



Mighty Engineering & Construction Pte Ltd

42D Penjuru Road #03-01 Singapore 609162
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UEN No. / GST Reg No. 201601165G

www.mighty-ec.com

TERMS AND CONDITIONS

The standard Terms and Conditions referred to the Letter of Offer and Acceptance ("LOA") and or/any other supply agreement entered into between the Seller and Buyer. The T&C herein will form an integral part of the LOA and/or the supply agreement and the seller is deemed to have knowledge of the terms set out herein.

DEFINITIONS

"Contract Price" means the price payable by the Buyer to the Seller for the Goods or Services as set out in the Order.

"Goods" means the articles or services or any of them described in this Order.

"Specification" means the work specification as described in the Purchase Order and any description, design or drawings of the Goods and details (if any) of their manufacture and performance.

"Services" means the service described in the Purchase Order, Supply Agreement and/or Quotation submitted.

"Order" means this Purchase or Service Order used by the Buyer for the supply of the Goods on the terms and conditions as set out herein.

"Company" and/or "Buyer" means A+ Engineering Pte Ltd, and all subsidiary companies

"Seller" means the person, firm or company to which the Order is addressed.

1. ACCEPTANCE

The T&C herein shall apply to every Purchase Order issued by the Company. The Company will not be bound by any terms other than those constituting the Agreement, unless such terms are agreed in writing by the Company and the Sellers as expressly forming part of the Agreement. For the avoidance of doubt, any terms or conditions contained in, issued with or printed on any quotation, tender, proposal, offer, order acknowledgement, order confirmation, letter of acceptance, notice of intention to proceed or the like issued by the Sellers shall not form part of the Agreement and are of no effect whatsoever unless otherwise agreed.

2. DELIVERY

2.1 Seller shall deliver the Goods and/or Services as specified in the Order.

2.2 Seller shall complete the Goods and/or Services specified in the Order within 3 working day unless specified and agreed upon in writing

2.3 Should Seller fail to deliver the Goods and/or Services by the dates as specified in the Order or as mutually extended by the parties, the Buyer shall in addition to any other remedies which it may have under these conditions or otherwise have the right to cancel all or any of the Goods and/or Services without being liable therefore in damages and obtain the same from other sources and all increased costs incurred thereby shall be deducted from any monies due to or to become due to Seller under these conditions or other contracts between Seller and the Buyer, or shall be recoverable against the Seller as damages.

3. QUALITY AND DESCRIPTION

Subject to Clause 13 the Goods shall:

- (1) conform as to the quantity, quality and description with the particulars stated in the Order;
- (2) be of sound materials and good workmanship;
- (3) be capable of any standard of performance specified in the Order and/or specification;
- (4) if the purpose for which they are required is indicated in the Order either expressly or by implication be fit for that purpose; and
- (5) maintain safe working condition at all times and comply with workplace health and safety and environmental laws & regulations and company's guidelines and regulations pertaining to health, safety, environment and security.

4. LIQUIDATED DAMAGES

4.1 The Due Dates agreed to between the Company and the Seller shall be strictly adhered to. In the event the Seller fails to deliver the Goods and/or Services as specified in the Agreement (including where the Goods are damaged or lost in transit, or the Goods and/or Services are short delivered or the wrong Goods and/or Services are delivered or Services fail to meet Buyer's expectation) or is unable to comply with the Due Dates as agreed between the parties (otherwise than in the circumstances provided for in Clause 22 (Force Majeure)) the Company shall, at its absolute discretion, have the right to impose liquidated damages at the rate of two per cent (2%) of the value of the Goods and/or Services outstanding per week or part thereof up to a maximum of ten per cent (10%) of the Gross Value of the Agreement, without prejudice to the other rights and remedies of the Company at law or in equity including the right to terminate the Agreement and forfeit the Security Deposit referred to in Clause 5 in regard to the whole or any part thereof of the Agreement and to obtain an alternative supply of the Goods and/or Services from other sources and the Company shall also be entitled to recover damages from the Seller in respect of obtaining such supply from other sources. The Company reserves the right at its sole discretion to vary, amend alter or increase the rate of the liquidated damages or the maximum recoverable liquidated damages or any other term in this clause

4.2 For the purpose of computing the liquidated damages under this Clause, the date of the bill of lading or an airway bill shall be deemed to be the actual date of the delivery of the Goods meeting all the requirements to be supplied under these conditions.



