contract terms Act 1977 the Company shall not be liable to the Buyer for any damage or for any direct or consequential loss incurred by the Buyer in consequence of any negligence of the Company or negligence or wilful default on the part of its servants or agents in or in connection with supply of any Goods or the design or manufacture thereof or in the provision of any information.

19. THIRD PARTY RIGHTS

A person who is not a party to the Contract shall not have any rights to enforce its terms.

20. VARIATION

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Comapny.

21. GOVERNING LAW

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims,) shall be governed by, and construed n accordance with the law of England

22. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shal have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or is subject matter or formation (including non-contractual disputes or claims).