

# Terms and Conditions of Sale

## 1. DEFINITIONS

In these conditions "Company" means Guardall Limited. "Customer" means the other contracting company. "Products" means all the goods supplied by the Company under the Contract. "Services" means all the services supplied by the Company in relation to the Products. "Order" means the Order placed by the Customer with the Company for the Products and/or Services. "Contract" means an Order accepted by the Company (in writing). "Total Contract Price" means the aggregate price of all the Products and/or Services (excluding VAT) supplied by the Company under the Contract. "Specification" means the Company's specification for the Products. "deals as consumer" has the same meaning as in Section 12 of the Unfair Contract Terms Act 1977. "Group Company" means Chubb Securities plc and any subsidiary thereof. "Class A Products" and "Class B Products" shall mean those Products identified as such in the Company's Warranty Policy a copy of which is available from the Company upon request.

## 2. QUOTATION

All quotations shall be subject to these conditions and unless otherwise stated or unless withdrawn from the Company shall be valid for a period of thirty (30) days from the date of the quotation. The quotation is not an offer to proceed and the Customer is required to place a written Order with the Company using the same reference as on the quotation.

## 3. PRECEDENCE OF THESE CONDITIONS

The Customer agrees that the Order fully specifies its requirements for Products and/or Services agreed to by the Company in writing shall be deemed to be placed subject to these conditions notwithstanding anything to the contrary contained in or referred to on the Order. The Order shall not be binding on the Company until specifically accepted (in writing).

## 4. PRICES

Unless otherwise stated all prices are strictly net, and are for delivery to site in mainland of the U.K. or ex-works the Company's Premises, Lochend Industrial Estate, Newbridge, Edinburgh, EH28 8PL, Scotland for any other destinations.

## 5. PRICE ADJUSTMENT

The Company reserve the right at any time prior to delivery to vary the price quoted for the Product and/or Services if following the data of the Order there is any change in rates of exchange any imposition or alteration of Government tax any increase in the cost of materials, labour or transport or if the cost of supplying the Products and/or Services is increased by any other factor beyond the control of the Company. (If any such variation in the net price of the Products and/or Services results in an increase in such price of more than five per cent (5%) the Customer may cancel the Order by so notifying the Company within seven days of notice of such increase).

## 6. PAYMENT

(a) U.K. Customers

(i) Unless otherwise agreed payment is to be made against the Company's invoice and payment shall be net cash by the twenty-fifth day of the month following the date of invoice.

(ii) Any sums not paid on the due date shall be subject to an interest charge at the rate of 4% per annum above the Base Rate of Barclays Bank PLC from time to time compounded monthly on all amounts overdue until payment thereof such to run from day to day and to accrue after as well as before any judgement.

(b) Overseas Customers

Unless otherwise agreed the Order must be accompanied by a remittance or advice that an irrevocable Sterling Pounds letter of Credit has been established with and confirmed by a major U.K. clearing Bank in favour of the Company. The letter of Credit shall have a validity equal to the full delivery period of the Products plus one month and shall provide for part shipment and trans-shipment with the release of one hundred percent of the value for each shipment against presentation of commercial invoices, packing list and bill of lading or forwarding agents receipt or airwaybill in evidence of despatch of the Products.

## 7. SET OFF

In the event of either;

(a) the Customer has not paid any sum or sums which are due and payable to the Company; or

(b) the Company has not paid any sum or sums which are due or about to be due and payable to the Customer for any reason;

the Company shall have the right as its sole discretion to reduce the Customer's indebtedness referred to in sub-clause (a) above by setting off against such indebtedness any sums due and payable to the Customer by any Group company or reduce the Company's indebtedness referred to in subclause (b) above by setting-off against such indebtedness any sums due and payable by the Customer to any Group company.

## 8. DELIVERY AND RISK

(a) Subject to the following sub-clauses of this clause 8 all risks shall pass to the Customer upon delivery.

(b) Unless otherwise specified, delivery shall be deemed to take place when the products have been delivered to the Customer's premises or other specified delivery point in the U.K. to the Carrier to be collected or ex-works the Company's premises, Lochend Industrial Estate, Newbridge, Edinburgh EH28 8PL, Scotland if for despatch overseas.

(c) All dates and times specified the Customer for delivery and installation of the Products are estimates only and the Company shall not have any liability for delay or for any damages or losses sustained by the Customer as a result of such dates or times not being met. The customer shall not be entitled to refuse acceptance of the Products as a consequence of such delay.

(d) The Company may be in its absolute discretion withhold delivery of the Products and/or supply of the Services pending payment of any sum due from the Customer either to the Company or to any Group company.

