



**4B BRAIME GROUP**

**TERMS AND CONDITIONS OF SALE OF GOODS AND/OR SERVICES**

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 10**

**1. Basis of the Contract**

- 1.1 These Conditions apply to the contract for the sale of the Goods and/or Services entered into by Braime and the Customer to the exclusion of all other terms and conditions including any terms and conditions appearing on the Customer's purchase order form or the Customer's written acceptance of Braime's quotation, or which the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Goods Specification and/or Service Specification are complete and accurate.
- 1.3 The Order shall only be deemed to be accepted when Braime issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 1.4 It is the Customer's responsibility to check that Braime's written acceptance of the Order is complete and accurate. In the event that Braime's written acceptance is different to the Order placed by the Customer Braime's written acceptance shall constitute a counter-off which is deemed accepted by the Customer if the Customer does not notify Braime to the contrary within 24 hours of receipt of the counter-offer or first delivery or performance of the Goods and/or Services (as applicable), whichever is earlier. In the event that such a counter-offer is deemed accepted the counter-offer shall thereafter be considered the "Order" for the purposes of the Contract.
- 1.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Braime which is not set out in the Contract.
- 1.6 Any samples, drawings, descriptive matter or advertising issued by Braime and any descriptions of the Goods and/or Services contained in Braime's catalogues or brochures or websites are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 1.7 Any quotation given by Braime shall not constitute an offer, and may be withdrawn at any time up to the issue of Braime's acknowledgement of the Customer's Order and in any event shall expire after thirty (30) days.

**2. Supply of the Goods**

- 2.1 The Goods are as described in the Order and the relevant product manual (if applicable) for the Goods as modified by any applicable Goods Specification. The Customer shall not be entitled to rely on any descriptions contained in any catalogues or data sheets and these are for illustrative purposes only.
- 2.2 Unless otherwise specified, packing will be in accordance with Braime's standard practice.
- 2.3 Due to the difficulty of producing exact quantities and unless otherwise specifically agreed Braime reserves the right to vary the quantity of Goods requested by the Customer in the Order by a maximum of plus or minus ten per cent. The invoice for the Goods will be based on the actual quantity delivered.
- 2.4 To the extent that the Goods are to be manufactured or modified in accordance with a Goods Specification supplied by the Customer and to the extent that such claim arises from the Customer's Goods Specification:



- (a) Braime shall under no circumstances whatever be liable for any liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Customer in connection with any claim made against Braime that the Goods as modified or specified are not fit for their intended purpose; and
- (b) the Customer shall indemnify Braime against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Braime in connection with any claim made against Braime for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Braime's use of the Goods Specification and/or any claim that the Goods as modified or specified are not fit for their intended purpose.

This clause 2.4 shall survive termination of the Contract.

2.5 Braime reserves the right to amend any Goods Specification if required by any applicable statutory or regulatory requirements.

2.6 The Customer shall be responsible for the selection of Goods and ensuring the Goods are suitable for its requirements. In particular the Customer shall be solely responsible for the design and construction of any plant or machinery incorporating the Goods.

### 3. Delivery of Goods

3.1 Braime shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of shipment of the Order, all relevant Braime reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if Braime requires the Customer to return any packaging materials to Braime, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Braime shall reasonably request. Returns of packaging materials shall be at Braime's expense.

3.2 Unless otherwise provided in Braime's written acknowledgement of the Order, Braime shall deliver the Goods Ex Works its premises at Hunslet Road, Leeds LS10 1JZ or such other location as may be advised by Braime prior to delivery ("**Delivery Location**") within five (5) Business Days of Braime notifying the Customer that the Goods are ready.

3.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Braime shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Braime with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.4 If the Customer fails to accept or take delivery of the Goods within five (5) Business Days of Braime notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Braime's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which Braime notified the Customer that the Goods were ready; and
- (b) Braime may:
  - (i) store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and/or



- (ii) resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

3.5 Braime may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

3.6 The Customer shall give notice of any claim relating to shortage of or damage to the Goods which would be apparent upon a reasonable visual inspection to Braime in writing within 24 hours of receipt of the Goods. In the event of loss or non-delivery of the Goods the Customer shall notify Braime in writing within three (3) days of the date of delivery.

