

1. DEFINITIONS AND INTERPRETATION

In these Terms and Conditions:
 1.1 the following words and expressions shall have the following meaning unless the context otherwise requires:

- “Business Day” shall mean a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales;
- “Buyer” shall mean the person, business, firm or company to whom the Company agrees to sell or supply the Goods pursuant to the acceptance of an order by the Company in accordance with **Condition 2.1**;
- “Company” shall mean Böhler-Uddeholm (UK) Limited a company registered in England and Wales with company number 00229550 whose registered office is at European Business Park, Taylors Lane, Oldbury, West Midlands B69 2BN;
- “Contract” shall mean any contract between the Company and the Buyer for the sale and purchase of the Goods incorporating these Terms and Conditions;
- “Force Majeure Event” shall mean any:
 - (a) act of God;
 - (b) war, insurrection, riot, civil commotion, act or threat of terrorism;
 - (c) lightning, earthquake, fire, flood, storm, or extreme weather condition;
 - (d) theft, malicious damage;
 - (e) strike, lockout, industrial dispute (whether affecting the workforce of the Company and/or any other person);
 - (f) breakdown or failure of plant or machinery;
 - (g) inability to obtain essential supplies or materials;
 - (h) change in any applicable law (whether statute, common law or otherwise);
 - (i) any failure or default of a supplier or sub-contractor of the Company; or
 - (j) any event or circumstance to the extent it is beyond the reasonable control of the Company;
- “Goods” shall mean any goods which the Company supplies to the Buyer (including any of them or any part of them) under a Contract;
- “Insolvent” shall mean in respect of a company, LLP or partnership), the Buyer:
 - (i) has a receiver, administrator or provisional liquidator appointed;
 - (ii) is subject to a notice of intention to appoint an administrator;
 - (iii) passes a resolution for its winding-up (save for the purpose of a solvent restructuring previously approved in writing by the terminating party);
 - (iv) has a winding up order made by a court in respect of it;
 - (v) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring previously approved in writing by the terminating party);
 - (vi) ceases to carry on business; or
 - (vii) has any steps or actions taken in connection with any of these procedures or any analogous steps or actions taken in any jurisdiction; and shall mean in respect of an individual, the Buyer:
 - (i) has a receiver appointed;
 - (ii) has a bankruptcy order made by a court in respect of him;
 - (iii) has a bankruptcy petition presented in respect of him;
 - (iv) enters into any composition or arrangement with creditors;
 - (v) ceases to carry on business; or
 - (vi) has any steps or actions taken in connection with any of these procedures or any analogous steps or actions taken in any jurisdiction;
- “Terms and Conditions” shall mean these terms and conditions of sale together with any special terms agreed in writing between the Buyer and the Company;
- “Warranty Period” shall mean the period starting on the delivery, or deemed delivery, of the Goods and ending on the expiry of a period of 12 months from and including this date of delivery.

- 1.1 all headings are for ease of reference only and shall not affect the construction or interpretation of the Terms and Conditions;
- 1.2 unless the context otherwise requires:
- 1.2.1 references to the singular include the plural and vice versa and references to any gender include every gender; and
- 1.2.2 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.3 references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time; and
- 1.4 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

2. FORMATION AND INCORPORATION

- 2.1 Each order or acceptance of a quotation for Goods by the Buyer shall be deemed to be an offer by the Buyer to buy Goods on these Terms and Conditions. The Contract is formed when the order is accepted by the Company, by way of an acknowledgement of order. No contract will come into existence until an acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer, however, for the avoidance of doubt, the Company may deliver the Goods specified in an order notwithstanding that no such acknowledgment has been issued. Acceptance of delivery of the Goods will be deemed conclusive evidence of the Buyer’s acceptance of the Terms and Conditions.
- 2.2 The Contract will be upon these Terms and Conditions, subject to any variation under **Condition 2.4**, to the exclusion of any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other similar document, whether or not such document is referred to in the Contract.
- 2.3 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.4 Any variation of the Contract will become effective only if it is in writing and signed by a duly authorised representative on behalf of the Company.
- 2.5 Subject to **Condition 6.6**, the Buyer may not cancel the Contract. The Company may cancel the Contract at any time prior to delivery.

