5. DELIVERY

5.1 Unless otherwise agreed in writing by Company, delivery of Company shall be taken place at the Delivery Point for collection by Customer or its carrier (“Delivery”).

5.2 Any and all dates and periods specified by Company for Delivery are estimates only and do not constitute fixed times for Delivery. Delivery shall not be of the essence of the Contract and shall not be made of the essence by notice. Company shall have no liability for any damages, losses, costs or expenses whatsoever or in connection with the delay or in any way in connection with the failure to make or the postponement of delivery times specified in the Order. Customer shall have no right to cancel an Order for delays in delivery.

5.3 Company will endeavor to comply with any reasonable request by Customer for postponement of Delivery but shall be under no obligation to do so and Company is not liable for any cost, loss of profit or other damage caused by the delay.

5.4 The date for Delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from Customer.

5.5 If Customer is ordering Goods for delivery outside of the country of manufacture by Company, such Goods may be subject to import duties and taxes which are levied when the Goods reach the specified destination. Customer will be responsible for payment of such import duties and taxes. Customer will comply with all laws and regulations of the country for which the Goods are destined and will comply with any such import duties and taxes.

5.6 The Customer shall (and shall procure that its sub-contractors and agents shall) (a) observe the work rules and safety regulations of Company while on Company’s premises; (b) strictly follow all instructions and installation materials related to the Goods and not make any alteration, modification or addition to the Goods or packaging as well as any other material or parts or products or packaging with the Goods, shall be a material breach of these Terms and voids any warranties made by Company for the Goods.

6. WARRANTY AND LIABILITY

6.1 Title to the Goods will pass to Customer upon Company’s Delivery of the Goods.

6.2 Unless otherwise agreed between Company and Customer in writing, risk of damage to or loss of the Goods shall pass to Customer upon Delivery. When Goods are transported by Company’s own vehicles, Delivery shall be deemed completed when Goods are offloaded or delivered to Customer.

6.3 No claim for Goods damaged in transit will be considered by Company unless Customer used its own transport for Delivery and unless: (a) Company is advised in writing per motor carrier rules;

6.4 No allowance for claims for short deliveries will be made unless (a) notice is provided to Company within three days of Delivery and (b) Company is given an opportunity to verify the same.

6.5 For the avoidance of doubt, where Customer collects the Goods from the Delivery Point or where a third party collects the Goods for transport to Customer, Company shall have no liability to Customer for any damage incurred in transit.

6.6 The foregoing warranty is in lieu of and excludes all other warranties not expressly set forth herein, whether express or implied by operation of law or otherwise, including but not limited to any implied Warranties of Merchantability or Fitness for a Particular Purpose.

6.7 Any claim for defect with respect to the Goods sold hereunder shall be deemed waived by Customer unless Company is notified in writing, in the case of defects apparent on visual inspection, within sixty (60) days from Delivery, or, in the case of defects not apparent on visual inspection, within twelve (12) months from Delivery (such 60 days or 12 months, as applicable, the “Warranty Period”). All Goods claimed to be defective shall be held subject to Customer’s inspection, and Company shall not be liable for the cost of any repairs performed without its express written consent. The Goods claimed to be defective may be returned pre-paid to Company’s plant in inspection for return to Customer for inspection; and Company reserves the right to inspect the Goods. If the claim is established, Company will reimburse Customer for all shipping costs incurred in connection with such return.

6.8 Any claim with respect to the Goods, or parts or materials manufactured by Company and sold hereunder shall be deemed waived by the Customer unless Company is notified in writing, in the case of defects apparent on visual inspection, within sixty (60) days from the delivery date, or, in the case of defects not apparent on visual inspection, within twelve (12) months from the said delivery date (such 60 days or 12 months, as applicable, the “Warranty Period”). The Goods shall be returned at Customer’s expense to Company’s plant in inspection for return to Customer for inspection; and Company reserves the right to inspect the Goods. If the claim is established, Company will reimburse Customer for all shipping costs incurred in connection with such return.

6.9 This Warranty is made to Customer and does not extend to any other person or entity and is not assignable.
10. This Warranty shall not apply (a) if the Goods have been subject to improper storage, accident, misuse, or unauthorized modifications, alterations, or repair; or have not been installed, operated, and maintained in accordance with procedures approved by Company, (b) to normal wear and tear, (c) to any errors, omissions or defects contained in the specifications or designs provided by Customer or (d) to any components manufactured by Customer or a third party not approved by Company.

7. Customer shall indemnify and keep Company indemnified in full against all and any direct, indirect or consequential liabilities (all three of which terms include without limitation loss of profit, loss of business, depletion of goodwill and like loss), claims, damages, losses, costs and expenses (including (a) all legal and other professional expenses) awarded against or incurred by Company as a result of or in connection with any breach of the Contract by Customer or death or personal injury to Company’s employees or agents while such employees or agents are on any premises of Customer in connection with the Contract. Without limiting the foregoing, Customer shall indemnify Company against all claims by any third parties for any claims, loss, damage or expense resulting from the breach by Customer of any of its obligations under these terms, including without limitation, any modification, misuse, or unapproved alteration of, or use of non-approved components with, the Goods.

