STANDARD TERMS AND CONDITIONS OF BUSINESS

1. Definitions
1.1 In the context of these standard terms and conditions of business:-
1.1.1 'the seller' means Entwistle and Joynt Limited of 62 Darlington Street East, Wigan, Lancashire, WN1 3AT and includes the seller's duly appointed representatives or agents.
1.1.2 'the buyer' means any customer of the seller whether a person, firm, or company (or any agent or authorised representative of such person, firm, or company) purchasing goods and/or services from the seller.
1.1.3 'delivery note' means the seller's note detailing goods delivered and/or services supplied (as the case may be) to the buyer given contemporaneously on delivery such goods sold and/or tools which have been the subject of the sellers repair service.
1.1.4 'goods' means all and any goods, materials or products of whatever description, supplied, sold or distributed by the seller.
1.1.5 'services' means all and any services of whatsoever description performed or supplied by the seller for or to the buyer, including (but without limitation) the seller's repair services, but excluding informal advice provided by the seller in respect of goods purchased or to be purchased by the buyer.
1.1.6 'sellers repair services' means all those services which involve the seller servicing, maintaining, and repairing tools (including goods) and installing new and replacement parts in tools (including goods)
1.1.7 'conditions' means these terms and conditions and any of them.
1.1.8 the singular shall include the plural and each of the male, female and neutral pronouns shall be interchangeable.
1.1.9 headings are for convenience only and do not affect the construction and/or interpretation of the conditions.
1.1.10 reference to any rule of law includes applicable law of the European union and the decisions of any court of competent jurisdiction.
1.1.11 reference to any statute includes any re-enactment or modification of such statute.

2. General
2.1 the conditions apply to all contracts entered into by the seller. No modification or variation of them shall be binding unless executed in writing by the parties in accordance with condition 18.
2.2 the conditions contain the entire terms and conditions of the contract between the seller and buyer and (subject to any rule of common law or statutory or legislative regulation incapable of being over-ridden) operate to displace any provisions in statute or common law and (so far as the law permits) or terms and conditions imposed or sought to be imposed by a buyer which might otherwise apply.
2.3 failure by the seller or by the buyer at any time or times to require performance of any provision of the contract of which these conditions form part shall in no manner affect the rights of the seller or the buyer to enforce such provisions at a later time in respect of the contract or otherwise.
2.4 no waiver by the seller or by the buyer of any condition or the breach of any term, covenant, representation, or warranty contained in the contract (whether express or given by conduct or otherwise) in any one or more instances shall be deemed to be or constructed as a further or continuing waiver of any condition or breach or a waiver of any other condition or deemed to be constructed as a breach of any other term, covenant, representation or warranty in the contract.

3. Samples and Examples
3.1 any samples of goods supplied to the buyer shall be accepted by the buyer as supplied solely for information and as in no way importing any express or implied conditions or warranties as to quality, description, colour fitness or satisfactory quality of goods subsequently delivered and the buyer shall be deemed to have satisfied himself as to such matter prior to ordering the goods. notwithstanding that any sample may have been produced to or supplied by the seller, all sales shall be sales by description only and not by sample.
3.2 any examples of services shown or supplied are for information only and shall not be deemed part of any order. Any such examples do not imply and conditions warranties or terms in or to the contract concluded with the buyer.

3.3 the seller (subject always to any rule of common law or statutory or legislative regulation to the contrary) shall at all times be deemed to have satisfied all obligations upon it, whether expressed or implied and whether arising by statute or otherwise as the quality of the goods supplied in the performance of the contract.

4. Validity
4.1 any written quotation given by the seller shall be valid for 30 days only unless otherwise specified in writing. No verbal quotation shall be binding on the seller.

4.2 no order is deemed to be accepted nor any contract made with the seller until an acknowledgement of such order or contract in writing has been made by the seller to or with the buyer and the seller's right is reserved (without prejudice to any other remedy) to cancel any uncompleted order to suspend delivery on the failure of any of the buyers commitments with the seller. Upon such cancellation or suspension by the seller or in the event of cancellation by the buyer the seller shall, on demand be indemnified by the buyer against any loss or damage resulting therefrom.

5. Purchase Price and Payment
5.1 payment in full for goods and/or services shall be made by the buyer to the seller in all cases strictly within 30 days of the date of the seller's invoice. Interest on overdue payments shall be charged daily by the seller at the rate of five per cent per annum above the base rate for the time being of The National West Minister Bank Plc.

5.2 The prices quoted by the seller are those prevailing at the time of quotation and all goods and services shall be invoiced at the prices ruling at the time of delivery unless otherwise agreed in writing between the seller and the buyer.

6. Delivery
6.1 whilst delivery dates are given by the seller in good faith based upon information available to the seller, such dates are not guaranteed and the seller accepts no liability for delay in delivery or completion of performance of services howsoever caused and no delay shall entitle the buyer to reject any such delivery or any further instalments or part of the order or to repudiate the contract or the order or any part thereof or to claim any damages or compensation in respect of any such delay.

