1. GENERAL

1.1 In these Conditions:

1.1.1 the following expressions shall have the following meanings:

1.1.2 “Buyer” the individual or other party from whom the Order to Supply Goods and/or provide Services is received by the Seller.

1.1.3 “Contract” a contract for the Supply of Goods and/or provision of services by the Seller to the Buyer whether verbally or in Writing.

1.1.4 “Date of Delivery” the date on which delivery of the Goods or Services takes place pursuant to Condition 6.

1.1.5 “Goods” the goods, articles or items which the Seller is to supply under the Contract.

1.1.6 “Order” an order placed by the Buyer for the Supply of Goods and/or provision of Services whether verbally or in Writing.

1.1.7 “Seller” Kinley Systems Limited or the holding division, subsidiary or holding company or associate of the Seller as notified by the Buyer in writing.

1.1.8 “Writing” includes facsimile transmission, electronic mail and other comparable means of communication.

2. ORDERS, ACKNOWLEDGEMENTS, CONDITIONS AND VARIATIONS

2.1 Notwithstanding that the Seller may have given a detailed quotation or estimate either verbally or in Writing, no Order shall be binding on the Seller unless and until it has been acknowledged in Writing by the Seller.

2.2 These Conditions are incorporated in the Contract and contain the entire obligations between the Seller and the Buyer. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any Order, letter or form of contact sent by the Buyer to the Seller, whatever may be their respective dates, the provisions of these Conditions shall prevail.

2.3 These Conditions are on all the Seller’s terms and any variation of these Conditions and any representations about the goods and the Services shall have no effect unless expressly agreed in Writing with the Seller.

3. DESCRIPTION

3.1 The description of the Goods and/or Services shall be set out in the Seller’s quotation.

3.2 Any figures, statements, descriptions, illustrations, photographs, drawings, weights or any other matters contained in the Seller’s catalogues, pamphlets, price lists or advertising literature are not guaranteed to be accurate and are intended merely to represent a general picture of the Seller’s products and services and shall not form part of the Contract nor be regarded as a warranty or representation relating to the Goods.

3.3 If the Buyer wishes to order the goods in accordance with a particular grade or specification this should be stated in the Buyer’s order and any accompanying drawings, but in any event the Seller reserves the right at any time without notice to the Buyer to change or modify the particulars of any specifications of any goods or materials used in their manufacture.

4. DESIGNS, BUYER’S PROPERTY AND INTELLECTUAL PROPERTY

4.1 No right of ownership or interest in the Seller’s patents, registered designs, trademarks, copyrights or any other intellectual property owned by the Seller shall pass to the Buyer in any way by transfer or otherwise in relation to the Goods or Services provided under these Conditions.

4.2 Where Goods are made or supplied to the Buyer’s own specification, pattern or design, the standard goods of the Seller are altered in accordance to the Buyer’s instructions.

4.2.1 The buyer warrants and undertakes full responsibility not only for the suitability and fitness of the specification, pattern or design but also that such specification, pattern or design does not infringe any patent, trademark, registered design, copyright or any other proprietary right of any third party and the Buyer shall indemnify and keep the Seller indemnified in full against any loss, damage or expense whatsoever (including costs) which the Seller may incur or arise from the performance of the Contract by reason of any infringement of any such patent, trademark, registered design, copyright or any other proprietary right and the Buyer acknowledges that the Seller shall be under no liability of any description to the Buyer if the Goods prove to be unsuitable for whatever reason for application or use.

4.3 To the extent that the Seller has agreed in writing to make patterns especially for the Buyer the same shall become the property of the Buyer when paid in full. Any replacements or alterations or repairs to any Buyer’s patterns or equipment shall be paid for by the Buyer.

4.4 The Seller shall have no responsibility for any loss of or damage to any patterns, equipment or other items of the Buyer’s property whilst on the Seller’s premises arising from inadequate storage or any unauthorised, injurious act or default by any employee of the Seller or otherwise and the Buyer shall arrange its own insurance at all times for such equipment.

