

**Doc Ref:** PD-011

**Rev:** Version 3 Rev 2

**Owner:** Sales Dept

**Conditions of Sale and Service**



**Location:** Coatbridge

## **Conditions of Sale and Services for KRG Specialist Engineering Services Ltd**

**The Terms and Conditions in this Section shall apply to all orders placed with the Company subject, in case of Export Sales only, to the modifications and additions specified in Section 2 hereof.**

### **Section 1**

#### **1. Definitions and Interpretation:**

- 1.1 In these Terms and Conditions, unless the context shall otherwise require, the following words and expressions shall have meanings hereinafter mentioned:-
- a) Company means the company from whom the Customer agrees to purchase the Goods referred to overleaf.
  - b) Customer means any person, body of persons, firm or company with whom the Company enters into a Contract for the sale of Goods by the Company.
  - c) Contract means the contract for the sale of Goods pursuant to these Terms and Conditions.
  - d) Terms and Conditions means these terms and conditions of sale and any additional terms and conditions agreed in writing between the Company and the Customer.
  - e) Goods means the goods and/or manufacturing services the subject of the Contract and where the context so admits any instalment thereof.
  - f) Export Sale means a contract involving the export of Goods from the United Kingdom irrespective of the method by which the export is carried out.
  - g) Premises means the Company's premises from which the Goods are despatched to the Customer, or such other place as may be notified by the Company to the Customer in writing.
  - h) Specified means (as the context admits) either stipulated in writing by the Company or stipulated by the customer in writing signed by, or whose acceptance is evidenced by writing signed by, the Company and cognate words shall be construed accordingly.
  - i) Price means the figure(s) specified in the Company's Acknowledgement of Order, or, in the event that no Acknowledgement of Order is issued by the Company, in the Company's Quotation or as otherwise stated by the Company.
  - j) Quotation means a written quotation issued by the Company to the Customer in respect of the sale of Goods by the Company.
  - k) Acknowledgement of Order means written confirmation issued by the Company of the Customer's order.
  - l) Delivery Note means the note issued to the Customer upon Delivery of the Goods.
  - m) Delivery means delivery of the Goods in accordance with these Terms and Conditions.

#### **2. General:**

- 2.1 Orders are accepted by the Company only on these Terms and Conditions (which form part of the Contract between the Company and the Customer) and to the exclusion of all other terms and conditions (unless expressly accepted in writing by the Company).
- 2.2 Without being obliged to give reason therefore, the Company reserves the right to refuse any order, if the Customer's order is inconsistent with these Terms and Conditions. The Company's acceptance of the Customer's order by the issue of an Acknowledgement of Order or Delivery Note or Delivery itself or in the case of orders made over the telephone, verbal acceptance by the Company of the Customer's order, shall constitute acceptance of an offer by the Customer on these Terms and Conditions.
- 2.3 The Contract between the Company and the Customer shall be constituted by the earlier of the issuing by the Company of its Acknowledgement of Order or Delivery following upon the placing of an order by the customer.
- 2.4 Until such time as the Company issues an Acknowledgement of Order or Delivery Note or Delivery takes place or in the case of orders made over the telephone, verbal acceptance by the Company of the Customer's order, there shall not be a binding contract between the Company and the Customer.

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### **3. Quotation:**

- 3.1 A Quotation does not constitute an offer by the Company to supply goods and every acceptance of any Quotation by the Customer shall be deemed an offer by the Customer to purchase goods from the Company and will not be binding on the Company until the Company has accepted such order pursuant to Clause 2 above.
- 3.2 Unless previously withdrawn by the Company, which may be done without prior notice, any Quotation is open for acceptance for thirty days only from the date thereof, unless otherwise agreed by the Company in writing.

### **4. Limits of Quotation:**

- 4.1 The Company's Quotation includes only such Goods as are specified therein. Any Quotation given by the Company shall not place the Company under any duty or liability to the Customer and shall not be deemed to form part of the Contract nor shall it constitute a representation by the Company inducing the Customer to enter into or finalise the Contract.

