

MSS GROUP

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

"The Company" means any legal entity in the MSS Group including Page Support Services Inc, their sub-contractors, and agents.

"The Buyer" means the person(s) or party (parties) who buy or agree to buy Goods from the Company.

"The Conditions" means the standard terms and conditions of trading set out in this document plus any additional terms and conditions specifically referred to herein or agreed in writing by the Company.

"The Goods" means industrial machinery equipment, components and services in relation to the same and any other articles or services which the Buyer agrees to purchase from the Company which are detailed either in an Order or similar purchase arrangement and includes any services provided by the Company.

"The Order" means any order from the Buyer to the Company for the purchase of Goods as specified in a quotation or tender issued by the Company to the Buyer.

"Target Delivery Date" means, in the absence of specific agreement in writing to the contrary, the date upon which the Company expects to be able to complete delivery of Goods.

"Installation" means the reassembly and/or siting and securing of any Goods in their final operational location but excludes connecting the Goods to any fuel or power supplies or to any other equipment required for their operation and excludes the supply of any pipes, wires, conduits or other connecting equipment components or material required to achieve safe connection to the Goods. The Buyer shall at its expense carry out or procure that there shall be carried out all necessary and desirable preparations to the proposed location for the Goods. To the extent that any nuts, bolts, seals or other assembly parts removed upon

dismantlement of the Goods require repair or replacement in order to achieve installation, the cost of repair or replacements shall, unless specifically stated otherwise in the Order, be born by the Buyer.

"Commissioning" means effecting such arrangements testing and trials as are necessary to enable working operation of the Goods in a normal manner and includes connecting the Goods to any fuel or power supplies or any other equipment required for their operation. The Commissioning shall be carried out by the Company or a qualified person approved by the Company. The Buyer shall at its expense carry out or procure that there shall be carried out all necessary and desirable preparations to the proposed location for the Goods including supply and availability of all items referred to hereafter which may be required to complete Commissioning. Commissioning excludes the supply of any pipes, wires, conduits or other connecting equipment components or material required to achieve safe connection of fuel or power or other equipment to the Goods (if those items are not part of the Goods) and excludes any nuts, bolts, seals or any wearing components or parts of the Goods which require repair or replacement in order to achieve normal working operation (the cost of which shall be born by the Buyer) unless specifically stated otherwise in the Order. If upon trial the Goods work/operate in their normal manner the Goods shall be deemed to conform to the contract and the Buyer shall be bound to accept the Goods.

2. CONDITIONS

2.1 The Conditions shall apply to all contracts for the sale hire or provision of Goods by the Company to the Buyer to the exclusion of all other terms and conditions. Any other terms, conditions, warranties, representations made prior to collateral with or subsequent to the Order are hereby excluded. Any variation of the Conditions or any other conditions or terms of Order sought to be imposed by the Buyer or

contained in the Order shall be of no effect unless otherwise specifically agreed by the Company in writing.

2.2 The Company shall not be bound by any variation in, waiver of or addition to the Conditions (including any special terms and conditions agreed between the parties) unless expressly agreed in writing.

3. QUOTATIONS AND ORDERS

3.1 Unless otherwise stipulated in writing Company quotations and tenders will lapse if not accepted within 10 days. Prices quoted are based upon present day cost. If the cost of any part of the Goods increases between acceptance of Order and completion of the Goods, the Company reserves the right to charge for the Goods at the price(s) ruling at date of invoice.

3.2 The Company may revise or withdraw any quotation or tender prior to acceptance by the Company of an Order received from the Buyer. References in any quotation or tender or Order to 'installation' or 'commissioning' shall import the meanings of Installation and Commissioning set out above.

3.3 All Orders shall be deemed to be an offer by the Buyer to buy Goods as described in the Company quotation or tender subject to the Conditions. The Order, when accepted by the Company in writing, shall contain the whole agreement between the parties and the Buyer shall not be entitled to rely upon any oral or written representations made to it by the Company or its employees or agents unless they are specifically confirmed in writing in the quotation or tender and therefore included in the Order, and the Buyer shall make its own independent investigations into and satisfy itself with regard to all matters relevant to the Goods.