3.7 Braime will consider claims for shortage, damage or non-delivery only if the Goods are unused and not incorporated into any other goods or systems and only if the notice periods specified in Clause 3.6 are met and the claim is signed by the Customer and accompanied by full particulars stating Braime's invoice and order number and a copy of the delivery note in respect of the Goods which, in the case of shortage or damage to the Goods must bear an appropriately qualified signature, for example "material received damaged, (signed)".

3.8 In relation to any claim for shortage, the Customer shall comply with the notice provisions in clause 3.6 and ensure Braime is given an opportunity to verify the Goods within three (3) days of the claim being made. Unless otherwise agreed, any Goods returned to Braime are to be returned at the Customer's cost.

3.9 Braime's liability in respect of any shortage, loss or damage to the Goods shall be limited to repair, replacement or refund of the proportion of the price attributable to the Goods lost or damaged.

#### 4. Quality of Goods

4.1 Subject to Clauses 4.3, 4.6 and 4.7, Braime warrants that on delivery, and for a period of twelve (12) months from the date of invoice ("**Warranty Period**"), the Goods shall:

- (a) conform in all material respects with any applicable Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be within Braime's usual and reasonable tolerances for the Goods in question in relation to quality and finish.

4.2 Subject to clause 4.3, if:

- (a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- (b) the Goods have not been irrevocably incorporated into another product;
- (c) the Customer immediately stops using the Goods;
- (d) Braime is given a reasonable opportunity of examining such Goods; and
- (e) the Customer (if asked to do so by Braime) returns such Goods to Braime's place of business at Customer's cost,

Braime shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. In the event that Braime repairs or replaces the defective Goods, it will deliver the repaired or replacement Goods to the original Delivery Location agreed under the Contract. Braime shall in no circumstance be liable (whether in contract, tort (including negligence), breach of statutory duty or otherwise howsoever arising) for any assembly, disassembly or installation costs arising out of or in connection with the repair or



replacement of the Goods. Subject to Braime's agreement, the Customer may change the Delivery Location for the replacement Goods, on the understanding that Braime shall be entitled to charge an additional fee if it incurs greater costs in delivering to that location.

4.3 Braime shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 4.2;
- (b) the defect arises because the Customer failed to follow Braime's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of Braime following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Braime; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions or being used other than in accordance with their intended purpose.

4.4 Except as provided in this clause 4, Braime shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.5 Braime shall not be required to supply test certificates to the Customer unless the same are requested by the Customer within a reasonable time before delivery and Braime may charge a reasonable fee for any certificates supplied.

4.6 Where the Customer purchases Goods from Braime which are manufactured by a third party and are not sold by Braime under Braime branding, Braime makes no warranty about the quality of those Goods, but shall (to the extent it is entitled and able to do so) pass to the Customer the benefit of the third party manufacturer's warranty in relation to those Goods.

4.7 Where the Customer:

- (a) fails to install and/or operate the Goods in accordance with Braime's instructions and good industry practice;
- (b) has made any unauthorised alterations or modifications to the Goods; or
- (c) continues to use the Goods even after becoming aware of a defect,

Braime makes no warranty about the quality of the Goods.

4.8 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Braime under clause 4.2.

## 5. Title & Risk

5.1 The risk in the Goods shall pass to the Customer on the completion of delivery of the Goods to the Delivery Location.

5.2 Title to the Goods shall not pass to the Customer until Braime has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods that Braime has supplied to the Customer.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as Braime's bailee;



- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Braime's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Braime's behalf from the date of delivery;
- (e) notify Braime immediately if it becomes subject to any Insolvency Event; and
- (f) give Braime such information relating to the Goods as Braime may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

5.4 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of Insolvency Event, or Braime reasonably believes that the Customer is about to become subject to an Insolvency Event and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Braime may have, Braime may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them and, in such cases, Braime shall be entitled to recover from the Customer its reasonable costs and expenses incurred in recovering possession of the Goods.

5.5 Braime shall hold a general lien on all Goods ordered by the Customer and any tooling owned by the Customer against any outstanding liability due from the Customer to Braime. Such lien shall be exercised at the discretion of Braime affecting the whole or any part of each Contract or other indebtedness.

## 6. **Supply of the Services**

6.1 Braime shall provide the Services to the Customer in accordance with the terms of the Contract and/or Service Specification.