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- (a) Should the Goods or any part of unit thereof fail to satisfy any of the requirements and hence be rejected by the Buyer, such Goods are not considered as delivered. Such Goods shall be considered as delivered only when subsequent replacement Goods is acceptable by the Buyer and the date of receipt of the acceptable replacement shall be used for the purpose of computing the liquidated damages.
- (b) Should a Services fail to meet Buyer's expectation and hence be rejected by the Buyer, such Services is not considered delivered. Services shall be considered delivered only when the services engaged for met the requirement and expectation of the Company

5. SECURITY DEPOSIT (PERFORMANCE BOND)

5.1 In the event the Order issued by the Buyer stipulates that the Seller is required to lodge with the Buyer a security deposit for the due and faithful performance of the Seller's obligations pursuant to the Order and these conditions, the Seller shall deposit with the Buyer a Bank Draft or issue a Banker's Guarantee ("Security Deposit") acceptable to the Buyer within two weeks from the date of acceptance of the Order or as per supply agreement. The Buyer shall thereafter be entitled to utilize and make payments out of or deductions from the said Security Deposit in the event the Seller fails to meet its obligation relating to the Purchase Order for whatever reason and whether in whole or in part.

5.2 The Security Deposit (or any balance thereof remaining for the credit of the Seller) shall be released upon the expiry of the Supply Agreement, or upon completion by the Seller of its obligation under the agreement, including delivery of the Goods and/or Services and receipt by the Company and all Warranties obligation and shall be returned immediately thereafter to the Seller.

6. WARRANTY

6.1 Seller guarantees the Goods and every part or unit thereof against any defect in manufacture or any defect arising out of design, materials or workmanship or any failure or malfunction due to quality or materials, workmanship, design, assembly or installation for a period of 1 year (hereinafter referred to as "the warranty period") from the date of receipt of the Goods and/or Services by the Buyer, or at such later date as the Buyer shall request.

6.2 Seller complies any directions given by the Company from time to time including in relation to the performance of Services or whilst on Company premises; not be in breach of any obligation owed to any person or infringe any Intellectual Property Rights or any other rights of any person, and that it is not aware that the Intellectual Property Rights of any person will be or are infringed by such provision;

- (a) Hold and maintain all licenses required or necessary to lawfully provide the Goods and/or Services;
- (b) At its own cost effect and maintain appropriate insurance policies, including but not limited to the following:
 - (i) Insurance of the Goods up to the time of delivery;
 - (ii) Adequate public liability insurance coverage for Sellers's liabilities under the Agreement;
 - (iii) Work injury compensation insurance as required by law; and
 - (iv) any other insurance as required by law or specified in the Agreement;
- (c) upon request by the Company, provide to the Company copies of any certificate of currency proving that all such insurances have been effected; and comply with all laws, industry codes, applicable standards or other regulations or directions issued by any regulatory authority;
- (d) All Services will be carried out:
 - (i) With all due care and skill and by suitably competent and trained personnel;
 - (ii) In a good, professional and timely manner; and
 - (iii) In accordance with and conforming to the Specifications;
- (e) All Goods will:
 - (i) Meet the functional and performance criteria set out in and otherwise conform with the Specifications;
 - (ii) Be of a satisfactory quality, and fit for the purpose(s) for which the Goods are supplied;
 - (iii) Be free of defects in design, materials and workmanship; and,
 - (iv) when supplied to the Company be new and not have been used by any other person (except with the prior written agreement of the Company via email or letter) and not have been re-conditioned or refurbished

6.3 Where during the warranty period the Goods and/or Services or any part or unit thereof is found by the Buyer to be defective and/or not compliance and not met the Buyer's expectation, Seller shall, at the written request of the Buyer, replace the same at the expense (including transport costs and other incidental charges) of Seller or if the Buyer agrees, make good or repair the same at the expense (including transport costs and other incidental charges) of Seller within 14 days of the receipt from the Buyer of the rejected Goods or part or unit thereof.



