

TERMS AND CONDITIONS OF REPAIR

1 INTERPRETATION

1.1 In these Conditions:

"Buyer"	means the person who accepts a Written quotation of Primayer for the Services or whose Written order for the Services is accepted by Primayer
"Conditions"	means the standard terms and conditions for repair set out in this document
"Contract"	means the contract for the purchase and supply of the Services
"Goods"	means the goods the subject matter of the Services provided by the Buyer to Primayer
"Primayer"	means Primayer Limited (registered in England and Wales under number 2959100)
"Repairs"	means the repairs to be made to the Goods by Primayer as specified by Primayer in the Written quotation or by the Buyer in any Written order
"Services"	means the repair services (including the provisions of any spare parts) which Primayer is to supply in accordance with these Conditions
"Writing"	includes facsimile transmission and comparable means of communication, but not electronic mail and Written shall be construed accordingly.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 BASIS OF THE SALE

- 2.1 Buyer shall purchase and Primayer shall supply the Services in accordance with any Written quotation of Primayer accepted by the Buyer, or any Written order of the Buyer which is accepted by Primayer, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and Primayer.
- 2.3 Primayer's employees or agents are not authorised to make any representations concerning the Services unless confirmed by Primayer in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

3 ORDERS AND SPECIFICATIONS

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by Primayer unless and until confirmed in Writing by the Primayer's authorised representative.
- 3.2 The Buyer shall be responsible to Primayer for ensuring the accuracy of the terms of any order submitted by the Buyer, and for giving Primayer any necessary information relating to the Services required within a sufficient time to enable Primayer to perform the Contract in accordance with its terms.
- 3.3 The description of the Repairs shall be set out in Primayer's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by Primayer).
- 3.4 No order which has been accepted by Primayer may be cancelled by the Buyer except with the agreement in Writing of Primayer and on terms that the Buyer shall indemnify Primayer in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Primayer as a result of cancellation.

4 PRICE OF THE SERVICES

- 4.1 The price of the Services shall be Primayer's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by Primayer without giving notice.
- 4.2 Primayer reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Services to reflect any increase in the cost to Primayer which is due to any factor beyond the control of Primayer, any change in delivery dates, or specification for the Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Primayer adequate information or instructions.
- 4.3 Unless otherwise agreed in Writing between the Buyer and Primayer, all prices are given by Primayer on an ex works basis, and where Primayer agrees to deliver the Goods otherwise than at Primayer's premises, the Buyer shall be liable to pay Primayer's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to Primayer.
- 4.5 The quoted price includes an assessment charge. In the event the Buyer decides not to proceed with the Service then the assessment charge will still apply.

5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the Buyer and Primayer, Primayer shall be entitled to invoice the Buyer for the price of the Services on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event Primayer shall be entitled to invoice the Buyer for the price at any time after Primayer has notified the Buyer that the Goods are ready for collection or (as the case may be) Primayer has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price for the Services within 30 days of the date of Primayer's invoice, and Primayer shall be entitled to recover the price, notwithstanding that delivery may not have taken place. The time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other righter remedy available to Primayer, Primayer shall be entitled to:
 - 5.3.1 not perform or suspend any further Services to the Buyer (or any part of the Services);
 - 5.3.2 require the Buyer to pay in advance for any Services (or any part of the Services) which have not yet been performed;
 - 5.3.3 appropriate any payment made by the Buyer to such of the Services (or the services supplied under any other contract between

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- the Buyer and Primayer) as Primayer may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.4 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per annum above Barclays Bank PLC base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 DELIVERY

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at Primayer's premises at any time after Primayer has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Primayer, by Primayer delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate and Primayer shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Primayer in Writing. The Goods may be delivered by Primayer in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 If Primayer fails to deliver the Goods for any reason other than any cause beyond Primayer's reasonable control or the Buyer's fault, and Primayer is accordingly liable to the Buyer, Primayer's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price for the Services.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give Primayer adequate delivery instructions at the time stated for delivery (otherwise than by reason of a dispute concerning the Goods where the Buyer is questioning or refusing to pay all or any part of what Primayer claims to be due in respect of the Services or by reason of Primayer's fault) then, without prejudice to any other right or remedy available to Primayer, Primayer may:
- 6.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; and
- 6.4.2 after first contacting the Buyer in Writing to arrange delivery and affording the Buyer a reasonable opportunity to take delivery of the Goods or where Primayer has failed to trace or communicate with the Buyer having taken reasonable steps to do so:
- 6.4.2.1 sell the Goods using the best method of sale reasonably available in the circumstances and (after deducting any amount payable and due to Primayer, storage and selling expenses) either charge the Buyer for any shortfall between the balance and the price for the Services under the Contract or account to the Buyer with the proceeds of sale, as appropriate; or
- 6.4.2.2 dispose of the Goods as Primayer may think fit.
- 6.4.3 The Buyer warrants that it is the owner of the Goods and in the event Primayer sells the Goods, in accordance with clause 6.4.2.1, Primayer shall give good title to any purchaser of the Goods.