4.5 The Seller shall have a general lien on the entire Buyer’s property in the Seller’s possession for all sums due at any time from the Buyer and shall be entitled to retain possession of, use, sell or dispose of such property as agent for and of the expense of the Buyer and apply the proceeds in and towards the payment of such sums on 28 days’ notice in writing to the Buyer. On accounting to the Buyer for any balance remaining after payment of any sums, due to the Seller and the costs of sale or disposal, the Seller shall be discharged of any liability whatsoever in respect of the customer’s property.

5. QUOTATIONS AND PRICE

5.1 The Seller’s quotations shall be valid for 60 days from the date of quotation and are provisional in so far as they are subject to alteration by reference to any changes in the price of raw materials, any item to be acquired by the Seller from a third party rates of wages, other costs of production and any other circumstances beyond the Seller’s control taking place between the date of the quotation and the Buyer’s placing of any Order in respect thereof.

5.2 The Seller shall be entitled to adjust the Contract price of the Goods and/or Services whether before or after the making of the Contract in the event of any variation in the cost to the Seller of supplying them or any part thereof by:

5.2.1 any increase in the cost of materials or services required by the Seller for the completion of the Contract or.

5.2.2 any increase in wages or production and manufacturing costs or other overheads or any other reason whatsoever beyond the control of the Seller including but without prejudice to the generality of the foregoing fluctuations in exchange rates between monetary currencies, the action of any government or any other authority or any labour problems.

5.3 Unless otherwise stated, the price set out in the Seller’s quotation shall be exclusive of any value added tax, insurance, packaging, cost of carriage to the contracted place of delivery cost of loading and installation of the Goods (which for the avoidance of doubt shall be at the Buyer’s sole risk and expense).

5.4 Samples submitted to the Buyer will be payable by the Buyer unless returned to the Seller, carriage paid, within 1 month from the date of dispatch. In instances where the Seller is working from a new pattern, an altered pattern, or a pattern fresh to the Seller’s works, the Buyer may submit sample castings for approval before manufacturing the majority of the Order which will only be commenced on receipt of such approval in writing.

6. DELIVERY

6.1 Delivery of Goods shall be deemed to be effected by the Seller, where Goods are delivered by the Seller, when the same arrive prior to unloading at the Buyer’s premises or at the nearest accessible road point to such premises, where Goods are delivered by an independent carrier, at the time of loading onto the carrier’s vehicle, where goods are collected by or on behalf of the Buyer by its servants or agents, when the same are collected or in the case of Services shall be deemed to be delivered to the time of completion by the Seller of the Services.

6.2 Whilst the Seller will make every reasonable effort to complete the Contract by the date or dates specified for delivery of Goods and/or provision of Services the sale dates or dates shall only constitute the times by which the Seller expects to effect such delivery and if no time is agreed delivery and/or provision will be within a reasonable time but the time for performance of the Contract shall not be of the essence of the Contract the Seller’s failure to so deliver and/or provide by the due date or dates shall not constitute a breach of Contract and the Seller shall not in any circumstances be responsible for any direct or consequential loss or damage of any kind, including from breach.

6.3 Neither of the parties shall be responsible to the other for any delay in performance or non-performance due to any cause beyond the reasonable control of the parties, but the affected party shall promptly notify the other party of such delay or non-performance in writing, stating that such cause has delayed or prevented its performance under the Contract and thereafter such party shall take all action within its power to comply with the terms of the Contract as fully and promptly as possible.

7. QUANTITIES AND INSTALLMENTS

7.1 Where Goods are delivered and/or Services are provided by installments each installment shall be deemed to be sold under a separate Contract and the party in default in respect of any installment shall be liable accordingly, but no default in respect of any one installment shall affect due performance of the Contract as regards other installments.