3.4 The specification for the Goods shall if ordered by reference to a named model be the design and specification for that model applicable at the date of Order provided that the Company reserves the right to amend any descriptive or technical errors in respect of the quoted specification of the Goods or in its discretion to incorporate into the Goods any design or specification improvements or

modifications or to otherwise alter the quoted specifications before manufacture or supply and shall advise the Buyer of such alterations.

3.5 Unless otherwise stated in the quotation or tender the price quoted for the Goods is exclusive of carriage and unloading at the Buyers works or place of delivery. Where the price quoted specifically includes delivery, the price quoted includes delivery only by a method of transport selected by the Company and within the specified delivery area.

3.6 No Order will be binding on the Company unless and until accepted by the Company in writing. The Company may cancel the Order at any time before commencement of the delivery of the Order without liability for any loss or damage arising from such cancellation. In the event of the Purchaser failing for any reason within one calendar months to effect any payment which might be due under this or any other contract with the Company, or if the Purchaser becomes insolvent or enters into composition with or for the benefit of it or its creditors or being a body corporate has a receiver appointed over its undertaking or assets or any part thereof (save for the purpose of reconstruction or amalgamation) or goes into liquidation or if any execution process is commenced or threatened against it or its assets, the Company shall thereupon be entitled without prejudice to its other rights hereunder forthwith to cancel the Order or any unfulfilled part thereof and the contract between the parties will thereby determine.

3.7 The Buyer may cancel an Order only with the Company's written consent. In the event of such cancellation the Buyer shall (at the discretion of the Company) pay to the Company a cancellation charge equivalent to any costs and expenses incurred by the Company prior to the cancellation date plus a sum equivalent to the Company's loss of profit on the Order.

3.8 Certified outline drawings of Goods will if requested and necessary be supplied to the Buyer by the Company after the acceptance of any Order but the Company will not supply copies of detailed drawings.

3.9 All drawings, descriptive matter, weights, dimensions and shipping specifications

submitted and descriptions contained in Company catalogues, pamphlets, price lists and other matters are approximate only and by way of identification and are intended to present a general idea of the goods described therein and shall not form part of any representation or description in any quotation, tender or Order.

3.10 All drawings supplied by the Company to the Buyer in relation to a prospective Order and the detailed material contained in them shall remain the property of the Company and are supplied to the Buyer in strict confidence and the Buyer shall not disclose them or divulge any details relating to them to any third parties without the written consent of the Company, and shall return them to the Company immediately upon request.

3.11 Where prior to an Order or before an Order is accepted by the Company estimates are given by the Company to the Buyer of the potential production capacity or output of Goods, such estimates are provided in good faith based on the Company's understanding of the operations on which the Goods are to be employed, the tooling and materials to be used, and based upon manufacturer's or other industry data, but owing to the many variable factors involved, such estimates cannot be guaranteed and the Buyer must make independent investigation and satisfy itself with regard to the capacity or output achievable.

3.12 Goods which are second hand are sold at the Buyer's risk as to condition or functionality and without any warranty or assurance on the part of the Company (unless specifically included in the Order and subject to 6.6 below) and the Buyer shall satisfy itself as to condition and functionality and that the Goods meet the Buyer's requirements and comply with all regulatory and statutory requirements.

4. AMENDMENTS TO ORDER

4.1 The Company shall not be obliged to agree to any change to manufacturing or other procedures or to specifications requested by the Buyer after an Order has been accepted by the Company. If at any time after the Order is accepted by the Company the Buyer wishes to add to or to amend any aspect of the Goods or

to modify Goods already manufactured or procedures adopted, any requests for additional or amended goods procedures services (including but not limited to special tests, inspections, packing, carriage arrangements or insurance) components or accessories to be supplied or modifications to be carried out shall, if agreed to be undertaken or adopted by the Company, be at an additional cost to the Buyer over and above the quoted price for the Goods.

4.2 In the event of a request for suspension or partial suspension of the Order work from the Buyer or a suspension or lack of required instructions from the Buyer, or any event falling within paragraph 4.3 below, the contract price may be increased by the Company to cover any extra expenses incurred by the Company including any additional costs incurred in storing and insuring machinery and in the manufacture thereof due to delay in completion and delivery of the Goods.

