1 Definitions

1.1 In these conditions (unless the context otherwise requires):

(a) “Buyer” means the person, firm or company with whom the Contract is made;

(b) “Company” means Phoenix Inspection Systems Limited and also (where the context so permits) its assignees and sub-contractors;

(c) “Company’s Premises” means the premises mentioned in the Company’s quotation or other contractual document, or if not so mentioned, the Company’s premises at 46 Hardwick Grange, Warrington, Cheshire, United Kingdom;

(d) “Contract” means the contract between the Buyer and the Company for the sale and purchase of the Goods and/or the Services (as the case may be);

(e) “Goods” and “Services” means the goods (or any instalment or part of them) and services to be supplied pursuant to the Contract.

1.2 Words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.

1.3 The headings in these conditions are intended for reference only and shall not affect their construction.
8.10 The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide, and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.

9 Returns

9.1 Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense. Standard stock items returned will normally be subject to a 15% restocking charge, non-stock items are non-returnable.

10 Carriage

10.1 Unless otherwise agreed by the Company in writing the Goods will be delivered ex Company's Premises and the price of the Goods is exclusive of carriage, packing and insurance to the Buyer's premises.

10.2 Where the Buyer requests delivery in a manner other than that selected by the Company in condition 10.1 above, any difference in price shall be charged to the Buyer's account.

11 Passing of title and risk

11.1 From the time of delivery the Goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the Company's property until all payments to be made by the Buyer under the Contract and any other contract between the Company and the Buyer in respect of any account whatsoever have been made full and unconditionally. Whilst the Company's ownership continues the Buyer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company.

11.2 The Buyer may only re-sell the Goods to the Buyer's customers in the ordinary course of the Buyer's business as a fiduciary and trustee for the Company. In the event of any resale by the Buyer of the Goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until such assignment shall be held in trust in a separate identified account for the Company by the Buyer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as the Company's moneys.

11.3 Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or judgement or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.

11.4 Pending payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.

11.5 The Company is hereby licensed to enter upon any premises in the ownership, possession or control of the Buyer at any time to recover the Goods.

12 Conditions and warranties

12.1 The Contract shall not constitute a sale by description or sample.

12.2 Any conditions or warranties (whether express or implied by statute or common law or arising from conduct or a previous course of dealing or trade custom or usage or otherwise howsoever) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample or as to the care and skill with which the Services will be performed are hereby expressly disclaimed and negatived.

13 Defective goods or services

13.1 In substitution for all rights which the Buyer would or might have but for these conditions the Company undertakes:

(a) in the case of Goods manufactured by the Company that it within three months of delivery of any item of the Goods a defect in materials or workmanship appears therein then the defect which would not be obvious on reasonable inspection thereof (whether such an inspection was carried out or not) it will at its own discretion either credit to the Buyer the full price paid by the Buyer to the Company for such item or repair it or supply a replacement thereof free of charge at the place of delivery specified by the Buyer for the original Goods provided that in any case the original Goods have been accepted and paid for; and

(b) if any Services have been found to be performed defectively within ninety days of the date of the performance the Company shall in (its sole discretion) replace such Services free of charge or credit to the Buyer the price paid for such Services.

13.2 Failure of the Goods and/or Services to perform in accordance with the Buyer's requirements shall not constitute a defect in the Goods and/or Services or non-compliance with the Contract unless the Buyer and the Company agreed in writing prior to delivery that the Goods and/or Services would perform in accordance with those requirements.

13.3 In the case of Goods not manufactured by the Company, the Company will pass on to the Buyer the extent that it is able any benefits obtainable under any warranty given by the Company's supplier provided that the Goods have been accepted and paid for.

13.4 In order to exercise its rights under this condition the Buyer shall inform the Company within seven days of the date when such defect appeared or ought reasonably to have been discoverable and (in the case of defective Goods the Buyer) shall at the Company's written request return the defective Goods carriage paid to the Company's Premises and (in the case of defective Services) the Buyer shall give the Company all reasonable access to its facilities in order to inspect the manner in which the Services had been carried out.

13.5 Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods and/or the Services arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of the Company as to storage and handling of the Goods.

13.6 Where the Goods are for delivery or the Services are to be performed by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery or performance (as appropriate) thereof.

13.7 Nothing herein shall have the effect of excluding or restricting the liability of the Company for fraudulent misrepresentation or for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.

14 Buyer's specification

14.1 The Company shall not be liable for imperfect work caused by any inaccuracies in any drawing, bill of quantities or specification supplied by the Buyer.

15 Limitation of liability

15.1 The Company shall not be liable for any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.

15.2 The aggregate liability of the Company (whether in contract or for negligence or breach of statutory duty or otherwise howeversoever) to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Goods or the price for the Services, whichever is applicable.

16 Default or insolvency of Buyer

16.1 If the Buyer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any resolution or petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend delivery or any further deliveries (as the case may be) of Goods and/or the performance of the Services until any default by the Buyer be remedied.

17 Representations

17.1 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the Company's agents or employees shall be construed to enlarge, vary or override in any way any of these conditions.

18 Force majeure

18.1 The Company shall be entitled to delay or cancel delivery or to reduce the amount of Goods delivered or suspend or cancel the Services to be performed if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery or performing the Services through any circumstances beyond its control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply.

19 Cancellation

19.1 Save as provided in conditions 16 and 18 hereof contracts may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.

20 Assignment; Sub-contracting

20.1 The Company may assign the Contract with the Buyer or sub-contract the whole or any part thereof to any person, firm or company. The Buyer may not assign this Contract or any right or obligation hereunder without the Company's prior written consent.

21 Governing law

21.1 The Contract shall in all respects be governed by and construed in accordance with the laws of England and Wales and shall be subject to the jurisdiction of the English courts.