1. DEFINITIONS

1.1 “Buyer” shall mean the individual or company placing the order.
1.2 “Seller” shall mean Bernhard & Co. Limited
1.3 “Purchase Order” shall mean the purchase order issued by the Buyer to the Seller for the supply of the Goods and/or Services.
1.4 “Contract” shall mean the Purchase Order these Conditions, the Specification(s), the Drawings and all other documents which are incorporated by reference made in the Purchase Order.
1.5 “Goods” shall mean all articles and materials supplied under the Contract.
1.6 “Services” shall mean all services performed under the Contract.
1.7 “Conditions” shall mean these Terms and Conditions of Sale.
1.8 “Intellectual Property Rights” shall mean without limit patents, copyright, registered designs, design rights, trademarks, trade secrets, unpublished know how, topographic rights and other rights of a like nature.
1.9 “Specifications” shall mean the specifications for the Goods and/or Services referenced on the Purchase Order.
1.10 “Drawings” shall mean the drawings for the Goods and/or Services specified on the Purchase Order.
1.11 “Contract Price” shall mean the price for the Goods and/or Services specified in the Purchase Order.
1.12 “Amendment” shall mean any variation of the requirements of the Contract.
1.13 “Party” shall mean either the Buyer or the Seller.
1.14 “Parties” shall mean the Buyer and the Seller.
1.15 In this Contract, except where the context requires otherwise:
1.15.1 references to statutory provisions are references to those provisions in force in the United Kingdom at the date of this Contract and any Amendments that may be enacted;
1.15.2 words denoting any gender include all genders and words denoting the singular include plural and vice versa;
1.15.3 a reference to a person includes a reference to a body corporate, association or partnership;
1.15.4 references to conditions, sub-conditions, paragraphs and schedules are to those in this Contract; and
1.15.5 headings, sub-headings are included for convenience only and shall not affect the construction or interpretation of this Contract.

2. GENERAL SCOPE OF CONTRACT

2.1 Unless otherwise agreed in writing, these Conditions apply exclusively to each Contract for the purchase of Goods and/or Services by the Buyer from the Supplier.
2.2 The Seller shall supply and the Buyer shall accept and pay for the Goods and/or Services in accordance with the terms of the Contract.

3. PRECEDENCE OF DOCUMENTS

3.1 If there is any inconsistency between provisions of the Contract, a descending order of precedence, where such documents exist, shall be accorded to:
3.1.1 the Conditions
3.1.2 the Specifications
3.1.3 the Purchase Order including any special requirements or instructions on the face of the Purchase Order.
3.1.4 any special or specific terms and conditions incorporated by express reference as part of the Contract.
3.1.5 the Drawings
3.1.6 and other document incorporated by express reference as part of the Contract.

4. ORDER

4.1 No binding order for the Goods and/or Services shall exist except by mutual written agreement. However, a written order acknowledgement given by the Seller shall be sufficient to establish the existence and content of an order. Any order acknowledgement shall be deemed to incorporate these Conditions.

5. AMENDMENTS TO THE CONTRACT

5.1 Before issuing an Amendment, the Buyer shall agree in writing with the Seller the nature and extent of the proposed changes and any addition or reduction in the Contract Price.
5.2 An Amendment shall constitute a formal variation to the Contract binding on the Buyer.
5.3 The Seller shall advise the Buyer of all proposed changes in the Specification or method of construction of the Goods supplied including but not limited to changes in form, fit, function, service life, reliability, maintainability, interchangeability or safety.

6. CONTRACT PRICE

6.1 Unless otherwise agreed in writing, all prices quoted are net ex-works trade packed and apply only in relation to the total quantities and dates and rates of delivery quoted. All prices are subject to the addition of all other duties and taxes (including Value Added Tax at the rate ruling at the relevant tax point).
7. PAYMENT
7.1 Payment, in full, of the Contract Price must be made within the due date of each invoice. The Buyer shall not be entitled to withhold payment either wholly or in part when it becomes due on any grounds whatsoever and all the Buyer’s common law rights of defence, set off and/or abatement are expressly excluded. In the event the Buyer has a Receiver appointed or enters into liquidation or otherwise becomes insolvent, payment in full of the Contract Price shall fall due immediately.

7.2 The Seller shall be entitled to charge interest on any part of the Contract Price or any other sum overdue from the Buyer at the annual rate of 5% above the Base Rate of HSBC Bank Plc for the time being in force, until payment, in full, of all monies due in respect of the Goods is made by the Buyer.