6.2 unless the seller delivers the goods directly to the buyer at the buyers premises in which case the place of delivery shall be at the buyers premises specified in the delivery note and/or at the place the buyers employee, servant, representative, agent or nominee signed the said delivery note, in the absence of express agreement to the contrary the place of delivery shall be the sellers premises.

6.3 any shortage of delivery or damage to goods must be notified to the seller in writing within 3 days of delivery of the goods. Non-delivery must be notified in writing also within 3 days of the due date for delivery. The liability of the seller shall be limited to the repair of damaged goods and the replacement of non-delivered goods provided written notice is given as required by this condition.

6.4 if the buyer fails to accept delivery, the goods will be stored by the seller at the buyers risk and expense until acceptance of the buyer.

7. Cancellation
7.1 no order shall be cancelled either in whole or in part without the seller's written consent. If a contract or order or any part thereof shall become impossible of performance or otherwise frustrated, the seller shall be entitled to reasonable remuneration for work done until the date of such frustration.

8. Risk of Loss
8.1 the risk of loss or damage to goods shall pass to the buyer when either:-
(i) the goods are released by the seller from its depot to the buyer or to any carrier authorised by the seller or by the buyer to collect the goods; or
(ii) the seller by its employees delivers the goods to the buyers premises specified in delivery note and the delivery note is signed by the buyer or his duly authorised representative.

8.2 the buyer shall be responsible for all costs of insurance of the goods from the time that risk of loss passes to the buyer.

9. Unforeseen Delay
9.1 neither party shall be responsible for any losses resulting in the fulfilment of any of the terms of the
contract is delayed or prevented by revolutions or other civil disorder, wars, acts of enemies, strikes, fires, floods, acts of god, delayed delivery to the seller of materials, parts and/or accessories required for the delivery of the goods and/or services to be provided under the contract, or by any other cause not within the control of the party whose performance is interfered with, and which, by the exercise of reasonable diligence, such party is unable to prevent, whether the class of causes enumerated or not. In the event of such delay, the time of delivery shall be extended by the number of days of the delay which are caused by reasons beyond the control of the party so delayed.

10. Local Taxes
10.1 In case any tax or duty (including but not limited to import duty, vat or other sales tax) should be imposed or collected under the laws of the country of the buyer or any governmental until thereof, whether now in existence or hereafter enacted, with respect to the goods or the manufacturer, purchase, sale or use thereof which shall increase the cost to the seller, then, and in every such event, the seller shall have the right to increase the price of the goods to the extent necessary to meet such increased cost and the amount of any such increased cost and the amount of any such tax may include in the invoice for the goods or services to be provided under the contract or may be invoiced at a later date. For the avoidance of doubt the buyer shall be responsible and liable for all import duties, vat or other sales tax charged or levied on all goods ordered by the buyer and sold subject to conditions.

11. Warranties and Liabilities
11.1 Subject as expressly provided in the conditions and except where the goods are sold to a person dealing as a consumer (within the meaning of the unfair contract terms act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law including (without limitation) all warranties, conditions or other terms implied by the sale of goods act 1979 and the supply of goods and services act 1982.
11.2 Where the goods are sold under a consumer transaction (as defined by the consumer transactions (restrictions on statements) order 1976) the statutory rights of the buyer are not affected by the conditions.
11.3 Any claim by the buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with a particular specification shall (whether or not delivery is refused by the buyer) be notified to the seller within 3 days from the date of delivery or (where the defect failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the buyer does not notify the seller accordingly, the buyer shall not be entitled to reject the goods and the seller shall have no liability for such defect or failure, and the buyer shall be bound to pay the price as if the goods had been delivered in accordance with the contract.
11.4 Where a valid claim in respect of goods based on any defect in the quality or condition of the goods or their failure to meet a particular specification is notified to the seller in accordance with the conditions, the seller shall be entitled to replace the goods (or the part in question, free of charge or, at the sellers sole discretion, refund the buyer the price of the goods (or a proportionate part of the price), but the seller shall have no further liability to the buyer.
11.5 Except in respect of death or personal injury caused by the sellers negligence, the seller shall be liable to the buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by negligence of the seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods, or their use or resale by the buyer except as expressly provided in the conditions.
11.6 The seller shall be under no liability in respect of any defect in the goods arising from any drawing design or specification supplied by the buyer.
11.7 The seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the sellers or manufacturers instructions (whether oral or in writing), misuse or alteration, or repair of the goods without the sellers approval.

12. Retention of Title
12.1 In this condition the expression 'goods' shall mean goods and/or any materials or other things supplied by the seller whether in the form in which collected by or delivered to the buyer or whether or not combined with any other materials or things. If the goods the property of the seller are combined with the property goods of the buyer or are incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the seller. If goods the property of the seller are combined with goods the property of any person other than the buyer or are incorporated therein the product thereof
shall become or shall be deemed to be owned in common with that other person.