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The Goods or part or unit so replaced or repaired being then subject to the warranty under Clause 6.1 for a period of 1 year from the date of receipt by the Buyer of the Goods or part or unit so replaced or repaired. If the Seller fails to make good or repair the Goods within 4 weeks or 2 attempts, the Buyer reserves the right to buy from alternative sources and the costs shall be borne by the Seller. The defective or unrepairable Goods shall be returned to the Seller at the sole discretion of the Buyer.

6.4 In the event that the Goods and/or Services or any part thereof remains unsatisfactory to the Company after replacement or resupply of the Goods and/or re-performance of the Services within the stipulated time, the Company reserves the right without prejudice to any other rights and/or remedies under the Agreement at law or in equity, to terminate the Agreement

6.5 The Seller warrants that the warranty set out in this Clause includes warranties of merchantability and fitness for a particular purpose and does not exclude any warranty rights of the Buyer under common or statutory law.

7. REPAIR AND REWORK COSTS

The Buyer may at its option choose to repair, sort and/or rework in such manner as it sees fit any delivered Goods which do not comply in all respects with the Specification and any specification(s) set out in these conditions and the Seller having been given prior notification shall reimburse the Buyer upon request of the Buyer's invoice for all expenses incurred in connection therewith. Buyer may deduct such expenses from any payments due to Seller.

8. INSPECTION AND TESTING

8.1 The Buyer shall be entitled to inspect and test the Goods during manufacture, processing or storage. If the Buyer exercises this right, Seller shall provide the Buyer free access to any premises on which the Goods are found and all such facilities as may be reasonable required by the Buyer therefore without charge.

8.2 If as a result of any inspection or testing under this Clause, the Buyer is of the opinion that the Goods do not comply with Specifications or conditions of acceptance or are unlikely on completion of manufacturing or processing to comply with the Specifications, it shall inform the Seller accordingly in writing (via email and/or letter) and the Seller shall take such steps as are necessary to ensure such compliance. The Seller shall have no claim whatsoever against the Buyer in respect of any Goods rejected under this Clause.

8.3 The Buyer shall be entitled to inspect the Services performed. If the Buyer exercises this right, Seller shall provide the Buyer full cooperation in accessing the Services.

8.4 If as a result of any inspection under this Clause, the Buyer is of the opinion that the Services do not meet requirement and not performing up to expectation, it shall inform the Seller accordingly in writing (via email and/or letter) and the Seller shall take such steps as are necessary to ensure such compliance. The Seller shall have no claim whatever against the Buyer in respect of any Services terminated under this Clause.

9. ACCEPTANCE TEST

9.1 Before delivering the Goods in accordance with Clause 3 of these conditions, the Seller shall carefully inspect and test them for compliance with the Specifications. The Seller shall, if required by the Buyer, give the Buyer reasonable notice of such test and the Buyer shall be entitled to be represented thereat. The test is hereunder referred to as the Acceptance Test.

9.2 The Seller shall also supply to the Buyer a copy of Seller's test sheet certified by Seller and the Buyer's representative.

9.3 All costs, charges and expenses for the Acceptance Test shall be borne by Seller.

9.4 Seller shall provide all necessary labor facilities and equipment required for the performance of the Acceptance Test.

9.5 The Buyer shall not be under any obligation to accept the delivery of the Goods or any part or unit thereof which have not satisfactorily passed the Acceptance Test under this Clause.

10. PACKING AND MARKING

The Seller shall preserve and pack the Goods in such a manner as to ensure that the Goods arrive at their destination intact and undamaged. The packing shall comply strictly with any special requirements specified by the Buyer for the transport of Goods of similar nature and construction. In particular, the Seller shall protect the Goods in packages which will withstand rough handling in transit and which will be further suitable for export to and for storage in the tropics. The Seller hereby acknowledges that the costs of all necessary packing cases (which will be considered non-returnable) material and labor have been provided for, and included in the Contract Price.

11. DAMAGE OR LOSS IN TRANSIT

The Seller will repair or replace, free of charge, Goods damaged or lost in transit provided the Buyer shall give to the Seller written notification of such damage or loss within a reasonable time.

12. STATUTORY REQUIREMENTS

The Seller warrants that the design, construction and quality of Goods to be supplied under the Order comply in all respect with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force the time when the same are supplied.