### **5. Acceptance:**

- 5.1 The Customer's acceptance of the Company's Quotation must be accompanied by sufficient information to enable the Company to proceed with the order forthwith, otherwise the Company shall be at liberty to amend the Quotation prices to cover any increases in cost which have taken place after acceptance.
- 5.2 The Company shall not be bound to accept changes to the order after acceptance but shall endeavour, subject to agreement of any necessary revision to the Price and estimated delivery date, to meet any reasonable request.
- 5.3 The Company only accepts responsibility for compliance with any relevant codes, regulations, standard or rules referred to in the Company's Acknowledgement of Order.

### **6. Credit to the Customer:**

- 6.1 If the Company so requests the Customer shall supply such details as to credit-worthiness as the Company may consider necessary.

### **7. Delivery:**

- 7.1 Any delivery or despatch date included in the Contract shall be accepted as an estimate only, unless otherwise agreed in writing. It is expressly stated that any such date shall not form an essential part of the Contract and the Company shall not be liable for any loss incurred by the Customer by reason of any delays in Delivery caused by factors beyond the Company's reasonable control.
- 7.2 Unless otherwise Specified, Delivery of the Goods shall be made at the Premises. Where any place other than the Premises is specified for Delivery of the Goods, all costs of carriage and insurance and all taxes, duties and imposts of whatever nature and by whomsoever imposed shall be payable by the Customer.
- 7.3 Where Delivery of the Goods is made by the Company to a carrier, the carrier will be deemed to be acting as the Customer's agent and Delivery to the carrier shall be deemed to constitute Delivery by the Company to the Customer. The Customer may authorise the Company in writing to engage a carrier and issue delivery instructions on the Customer's behalf. The Customer acknowledges that the Company shall have no liability if the Goods are lost or damaged in transit.
- 7.5 Where the Contract specifies that the Customer may inspect the Goods prior to Delivery, the Company shall give the Customer 48 hours notice as to when the Goods will be available for inspection. The Customer shall use best endeavours to complete such inspection within 48 hours of the Goods being made available by the Company. Without prejudice to the Customer's rights to reject Goods which are found not to be in accordance with the Contract, the Customer shall take Delivery of the Goods within three working days of the Goods being made available for Customer inspection, whether or not that inspection has been completed.
- 7.6 In the event of the Customer failing to accept and take Delivery of the Goods then the Company shall store them at the Customer's expense.
- 7.7 After the expiry of five days from the date of failure by the Customer to accept and take Delivery of the Goods (and without prejudice to the Company's other rights and remedies) the Company shall be entitled at its sole discretion to apply the aforementioned storage costs to the account of the Customer.

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### **8 Delivery in Instalment:**

8.1 The Company reserves the right to deliver the Goods in instalments. Each Delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of the instalments in accordance with the Contract or any claim by the Customer in respect of any one or more instalment shall not entitle the Customer to treat the Contract as a whole as repudiated.

### **9 Rejection:**

9.1 The Customer shall only be entitled to reject Goods which are found not to be in accordance with the Contract and shall not under any circumstances be entitled to reject Goods after a period of fourteen working days has elapsed from the date of Delivery, or in the case of latent defects within fourteen days after the latent defect has become apparent or should reasonably have been apparent to the Customer up to a maximum of 45 days from the date of Delivery.

9.2 The Customer shall be obliged to give notice in writing to the Company of its reasons for rejection of the Goods. The Company shall (at its sole discretion) either replace any Goods which fail to comply with the Contract or refund any money paid by the Customer in respect of any rejected Goods not replaced by the Company. For the avoidance of doubt the maximum liability of the Company shall be the line item value of the rejected Goods on the Customer's Purchase Order.

### **10 Warranty:**

10.1 The following warranty is given by the Company and is accepted by the Customer as fair and reasonable and as far as is permissible at law to the exclusion of any statutory, common law or contractual rights relating to quality of the Goods supplied in terms of the Quotation.

10.2 Save as provided in this Clause, the Company shall not be under any liability whether in contract, delict (tort) or otherwise in respect of defects in the Goods supplied or for any injury (other than death or personal injury caused by the Company's negligence) damage or loss resulting from such defects.

10.3 The Company shall have no liability in respect of any damage, loss, personal injury or death resulting from the failure to observe any information or advice relating to the Goods supplied or to be supplied by the Company, and the Customer agrees to indemnify the Company in respect of any claim brought against the Company in respect of any such damage, loss, personal injury or death. Nothing in the Contract shall remove liability on the part of the Company for death or injury caused by its negligence.