7 RISK AND INSURANCE

- 7.1 Risk of damage to or loss of the Goods shall remain with the Buyer whilst the Goods are in the possession of Primayer. Accordingly, the Buyer shall take out and maintain adequate insurance cover with an insurance company of good repute to cover such risk. The Buyer shall on the request of Primayer produce a copy of such insurance policy and a receipt for the payment of the current premium.

8 WARRANTIES AND LIABILITY

- 8.1 Subject to the conditions set out below Primayer warrants the Repairs will be free from defects in material and workmanship for 3 months from delivery.
- 8.2 The above warranty is given by Primayer subject to the following conditions:
- 8.2.1 Primayer shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working and storage conditions, failure to follow Primayer's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without Primayer's approval;
- 8.2.2 Primayer shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Services has not been paid by the due date for payment;
- 8.2.3 the above warranty does not extend to spare parts or equipment not manufactured by Primayer, in respect of which the Buyer shall only be entitled to the benefit of the warranty as is given by the manufacturer to Primayer.
- 8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Repairs shall (whether or not delivery is refused by the Buyer) be notified to Primayer within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Primayer accordingly, the Buyer shall not be entitled to reject the Goods and Primayer shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Services had been delivered in accordance with the Contract.
- 8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Repairs is notified to Primayer in accordance with these Conditions, Primayer shall be entitled, at Primayer's sole discretion, to fulfill its obligations under the warranty in clause 8.1, in respect of any defect in the quality or conditions of the Repairs by re-performing the Services (or the relevant part of the Services) free of charge or refunding to the Buyer the price of the Services (or a proportionate part of the price), but Primayer shall have no further liability to the Buyer.
- 8.5 The Buyer shall be entitled to the benefit of the warranty in clause 8.1 which constitutes Primayer's entire liability in respect of the Services. All other terms, conditions, warranties or other undertakings, whether express or implied by statute, common law, trade usage, custom or otherwise are excluded from and by these Conditions.
- 8.6 Except in respect of death or personal injury caused by Primayer's negligence, Primayer shall not be liable to the Buyer:
- 8.6.1 by reason of any representation (unless fraudulent);
- 8.6.2 in respect of any loss or damage of whatever kind, including (without limitation) to premises or other tangible property (whether arising by reason of the negligence of Primayer, its employees or agents or otherwise); or
- 8.6.3 for any indirect, special or Consequential Loss or damage or other claims for compensation whatsoever (whether arising by reason of the negligence of Primayer, its employees or agents or otherwise) arising out of or in connection with the Services (including any delay in supplying or failure to supply the Services) or use or resale of the Goods by the Buyer. In the event of legal liability being established Primayer shall not be liable to pay damages arising from the aforementioned loss or damage. For the purposes of this condition 8.5 "Consequential Loss" means economic loss or indirect loss or damage of the Buyer including, without limitation, any damage to its business, any loss of anticipated profits, damage to reputation or goodwill, loss of expected future business, damages, costs or expenses payable to any third party or any other indirect losses.
- 8.7 In the event of legal liability being established against Primayer, Buyer's sole rights of redress against Primayer shall be limited to the payment of any claim or claims for damages the total of which will in no circumstances exceed the price paid for the

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Services.

- 8.8 Primayer shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Primayer's obligations in relation to the Repairs, if the delay or failure was due to any cause beyond Primayer's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Primayer's reasonable control:
- 8.8.1 act of God, explosion, flood, tempest, fire or accident: war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.8.2 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes;
- 8.8.3 strikes, lock-outs or other Industrial actions or trade disputes (whether involving employees of Primayer or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery.

9 INSOLVENCY OF BUYER

- 9.1 This clause applies if the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer: or the Buyer ceases, or threatens to cease, to carry on business; or Primayer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to Primayer, Primayer shall be entitled to cancel the Contract or suspend any further Services under the Contract without any liability to the Buyer, and if the Services have been performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10 EXPORT TERMS

- 10.1 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 10.2 Where the Services are supplied to the Goods for export, the provisions of clause 10 shall (subject to any special terms agreed in writing between the Buyer and Primayer) apply notwithstanding any other provision of these Conditions.
- 10.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 10.4 Unless otherwise agreed in Writing, return of the Goods shall be charged to the Buyer.
- 10.5 The Buyer shall be responsible for arranging for testing and inspection of the Services at Primayer's premises before shipment. Primayer shall have no liability for any claim in respect of any defect in the Repairs which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 10.6 Payment of all amounts due to Primayer shall be made by irrevocable letter of credit opened by the Buyer in favour of Primayer and confirmed by a bank acceptable to Primayer or, if Primayer has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to Primayer of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of Primayer at such branch of HSBC Bank in England as may be specified in the bill of exchange.

11 GENERAL

- 11.1 **Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or place of business.**
- 11.2 No waiver by Primayer of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable the validity of the other provisions and the remainder of the provision in question shall not be affected.
- 11.4 The parties acknowledge that it is not their intention that any third party shall be entitled to enforce any term of this agreement which may confer a benefit on that third party, whether any such entitlement would, but for this provision, arise under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

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