13. REJECTION



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13.1 The Buyer may by notice in writing (via email and/or letter) to the Seller reject the Goods and/or Services if the Seller fails to comply with his obligations under Clauses 8 and 9 hereof and may also by notice in writing to the Seller reject any Goods which are found not to be in accordance with the Order.

13.2 The Buyer shall when giving notice of rejection specify the reasons therefore and shall thereafter return the rejected Goods to the Seller at the Seller's risk and expense unless otherwise agreed to by the parties hereto. In the case the rejected Goods are returned, the Seller shall within a reasonable time replace such rejected Goods with Goods which are in all respects in accordance with the Order.

13.3 The Buyer shall when giving notice of rejection specify the reasons therefore and shall thereafter request for Services to be modified (whilst still complying with the Specifications for the Goods and/or Services), the Seller shall within a reasonable time rework and improve on the Services in accordance with the order.

13.4 Any money paid by the Buyer to the Seller in respect of any rejected Goods and/or Services not replaced by the Seller within a reasonable time together with any additional expenditure over and above the Contract Price reasonably incurred by the Buyer in obtaining other goods in replacement shall be paid by the Seller to the Buyer.

14. INDEMNITY

If in the course or any supply of the Goods and/or Services or any part or unit thereof and/or the performance of any of the Seller's obligations hereunder and/or the use or operation of the Goods and/or Services or any part or unit thereof, loss of or damage to any property occurs or death or personal injury is caused to any person and it is shown that such loss, damage, death or personal injury is caused by faulty workmanship on the part of Seller in the manufacture of the Goods and/or Services or any part or unit thereof or by sub-standard materials used in the manufacture or by defective design, the Seller shall indemnify the Buyer against any claim arising therefrom and all costs, fees, charges, expenses and losses incurred thereby.

15. INTELLECTUAL PROPERTY RIGHTS AND ROYALTIES

In the event that the Buyer (including for this purpose every officer, department, employee, servant, agent and representative thereof) is held liable for losses and/or damages arising out of any claim at any time on account of any patent copyright, trademarks, design or intellectual property right which may be held to have been infringed or royalties which may be payable by virtue of the Buyer's acceptance, distribution or use of the Goods supplied under the Order, the Seller shall indemnify the Buyer against such claims and costs, fees, charges and expenses in respect thereof.

16. PROPERTY OF THE BUYER

16.1 The property in the Goods shall pass to the Buyer on delivery without prejudice to any right of rejection which may accrue to the Buyer under these conditions.

16.2 Unless otherwise agreed in writing, all tooling, equipment, or material of every description furnished to Seller by Buyer, or paid for or partially paid for by Buyer and any replacement thereof, or any materials affixed thereto, shall at all times remain the property of the Buyer. The Seller shall not substitute any property for Buyer's property and shall not use such property except for fulfilling Buyer's orders.

16.3 Such property while in Seller's custody or control shall be held at Seller's sole risk and shall be kept insured by Seller in the joint names of the Buyer and Seller at Seller's expense in an amount equal to the then current replacement cost with loss payable to Buyer.

16.4 Such property shall be prepared for shipment and delivered in good condition, normal wear tear excepted, to the Buyer's plant immediately upon request by the Buyer.

17. CONFIDENTIALITY

Except with the written consent (via email and/or letter) of the Buyer, the Seller shall not disclose these conditions and/or documents, the Order or any provisions thereof, or any information, specification, plans, drawing and/or documents issued or furnished by or on behalf of the Buyer in connection therewith to any person, other than a person employed or engaged by the Seller in carrying out these conditions and/or Order.

All Specifications, drawings and technical information delivered by the Buyer to the Seller shall remain the property of the Buyer and must not be used by the Seller to reproduce or brought to the knowledge of a third party without the written consent of the Buyer. The confidentiality obligations contained in the Agreement shall survive the expiry or earlier termination of the Agreement but shall cease to apply to any Confidential Information which has come into the public domain through no fault or breach by the Sellers. Further, in the event of expiry or earlier termination of the Agreement, Sellers shall erase all Confidential Information including copies thereof, electronic or otherwise, from Sellers's systems and magnetic data and, when directed to do so by the Company, shall instruct and procure all its agent(s) and sub-contractor(s) to erase all Confidential Information including copies thereof, electronic or otherwise, from all systems and magnetic data owned and/or controlled by such agent(s) and sub-contractor(s).