12.2 The property in any goods shall pass to the buyer when, and shall not pass to the buyer until, the seller has been paid for them in full together with the full price due to the seller for any other goods the subject of any other contract between the seller and buyer.

12.3 In the event of the buyer becoming insolvent or have a receiver appointed of the whole or any part of its property or compounding with its creditors or going into liquidation or in the event of payment for any goods being overdue then and in any such event it shall be lawful for the seller, its servants officers or representatives to enter upon the buyers premises and recover possession of any goods of the seller for which the seller has not been paid and to take away such goods.

12.4 In the event of any goods being sold or otherwise disposed of by the buyer before the seller has been paid for them in full, then the entire proceeds of sale thereof and/or any other monies received by the buyer, or by any other person (except a purchase of goods in good faith without notice of this condition) in connection with the sale, disposal or factoring of the goods or of invoices dealing with the goods (whether such monies are received by the buyers own customers or from factors or other third parties) shall be held in trust for the seller and shall not be mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the sellers monies unless and until all monies referred to in condition 12.2 have been fully paid. The buyer shall give written notice of this condition to any factor or other person except a purchaser of goods in good faith.

12.5 In the event of certain goods having been paid for by the buyer and other goods not having been so paid for the onus of proof shall be on the buyer to show that any goods remaining in its possession are goods for which it has paid.

12.6 This condition does not entitle the buyer to return the goods or to refuse to delay payment on the grounds that the property has not yet passed nor shall it constitute an agency.

12.7 The buyer appoints the seller its attorney in fact with full authority to execute on behalf of the buyer any financing statement or other document or instrument which may be required in order to perfect the sellers title and interest in the goods.

13. The Buyers Use of The Goods

13.1 The buyer shall be responsible for and agrees to train and instruct users of the goods to be sold under the contract on the sale and proper use of the goods and the buyer shall ensure that where goods are accompanied by an instruction leaflet that all persons using the goods shall read such instruction leaflet. Further, the buyer shall be responsible for and agrees to maintain in good working order the safety features installed on the goods. It is understood and agreed that the failure by the buyer to conform with these requirements obviates any responsibility on the seller for operator safety and the buyer agrees to indemnify and keep the seller harmless from and against any liability damages, costs and expenses, including reasonable legal fees and expenses, which may be incurred by the seller as a result of the buyers failure to comply with the requirements of this condition.

13.2 If the goods sold to the buyer should have been accompanied by an instruction leaflet and the buyer finds that no such instruction leaflet has been delivered with such goods the buyer shall ensure that he obtains the relevant instruction leaflet relating to such goods either from the manufacturer of the goods or from the seller prior to the buyer or his employees, servants or agents using such goods.

14. Sellers Repair Services Warranty

14.1 The seller warrants that the sellers repair services will correspond with their specification at the time of re-delivery of the goods to the buyer and that the goods which have been the subject of the sellers repair services will be free from defects in materials and workmanship for a period of 3 months from the date of re-delivery of the goods to the buyer.

14.2 The warranty contained in condition 14.1 shall cease to have effect and the seller shall not be obliged to honour the warranty if:-

(i) any defect arises in the goods as a result of any wilful damage, negligence, abnormal working conditions, or failure to follow the manufacturers or the sellers instructions on the part of the buyer, its employees, servants and/or agents; or

(ii) the total price for the sellers repair service has not been paid by the due date for payment; or

(iii) further maintenance and/or repairs and made to the goods other than by the seller without the buyer first obtaining the sellers written consent.

14.3 The warranty obtained in condition 14.1 shall not apply to goods (parts, materials or equipment) which have not been the subject of the sellers repair services.

14.4 The warranty given in this condition 14 does not affect any of the buyers statutory rights save to the extent excluded by the conditions so far as the law allows.
15. Sellers Remedies
15.1 in addition to the rights and remedies contained in the conditions the seller shall have all the rights and remedies afforded to a seller pursuant to statute and/or common law. All rights and remedies of the seller under the conditions shall be cumulative and not in the alternative.

16. Assignment
16.1 the contract and the rights granted under the conditions shall not be assigned by the buyer without the prior written consent of the seller. Any assignment or purported assignment by the buyer shall be wholly void and ineffective for all purposes unless made in conformity with this condition.

17. Construction
17.1 The contract and the conditions shall be governed by the construed according to English law and the courts of England and Wales shall have the exclusive jurisdiction. The invalidity or unenforceability of any particular condition or any other term of the contract shall not effect the other provisions and the contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

18. Scope of Conditions
18.1 no modification, variation or cancellation of any condition shall be binding on the seller unless the same shall be in writing and shall be signed by an executive officer of the seller. The conditions shall be binding upon and shall insure for the benefit of the parties and their respective successors and permitted assigns.