4.3 The Company shall be relieved of its obligation to supply Goods to the extent that performance of its obligation is prevented by act or omission of the Buyer, fire, weather conditions, industrial dispute, labor disturbance or other cause beyond the reasonable control of the Company.

5. RISK/DELIVERY

5.1 The risk in Goods shall pass to the Buyer upon delivery of the Goods to the Buyer or to a carrier on the Buyer's behalf and the Buyer is recommended to insure the Goods accordingly. If delivery is undertaken by the Company for the Buyer the risk during transportation shall be born by the Company and shall cease upon delivery to the Buyer's chosen delivery location.

5.2 Target Delivery Dates and delivery times quoted by the Company are estimates only and although the Company will use its reasonable efforts to meet the Target Delivery Date and effect delivery within a reasonable time, it shall not be liable for the consequences of any delay. The Company reserves the right to deliver the Goods in one or more consignments.

5.3 The Company shall advise the Buyer of the Target Delivery Date. If for any reason the

Buyer is unable or unwilling to accept delivery on the Target Delivery Date, the Company shall be entitled to arrange storage of the Goods and levy storage charges which charges may commence seven days after the Target Delivery Date.

5.4 The Target Delivery Date shall be extended as may be reasonable to reflect the effect of any request for amendment to or suspension or partial suspension of the Order work requested by the Buyer, or any suspension or lack of instructions from the Buyer, or of any event whatsoever beyond the reasonable control of the Company including strikes, lockouts, war, flood, fire, accident, defective materials or delay in obtaining materials not manufactured by the Company required for the Goods, or for any other cause of a similar character. In any such event, a reasonable extension of delivery time shall be agreed.

5.5 Notwithstanding that the Company may have failed to deliver or complete the Goods (or any part of them) by the Target Delivery Date the Buyer shall be bound to accept delivery/completion and to pay for the Goods in full provided that delivery/completion shall be tendered at any time within 3 months of the Target Delivery Date.

5.6 If the Buyer has not taken delivery of the Goods within 28 days of the Target Delivery Date or any other proposed delivery date which the Company has advised to the Buyer the Company shall, unless the Buyer has paid for the Goods in full, have the right to rescind the Order and shall be at liberty to sell the goods elsewhere, whereupon the Company shall refund to the Buyer any part payment made by the Buyer less any storage delivery and other charges or costs due under the Conditions.

5.7 The Buyer shall sign the Company delivery note which accompanies the Goods to confirm that delivery has taken place.

5.8 Without prejudice to any other rights hereunder, should the Buyer for any reason fail to collect the goods on receipt of notice to collect, or fail to accept delivery of the goods when offered, the Company shall be entitled at the Buyer's risk and expense, to store the Goods, and/or to procure or effect third party

storage of the Goods and to charge to the Buyer the cost of any failed delivery.

5.9 The Company is in addition to the price of the Goods entitled to charge the Buyer for packing cases delivered with the Goods to United States locations unless the packing cases are returned to the Company "carriage paid" and in good condition within one month of the date of delivery to the Buyer.

5.10 Where delivery is to be effected or arranged by the Company to a site selected by the Buyer, the Buyer shall provide a proper leading in way, easy and safe means of approach and access, lifting equipment for unloading the Goods, skilled and all other facilities required in order to safely unload the Goods, protect them and place them under cover in a convenient position for installation. Where the Company has agreed to provide or appoint a representative on site to oversee delivery and/or offloading and/or installation, all Buyer employees on site shall be bound to comply with that representative's lawful orders or directions with regard to those procedures.

5.11 Where Installation and/or Commissioning is included in the Goods the Buyer shall ensure that all necessary equipment connecting components replacements parts fuel power and all other facilities required in order to safely install and/or commission the Goods are available when required, and any delay in Installation and/or Commissioning caused by the nonavailability of any such items shall entitle the Company in its discretion to make an additional charge to reflect the delay and any additional costs incurred.

6. ACCEPTANCE

6.1 The Buyer shall inspect the Goods immediately upon delivery. Any defects apparent upon such inspection shall be noted on the delivery note signed under 5.7 above. Any defects alleged by the Buyer to have been present at the time of delivery shall in any event be communicated in writing to the Company within 72 hours of delivery failing which the Goods shall be deemed to be in accordance with the Order and the Buyer shall be bound to accept and pay for them accordingly.