7.3 Without prejudice to any other remedy, if the Buyer fails to make any payment of the Contract Price or part thereof by the due date or if the Seller in its absolute discretion considers the Buyer’s credit to be unsatisfactory the Seller may, after giving notice to the Buyer of its intention so to do, delay and/or suspend collection of the Goods by the Buyer or cancel the Order until any Payment due has been received by Seller and/or credit arrangements satisfactory to the Seller have been made by the Buyer and the Buyer shall be liable for and shall indemnify the Seller for any expenses, costs, liabilities, losses, claims and/or damages of whatever nature incurred as a result of such delay and/or suspension or cancellation.

8. DELIVERY
8.1 Unless otherwise agreed in writing, all deliveries shall be made Ex-Works (Haverhill), Incoterms 2010, and shall be deemed to have been affected when the Seller shall have notified the Buyer, the Goods and/or Services are ready for collection.

8.2 Any periods quoted for delivery or despatch are estimates only and time for delivery shall not be made of the essence by notice.

8.3 Unless otherwise agreed in writing, delivery of the Goods and/or Services to a carrier for transmission to the Buyer or the delivery of the Goods and/or Services to the place of delivery shall constitute delivery to the Buyer and the risk therein shall upon such delivery pass to the Buyer. Section 32(2) and (3) of the Sale of Goods Act 1979 shall not apply.

8.4 The Seller shall be entitled to make partial deliveries or deliveries by instalments and these conditions shall apply to each partial delivery.

8.5 Where the Goods and/or Services are ready but cannot be despatched for any reason beyond the control of the Seller or through the fault or delay of the Buyer, the Seller shall be entitled to make a reasonable charge in respect of storage and insurance of the Goods and/or Services.

9. ACCEPTANCE
9.1 The Buyer shall accept the delivery of the Goods and/or Services even if the Goods and/or Services exhibit minor defects.

9.2 Goods and/or Services requiring no further installation of further Services shall, unless rejected in the interim by the Buyer, be deemed accepted within two weeks of the delivery date. In the case of Goods and/or Services requiring further Services, the Seller may service notice on the Buyer following the performance of such Services requiring acceptance of the Goods and/or Services, which shall be deemed accepted within two weeks of such notice. Acceptance shall also be deemed to have been performed if the Goods and/or Services have been put to use – as may be the case after completion of an agreed test phase.

10. RESERVATION OF TITLE
10.1 Title of the Goods and/or Services shall not pass to the Buyer until the Seller has received in full all sums due to it in respect of:

10.1.1 the Goods and/or Services; and

10.1.2 all other sums which are or which become due to the Seller from the Buyer on any account.

10.2 Until title of the Goods and/or Services has passed to the Buyer, the Buyer shall:

10.2.1 hold the Goods and/or Services on a fiduciary basis as the Seller’s bailee;

10.2.2 store the Goods and/or Services (at no cost to the Seller) separately from all other Goods and/or Services of the Buyer or any third party in such a way that they remain readily identifiable as the Seller’s property;

10.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods and/or Services;

10.2.4 maintain the Goods and/or Services in satisfactory condition and keep insured on the Seller’s behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.

10.3 While title in the Goods and/or Services in the Seller, the Seller shall have the right without prejudice to the obligations of the Buyer to purchase the Goods and/or Services, to retake possession of the Goods and/or Services.

10.4 The Seller shall have the right to maintain an action for the Contract Price notwithstanding that title in the Goods and/or Services may not have passed to the Buyer.

10.5 Until title of the Goods and/or Services passes to the Buyer, the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods and/or Services are or may be stored in order to repossess them pursuant to Clause 10.3 or inspect them.

10.6 The Buyer shall immediately inform the Seller in the event of any seizures, attachments or other dispositions or interventions by third parties.
10.7 On termination of the Contract, howsoever caused, the Seller’s (but not the Buyer’s) rights contained in this Clause 10 shall remain in effect.

11. INTELLECTUAL PROPERTY RIGHTS
11.1 All Intellectual Property Rights in the Goods and/or Services shall be the property of the Seller. The Buyer represents and warrants that the use of any design(s), specification(s) and/or instruction(s) (or any part thereof) provided directly or indirectly by the Buyer will not infringe any rights of any third party. The Buyer shall indemnify and hold harmless the Seller against any and all claims alleging infringement of Intellectual Property Rights which arise as a result of the Seller’s compliance with the Buyer’s specification(s), design(s) and/or instruction(s) (or any part thereof).

11.2 The contract does not grant the Buyer or any other third party any licence, express or implied, under any Intellectual Property Rights of the Seller for the Goods and/or Services or any product, process, design or machine of which the Goods and/or Services for part, nor does the sale of the Goods and/or Services or supply of supporting information imply, represent or warrant that the Goods and/or Services do not infringe the rights (including without limitation the Intellectual Property Rights) of a (or any) third party (and for the avoidance of doubt no indemnity is given by the Seller in relation to any such infringement(s) or alleged infringement(s)).