3. THE GOODS

3.1 All samples, drawings, descriptive matter, specifications and advertising issued by the Company (or the manufacturer of the Goods) and any descriptions or illustrations contained in the Company’s or manufacturer’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

3.2 The Company may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements.

4. PASSING OF RISK

4.1 The risk of damage to or loss of the Goods shall pass to the Buyer on delivery or deemed delivery in accordance with **Condition 6**.

5. RESERVATION OF TITLE

- 5.1 Legal and beneficial ownership of the Goods shall not pass to the Buyer until the Company has received in full in cleared funds:
 - 5.1.1 all sums due to it in respect of the Goods; and
 - 5.1.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 5.2 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - 5.2.1 hold the Goods on a fiduciary basis as the Company’s bailee;
 - 5.2.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company’s property;
 - 5.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.2.4 maintain the Goods in satisfactory condition; and
 - 5.2.5 keep the Goods insured for their full price against all risks to the reasonable satisfaction of the Company and ensure that the Company’s interest in them is noted on the relevant insurance policy. On request the Buyer shall promptly produce evidence of the terms of this policy of insurance to the Company and procure that any insurance proceeds received in respect of lost or damaged Goods are paid to the Company, to the extent required to satisfy the indebtedness of the Buyer to the Company.

5.3 The Buyer may use and resell the Goods in the ordinary course of its business before ownership has passed to it, provided that the Buyer shall be permitted to make sales solely on the following conditions:

- 5.3.1 any sale shall be effected at full market value;
- 5.3.2 any such sale shall be a sale of the Buyer’s property on the Buyer’s own behalf and the Buyer shall deal as principal when making such a sale; and
- 5.3.3 the Buyer shall include a reservation of title clause in the form of **Condition 5** in its sale contract with its customer.
- 5.4 The Buyer’s right to possession, use and resale of the Goods shall terminate immediately:
 - 5.4.1 if the Buyer becomes insolvent;
 - 5.4.2 on the Company giving the Buyer written notice that it has any reasonable concerns regarding the financial standing of the Buyer;
 - 5.4.3 if the Buyer is in breach of any of its obligations under the Contract or any other contract between the Company and the Buyer;
 - 5.4.4 if the Buyer encumbers or in any way charges any of the Goods; or
 - 5.4.5 if the Contract terminates for any reason.

5.5 The Company shall be entitled to recover payment for the Goods (including by way of court action) notwithstanding that ownership of any of the Goods has not passed from the Company.

5.6 The Buyer grants the Company, its agents, employees, sub-contractors and suppliers an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer’s right to possession has terminated, to recover them.

5.7 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer’s right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

5.8 If the Buyer’s right to possession, use and resale of the Goods terminates in accordance with **Condition 5.4**, the Company shall be entitled to issue the Buyer with a credit note for all or any part of the price of the Goods together with value added tax thereon.

5.9 On termination of the Contract, howsoever caused, the Company’s (but not the Buyer’s) rights contained in **Condition 5** shall survive this termination.

6. DELIVERY

6.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall be made ex-works as defined in INCOTERMS 2010 at the Company’s place of business as notified to the Buyer by the Company.

6.2 Notwithstanding **Condition 6.1**, the Company may, at its discretion, arrange physical delivery of the Goods to the address specified by the Buyer if the Buyer requires.

6.3 The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery. Delivery of the Goods will be made during the Company’s usual business hours.

6.4 The Company will use reasonable endeavours to deliver each of the Buyer’s orders for the Goods within the time agreed when the Buyer places an order. If no time is agreed, the Company shall use reasonable endeavours to make delivery of the Goods within:

- 6.4.1 7 Business Days of the Company’s acknowledgment of order being issued in respect of Goods which are supplied from stock and are not made to order; and
- 6.4.2 within a reasonable amount of time of the Company’s acknowledgment of order being issued to the Buyer for all other Goods;

and any times specified by the Company for delivery of the Goods are an estimate only. Time of delivery shall not be of the essence, therefore any delay in delivery will not entitle the Buyer to terminate the Contract other than as set out in these Terms and Conditions.