7.2 If Goods and/or Services are to be delivered in installments the Seller shall be entitled to invoice each installment as and when delivery and/or provision is made and payment for all delivered and/or Services provided by installments shall be due notwithstanding non-delivery and/or non-provision of other installments or other default by the Buyer. Failure by the Buyer to make payment for the delivery and/or provision of any installment shall entitle the Seller to suspend deliveries of the Goods and/or provision of Services under the Contract but without prejudice to any right the Buyer may have under any other provision of the Contract.

8. SUSPENSION AND CANCELLATION

8.1 If the Buyer requires cancellation of the Contract this will only be accepted at the sole discretion of the Seller and unless otherwise agreed in Writing will only upon condition that any costs, charges or expenses (both direct and consequential) incurred by the Seller up to the date of cancellation and the value of all loss or damage (both direct and consequential) thereby incurred by the Seller by reason of such cancellation will be reimbursed by the Buyer to the Seller forthwith. Acceptance by the Seller of any cancellation by the Buyer will only be binding upon the Seller if this is made in writing.

8.2 The Seller shall suspend the performance of the Contract on receipt of a request in Writing from the Buyer but shall only do so for a period not exceeding 28 days and shall only constitute the times by which the Seller expects to effect such delivery and if no time is agreed delivery and/or provision will be within a reasonable time but the time for performance of the Contract shall not be of the essence of the Contract the Seller’s failure to so deliver and/or provide by the due date or dates shall not constitute a breach of Contract and the Seller shall not in any circumstances be responsible for any direct or consequential loss or damage of any kind, including from breach.

9. TERMS OF PAYMENT

9.1 CONTACT TO THE PRICE OF THE GOODS AND/OR SERVICES IS DUE 30 DAYS FROM THE DATE ON WHICH THE GOODS AND/OR SERVICES WERE DELIVERED OR DEEMED TO BE DELIVERED AND THE TIME FOR PAYMENT SHALL BE OF THE ESSENCE.

9.2 No payments shall be deemed to have been received by the Seller unless cleared funds have been paid. All payments payable to the Seller under the Contract shall become due immediately on termination of this Contract despite any other provisions.

9.3 The Seller shall not be entitled to withdraw payment for any amount due to the Seller by reason of any dispute claimed by the Buyer in connection with the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any amount which is not then due and payable to the Seller or for which the Seller disputes liability.

9.4 If the Buyer fails to pay the Buyer any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the monthly rate of 6% above the base lending rate of Lloyds Bank Plc accruing on a daily basis until payment is made, whether before or after any judgment.
Terms and conditions of sale

10. INSTALLATION AND/OR PROVISION OF SERVICES
10.1 Where the Contract provides for additional installation by the Seller and/or provision of Services, the Seller will supply and perform all necessary work for the installation of the Goods and/or the provision of Services according to the details specified in its quotation.

10.2 Where installation services or services are to be provided under Condition 10.1 unless otherwise agreed by the Buyer in writing of the Seller, all necessary preparation of the site including all work to buildings, foundations, supporting structures and fixing points.

10.2.1 giving the Seller access to and possession of the site at such time and in such state as may enable it to complete the installation or provision of the Services within any agreed time limit.

10.2.2 that it has taken all necessary precautions to procure that all areas on which the Seller is performing the Services are safe and without risk to health.

10.3 That it has made sufficient enquiries and/ or is reasonably aware that all areas on which the Seller is performing the Services are free from latent defects and agrees to fully indemnify the Seller against all and any claims which arise from any subsequent discovery of a latent defect on such area.

11. ADDITION GOODS/SERVICES
11.1 Where the Buyer requires Goods and/or Services to be provided in addition to those set out in the Contract as a part of the Contract, the Buyer shall place on order in Writing therefore and upon acceptance in Writing by the Seller of such Order the provision of the Goods and/or Services.

12. WARRANTY
12.1 The Seller shall make good by replacement or, at its option, repair any failure (fair wear and tear excepted) in the Goods and/or services which under conditions of proper use and maintenance, results from defects in the Seller’s manufacture, design, materials or workmanship and which appears not later than 12 months after the Date of Delivery or after the date on which the provision of the Services is completed.