The Seller shall ensure Confidential Information is shared with its employee(s), officer(s) and/or agent(s) on a need-to-know basis only and shall take all reasonable precautions and adequate measures to:

- (i) Prevent the unauthorized disclosure of the Confidential Information or any part thereof by any of its employee(s), officer(s), Agent(s) or permitted subcontractor(s);
- (ii) Preserve the integrity of the Confidential Information and prevent any corruption, damage, destruction or loss of the Confidential Information



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18. TERMINATION

The Company may terminate the Agreement, either in its entirety or in part for convenience by giving the Sellers five (5) days' notice without being liable to the Sellers in damages or otherwise except for the payment of the Price of the Goods and/or Services ordered prior to the effective date of the termination and accepted by the Company at any time thereafter.

The Company may terminate the Agreement with immediate effect by giving written notice (via email and/or letter) to the Sellers if:

18.1 The Sellers breaches any material provision of the Agreement and fails to remedy the breach within fourteen (14) days after receiving written notice requiring it to do so; or

18.2 The Sellers breaches Clause 18;

18.3 An Insolvency Event occurs in respect of the Sellers; or

18.4 A notice in writing has been issued by the Company to the Sellers when there is misconduct, fraud or dishonesty on the part of the Sellers in the performance of its obligations under the Agreement.

18.5 The termination of the Agreement for any reason whatsoever shall be without prejudice to any rights of the parties, which have accrued prior to termination.

18.6 Regardless of expiry or earlier termination of the Agreement, the rights and obligations of the parties under the provisions of the Agreement which by their context, intent and meaning would reasonably be expected to survive the expiry or earlier termination of the Agreement, or any part thereof, will so survive including but not limited to Clauses 4 (Liquidated Damages), 6 (Warranty), 14 (Indemnity), 15 (Intellectual Property Rights and Royalties), 17 (Confidentiality), 23 (Arbitration) and 30 (Limitation of Liability).

19. VARIATION

No variation of these conditions shall apply thereto unless such variation shall have first been expressly accepted in writing by the Buyer and Seller.

20. ASSIGNMENT

Except with the written consent of the Buyer, Seller shall not transfer or assign the Order or any part, share or interest therein.

21. GIFTS, INDUCEMENTS OR REWARDS

The Company shall be entitled to terminate the Agreement and to recover from the Sellers the amount of any loss, damages, costs, and expenses resulting from such termination, if the Sellers shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not done any action in relation to the obtaining or execution of the Agreement, or for showing or not showing favour to any person in relation to any agreement with the Agreement, or if like acts shall have been done by any person employed by the Sellers or acting on its behalf (whether with or without the knowledge of the Sellers) or if in relation to any agreement with the Company, the Sellers or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Act or shall have abetted or attempted to commit such an offence under the said Prevention of Corruption Act.

22. FORCE MAJEURE

22.1 For the purposes of the Agreement, a "Force Majeure Event" shall mean any circumstance beyond a party's reasonable control including but without limiting the generality of the foregoing, such circumstance as an act of God, a fire, a state of war, an act of the public enemy, a declaration of a state of emergency by the government, a circumstance seriously disrupting public safety, peace or good order of the Republic of Singapore, an act of terrorism, a flood, a quarantine restriction, an epidemic, any outbreak of disease, a strike or lockout (other than a strike or lockout involving the Sellers's own employees), a riot, a war (declared or undeclared), a civil commotion, vandalism, or malicious mischief and which occurs without the fault or the negligence of the party seeking relief.

22.2 If a party ("Affected Party") is wholly or partially unable to perform its obligations because of a Force Majeure Event, then it shall promptly notify the other party of its inability to perform and the nature and extent of the circumstances that amounts to a Force Majeure Event.

22.3 Subject to compliance with the provisions of Clause 22.2, the Affected Party's obligation to perform those aforementioned obligations affected by the Force Majeure Event will be suspended for the duration of the delay arising directly out of the Force Majeure Event but the Affected Party shall otherwise comply in full with all its obligations under this Agreement.