12. CONFIDENTIALITY AND PUBLICITY
12.1 The Parties acknowledge and agree that the Non-Disclosure Agreement (if any) shall continue to apply in respect of the Contract. If there is no Non-Disclosure Agreement between the Parties, the following terms shall apply.

12.2 The Parties (as a “Receiving Party”) hereby acknowledge that the other (the “Disclosing Party”) has provided to the Receiving Party Confidential Information and in respect of all such Confidential Information the Receiving Party will:

12.2.1 treat it as confidential;
12.2.2 restrict its disclosure to such of its employees as have a need to know and subject always to such employees being under a similar duty of confidentiality; and
12.2.3 not to disclose it to any third party without the prior written consent of the Disclosing Party.

12.3 The requirements shall not apply to any Confidential Information which:

12.3.1 is or becomes common knowledge without the breach of this Clause by the Receiving Party; or
12.3.2 was in the Receiving Party’s possession prior to receipt from the Disclosing Party or developed for or by the Receiving Party at any time independently of any disclosure by the Disclosing Party; or
12.3.3 the Receiving Party is required to disclose by law or other competent authority provided that the Receiving Party notifies the Disclosing Party, if permitted by law, as soon as it receives such a request for disclosure and affords to the Disclosing Party all such reasonable assistance as the Disclosing Party may request to prevent or limit such disclosure.

12.4 Neither this Contract nor any details thereof nor name shall be used by the Buyer for advertisement or publicity purposes without the Seller’s prior written consent.

12.5 The Buyer shall not without prior written consent take any pictures or make any recordings on any of the Seller’s premises.

13. INFORMATION
13.1 All drawings, descriptions, specifications, designs, documents and other information (including without limitation features contained in any of the foregoing or in any objects or software), whether business or technical, supplied or otherwise disclosed by the Seller are supplied or disclosed on the express understanding that such supply or disclosure shall not be construed as passing to the Buyer any copyright (or any other rights whatsoever) in such Information. All rights including, without limitation, copyright and property in all such Information shall, as between the Seller and the Buyer, remain vested in the Seller.

14. EXCLUSION OF LIABILITY
14.1 The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

14.1.1 any breach of the contract;
14.1.2 any use made or resale by the Buyer of any of the Goods and/or Services, or of any product incorporating any of the Goods and/or Services; and
14.1.3 any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the contract.

14.2 SAVE AS EXPRESSLY PROVIDED IN THESE CONDITIONS, ALL CONDITIONS, WARRANTIES AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW, ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.

14.3 Subject to Clause 14.2 and Clause 14.4:

14.3.1 The Seller’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the contract price (save where Clause 14.2 applies); and

14.3.2 The Seller shall not be liable to the Buyer for any:
14.3.2.1 loss of profit;
14.3.2.2 loss of business;
14.3.2.3 depletion of goodwill and/or similar losses.
14.3.2.4 loss of anticipated savings;
14.3.2.5 loss of contract;
14.3.2.6 loss of use;
14.3.2.7 loss or corruption of data or information; or
14.3.2.8 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses whatsoever (howsoever caused) which arise out of or in connection with the contract.

14.4 Except where the contract is an international supply contract within section 26 of the Unfair Contract Terms Act 1977 (the “Act”) nothing contained in these conditions shall exclude or restrict:
14.4.1 any liability of the Seller for death or personal injury (as defined in the Act) resulting from negligence (as defined in the Act);
14.4.2 any liability of the Seller for fraud or fraudulent misrepresentation;
14.4.3 any liability of the Seller for breach of the implied undertakings as to title contained in Section 12 of the Sale of Goods Act 1979 (as amended); and
14.4.4 where the Buyer deals as a consumer within the meaning of the Act, any liability of the Seller for breach of its implied undertakings as to conformity of the Goods and/or Services within description or sample or as to their quality or fitness for a particular purpose contained in sections 13, 14 and 15 of the Sale of Goods Act 1979 (as amended).

15. HEALTH AND SAFETY AT WORK ETC ACT 1974
15.1 If the Goods and/or Services are articles for use at work within the meaning of the Health and Safety at Work etc Act 1974, the Buyer hereby agrees that it is responsible for taking all necessary steps to ensure that the Goods and/or Services are safe and without risks to health when properly used including:
15.1.1 regular and properly testing, inspecting and maintaining, properly installing, storing and housing the Goods and/or Services,
15.1.2 disseminating adequate detailed information regarding their sale and proper use to the persons using the Goods and/or Services, and ensuring that the Goods and/or Services are adequately manned, and the Buyer’s order for the Goods and/or Services shall be deemed to be its written undertaking therefore pursuant to the said Act.