12.2 Notwithstanding the provisions of Condition 12.1, if a claim falling within Condition 12.1.2 the Seller reserves the right at its sole discretion to credit the Buyer in full the prices paid by the Buyer to the Seller.

12.3 The Seller’s liability under this Condition shall automatically cease if:

12.3.1 the Buyer shall not have paid for all Goods supplied and/or Services provided under any Contract by the due date or is otherwise in breach of this or any other contract made with the Seller.

12.3.2 the Seller or its servants or agents are denied full and free right of access to the allegedly defective Goods and/or Services or the Buyer has not properly maintained the Goods.

12.3.3 the defect or failure is caused by willful damage, dirt, neglect, misuse, accident or abnormal working conditions or continued use after a defect has become apparent.

12.3.4 the defect or failure is caused by wear and tear or

12.3.5 the Buyer has failed to allow the Seller in Writing any defect or suspected defect within 30 days of the same coming to the knowledge of the Buyer.

12.3.6 if such defect or failure arises as a result of any inaccurate or incomplete information or details supplied by the Buyer or in any defect or inaccuracy in any patterns, equipment or other property of the Buyer.

12.4 THE WARRANT’S SETTLEMENT UNDER CONDITION 12.1 SHALL BE IN LIEU OF ANY WARRANTIES, CONDITIONS OR UNDERSTAKINGS WHICH EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE HOWSOEVER WHICH WARRANTIES, CONDITIONS AND UNDERSTAKINGS ARE HEREBY EXPRESSLY EXCLUDED, EXCEPT THAT EXCLUSIONS DO NOT APPLY TO

12.4.1 WHEN THE Buyer DEALS AS A CONSUMER (AS DEFINED IN SECTION 12 UNFAIR CONTRACT TERMS ACT 1977), ANY IMPLIED TERM RELATING TO THE CONFORMITY OF THE GOODS WITH THEIR DESCRIPTION OR SAMPLE OR AS TO THEIR QUALITY OR FITNESS FOR A PARTICULAR PURPOSE

12.5 THE SELLER’S RESPONSIBILITY IS LIMITED TO THE TERMS OF THE FOREGOING PROVISIONS OF THIS CONDITION AND (EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF THE SELLER, ITS SERVANTS OR AGENTS; THE SELLER SHALL NOT BE LIABLE FOR ANY CLAIM FOR DIRECT OR INDIRECT CONSEQUENTIAL OR INCIDENTAL LOSS, INJURY OR DAMAGE WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT) MADE BY THE BUYER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH ANY DEFECT IN THE GOODS AND/OR SERVICES WHETHER OR NOT SUCH DEFECT IS DIRECTLY OR INDIRECTLY WHOLESOME OR IN PART CAUSED BY THE ACT, OMISSION, DEFAULT OR NEGLIGENCE OF THE SELLER OR THE SELLER ITSELF OR SUCH OTHER OR NOT SUCH DEFECT AMOUNTS TO A BREACH OF A FUNDAMENTAL TERM OR A PRIMARY OBLIGATION OF THE CONTRACT OR A FUNDAMENTAL BREACH THEREOF.

13. GOODS AND MATERIALS MANUFACTURED BY THIRD PARTIES
13.1 Where the Goods which are the subject of the Contract and are not manufactured by the Seller and are delivered direct to the Buyer or collected by or on behalf of the Buyer by the Manufacturer of any third party, the Seller shall not be liable for any loss or damage to such Goods whatsoever or whenever occurring.

14. TITLE TO GOODS
14.1 Until payment in full of all monies due and owing by the Buyer to the Seller on any account whatsoever has been made and balance and benefited the ownership of the Goods shall be retained by the Seller notwithstanding that the risk in the same shall pass to the Buyer at the time of delivery.