7. To the fullest extent permitted by law, under no circumstances will Company be liable to Customer for an amount in excess of the price paid, or to be paid, for the Goods for any claims, losses, liens, costs, liabilities, causes of action, suits, demands, judgments, obligations, fines, penalties, damages, requirements, violations, and expenses (including without limitation, attorneys’ fees, court costs, and costs of investigation) of any nature, kind, or description, whether based in contract, warranty, indemnity, or tort (including negligence and strict liability), of any person or entity, directly or indirectly, arising out of, resulting from or related to the Contract or the Goods.

8. TERMINATION

8.1 Company shall be entitled, without prejudice to Company’s other rights and remedies, to terminate wholly or in part any or every Contract between Company and Customer and/or to suspend any further deliveries of Goods in any of the following circumstances:

(a) non-compliance by Customer with Company’s terms of payment;
(b) if Customer has failed to provide a letter of credit or guarantee, bill of exchange or any other security required by the Contract or reasonably requested by Company;
(c) upon Customer’s dissolution, insolvency, filing of a voluntary or involuntary petition under any law relating to bankruptcy, appointment by a court of a temporary or permanent receiver, trustee or custodian for Customer’s business, or an assignment for the benefit of creditors, of Customer;
(d) Customer becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business;
(e) Customer or any connected person commits any breach of this or any other Contract whenever made between Customer and Company; or
(f) there has been, or Company suspects that there has been, a breach or there has been a breach of any of the provisions of Section 13 below.

9. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

9.1 All intellectual property, including without limitation, all drawings, installation instructions, documents, confidential records, computer software and other information supplied by Company or otherwise obtained by Customer, whether produced by itself or a third party, are supplied on the express understanding that all intellectual property rights are reserved to Company (or the third party) and that Customer will not, without the written consent of Company, give away, loan, exhibit, or sell any such intellectual property or other information or extracts from them, or copies of them, or use them in any way except in connection with the Goods in respect of which they are issued.

9.2 All claims for alleged infringement of patents, trademarks, registered designs, design rights or copyright received by Customer relating to the Goods must be notified immediately to Company. If requested by Company, Customer shall be entitled to have conduct of any proceedings relating to any such claim in such manner as Company thinks fit and Customer will provide Company with such reasonable assistance as Company may request. The cost of any such proceedings will be borne by Company.

9.3 If any allegations shall be made against Customer to the effect that the supply of the Goods infringes the intellectual property rights of any third party or Company has reason to believe that such allegation is likely to be made, Company may at its option and expense modify or replace the Goods so as to avoid the infringement (but without adversely affecting the overall performance of the Goods), or obtain for the benefit of Customer the right to continue to use the Goods, or repurchase the Goods at the Contract Price as reduced by a reasonable provision for depreciation. If Company pursues any of such options, Customer will have no rights or remedies against Company arising directly or indirectly out of the alleged infringement.

10. FORCE MAJEURE

In the event of the performance of any obligation by Company being prevented, delayed, or in any way interfered with by war, riot, civil commotion, strikes, lock-outs, accidents, flood, fire, explosion, or by any other cause beyond its reasonable control (including the delay or failure to supply of any suppliers of Company or its reasonable provision for depreciation. If Company pursues any of such options, Customer will have no rights or remedies against Company arising directly or indirectly out of the alleged infringement.

11. HEALTH AND SAFETY

Customer agrees to pay due regard to any information supplied by Company relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when and while being used, cleaned, serviced or maintained by any person and Customer undertakes to take such steps as may be specified by such information or otherwise necessary to ensure that as far as reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above.

12. TESTING AND INSPECTION

12.1 Testing and inspection if specified by Customer or his agent shall be at Company’s desired location (at Customer’s expense) and such testing and inspection shall be final and conclusive as to the results thereof.

12.2 Company shall not be obliged to produce test and performance certificates or any critical certificates unless requested by Customer and accepted by Company in writing.

12.3 In addition to any costs incurred by Company in testing the Goods, Customer shall pay for all test pieces which comply with specification.

13. COMPLIANCE

13.1 Customer shall comply with all relevant laws, including any applicable anti-corruption laws in connection with the Contract and Company’s business and shall immediately notify Company if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such laws.

13.2 Customer acknowledges that Company has a code of responsible business: The Hill & Smith Holdings PLC Code of Business Conduct (“HS Code of Conduct”). The HS Code of Conduct, together with Company’s Anti-Bribery and Corruption Policy (“HS ABC Policy”), are available at www.hsholdings.co.uk and Customer shall, at all times, conduct, and cause its officers, directors, employees and/or representatives conduct, business ethically and in accordance with the relevant provisions of the HS Code of Conduct and the HS ABC Policy, as each may be updated from time to time. This clause shall apply whether or not Customer is acting pursuant to the Contract or its relationship with Company.

13.3 Customer agrees that it must be able to demonstrate its compliance with the requirements referred to in this Section 13 at the request of and to the satisfaction of Company, which includes, but is not limited to, Company having the right to inspect any site involved in work for Company and requiring Customer to sign an annual certificate certifying compliance. If Customer fails to comply with this Section 13, Company shall be entitled, in its sole discretion, to terminate the Contract and any other agreement between Customer and Company without penalty to Company, but with obligations for Company to remediate any damages suffered by Company as a result of such termination or as a result of the breach of contract.