6.5 If the Company is unable for any reason to fulfil any delivery obligation at the specified time, the Company will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill, loss of anticipated savings, cost of mitigation, cost of any wasted expenditure or similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay or failure in the delivery of the Goods (including if caused by the Company’s negligence) except as set out in **Condition 6.6**.

6.6 Any delay in delivery will not entitle the Buyer to cancel the order unless and until the Buyer has given 90 days’ written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period. If the Buyer cancels the order in accordance with this **Condition 6.6** then:

- 6.6.1 the Company will at the pro rata Contract rate, at its option, issue a credit note against any invoice raised or refund to the Buyer any sums which the Buyer has paid to the Company in respect of that order or part of the order which has been cancelled; and
- 6.6.2 the Buyer will be under no liability to make any payments under **Condition 11** in respect of that order or part of the order which has been cancelled.

6.7 If for any reason at the due date for delivery the Buyer fails to take delivery of any of the Goods when they are ready for delivery, or the Company is unable to make the Goods available for delivery on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, then without prejudice to the Company’s other rights:

6.7.1	the Goods shall be deemed to have been delivered on the due date; and		
6.7.2	the Company may store or arrange storage of the Goods until actual delivery or sale in accordance with Condition 6.7.3 and the Buyer shall be liable for all related costs and expenses (including storage and insurance); and/or	8.7	
6.7.3	following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.	8.8	
6.8	The Buyer shall provide at the place of delivery and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.	8.9	
6.9	Notwithstanding the provisions of Condition 6.11 , if the Company delivers to the Buyer a quantity of Goods up to 15% more or less than the quantity the Buyer ordered, the Buyer shall not be entitled to reject the Goods or any part of them by reason of the surplus or shortfall (as appropriate) and:		
6.9.1	the Buyer shall pay for any surplus goods; and/or		
6.9.2	the Company shall adjust the price payable for the Goods in the amount of any shortfall in quantity;		
	on a pro rata basis which will be based on the price set out in the Contract for the Goods.		
6.10	If a Contract provides for delivery of the Goods at a place other than the Company's place of business, the Company will not be liable to the Buyer for any loss of or damage to the Goods which occurs in transit unless the Buyer gives written notice to the Company within 1 day of the date of the Company's advice note or other notification of the despatch of the Goods in the case of non delivery or, in any other case, within 4 days after delivery (including deemed delivery) of the Goods.		
6.11	On delivery of the Goods the Buyer will perform a reasonable inspection to assess the Goods delivered against the quantities specified on the delivery note. The Buyer cannot bring a claim against the Company to dispute the accuracy of the details on the delivery note unless the alleged discrepancy is noted with full details on the proof of delivery note. No statement on the proof of delivery note waives or relieves the Buyer from its obligations to inspect the quantity of the Goods at the time of delivery. Where the Buyer has signed the proof of delivery or other similar document indicating that no inspections, checks or similar exercises have been undertaken, the quantity details set out on the delivery note will be deemed to be correct and cannot subsequently be disputed by the Buyer.		
7.	SEPARATE CONTRACTS		
7.1	The Company may deliver the Goods by separate instalments. The Company shall be entitled to invoice the price for each instalment separately in accordance with Condition 11.4 of the Terms and Conditions.		
7.2	Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.		
8.	QUALITY AND WARRANTY		
8.1	The Company warrants to the Buyer that (subject to the other provisions of these Terms and Conditions) during the Warranty Period the Goods shall:		
8.1.1	be of satisfactory quality within the meaning of the Sale of Goods Act 1979;		
8.1.2	be reasonably fit for any particular purpose for which the Goods are bought if the Buyer had notified that purpose to the Company in writing and the Company had confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company in respect of that purpose;		
8.1.3	conform with the Buyer's specification in all material respects where the Buyer has specified the chemical composition of the Goods;		
8.1.4	have a weight which conforms with the quantity tolerances agreed between the Buyer and the Company at Condition 6.9 or otherwise agreed in writing.		
8.2	The Company shall not be liable for a breach of any of the warranties in Condition 8.1 unless:		
8.2.1	where the breach of warranty is a:		
8.2.1.1	breach which would be apparent on a reasonable examination, the Buyer has given written notice of the breach to the Company within 7 days of receipt of the Goods;		