10.4 The Goods comply with the specifications and description in the Contract subject to agreed tolerance relating to measures and dimensions.

10.5 The Goods are of satisfactory quality in accordance with the specifications in the Contract;

10.6 Save as provided herein, there are excluded from the Contract as far as is permissible at law all representations, conditions, warranties and terms, whether express or implied, as to the quality, condition or fitness for any purpose of the Goods.

10.7 The maximum liability of the Company however arising from or in connection with the sale of the Goods to the Customer (whether for breach of contract, negligence misrepresentation or otherwise) shall be limited to the Customer's Purchase Order line item value of the Goods which fail to comply with the Contract or a refund of any money paid by the Customer in respect of any rejected Goods not replaced by the Company, except in respect of death or personal injury caused by the Company's negligence.

10.8 The Company shall not in any circumstances be liable to the Customer or to any other person for any consequential or indirect loss or damages (including damages for loss of profit) arising directly or indirectly in connection with the sale of the Goods.

10.9 Although every precaution will be taken, the Company will hold no liability for replacement of material and pre-machining of parts(s), prior to the Company's operations, should the part(s) subsequently be scrapped.

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### **11. Prices:**

- 11.1 Prices quoted are nett and do not include the amounts of any VAT or any other sales tax or excise duties paid or payable by the Company which extra charges shall be added to the Price and be payable by the Customer.
- 11.2 The Price stated by the Company in the Contract is based on information available to the Company at the date thereof. If between the date of the Contract and date of Delivery there shall be any variation in the cost of materials, labour or otherwise, the Company may at its absolute discretion adjust the Price to take account of such variation.

### **12 Variation:**

- 12.1 If the Company incurs extra expenditure and/or unutilised manufacturing hours as a result of variation or suspension of work caused by the Customer's instructions or lack of instructions, interruptions, delays, overtime, unusual hours, mistakes or otherwise as a result of the Customer's action or for any other cause whatsoever beyond the Company's control, a reasonable sum in respect of such extra expenditure and/or costs associated with unutilised manufacturing hours shall be added to and form part of the Price and paid for accordingly.
- 12.2 Where the Contract specifies that the Customer shall provide free issued raw or part machined material on a specified date and the Customer fails to provide the material on the agreed date at the specified location, such delay shall be deemed a delay variation under this clause for which the Customer is liable to the Company for the associated costs as described above.

### **13 Statutory and Other Regulations:**

- 13.1 If the cost to the Company of performing its obligations under the Contract shall be increased or reduced by reason of amendment after the date of Quotation, of any law or of any order, regulation or bye-law having the force of law that shall effect the performance of the Company's obligations under the Contract, the amount of such increase or reduction shall be added or deducted from the Price as the case maybe.

### **14. Payment:**

- 14.1 The Price in full including taxes, duties and charges will be due within 30 days of the date of the Company's invoice.
- 14.2 Where the Contract provides for Delivery by instalments and for progress payments the Company shall be entitled to withhold release of any subsequent instalments of Goods until the Customer has paid for every previous instalment released by the Company.
- 14.3 If payment is not made in accordance with this Clause all monies owed by the Customer to the Company in respect of any order shall immediately become due and payment recoverable forthwith.
- 14.4 In the event that payment of the Price in full is not received by the due date, interest thereon shall be chargeable on the outstanding amount at the rate of 4 % per annum above the Bank of England base rate from the due dates until payment is received in full.

### **15 Set Off:**

- 15.1 The Company or any company of which the Company has control (as defined in Section 840 of the Income and Corporation Taxes Act 1988). Or any subsidiary or holding company (as defined in Section 736 of the Companies Act 1985) shall have the right to set off any sum owing to the Company by the Customer or any controlled company or subsidiary or holding company of the Customer, against any sums due by the Company or by any such controlled or holding or subsidiary company of the Company to the Customer.