16. FORCE MAJEURE
16.1 The Seller shall not be liable for delay in performance or for non-performance in whole or in part of its obligations under the contract direct or indirectly resulting from causes beyond the control of either the Seller or of the Seller’s suppliers including, but not limited to reference to, acts of God, acts of the Buyer or a third party, hostilities, embargoes, sabotage, civil disturbance, government regulations, strikes, lock-outs or other industrial action, illness, flood, fire, impact, explosion or adverse weather, delay in delivery to the Seller or the Seller's suppliers or shortage of any services, products or materials.
16.2 In any such event the Seller may without liability extend the time for performing the contract or reduce the volume of the goods ordered by the Buyer. If the contract is frustrated or cancelled as a result of an event set out in Clause 16.1, the Seller shall be entitled to such reasonable remuneration as it may specify.

17. DISPUTES
17.1 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, the Parties agree to submit the matter to settlement proceedings under the International Chamber of Commerce Alternative Dispute Resolution (ADR) Rules. If the dispute, controversy or claim has not been settled within a period of two months following the filing of a request for ADR pursuant to the said Rules, such dispute or controversy or claim shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of Arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

18. TERMINATION
18.1 Without prejudice to any other right or remedy available to the Seller shall be entitled to terminate the Contract between the Seller and the Buyer or suspend any further work due under the Contract without any liability to the Buyer, and in the event, that work has been carried out but remains unpaid for, the Contract Price shall become due immediately notwithstanding any previous agreement to the contrary in the event of:
18.1.1 the Buyer committing a breach of this Contract provided the Seller has notified him of the breach and in the case of that breach being capable of remedy, the breach has not been remedied within seven days of receipt of such notice;
18.1.2 the Buyer goes into liquidation or having a receiver appointed over any of its assets or becoming subject to an administration order or any other insolvency proceedings or, (being and individual or partnership) the Buyer becomes insolvent, bankrupt or the Buyer makes any agreement with its creditors or ceases or threatens to cease or carry on business.

19. WAIVER
19.1 No exercise or failure to exercise or delay in exercising any right, power or remedy vested in either Party under or pursuant to the Contract shall constitute a waiver by the Party of that or any other right, power or remedy. No single or partial exercise of such right, power or remedy shall preclude or restrict the further exercise of that or any other right, power or remedy.
20. **NOTICES**
20.1 Any notice required to be given hereunder shall be deemed to have been properly given by a Party sent by prepaid mail or facsimile to the other Party at the other Party’s address specified on the Purchase Order. Notices shall be deemed to have been received and effective: if sent by mail two (2) working days after the date of mailing; or if sent by facsimile at the time specified on the transmission report or in the event such time is outside normal working hours 0930 on the first business day after the day of transmission.

21. **ASSIGNMENT**
21.1 The Buyer shall not assign the Contract in whole or in part, without the prior written consent of the Seller, such consent not to be unreasonably withheld. The Seller shall have the right to assign the Contract, such right to be exercised by written notice to the Buyer.

22. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
22.1 A person who is not a party to this Contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

23. **ENTIRE AGREEMENT**
23.1 The Contract constitutes the whole agreement between the Parties with respect of the Goods and/or Services and supersedes all prior negotiations, representations and agreements related to the Contract, either written or oral. Each Party acknowledges that it has not relied on, and shall have nor right or remedy in respect of any statement, representation, assurance or warranty other than as expressly set out in the Contract. Nothing in this Clause shall limit or exclude any liability for fraud.

24. **NO PARTNERSHIP**
24.1 Nothing in this Contract shall be deemed to create a partnership, pooling arrangement, alliance, joint venture or a formal business organisation or agency or a structure of any kind between the Parties. Nothing in this Contract shall permit either Party as the agent or representative of the other and neither Party may hold itself out as such or commit the other to any liability, relationship or arrangement, whether or not legally binding. Neither Party may make any representation or give any warranty on behalf of the other.

25. **SEVERANCE**
25.1 If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:
25.1.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and
25.1.2 the Parties shall use reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision to the intended effect of the invalid, illegal or unenforceable provision.

26. **INDUCEMENTS**
26.1 The Buyer shall not:
26.1.1 induce an employee of the Seller to make any concession to the Buyer, issue the Contract or alter any requirements of the Contract in return for any gift, money or other inducement; nor
26.1.2 pay money or give any other benefit to any third party (either directly or indirectly) in connection with the negotiation and/or issue of the Contract; nor
26.1.3 encourage an employee of the Buyer to commit an act of dishonesty against the Buyer which may benefit the employee or be a detriment to the Buyer, or both.

27. **LAW**
27.1 English Law governs these Conditions and the Contract.
27.2 The Parties agree to the jurisdiction of the Courts of England and Wales to the exclusion of all foreign jurisdictions, save that foreign jurisdiction may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgement, order or award given under English jurisdiction.