8.2.1.2	breach which would not be apparent on reasonable examination, the Buyer has given written notice of the breach to the Company promptly upon discovery of the breach and at least within 14 days of the same coming to the knowledge of the Buyer; or		
8.2.1.3	non-conformance with the quantity tolerances agreed between the Buyer and the Company at Condition 6.9 or otherwise agreed in writing, the Buyer has promptly given the Company written notice of the non-conformance in quantity and the Company has been given a reasonable opportunity to witness the weighing or other measuring of the defective Goods; and		
8.2.2	the Company is given a reasonable opportunity after receiving the notice at Conditions 8.2.1.1 and 8.2.1.2 to examine the Goods in question;		
8.2.3	at the Company's option, the Buyer returns the Goods in question to the Company's place of business or such other address notified to the Buyer or permits the Company or its agent or sub-contractor to inspect the Goods at the Buyer's premises; and		
8.2.4	the Buyer provides to the Company all information and assistance which the Company may reasonably require to investigate the alleged breach.		
8.3	The Company shall not have any liability for a breach of any of the warranties at Condition 8.1 if, or to the extent that:		
8.3.1	the Buyer makes any further use of the relevant Goods after discovering the relevant breach;		
8.3.2	the defect was caused or exacerbated by improper use, handling, alteration, installation, repair, maintenance, storage or failure to comply with instructions provided with the Goods by the Buyer, its customers or its or their officers, employees, agents or sub-contractors;		
8.3.3	the Buyer alters or repairs the relevant Goods without the written consent of the Company;		
8.3.4	subject to any contrary agreement between the Company and the Buyer, the relevant defect was caused by damage in transit after delivery; or		
8.3.5	the relevant defect was caused by fair wear and tear.		
8.4	In respect of Goods which are supplied from stock and are not made to order and which do not conform with the warranties in Condition 8.1 then, subject to Conditions 8.2 and 8.3 , the Company's only liability will be, together with the provisions of Condition 9.4 , to at its option:		
8.4.1	reduce the price of the relevant defective Goods (or the defective part thereof) by a sum which is equitable in the circumstances;		
8.4.2	repair or replace the defective Goods (or the defective part thereof); or		
8.4.3	where there is a shortfall in the quantity of the Goods which exceeds that which is permitted by Condition 6.9 , supply additional Goods up to amount of the quantity tolerances at Condition 6.9 within a reasonable amount of time;		
8.5	In respect of Goods which are bespoke and manufactured specifically to the Buyer's order or specification and which do not conform with the warranties in Condition 8.1 then, subject to Conditions 8.2 and 8.3 , the Company's only liability will be, together with the provisions of Condition 9.4 , to at its option:		
8.5.1	reduce the price of the relevant defective Goods (or the defective part thereof) by a sum which is equitable in the circumstances; or		
8.5.2	if the Company and the Buyer cannot agree a sum under condition 8.5.1, the Company shall at its option:		
8.5.2.1	repair the Goods (or the defective part thereof); or		
8.5.2.2	replace the defective Goods.		
8.6	At the Company's option the Buyer shall, before the remedies at Conditions 8.4 and 8.5 can be exercised, return any Goods which breach any of the warranties at Condition 8.1		
	(or the defective part thereof) to the Company's place of business or such other address notified to the Buyer and the cost of returning the Goods shall be paid by the Buyer.		
	Any Goods which have been replaced shall belong to the Company. The warranties under Condition 8.1 shall apply to any repaired or replacement Goods for the unexpired remainder of the Warranty Period of the Goods which have been repaired or replaced.		
	The Company will deliver any repaired or replacement Goods to the Buyer in accordance with Conditions 6.1 and 6.2 at the Company's own expense.		
	Where the Goods supplied are alleged to be defective and it cannot be determined whether the Company is in breach of the warranties at Condition 8.1 , the Company may, if it deems necessary in its sole discretion, arrange for any technical investigation into the alleged breach. The Company and the Buyer shall, at the Company's option, each pay half of the anticipated costs of this investigation in advance into an account designated for this sole purpose by the Company. If:		
8.9.1	it is established that Condition 8.1 was breached, the Company shall reimburse to the Buyer its proportion of the agreed, anticipated costs of the technical investigations and pay the costs of the investigation; or		
8.9.2	if it is established that there was no breach of Condition 8.1 , the Buyer shall reimburse to the Company its proportion of the agreed, anticipated costs of the technical investigations and pay the costs of the investigation.		
9.	LIMITATION OF LIABILITY		
9.1	With the exception of Conditions 6.4 , 6.5 , 6.9 and 8 , this Condition 9 sets out the Company's liability to the Buyer.		
9.2	Subject to Conditions 8 and 9.3 , all warranties, conditions and other terms implied by law (whether statute, common law or otherwise) are excluded from the Contract.		