6.2 All claims relating to damage, breakage, destruction or loss of goods or parts in transit shall be made in writing to the last carrier or forwarding agent as the case may be within 3 days of receipt of the Goods by the Buyer, his servants or agents, from such carrier or forwarding agent, and a copy of such claim shall forthwith be forwarded to the Company by the Buyer.

6.3 The Buyer shall permit the Company all necessary access to inspect any alleged defect, and no investigation or repair of the alleged defect shall be attempted before inspection by the Company. If so requested by the Company, the allegedly defective items shall be returned by the Buyer to the Company promptly carriage paid to the Company works.

6.4 If as a consequence of a claim notified to the Company by the Buyer under 6.1 above the Company inspects the alleged defect but finds the claim to be groundless or the defect to be due to third party fault the Buyer shall reimburse the Company the costs and expenses incurred by it in making such inspection.

6.5 If the Company as part of the Goods has agreed to provide the Buyer with a third party manufacturer's warranty in respect of any part of the Goods, the Buyer's rights of redress shall be limited to the rights conferred by that warranty and the Company shall not be liable to the Buyer.

6.6 If the Company as part of the Goods has agreed to provide the Buyer with a Company warranty in respect of any part of the Goods, the Buyer's rights of redress shall be limited to the rights conferred by that warranty and the Company's Warranty Terms and Conditions shall apply and the Company shall not be liable to the Buyer save to the extent provided thereunder. Any such Company warranty is, so far as permitted by law, given in place of all other contractual and statutory obligations (whether having the status of warranties or conditions and whether express or implied).

6.7 The Company may discharge any obligations arising under this clause in such manner and by such means as it shall deem appropriate and the Buyer shall grant it all necessary access and facilities to do so.

7. PAYMENT

7.1 Unless otherwise stated prices quoted are strictly net cash ex-works and are payable upon notification by the Company that the Goods have been inspected and are ready for delivery.

7.2 If for any cause beyond its control the Company is not able to dispatch the Goods when ready for delivery, payment shall be due on presentation of the Company's invoice and notification from it that the Goods are ready for dispatch, and payment shall be made in full as if the Goods had in fact been delivered.

7.3 The price of the Goods shall be paid in full and the Buyer shall not be entitled to make any deductions or set-off for any reason.

7.4 In the event of payment not being made in accordance with these terms the Company may withhold delivery until the Buyer has met its payment obligations.

7.5 In the event of payment of all or any part of the price of the Goods after the due date the Company may in its discretion charge the Buyer interest at a rate up to the maximum rate specified by law. The Company will exercise its right to compensation and administration costs under the Late Payment legislation if court action is taken to enforce payment.

7.6 The Company shall be entitled to recover the price of the Goods plus taxes and other charges notwithstanding that the property in the Goods has not yet passed from the seller pursuant to 8 below

8. RETENTION OF TITLE

8.1 In spite of delivery having been made property in the Goods shall not pass from the Company until the Buyer shall have paid the price for the Goods in full and no other sums whatever are due from the Buyer to the Company.

8.2 Until property passes to the Buyer in accordance with 8.1 the Buyer shall hold the Goods and each of them on a fiduciary basis for the Company. The Buyer shall store the Goods at no cost to the seller and separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.

8.3 Until such time as the property in the Goods passes from the Company the Buyer shall upon request deliver up the Goods to the Company. If the Buyer fails to do so the Company may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. The Company shall be entitled to charge the cost of recollection to the Buyer.

8.4 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Buyer does so pledge or charge, all sums whatsoever owing by the Buyer to the Company shall forthwith become due and payable.

8.5 The Buyer shall insure and keep insured the Goods to their full price against 'all risks' to the reasonable satisfaction of the Company until the date that property in the Goods passes from the Company, and shall whenever requested by the Company produce a copy of the policy of insurance.