### **16 Property and Risk:**

- 16.1 This Clause shall apply to all Goods supplied to the Customer.  
For the purposes of this Clause "Associated Company" shall mean any holding or subsidiary company (as defined in Section 736 of the Companies Act 1985) or any subsidiary of such holding company.
- 16.2 Until such time as the Customer has paid in full all monies (including any interest and charges) due by the Customer to the Company and any Associated Company, property to and title in the Goods shall remain with the Company.

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### **16 Property and Risk**

- 16.3 The monies shall not be treated as paid until any instalment of payment has been met on presentation or otherwise honoured in accordance with its terms. Payment shall be applied to invoices in the order in which they are issued and to the Goods in the order in which they were listed on the invoices.
- 16.4 Until payment of all such sums referred to in Clause 16) hereof has been made in full to the Company, the Customer shall store the Goods separately so that they are readily identifiable and clearly marked as the Company's Goods.
- 16.5 If the Customer fails to pay any sums due in terms of Clause 16 hereof by the date for payment, in addition to any other remedies available to the Company under these Terms and Conditions or otherwise, the Company shall be entitled to re-possess the Goods. The Customer will assist and allow the Company to re-possess the Goods and for this purpose, admit or procure entry to the premises in which the Goods are situated.
- 16.6 If the Customer becomes apparently insolvent or compounds with his or its creditors or has a liquidator, receiver or administrator appointed over all or any of its assets or carries out or undergoes any analogous act or proceeding under foreign law prior to property in the Goods passing as aforesaid, or if the Customer is in material breach of these Terms and Conditions the Customer's right to re-sell or otherwise deal in the Goods shall automatically terminate and the Company shall be entitled to re-possess the Goods.

### **16 Property and Risk:**

- 16.7 The Company shall be entitled to enter the premises whether lockfast or otherwise, in which it believes the Goods are situated for the purpose of repossessing and to repossess the Goods.
- 16.7 Notwithstanding the foregoing, the risk of damage to or loss or destruction of the Goods shall pass to the Customer at the date of Delivery.
- 16.8 No claim for shortage of Delivery of the Goods will be accepted by the Company unless separate written notice is given to the carrier concerned (if appropriate) and to the Company within four days of receipt of the Goods, followed by a complete claim within fourteen days of receipt of the Goods.
- 16.9 In the case of non-delivery a separate written notice must be given to the carrier concerned (if appropriate) and to the Company within fourteen days of the Delivery date Specified by the Company.
- 16.10 If liability is accepted by the Company under this Clause the Company will rectify or replace the Goods or pay the Customer such compensation as the Company in its absolute discretion considers to be reasonable.

### **17 Sales to Third Parties:**

- 17.1 Subject always to Clause 16) of these Terms and Conditions, the Customer shall be entitled to resell or use the Goods in the ordinary course of its business.

### **18 Cancellation, termination, lien and damages:**

- 18.1 For the purposes of this Clause "Associated Company" shall mean any holding or subsidiary company (as defined in Section 736 of the Companies Act 1985) or any subsidiary of such holding company.
- 18.2 The Customer's cancellation of any order will be of no effect unless the Company has previously agreed to such cancellation in writing.
- 18.3 Without prejudice to any other right available to it, the Company and any Associated Company and the Customer may terminate the Contract if.
- a) The Customer after due warning from the Company commits or continues to commit a material breach of the Customer's obligations under any contract with the Company,
  - b) Any arrestment or any other legal process is carried out upon any of the Customer's,
  - c) The Customer makes or offers to make any arrangement or composition with creditors or becomes bankrupt or apparently insolvent or is sequestrated. Or if any petition or receiving order in bankruptcy shall be presented against it. If the Customer is a Company, any resolution or petition for winding up the Customer shall be passed or presented or a liquidator, receiver, manager, administrator, judicial factor, or committee shall be appointed over the Customer's undertaking property and assets or any part thereof or the Customer carries out or undergoes any analogous act or proceeding under foreign law.