9.3	Nothing in these Terms and Conditions shall operate to exclude or restrict the liability of the Company (if any) for:		
9.3.1	death or personal injury resulting from its negligence or by the negligence of a person for whom it is vicariously liable (negligence being as defined in section 1(1) Unfair Contract Terms Act 1977);		
9.3.2	for breach of its obligations arising under section 12 Sale of Goods Act 1979;		
9.3.3	its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or		
9.3.4	for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.		
9.4	The Company's maximum aggregate liability for liability arising out of or in connection with this Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Company's obligations under this Agreement and/or any defect in any of the Goods and/or any use made or resale of any of the Goods by the Buyer or of any product incorporating any of the Goods and/or where caused by a deliberate personal repudiatory breach by the Company, shall be limited to damages in the amount of:		
9.4.1	€3,000,000 in case of loss of or physical damage to the tangible property (excluding the Goods) of the Buyer caused by the Goods; and		
9.4.2	the purchase price of the Goods for all other liabilities which do not fall within Condition 9.4.1 .		
9.5	The Company shall have no liability to the Buyer for any:		
9.5.1	loss of profit (direct or indirect);		
9.5.2	loss of anticipated saving or loss of margin (in each case whether direct or indirect);		
9.5.3	loss of revenue, loss of production or loss of business (in each case whether direct or indirect);		
9.5.4	loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect);		
9.5.5	cost of removal of defective Goods, costs of return of defective Goods to the Company, installation of replacement or repaired Goods and any rectification work required in connection with such removal or installation;		
9.5.6	of the Buyer's wasted expenditure;		
9.5.7	of the Buyer's costs of mitigation;		
9.5.8	liability of the Buyer to third parties (whether direct or indirect); or		
9.5.9	other indirect, consequential or special loss, arising out of or in connection with this Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Company's obligations under this Contract and/or any defect in any of the Goods and/or any use made or resale of any of the Goods by the Buyer or of any product incorporating any of the Goods and/or where caused by a deliberate personal repudiatory breach by the Company subject always to Condition 9.3 .		
9.6	The price of the Goods is assessed on the basis of the limitation of liability in these Terms and Conditions. Any negotiated liability of the Company which is higher than that in these Terms and Conditions will be reflected in the price of the Goods.		
9.7	The Company shall have at least 60 days in which to remedy any default for which the Company is liable following prompt notification of the default to the Company by the Buyer.		
9.8	The Company shall have no liability to the Buyer in respect of any default for which the Company is liable unless the Buyer has served notice of the same on the Company no later than 30 days after the date at which it first became aware of the circumstances giving rise to the default or the date on which it ought reasonably to have become so aware.		
9.9	The Buyer agrees to indemnify, keep indemnified and hold harmless the Company from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect and consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) and judgments which the Company incurs or suffers as a consequence of any direct or indirect breach or negligent performance or failure in performance by the Buyer of the Terms and Conditions of the Contract.		
10.	TERMINATION		
10.1	On the occurrence of any of the events in Condition 10.2 , without prejudice to the Company's other rights and remedies:		
10.1.1	the Company may terminate immediately on written notice, wholly or in part, this Contract; and/or		
10.1.2	at the Company's option, all other contracts between the Company and the Buyer which have not been fully performed as at the date of the termination of the Contract shall be deemed to be cancelled without the Company incurring any liability to the Buyer under this Contract; and/or any further deliveries under any or every such contract may be suspended.		
10.2	If the Buyer:		
10.2.1	fails to make any payment due to the Company under the Contract or any other contract between the Company and the Buyer within 5 Business Days after the due date;		
10.2.2	has failed to provide any letter of credit, bill of exchange or any other security required by the Contract provided that in such an event, the Company's rights at Condition 10.1 shall apply only in regard to the particular contract in respect of which the Buyer shall have so failed;		
10.2.3	has failed to take delivery of any goods under any contract between it and the Company otherwise than in accordance with the Buyer's contractual rights; becomes Insolvent; and		
10.2.4	commits a material breach of these Terms and Conditions which cannot be remedied or commits a material breach of the Contract which can be remedied but fails to remedy that breach within 30 days of a written notice setting out the breach and requiring it to be remedied being given by the Company.		