9. INTELLECTUAL PROPERTY

If the manufacture or supply of any Goods or part of Goods to the Buyer pursuant to the Order results in the Company becoming liable for infringement of any patent, copyright, design or other intellectual property rights, the Buyer shall keep the Company fully and effectually indemnified from and against all costs, expenses, damages or other liabilities incurred by the Company in relation to any proceedings claims or actions brought or threatened against the Company by any party claiming such rights.

10. LIABILITY

10.1 ALL WARRANTIES, CONDITIONS OR TERMS RELATING TO THE FITNESS FOR PURPOSE CONDITION OR QUALITY OF GOODS AND/OR THE REASONABLENESS OF CARE AND SKILL IN PERFORMING SERVICES, WHETHER IMPLIED BY STATUTE OR COMMON LAW ARE HEREBY EXCLUDED.

10.2 THE COMPANY SHALL NOT BE LIABLE FOR THE FOLLOWING:-

10.2.1 IN CONTRACT AND/OR TORT FOR ANY INJURY LOSS OR DAMAGE TO PERSONS OR PROPERTY SUSTAINED BY REASON OF ANY DEFECT IN THE GOODS OR USE OF THE GOODS PROVIDED THAT THIS PARAGRAPH DOES NOT RESTRICT ANY LIABILITY OF THE COMPANY FOR PERSONAL INJURY CAUSED BY THE GOODS THE COMPANY ITS SERVANTS OR AGENTS.

10.2.2 CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND

10.2.3 ANY CLAIM NOT NOTIFIED TO THE COMPANY IN ACCORDANCE WITH 10.3 BELOW

10.3 SUBJECT TO 6 ABOVE, ANY CLAIM, WHETHER ON BEHALF OF THE BUYER OR ANY THIRD PARTY, MUST BE NOTIFIED TO THE COMPANY IN WRITING WITHIN FOURTEEN DAYS OF THE OCCURRENCE WHICH GIVES RISE TO THE CLAIM SO AS TO ENABLE THE COMPANY TO PROMPTLY AND FULLY INVESTIGATE THE SAME, FAILING WHICH THE COMPANY SHALL BE ENTITLED TO REPUDIATE ANY POTENTIAL LIABILITY.

10.4 WITHOUT PREJUDICE TO THE FORGOING, THE LIABILITY OF THE COMPANY (IF ANY) SHALL BE LIMITED TO THE ORDER PRICE.

10.5 WITHOUT PREJUDICE TO THE FORGOING, THE LIABILITY OF THE COMPANY (IF ANY) SHALL BE LIMITED TO THE TERMS OF ANY MANUFACTURER'S OR COMPANY WARRANTY INCLUDED IN THE ORDER.

10.6 WITHOUT PREJUDICE TO THE FORGOING, THE LIABILITY OF THE COMPANY (IF ANY) SHALL BE LIMITED TO THE COST REPLACEMENT OF THE GOODS OR ANY COMPONENTS IN RESPECT OF WHICH THE LIABILITY ARISES. 10.7 THE BUYER SHALL INDEMNIFY THE COMPANY IN RESPECT OF ANY CLAIM AGAINST THE COMPANY BY ANY THIRD PARTY WHO HAS PURCHASED THE GOODS FROM THE BUYER.

11. GENERAL

11.1 Any dispute concerning the Goods / Order shall in the first instance be resolved by discussion between the parties, both acting reasonably and in good faith, but in the absence of agreement shall be the subject of mediation by a mediator agreed between the parties.

11.2 The contract between the parties shall in all respects be construed and operated in accordance with the laws of the United States and North Carolina who shall have sole jurisdiction in respect of any dispute arising which is not resolved pursuant to 11.1 above.

11.3 Any Company rights provided by the Conditions shall be deemed cumulative and the exercise of any one right by the Company shall not preclude the exercise of any other right available nor exclude any other available rights or remedies at law or in equity.

11.4 Any waiver by the Company of compliance by the Buyer with any of the Conditions shall not prevent the subsequent enforcement of same term of the Conditions and shall not be deemed to be a waiver of any subsequent breach.

11.5 Unless otherwise specifically agreed in writing by the Company, time shall not be of the essence in relation to any aspect of the contract between the parties.

11.6 Acceptance of the Order shall not confer upon or operate so as to create any third party rights or rights enforceable other than by the Buyer.