6.2 Braime shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or Service Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

6.3 Braime shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Braime shall notify the Customer in any such event.

6.4 Braime warrants to the Customer that the Services will be provided using reasonable care and skill.

6.5 Braime's liability in respect of any non-compliance with the Service Specification shall be limited to the price paid by the Customer for the Services.

6.6 Any Services provided in relation to the commissioning of a monitoring system for the Customer's material handling equipment system do not guarantee that the monitoring system has been installed correctly by the Customer and do not reduce the Customer's obligation to follow any installation instructions and install the equipment correctly.

6.7 The Customer may not rely on and Braime accepts no liability for any recommendation made by Braime during the provision of Services to the Customer in relation to the Customer's material handling equipment system (including in relation to improvements or efficiencies) unless it is given in writing.



**7. Customer's Obligations**

7.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification and/or Service Specification are complete and accurate;
- (b) co-operate with Braime in all matters relating to the supply of Goods and/or Services; and
- (c) provide Braime with such information and materials as Braime may reasonably require to supply the Goods and/or Services and ensure that such information is accurate in all material respects.

7.2 If Braime's performance of any of its obligations in respect of the Goods and/or Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) Braime shall without limiting its other rights or remedies have the right to suspend performance of its obligations until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Braime's performance of any of its obligations;
- (b) Braime shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Braime's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Customer shall reimburse Braime on written demand for any costs or losses sustained or incurred by Braime arising directly or indirectly from the Customer Default.

7.3 If the Customer exports the Goods, it is the Customer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Customer's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the ultimate delivery point. The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and for paying all relevant import and export taxes and other levies.

**8. Charges & Payment**

8.1 Unless fixed prices have been specifically and expressly agreed by Braime, notwithstanding any offer, quotation, tender price or price list all prices are subject to alteration without notice and Goods will be invoiced at Braime's then current pricing at the date of despatch. In particular, if Braime makes any change to the Goods at the Customer's request or pursuant to any legal requirement or, if during the period between the date of the Order and the date of delivery, Braime's costs increase, the Customer shall pay such additional sum as incurred by Braime in performing the Contract. If Braime agrees a fixed price, the price for the Goods shall be the price set out in the Order.

8.2 Unless otherwise agreed in writing, the contract price shall be paid in pounds sterling.

8.3 The price of the Goods is exclusive of all costs and charges of packaging, insurance and transport of the Goods, and any applicable taxes and levies, which shall be paid by the Customer when it pays for the Goods.

8.4 The charges for the Services shall be set out in the Order. Unless otherwise agreed, the charges shall include every cost and expense of Braime directly incurred in connection with the performance of the Services.



- 8.5 In respect of the Goods, Braime shall invoice the Customer on or at any time after despatch of the Order, save that in the event of any delay or delays in despatch or delivery which are attributable to the Customer's actions or failure to act, Braime shall be entitled to submit its invoice on or after the date on which the Goods would have been despatched but for such delay or delays. In respect of the Services, Braime shall be entitled to invoice the Customer at any time after acceptance of the Order.
- 8.6 Subject to any credit agreement entered into by the parties and clause 8.10, the Customer shall pay each invoice submitted by Braime:
- (a) within thirty (30) days of the date of the invoice;
  - (b) in full and in cleared funds to a bank account nominated in writing by Braime; and
  - (c) time for payment shall be of the essence of the Contract.
- 8.7 If the Customer elects to pay by debit or credit card, Braime shall be entitled to charge an additional administration fee to the price for processing the payment.
- 8.8 In the case of partial completion of an Order by reason of any of the events referred to in clause 13.1, Braime shall be entitled to a quantum meruit payment in respect of all work done by it without prejudice to the rights should non-completion be occasioned by the Customer.
- 8.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by Braime to the Customer, the Customer shall, on receipt of a valid VAT invoice from Braime, pay to Braime such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services. Where before delivery or the date of the invoice, whichever is the earlier, the Goods become subject to any additional duty, VAT or any other tax or surcharge, in excess of the sum specified for such liabilities in Braime's quotation or invoice, the Customer shall be charged and will pay such extra duty, tax or surcharge.
- 8.10 Unless Braime agrees otherwise in writing, if the Customer is based outside the UK, payment shall be made in advance.
- 8.11 All bank charges shall be to the account of the Customer except in the case where Braime requests extension to account for any delay on its part for reasons within its control, in which case Braime shall bear the reasonable cost of such extension.
- 8.12 Without limiting any other right or remedy of Braime, if the Customer fails to make any payment due to Braime under the Contract by the due date for payment ("**Due Date**"), Braime shall have the right to charge interest on the overdue amount at the rate of four (4) per cent per annum above the then current HSBC's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding daily.
- 8.13 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Braime in order to justify withholding payment of any such amount in whole or in part. Braime may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Braime to the Customer.
9. **Intellectual Property Rights**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods or their manufacture or supply (other than any Goods Specification provided by the Customer) shall be owned by Braime.