- 10.3 The right of termination set out in **Condition 10.1** shall not arise in respect of any failure to make payment of any sum to the extent that such sum is and remains the subject of a bona fide dispute (where any sum which is not part of the bona fide dispute has been paid in accordance with the Contract).
- 10.4 The Company may as a condition of delivery, following any suspension under **Condition 10.1.2**, under any contract between it and the Buyer, require the Buyer to pay the price of the goods before delivery or offer such other security as the Company may require in respect of the payment for any further deliveries and/or require the price for goods to be increased if the Company considers this necessary.
- 11. PRICE AND PAYMENT**
- 11.1 Unless the Contract provides expressly otherwise, the price payable by the Buyer for each delivery of Goods shall be the Company's ruling price for such Goods at the date of despatch. The price is specified on an ex-works delivery basis, pursuant to **Condition 6.1**, and any other costs of handling, storage, packaging, insurance, carriage and delivery will be payable in addition to the price.
- 11.2 Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which shall be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.
- 11.3 The Company shall be entitled to vary the prices following any changes in the specification made at the request of the Buyer and agreed by the Company or to cover any extra expense as a result of the Buyer's instructions or lack of instructions or to comply with the requirements referred to in **Condition 3.2.1**. The Company shall give written notice of the variation to the Buyer.
- 11.4 The Company shall be entitled to invoice the Buyer for the prices for the Goods and any handling, storage, packaging, insurance, carriage and delivery costs (if any) payable by the Buyer in addition to the price following the Company issuing the relevant written acknowledgement of order in accordance with **Condition 2.1**.
- 11.5 Each invoice shall be payable in full and such payment shall be received by the Company within 30 days from the date of the invoice, unless otherwise agreed between the parties. The Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 11.7 Notwithstanding any purported contrary appropriation by the Buyer, the Company shall be entitled, by giving written notice to the Buyer, to appropriate any payment by the Buyer to any invoice issued by the Company.
- 11.8 Time shall be of the essence in respect of the payment timescales set out in **Condition 11.5** and any timescales which may be substituted for them by the agreement in writing of the parties.
- 11.9 Save as otherwise expressly provided in the Contract or required by law, all payments to be made by the Buyer to the Company under the Contract shall be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 11.10 If the Buyer fails to make any payment due to the Company under the Contract on or before the due date the Company shall be entitled to withhold further deliveries of Goods until payment of all overdue sums has been made and to cancel any or all orders accepted under **Condition 2.1** which have not yet been delivered.
- 11.11 Following termination of the Contract:
- 11.11.1 the Company shall be entitled to invoice all Goods and any packaging, insurance, carriage and delivery costs incurred which have not yet been invoiced; and
- 11.11.2 all invoices (including any invoices issued under **Condition 11.11.1**) shall become immediately due and payable by the Buyer.
- 12. CURRENCY PROVISIONS**
- 12.1 If the Buyer makes any payments due under the Contract in a currency which is other than that specified in the Contract, the conversion of that payment into the currency of the Contract shall be made on the basis of the buying rate for the said currency published by the Bank of England which is applicable on the date the Company issues its written acknowledgment of the Buyer's order. If the value of the currency of the Contract decreases in relation to Sterling between the date of acknowledgment of the order and the date that payment is made, the price payable under this Contract shall be recalculated based on the buying rate for the currency of the Contract published by the Bank of England on the date that payment is made by the Buyer.
- 13. INSPECTION**
- 13.1 Without prejudice to the provisions of **Conditions 6.10 and 6.11**, the Buyer shall inspect the Goods as soon as reasonably practicable after delivery and shall within 14 days from and including the date of delivery give written notice to the Company of any breach of any of the warranties in **Condition 8.1** in relation to those Goods.