(e) If the Customer does not accept delivery of a consignment of Products in accordance with the Contract then

(i) the Company shall be entitled to claim payment in accordance with the Contract then

(ii) the Products refused shall be in all respects at the Customer's risk; and

(iii) the cost of storing the Products shall be borne by the customer ; and

(iv) if such failure to accept delivery continues for more than ten days the Company shall have the right to terminate the Contract pursuant to clause 18 below.

## 9. DAMAGE OR LOSS IN TRANSIT

The company will at its discretion either refund the cost or replace or repair free of charge any Products proved to the Company's satisfaction to have been lost or damaged in transit upto the moment of delivery provided that within (three) days of receipt of the Products in the case of damages within (ten) days of the date of the invoice or advice not or equivalent notice whether oral or written in the case of loss the Customer notifies both the carrier and Company in writing of the nature and extent of the damage or loss. The Company accepts no liability for delay in transit. Unless the Products are checked on receipt the carrier's documentation should be endorsed "unexamined".

## 10. NOTICES

Any notice required to be given hereunder shall be sufficiently given if properly addressed and sent by registered post, cable or telex (and if sent by cable or telex shall be confirmed by an equivalent notice sent by registered post within 48 hours of the sending of the original notice) to in the case of the Company its registered office and in the case of the customer its last known address and shall be deemed to have been properly served at the time when in the ordinary course of transmission it would reach its destination.

## 11. TITLE

(a) the Company shall retain title to the Products as legal and equitable owner until it shall have received all sums due to it from the Customer whether under the Contract or any other contract between parties.

(b) Subject to the sub-clauses (d) and (e) below until the Customer has paid the Total Contract Price:

(i) the Customer shall store the Products in a manner which makes them readily identifiable as the property of the Company ; and

(ii) the relationship of the Customer to the Company shall be fiduciary in respect of the Products and accordingly the Company shall have the right to trace any proceeds of sale.

(c) If any event occurs under clause 18 below which would entitle the Company to terminate any Contract

(i) the Customer shall immediately notify the Company of such event ; and

(ii) notwithstanding any failure to so notify, all sums due to the Company shall become immediately payable ; and

(iii) the Company by its servants or agents may for the purposes of all or any of the Products enter upon any premises where they are reasonably thought to be stored and may repossess the same.

(d) The Customer is licensed by the Company to agree to sell the Products, subject to express condition that the entire proceeds thereof are held in trust for the Company.

(e) The Customer is licensed by the Company to mix the Product with goods not supplied by the Company subject to the following express conditions, which shall apply unless and until all sums due to the Company have been paid

(i) if the Products are incorporated in or fixed or attached to or used as material for goods owned by the Customer to form new goods such goods shall be deemed to be the sole and exclusive property of the Company; or

(ii) if the Products are incorporated in or used as material for goods owned by a third party to form new goods such goods shall become or shall be deemed to be owned in common with that of the third party in proportion to the value of the Products to the other goods at the date of such incorporation or use. The Company's rights hereunder shall extend to those new goods whether under the sub-clauses (e) (ii) or (e) (iii) above and in particular the Customer shall hold any proceeds of sale of such new goods on trust for the Company.

## 12. SPECIFICATION

(a) the Products will be supplied generally in accordance with the Specification. The Company's policy is one of continuous development and consequently the Specification may vary from time to time. The Company will not accept liability for the Products in respect of variations from the Specification except where any variation from the Specification is material.

(b) (Descriptions and illustrations contained in the Company catalogues shall not form part of the contract).

(c) All Specifications, drawings and technical descriptions submitted with or in connection with any quotation or acknowledgement of the Company are the Company's copyright.

## 13. REPAIRS IN AND OUT OF WARRANTY

### *CLAUSE 13 DOES NOT AFFECT THE CUSTOMER'S STATUTORY RIGHTS WHERE THE CUSTOMER DEALS AS A CONSUMER*

13.1 This Clause shall apply to any Product found in the Company's satisfaction to be faulty as a result of defects in materials or workmanship provided :

(i) the unit was sold by Guardall Ltd

(ii) the unit is within the specified warranty for its class - see Section 2.

(iii) the unit has not been subjected to misuse, mishandling, neglect, improper installation, unauthorised repair, modification or use for any purpose other than that for which it was designed.

### 13.2 Warranty Periods

For the purpose of warranty, products are sub-divided into 6 classes, A, B, C, D, E and F. Each product is marked with its warranty class and warranty expiry date.

**Class A** products have a two year warranty period during which a free replacement shall be provided.

**Class B** products have a one year warranty period during which a free repair or replacement shall be provided.

**Class C** products have a five year warranty period. During years one and two a free replacement product shall be provided. During years three to five a free repair or replacement shall be provided.

