

STEM DRIVE LIMITED
TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions, unless the context otherwise requires:

'CONDITIONS': means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

'DELIVERY DATE': means the date for delivery mentioned in Part D of the Quotation to this Agreement

'EQUIPMENT': means the equipment (including any instalment of the equipment or any parts for them) more fully described in Part B of the Quotation to this Agreement which the Seller is to supply and install in accordance with these Conditions

'INTELLECTUAL PROPERTY RIGHTS': all patents, property, trade and other marks, registered designs (and applications for all the same), copyrights, trade and business names, inventions, discoveries, improvements designs, techniques, and other confidential processes and information and know-how and any licences in connection with any of the same and the full right to all intellectual property and legal protection relating to the same and in every case (unless the context otherwise requires) of or belonging or licensed to the Seller in relation to the Equipment and its use;

'PRICE': means the VAT and/or other tax exclusive sum specified in Part C of the Quotation to this Agreement

'SITE': means the location specified in Part Quotation A to this Agreement

'WRITING': includes telex, cable, facsimile transmission and comparable means of communication

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale and installation

2.1 The Seller shall sell and install at the Site and the Buyer shall buy the Equipment for the Price, in accordance with the provisions of this Agreement, which shall constitute the entire agreement between the Parties to the exclusion of any other terms and conditions.

2.2 No variation to this Agreement shall be binding unless agreed in Writing between the Buyer and the Seller or their respective authorised agents.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Equipment or its installation unless confirmed by the Seller in Writing. In entering into this Agreement the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application, installation or use of the Equipment which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 It shall be the Buyer's responsibility to prepare the site for access and installation in accordance with any written instructions supplied by the Seller to the Buyer. The Seller will not be liable for any breach of its obligations under this Agreement in the event of any default by the Buyer of its obligations under this clause 2.6.

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller or its authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer.

3.3 The quantity, description of and any specification for the Equipment shall be those set out in Part A of the Schedule to this Agreement.

3.4 The Seller reserves the right to make any changes in the design and specification of the Equipment which are required to conform with any applicable statutory or EC requirements, or as a result of ongoing refinement or research and development of the Equipment which do not adversely affect its quality or performance.

4. Price of the Equipment

4.1 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price of the Equipment to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions

4.2 The Price shall include the Equipment, packaging for transit and transport to the Buyer's site, goods in transit insurance and installation.

4.3 The Price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the Price of the Equipment on or at any time after delivery and installation of the Equipment, unless the Buyer wrongfully fails to take delivery of the Equipment in which event the Seller shall be entitled to invoice the Buyer for the Price at any time after the Seller has notified the Buyer that the Equipment is ready for installation.

5.2 The Buyer shall pay the Price within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and property in the Equipment has not passed to the Buyer. The time of payment of the Price shall be of the essence of this Agreement.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 terminate this Agreement insofar as it relates to any Equipment yet to be delivered to the Buyer or suspend any further deliveries of such Equipment to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Equipment (or the equipment supplied under any other agreement between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per cent per annum above the National Westminster Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery

6.1 Delivery of the Equipment shall be made by the Seller delivering the Equipment to the Site and installing it.

6.2 The Delivery Date is approximate only and the Seller shall not be liable for any delay in delivery of the Equipment however caused. Time for delivery shall not be of the essence of the Contract. The Equipment may be delivered by the Seller in advance of the Delivery Date upon giving reasonable notice to the Buyer.

6.3 Where the Equipment is to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat this Agreement as a whole as repudiated.

6.4 If the Seller fails to deliver the Equipment (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar equipment to replace those not delivered over the price of the Equipment.

6.5 If the Buyer fails to take delivery of the Equipment or fails to enable the Seller to install the Equipment at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) or if different failure by the Buyer to prepare the Site for installation in accordance with any instructions supplied prior to delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Equipment until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Equipment at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price.

7. Risk and property

7.1 Risk of damage to or loss of the Equipment shall pass to the Buyer at the time of delivery to the Site or, if the Buyer wrongfully fails to take delivery of the Equipment, the time when the Seller has tendered delivery of it.

7.2 Notwithstanding delivery and the passing of risk in the Equipment, or any other provision of these Conditions, property in the Equipment shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Equipment and all other equipment agreed to be sold by the Seller to the Buyer, or in respect of any services supplied by the Seller to the Buyer under any agreement between them, for which payment is then due.

7.3 Until such time as the property in the Equipment passes to the Buyer, the Buyer shall hold the Equipment as the Seller's fiduciary agent and bailee, and shall keep the Equipment protected and insured and identified as the Seller's property.

7.4 Until such time as property in the Equipment passes to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Equipment to the Seller and, if the Buyer fails to do so forthwith, to enter upon any property of the Buyer or any third party where the Equipment is installed and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Equipment which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Warranties and liability

8.1 Subject to the conditions set out below the Seller warrants that the Equipment will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of [twelve] months from the date of their initial use or [eighteen] months from delivery, whichever is the first to expire.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 The Seller shall be under no liability in respect of any defect in the Equipment arising from any drawing, design or specification supplied by the Buyer;

8.2.2 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 Seller's instructions (whether oral or in writing), misuse, or alteration or repair of the Equipment carried out by the Buyer in breach of this Agreement;

8.2.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Equipment has not been paid by the due date for payment;

8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 The Seller warrants that the Equipment will be installed using reasonable care and skill but the Seller shall have no liability to the Buyer for any loss, damage, costs, expenses or other claims for compensation arising from any:

8.3.1 failure by the Buyer to prepare the Site for installation in accordance with any instructions supplied prior to delivery; or

8.3.2 incomplete, incorrect, inaccurate or otherwise defective instructions or requirements made or specified by the Buyer in relation to the installation of the equipment.

8.4 Subject as expressly provided in this Agreement, and except where the Equipment is 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.

8.5 Any claim by the Buyer which is based on any defect in the quality or manner of installation or in the quality or condition of the Equipment or its failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or 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 Equipment 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 Equipment had been delivered in accordance with the Contract.

8.6 Where any valid claim in respect of the Equipment which is based on any defect in the quality or condition of the Equipment or its failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Equipment (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the Price of the Equipment (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer.

8.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Equipment, its installation by the Seller, or use by the Buyer, and the entire liability of the Seller under or in connection with this Agreement shall not exceed the Price, except as expressly provided in this Agreement.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Equipment or its installation, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.8.1 Act of God, explosion, flood, tempest, fire or accident;

8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.8.4 import or export regulations or embargoes;

8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7 power failure or breakdown in machinery.

9. Intellectual Property Rights

9.1 The Parties agree that nothing in this Agreement shall serve to transfer to the Buyer any Intellectual Property Rights in the Equipment and the Buyer shall not copy or reproduce the Equipment nor any substantive part or element thereof, nor in any way infringe the Intellectual Property Rights of the Seller.

10. Indemnity

10.1 If any claim is made against the Buyer that the Equipment infringes or that its use infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

10.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;

10.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

10.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

10.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

10.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

10.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

11. Insolvency of buyer

11.1 This clause applies if:

11.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to terminate this Agreement or suspend any further deliveries or works hereunder without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. General

12.1 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 at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.2 No waiver by the Seller of any breach of the contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.3 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected.

12.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.