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### **18 Cancellation, termination, lien and damages:**

18.4 Without prejudice to any other rights available to it, the Company shall in the event of cancellation or termination of the Contract. Be entitled to recover from the Customer the full value of the Contract or cancelled part thereof less any costs of materials or labour that the Company has been able to avoid and where such reduction in the Contract value shall be at the sole discretion of the Company. As such the Company shall be able to recover

a) the quoted value of any work completed on the Customer's behalf at the date of cancellation or termination.

b) the value of any such work begun but not completed at such date, such value to include the cost of material, labour, overheads and a fair profit as determined by the Company's Accountant whose decision shall be conclusive and binding on both parties.

c) the cost of the Goods and materials ordered by the Company pursuant to the Contract for which the Company has to pay.

d) the sale value of manufacturing hours which the Company had scheduled for the delivery of the Contract but is unable to utilise as a result of cancellation, part cancellation or termination.

18.5 The Company shall have in addition to any other remedy, a general lien on all Goods ordered by or belonging to the Customer, which may be under the Company's control (although such Goods or some of them may have been paid for) for all monies due to the Company by the Customer under any order and may at the Company's discretion sell such Goods and apply all monies received in respect thereof in reduction of those monies due to it by the Customer. If the Customer does not discharge the lien within eight days of it being imposed by the payment of all amounts due, the Company shall have the right to sell the Goods subject to the lien and to deduct from the nett proceeds of the sale all amounts due to the Company.

### **18 Cancellation, termination, lien and damages:**

18.6 In the event of industrial or trade disputes, accidents, fire, inclement weather, flood, tempest, war or Act of God or delay in delivery of materials or any cause or contingency whatsoever beyond the reasonable control of the Company but affecting the Company's supply of Goods the Contract may be terminated or suspended by the Company at its sole discretion. Such cancellation or suspension shall not constitute a breach by the Company of its obligations under the Contract and the Company shall not be liable to the Customer for any delay or damage caused by reason of such cancellation or suspension. At any time after a suspension arising under this Clause the Company may exercise its right to terminate the Contract.

### **19. Assignment:**

19.1 The Customer shall not assign any benefit or burden under the Contract without the Company's prior consent in writing which may if given be on such terms as to guarantee or indemnity or otherwise as the Company may think fit. The Company shall be entitled to sub-Contract or assign its rights and/or obligations under the Contract.

### **20. Notices:**

20.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by recorded delivery service or transmitted by facsimile or email other means of communication resulting in the receipt of a written communication in permanent form. If so sent or transmitted to the address of the relevant party as shown on the Contract documents or such other address as one party may by notice to the other have substituted therefore shall be deemed validly and effectively given on a day when in the ordinary course of the means of transmission it would be first received by the addressee in normal business hours.

### **21. Validity:**

21.1 If any paragraph or sub-paragraph (or part thereof) of these Terms and Conditions shall be found to be invalid, ineffective or unenforceable, such invalidity, ineffectiveness or unenforceability shall not effect any other part thereof.

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### **22. Legal Construction:**

22.1 The heading of these Terms and Conditions are for reference only and shall not affect the construction hereof.

22.3 Unless otherwise agreed in writing, the Contract shall be governed and construed in accordance with the Law of Scotland and the parties hereby submit to the non exclusive jurisdiction of the Scottish Courts.

### **23 Waiver:**

23.1 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

## **Section 2**

### **Export Sales**

#### **1. Terms and Conditions:**

1.1 The terms and conditions specified in Section 2 hereof, shall apply to all Export Sales subject to the modifications and additions contained in this section. In the event of any provisions of the terms and conditions in Section 1 and 2 being in conflict, the provisions of this Section 2 will prevail. The latest edition of Incoterms shall be deemed to have been incorporated into, and form part of, the provisions of this Section, where any Export Sale is agreed by reference to an Incoterm, save where inconsistent with the provisions of this Section.

#### **2. Delivery:**

2.1 Clauses 9, 10 and 11 of Section 1 shall apply to all Export Sales with the qualification that, unless otherwise agreed by the Company in writing, or by reference to an Incoterm. Delivery of Goods to a Customer will be deemed to have taken place (and for the avoidance of doubt title to and risk in the Goods shall be deemed to pass to the Customer) on the Delivery of such Goods, to a carrier or other bailee or custodian (whether named by the Customer or not). For the purpose of transmission to the Customer or when the Goods are available for collection by the Customer or his Agent.