14.2 Until payment in full of all monies due and owing by the Buyer to the Seller on any account whatsoever has been made the Buyer shall hold the Goods supplied in a fiduciary capacity and as bailee of the Seller and shall at all times take proper care of the same and will not obliterate any identifying mark on the Goods or their packaging and will keep the Goods separate from any other goods and in such manner that they may be clearly identified as belonging to the Seller.

14.3 Subject to Conditions 14.4 and 14.5 the Buyer shall be at liberty to sell the Goods supplied in trust to pay to the Seller such monies to which it is entitled under the provisions of the Contract provided that the sums due to the Seller shall be kept separate from any monies of the Buyer and/or any third party. Notwithstanding the provisions of this Condition 14.3, the Buyer may retain from the proceeds of such sale any sum in excess of the sum or sums to which the Seller is entitled under the Contract or any other Contract between the Seller and the Buyer.

14.4 The Seller may at any time revoke the Buyer’s conditional power of sale contained in Condition 14.3 by giving 24 hours’ prior notice in the event of the Buyer being in default for longer than 14 days in the payment of any sums due to the Seller.

14.5 The Buyer’s conditional power of sale contained in Condition 14.3 shall automatically cease if:

14.5.1 a receiver or administrative receiver is appointed over the whole or any part of the assets or the undertaking of the Buyer or a winding up order is made against the Buyer or the Buyer goes into voluntary liquidation (except solely for the purpose of a reconstruction or a amalgamation) or calls a meeting or makes any arrangement with its creditors or becomes subject to an administration order or commits any act of bankruptcy or

14.5.2 the Buyer pledges or in any way Charged by way of security for indebtedness the whole or any part of the Goods.

14.6 Should the Contract require the installation of the Goods at or in the premises of any third party, the Buyer shall notify the third party before installation begins of the terms of this Condition 14 and obtain the acknowledgement in Writing of the third party (sending a copy thereof to the Seller) that the third party has noted the terms of this Condition 14 and concides the rights of the Seller under it as if the Contract was made by the third party directly with the Seller.

14.7 The Seller will have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that property in the Goods has not passed.

15. RISK AND INSURANCE
15.1 The risk in the Goods and Services shall pass to the Buyer at the time of delivery as provided for in Condition 6.

15.2 Notwithstanding the reservation of title contained in Condition 14.1, the Buyer shall insure the Goods and/or any products made wholly or partly thereto and/or on any areas on which the Services are being rendered for the full amount of the price payable under the Contract with an insurance office of repute from the time of delivery of the Goods until the date title in the Goods passes to the Buyer pursuant to Condition 14.1 or practical completion of the Services has taken place and procure that the interest of the Seller as the owner of the Goods and/or performance of the Services is noted on AND 일이에 of such insurance and produce such policy to the Seller for inspection on demand.

16 HEALTH AND SAFETY AT WORK (ETC.) ACT 1974
16.1 The attention of the Buyer is drawn to the provisions of section 6 Health and Safety at Work (Etc.) Act 1974. The Seller will make available upon request information on the design, construction and intended uses of the Goods and/or Services, so that they are safe and suitable for the purposes for which they are intended, practicable, they are safe and without risk to health. It is the responsibility of the Buyer to take such steps as are necessary to ensure that such information relevant to the Goods which is appropriate is made available its servants, agents or any person to whom the Buyer supplies them and to any other person to whom the Buyer reasonably considers any such information should be given.

17 FORCE MAJURE
17.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, floods, epidemic, radioactivity, lock-outs, strikes or other labour disputes, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in Writing to the Seller to terminate the Contract.

18 GENERAL
18.1 If at any time any one or more of the provisions, or part thereof, these Conditions becomes or is invalid, illegal or otherwise ineffective in any respect under any law or is held by a court to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

18.2 These Conditions and every part or provision thereof to them shall be governed by and construed in all respects in accordance with the laws of England and the Seller and the Buyer thereunder to submit to the non-exclusive jurisdiction of the English Courts.

18.3 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 or its registered office or principal place of business or such other address as may at the relevant time have been notified by the party giving such notice to the other under these Conditions.