- 13.2 If the Buyer does not give notice to the Company under **Condition 13.1** in respect of the Goods, the Buyer shall be deemed to have accepted those Goods on expiry of the 14 day period from and including the date of delivery.
- 14. FORCE MAJEURE**
- 14.1 The Company shall not be in breach of the Contract or otherwise liable to the Buyer for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 14.2 If a Force Majeure Event occurs:
- 14.2.1 the Company shall as soon as reasonably practicable after becoming aware of the Force Majeure Event give written notice to the Buyer that the Force Majeure Event has occurred; and
- 14.2.2 the Company shall not be required to mitigate the effects of the Force Majeure Event.
- 14.3 Subject to **Condition 14.4**, the Buyer shall not be in breach of the Contract or otherwise liable to the Company for any failure to perform or delay in performing its obligations under the Contract to the extent that this is due to a Force Majeure Event affecting the Company.
- 14.4 The Buyer shall continue to pay the prices for any Goods which the Company continues to supply notwithstanding the occurrence of the Force Majeure Event.
- 14.5 If a Force Majeure Event which gives rise to relief from liability under **Condition 14.1** continues for a period of more than 90 days, either party shall be entitled to terminate the Contract immediately by giving written notice to that effect to the other party.
- 15. INTELLECTUAL PROPERTY**
- 15.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of the Company, except the right to use, or re-sell the Goods in the Buyer's ordinary course of business.
- 16. REGULATION OF EXPORTS**
- 16.1 Notwithstanding anything to the contrary herein, nothing in this Contract is intended, and nothing herein should be interpreted or construed, to induce or require either party to act or refrain from acting (or agreeing to act or refrain from acting) in any manner which is inconsistent with, penalised or prohibited under any laws, regulations or decrees of the United Kingdom or the United States of America or other official government rules or requirements applicable to such party which relate to foreign trade controls, export controls, embargoes or international boycotts of any type.
- 16.2 In particular, the Buyer hereby confirms that it will at all times fully comply with (i) the Regulation (EC) No 961/2010 on restrictive measures against Iran replacing Regulation (EC) No 423/2007 or any amended, replacement or additional Regulation in force at the time of this Contract, (ii) the U.S. Iran Sanction Act of 1996, as amended by the Comprehensive Iran Sanction, Accountability, and Divestment Act 2010 or any amended, replacement or additional legislation in force at the time of this Contract, (iii) similar regulations and statutory provisions in this respect in place globally and (iv) our group policy to control that none of our products are delivered into the oil and gas industry of the Islamic Republic of Iran.
- 16.3 The Buyer hereby further agrees not to deliver the products, directly or indirectly, into the oil and gas industry of the Islamic Republic of Iran or resell the products to anyone he knows or reasonably suspects will do so or circumvent or attempt to circumvent this condition in any other way. Furthermore, the Buyer hereby agrees to fully indemnify the Company for all costs, liabilities, losses, damages, claims, proceedings, legal costs and judgments for any breach of this condition whether such breach occurs directly or indirectly, with or without the Buyer's knowledge.
- 16.4 The Buyer is aware of EU and US regulations regarding sanctions against Iran and Syria and similar regulations or statutory provisions in place as well as the company's group (voestalpine AG) policy to control that none of our products are delivered into Iran or Syria (collectively "Regulations"). The customer will fully obey these Regulations non-regarding their applicability on him and will neither (i) deliver the products into Iran or Syria nor resell the products to anyone he knows will do so nor (ii) circumvent this provision in any other way."
- 17. GENERAL**
- 17.1 Subject to the provisions of **Condition 11.8**, time shall be of the essence in respect of all dates, periods and timescales with which the Buyer is required to comply under the Contract and any dates, periods and timescales which may be substituted for them by the agreement in writing of the parties. Time shall not be of the essence in respect of any obligation with which the Company is required to comply under the Contract.