9.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and Services, the Customer's use of any such Intellectual Property Rights is conditional on Braime obtaining a written licence from the relevant licensor on such terms as will entitle Braime to license such rights to the Customer.

9.3 All plans, drawings, designs, specifications and other written technical materials forming part of the contract or supplied in connection therewith shall remain the property of Braime and shall not be copied or disclosed to third parties without the written consent of Braime. The Customer shall return the same to Braime forthwith upon request by Braime to do so and acknowledges that in the event of breach they shall be liable to account to Braime for all gain and profit to themselves and losses to Braime.

## 10. Limitation of Liability

### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 10**

10.1 Nothing in these Conditions shall limit or exclude Braime's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) defective products under the Consumer Protection Act 1987.

10.2 Subject to clause 10.1:

- (a) Braime shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of contract, loss of production, loss of anticipated savings, loss of goodwill or any special indirect or consequential loss arising under or in connection with the Contract;
- (b) Braime's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the value of Goods or Services which are the subject of the claim;
- (c) all descriptions, drawings, illustrations, particulars of weights and measures, rating, standards, statements or details as to performance, specifications or other descriptive matter, not contained in any quotation, are given without responsibility as to performance or suitability for the Customer's needs and shall not form part of the description of the Goods and/or Services supplied or to be supplied, so that Braime shall not be under any liability in respect thereof;
- (d) in respect of installation or applications of the Goods as part or components of other goods or machinery the Customer shall be solely responsible for the compliance and the installation with safety regulations issued by competent authorities and in force at the place of operation (except to the extent that the Services includes the installation or commissioning of the Goods) and/or for its compliance with any terms of insurance notified by the Customer's insurance for personal injury or damage to property or loss of profit or any other type of loss through fire, explosion gas or otherwise; and
- (e) Braime shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss where the Customer:
  - (i) fails to install and/or operate the Goods in accordance with Braime's instructions and good industry practice;



- (ii) has made any unauthorised alterations or modifications to the Goods;
- (iii) continues to use the Goods even after becoming aware of a defect; or
- (iv) fails to provide adequate and accurate information in relation to any Goods Specification and/or Service Specification.

10.3 If Braime fails to deliver the Goods and/or perform the Services, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods and/or services (as applicable) of similar description and quality in the cheapest market available, less the price of the Goods / Services. Braime shall have no liability for any failure to deliver the Goods and/or perform the Services to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Braime with adequate delivery instructions for the Goods and/or Services or any relevant instruction related to the supply of the Goods and/or Services.

10.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.5 This clause 10 shall survive termination of the Contract.

#### 11. Termination

11.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within fifteen (15) Business Days after receipt of notice in writing of the breach.

11.2 Without limiting its other rights or remedies, Braime shall have the right to suspend the supply of all further deliveries of Goods and/or Services under the Contract or any other contract between the Customer and Braime and to demand immediate payment in respect of all Goods and/or Services supplied if:

- (a) the Customer fails to make pay any amount due under this Contract or any other contract between the parties on the due date for payment; or
- (b) the Customer becomes subject to any Insolvency Event or Braime reasonably believes that the Customer is about to become subject to any Insolvency Event.

#### 12. Consequences of Termination

12.1 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Braime all of Braime's outstanding unpaid invoices and interest and, in respect of all Goods and/or Services supplied but for which no invoice has yet been submitted, Braime shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return any property belonging to Braime which is in its possession but has not been fully paid for. If the Customer fails to do so, then Braime may enter the Customer's premises and take possession of such property. Until it has been returned, the Customer shall be solely responsible for its safe keeping and will not use it for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.