22.4 Subject to compliance with Clause 22.2, if a delay arising directly out of a Force Majeure Event continues or is likely to continue for more than thirty (30) days, the parties shall draw up and agree to a workaround plan within fourteen (14) days. If a suitable workaround plan cannot be agreed to by the end of the fourteen (14) days, the Company may at its election, by notice to the Sellers in writing, do any of the following:

22.4.1 Negotiate a variation in accordance with Clause 19 (Variation);

22.4.2 Cancel the Goods and/or Services affected by the delay; and/or

22.4.3 Terminate the Agreement; without being liable to the Seller in damages or otherwise.



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22.5 Notwithstanding the provisions of Clauses 22.1 to 22.4, in the event that the Company's customer(s) exercises a right to suspend or terminate its/their agreement(s) with the Company due to a Force Majeure Event, the Company shall have the right by seven (7) days' prior notice in writing (via email and/or letter) to the Sellers to suspend or terminate the Agreement. In exercising the right under this Clause 22.5, the Company shall not be liable to the Sellers save that the Company shall remain liable to pay the Sellers for the Price of Goods and/or Services delivered / performed and accepted by the Company. The Sellers shall refund the balance of any payment(s) or deposit(s) made after deducting any outstanding sum(s) owed by the Company to the Sellers by reason of this Clause 18.5.

23. ARBITRATION

Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity, breach or termination, shall be referred to and finally resolved by arbitration in Singapore at the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the SIAC ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. There shall be one (01) arbitrator appointed in accordance with the SIAC Rules. The language of the arbitration shall be English.

24. APPLICABLE LAW

These conditions and the Order shall be subject to, governed by and interpreted in accordance with the Laws of the Republic of Singapore for every purpose.

25. ORDER OF PRECEDENCE

In the event of any conflict between these Standard Conditions and any documents (including without limitation, contracts, tender submission(s), Specification(s), drawing(s) or technical data), unless otherwise agreed to in writing by the parties hereto, the order of precedence shall be:

- LOA;
- Specification(s);
- These Standard Conditions;
- Any other document(s).

26. HEADINGS

The headings to the clauses of these conditions are for ease of reference only and shall not affect the interpretation or construction of these conditions.

27. NOTICES

Any notice given hereunder shall be in writing and shall be hand delivered or sent by pre-paid or registered or recorded delivery post to the registered address for the time being of the Company as set out below and any notice shall be deemed to be given if hand delivered, at the time of delivery, if sent by post as aforesaid for forty-eight (48) hours after the same has been posted.

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28. SEVERABILITY

Should any provisions of these conditions be found to be illegal, invalid or unenforceable, such finding will not affect the legality, validity or enforceability of any other provisions as though such illegal, invalid or unenforceable provision had not been included herein.

29. NON-WAIVER

No supplement modification amendment or waiver of these conditions shall be binding unless it is in writing signed by the parties hereto. No waiver of any of the provisions of these conditions shall be deemed or shall constitute a waiver of any of the provisions hereof, nor shall such waiver constitute a continuing waiver as otherwise expressed provided.

30. LIMITATION OF LIABILITY

Notwithstanding any other provision in the Agreement and to the maximum extent permissible under applicable law, in no circumstances shall the Company be liable for any special, incidental, consequential, indirect, exemplary or punitive damages or losses of any kind or for any loss of use, savings, business, contracts, goodwill, profits, revenue or reputation, whether arising under contract, tort, statutory liability or otherwise, regardless of whether such loss or damage was reasonably foreseeable or the Company knows or has previously been advised of the possibility of such loss or damage.

31. EXPORT LICENCE

If an export license is required for export of the Goods ordered, it shall be the responsibility of the Seller to obtain such license (including making suitable arrangements with the manufacturer of such Goods, if necessary) in a timely manner to facilitate the export of the Goods out of the manufacturer/Seller's country. The Seller shall be entirely responsible (including assuming the responsibility of the manufacturer) if it is subsequently discovered that the appropriate license was not obtained/inadequately applied.

32. RIGHTS OF THIRD PARTIES

Except as expressly set out in the Agreement, any person not a party to the Agreement shall acquire no rights whatsoever under the Agreement by virtue of the Contracts (Rights of Third Parties) Act or otherwise.