- 17.2 The Company's rights and remedies set out in the Terms and Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 17.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and this shall not affect the remainder of the Contract which shall continue in full force and effect.
- 17.4 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid if it is in writing and only in the circumstances and for the purpose for which it was given and shall not constitute a waiver of any other right, remedy, breach or default.
- 17.5 The Buyer shall not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or to sub-contract any of its obligations under the Contract.
- 17.6 The Company shall be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract and to sub-contract any of its obligations under the Contract.
- 17.7 The Company's employees, agents and sub-contractors shall be entitled to enforce **Conditions 5.6, 6.4 and 9** subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of the Contract.
- 17.8 The parties may vary or rescind the Contract without the consent of the Company's employees, agents or sub-contractors.
- 17.9 Save as provided in **Condition 17.7**, the parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.
- 17.10 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 17.10.1 neither party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract;
- 17.10.2 the only remedies available for breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract shall be for breach of contract; and
- 17.10.3 nothing in this **Condition 17.10** shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.
- 18. NOTICE**
- 18.1 Subject to **Condition 18.4**, any notice or other communication given under or in connection with the Contract shall be in writing and:
- 18.1.1 sent by pre-paid recorded delivery to that party's address;
- 18.1.2 delivered to or left at (but not, in either case, by post) that party's address;
- 18.1.3 sent by facsimile to that party's facsimile number; or
- 18.1.4 sent by e-mail to that party's e-mail address (with a copy sent by pre-paid recorded delivery to that party's address within 24 hours after sending the e-mail),
- and, in the case of any notice or other communication to be given to the Company, marked for the attention of the specified representative of the Company. The address, facsimile number and representative for the Company are set out below and the address and facsimile number for the Buyer are those detailed in any purchase order or other document received by the Company from the Buyer, and may be changed by the relevant party giving at least 30 days notice in accordance with this **Condition 18**.
- Böhler-Uddeholm (UK) Limited
- European Business Park
Taylors Lane
Oldbury, West Midlands
B69 2BN
Fax: 0121 544 7623
For the attention of: the Company Secretary
- 18.2 Any notice or communication given in accordance with **Condition 18.1** shall be deemed to have been served:
- 18.2.1 if delivered by hand, at the time of delivery;
- 18.2.2 if sent by pre-paid recorded delivery, at 9.00am on the second Business Day after the date of posting;
- 18.2.3 if sent by facsimile at the time of confirmation of completion of transmission by way of a transmission report; and
- 18.2.4 if sent by e-mail as set out in **Condition 18.1.4**, at the time of sending the e-mail (except that if an automatic electronic notification is received by the sender within 24 hours after sending the e-mail informing the sender that the e-mail has not been delivered to the recipient or that the recipient is out of the office, that e-mail shall be deemed not to have been served), provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it shall be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it shall be deemed to be served at 9.00am on the immediately following Business Day.
- 18.3 To prove service of a notice or communication it shall be sufficient to prove that the provisions of **Condition 18.1** were complied with.
- 18.4 This **Condition 18** shall not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.
- 19. GOVERNING LAW AND JURISDICTION**
- 19.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by English law.
- 19.2 Each party agrees that the courts of England have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).
- 19.3 Any party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.