13. General

13.1 Force majeure:

- (a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Braime including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) Braime shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents Braime from providing any of the Goods and/or Services for more than four weeks, Braime shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

13.2 Assignment and subcontracting:

- (a) Braime may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of Braime, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.3 Selling agents:

- (a) Selling agents of Braime have no actual or approved authority to enter into any contract or agreement on behalf of, or in the name of Braime or binding on the Braime. Any orders placed are not binding upon Braime until accepted in writing by Braime.
- (b) Selling agents of Braime have no express or ostensible authority to negotiate or settle or compromise any dispute or action, or to release, or grant any concession to any debtor of Braime.

13.4 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 13.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

13.5 Waiver and cumulative remedies:



- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

13.6 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.7 No partnership:

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.8 Third parties:

A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.9 Variation:

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Braime.

13.10 Governing law and jurisdiction:

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.

14. **Personal Data**

14.1 Braime may use personal information provided by the Customer to:

- (a) provide the Goods and/or Services;
- (b) process the Customer's payment for the Goods and/or Services; and
- (c) inform the Customer about similar goods and services offered by Braime.

14.2 Braime may at any time conduct or instruct a third party to conduct a search into the Customer's credit history and current credit score. Braime may pass the Customer's personal information to credit reference agencies and they make keep a record of the search that they carry out.



15. Interpretation

15.1 The following definitions shall apply to these terms and conditions for the sale of goods and services:

<b>Braime</b>	Braime Elevator Components Limited (a company registered in England and Wales with company number 01171825 whose registered office address is Braime Elevator Components Limited, Hunslet Road, Leeds LS10 1JZ); <sup>1</sup>
<b>Business Day</b>	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 13.9;
<b>Contract</b>	the contract between Braime and the Customer for the supply of Goods and/or Services in accordance with these Conditions and the Order;
<b>Customer</b>	the person or firm who purchases the Goods and/or Services from Braime;
<b>Deliverables</b>	all documents, products and any materials developed or supplied by the Braime or its agents, contractors and employees as part of or in relation to the Services;
<b>Delivery Location</b>	has the meaning given to it in clause 3.2;
<b>Force Majeure Event</b>	has the meaning given in clause 13.1;
<b>Goods</b>	the goods (or any part of them) set out in the Order;
<b>Goods Specification</b>	any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Braime;
<b>Individual Insolvency Event</b>	for a party who is a natural person, any of the following events: (a) they are unable to or admit that they are unable to pay their debts or otherwise appear to have no reasonable prospect of being able to pay their debts in each case as defined in section 268 of the Insolvency Act 1968; (b) they take any step with a view to renegotiating or compromising in satisfaction of their debts; (c) a valid written demand is made against them; (d) a bankruptcy petition is filed or bankruptcy order is made in relation to them; (e) they take any step to obtain a debt relief order, or a debt relief order is made relating to them; (f) any step is taken to appoint a receiver, or a receiver is appointed, in each case over any of their assets; (g) any other valid step is taken to enforce any security interest or otherwise enforce any debt in relation to them or any of their assets; (h) they cease or suspend or threaten to cease or suspend any material part of their business or payment of any of their debts; (i) any step is taken in any jurisdiction that is the same or similar in effect to any of those set out above; or (j) they die or by reason of any mental or physical ailment are incapable of managing their affairs;
<b>Insolvency Event</b>	for a party, any of the following events: (a) it is unable to or admits that it is unable to pay its debts as defined in section 123 of the Insolvency Act 1986; (b) it takes any step with a view to renegotiating or compromising in satisfaction of its debts; (c) any step is taken in relation to its winding up; (d) any

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<sup>1</sup> The correct company details for each subsidiary will need to be inserted here.



step is taken to appoint a liquidator, administrator, receiver or administrative receiver, or any such officer is appointed, in each case over that party or any of its assets; (e) any other valid step is taken to enforce any security interest or otherwise enforce any debt in relation to that party or any of its assets; (f) it ceases or suspends or threatens to cease or suspend any material part of its business or payment of any of its debts; (g) any step is taken in any jurisdiction that is the same or similar in effect to any of those set out above; or (h) (being a sole trader or partnership) an Individual Insolvency Event affects the owner of the business or any partner);

**Intellectual Property Rights**

all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Order**

the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of Braime's quotation as the case may be;

**Service Specification**

the description or specification for Services (if any) agreed in writing by Braime and the Customer; and

**Services**

the services, including any Deliverables, to be provided by Braime under the Contract as set out in the Service Specification.

15.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and emails.