2.2 Notwithstanding anything to the contrary herein, the Company will have been deemed to have performed and discharged its duties under the Contract in respect of any Export Sale by delivering the Goods to a carrier or other bailee or custodian (whether named by the Customer or not). For the purposes of transmission to the Customer, and by presenting the shipping documents, (i.e. the invoice and one or other of the consignment note, airway bill, delivery order, non negotiable sea waybill or Delivery Note as the case may be and, where the Export Sale is CIF, the certificate of insurance) to the Customer or to the Customer's order or pursuant to any letter of credit or bill of exchange issued on the Customer's behalf.

2.3 Where the Contract is C.I.F (cost insurance and freight) or C&F (cost and freight) the Company has the absolute discretion to select the method, route and conditions for carriage of the Goods and where CIF the Company has absolute discretion to select the insurer and conditions of the insurance cover.

#### **3. Licences:**

3.1 The Customer warrants that, prior to shipment of the Goods, all regulations governing import of the Goods into the country of destination will have been complied with and all such licences as may be necessary to import the Goods will have been obtained.

3.2 The Company will make such export declarations as it may consider reasonably necessary and such further declarations as the Customer may lawfully request at the Customer's expense and on the Customer's behalf but if the Customer does not provide the necessary instructions as to how the Goods are to be declared, they will be declared by the Company as it shall deem fit and the Customer shall be responsible for the fines or other charges imposed as a result of errors or incorrect declarations.

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### **4. Storage:**

- 4.1 Without prejudice to the Company's other rights and remedies, if the Company is unable by reason of the Customer's instructions to deliver all or any part of the Goods in accordance with the Contract, the Customer shall pay all demurrage costs arising from such non delivery and procure and pay the cost of suitable storage and insurance, such insurance shall be on terms as the Company may reasonably require.
- 4.2 If the Customer does not take delivery or procure such storage and insurance the Company shall be entitled to itself procure storage (either at the Premises or elsewhere) and insurance and all charges for storage and insurance and demurrage shall be payable by the Customer in addition to the Price payable pursuant to Clause 6 of this Section.

### **5. Packing:**

- 5.1 Unless otherwise specified the cost of packaging in the case of an Export Sale shall be included in the Price.

### **6. Payment:**

- 6.1 In an Export Sale the Price shall be paid to the Company against presentation of the shipping documents referred to in Clause 2 of this Section to the Customer or to the Customer's order. Or in accordance with any letter of credit or bill of exchange issued on the Customer's behalf or when the Goods are available for collection by the Customer or his Agent.
- 6.2 Payment shall be made by irrevocable letter of credit or bill of exchange or by any other suitable method which the Company may require, including telegraphic transfer. Otherwise Clause 14 of Section 1 remain in full force and effect; save that the due date for payment in an Export Sale shall be forthwith on presentation of such shipping documents unless the Company shall agree in writing to the contrary.

### **7 Property and Risk:**

- 7.1 Unless otherwise agreed by the Company in writing, or by reference to an Incoterm, title to and risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery of the Goods to a carrier or other bailee or other custodian (whether named by the Customer or not) for the purpose of transmission to the Customer.
- 7.2 The periods given in Clause 16 of Section 1 for notification may be amended by the Company at its sole discretion having due regard to the particular circumstances of any Export Sale.
- 7.3 The Customer hereby agrees that the Company shall not be obliged to give notice to the Customer under Section 32 (3) of the Sale of Goods Act 1979.

### **8. Warranty:**

- 8.1 Save as provided in Clause 10 of Section 1, the Company shall not be under any liability whether in contract, delict (tort) or otherwise, in respect of defects in Goods supplied or for any injury, damage or loss whatsoever resulting from such defects or from any work done in connection therewith, whether or not such injury damage or loss arises as a result of the Company's negligence; always provided that the Company shall remain liable for any death or injury of or to persons caused by its own negligence or the negligence of those for whom it is vicariously liable.

### **9 Law and Jurisdiction:**

- 9.1 It is expressly agreed and stipulated that the Contract relating to an Export Sale is to be governed and construed in accordance with the Law of Scotland and any dispute arising in respect of the Contract relating to an Export Sale shall be subject to the exclusive jurisdiction of the Scottish Courts to the jurisdiction of which the parties hereby submit. The provisions of the United Nations Convention on Contracts for the International sale of Goods are hereby excluded in respect of the Contract relating to an Export Sale.