**Class D** products have a two year warranty period during which a free repair or replacement shall be provided.

**Class E** Products have a warranty specified by the original manufacturer. These products are not manufactured by Guardall Limited.

**Class F** products have a 90 day warranty period during which a free replacement shall be provided.

The Company shall have the right of final determination as to whether product is repaired or replaced.

13.3 this policy will not apply to batteries, lamps, lenses, plastics or any product without a warranty classification.

## 14. CUSTOMER ACKNOWLEDGEMENT

The Customer acknowledges and agrees that;

(a) that it is responsible for the operation of the Products and should ensure that they are used safely and that it ,should use, maintain, store and keep the Products in accordance with any instructions user handbook or other form of guidance relating to them; and

(b) notwithstanding the Company's acceptance of liability as set out in clause 15(c) below, it would be prudent for the Customer to insure against all loss of damage the Customer may suffer as a result of the Company's acts or omissions whether negligent or not on the basis that the company's potential liability hereunder might otherwise be disproportionate to the Total Contract Price.

## 15. LIABILITY

(a) The warranty given in clause 13 above is only the warranty given by the Company and otherwise this clause 15 specifies the entire liability of the Company including liability for negligence and in particular but without limitation all statutory other or express implied or collateral terms conditions or warranties are excluded.

(b) The Company accepts liability except in the case of international supply contracts as described in the Unfair Contract Terms Act 1977:

(i) for death or personal injury resulting from its negligence

(ii) arising out of any breach of the obligations as to title implied by statute

(iii) where the customer deals as consumer for any breach of any condition or warranty implied by statute as to the correspondence of the Products with description or sample or as to their quality or fitness for purpose or particular purpose.

(iv) up to the amount calculated pursuant to clause 15(f) below for direct physical damage to or loss of property resulting from the negligence of the Company.

(c) The Customer is required to notify the Company of any claim under clause 15(b) above as soon as reasonably possible except that any claim under clause 15(b) (iv) above shall be notified to the Company within ten (10 ) days of the Customer suffering any alleged loss or damage

(d) Except as provided in clauses 15(a) (b) and (c) above the Company shall not be under any liability (including liability for negligence) for any loss or damage or injury to the customer whatsoever no matter when or how arising out of the Products or Services or otherwise whether direct or indirect consequential or contingent and whether foreseeable or not and in particular shall not be liable for financial loss or loss of profits contracts business anticipated savings or goodwill.

(e) The Customer will indemnify the Company against any liability (including liability for negligence) no matter when or how arising out of any claim by any third party against the Company together with all legal costs relating thereto except that insofar as the claim relates to direct physical damage to or loss of property resulting from the negligence

of the Company their indemnity shall only apply if and to the extent that the claim and/or legal costs exceed the sum calculated pursuant to clause 15 (f) (i) and (ii) below.

(f) Under no circumstances except as provided in clauses 15(b) (i) (ii) and (iii) above will the Company's liability whether in contract tort or otherwise exceed:

(i) where the Total Contract Price is £200,000 or less, the sum of £100,000 ;or

(ii) where the Total Contract Price exceeds £200,000, fifty per cent of the Total Contract Price.

*N.B. THIS CLAUSE 15 DOES NOT AFFECT THE CUSTOMER'S STATUTORY RIGHTS WHERE THE CUSTOMER DEALS AS A CONSUMER.*

#### **16. PATENT INDEMNITY**

If the Customer is threatened with any action alleging that the Products in the form sold infringe any Patent, Copyright Registered Design or other intellectual property rights then provided that the Company promptly informs and fully cooperates with the Company and in case where the Company so requests allows the Company to defend any action on the Customer's behalf and have the sole control of any and all negotiations for settlement, then the Company will indemnify the Customer agrees that the Company shall have the option at its own expense either

(a) to modify the Products so that they do not infringe ; or  
(b) to replace the Product with non-infringing goods ; or  
(c) to procure for the customer the right for the Customer to continue its use of the Products ; or  
(d) to repurchase the Products from the Customer at the price paid by the customer less depreciation The Company shall have no liability in respect of claims for infringement or alleged infringement of third parties patent or

other proprietary rights arising from the execution of the Order in accordance with the Customer's designs plans or specifications and the Customer shall indemnify the Company against all losses damages expenses costs or other liability arising from such claims.

#### **17. EXCUSABLE EVENTS**

The Company shall be under no liability to the Customer for any breach of any provision hereof or failure on its part to perform any obligation as a result of act of God, war (whether declared or not), sabotage, riot, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, fire, accident, earthquake, storm, flood, epidemic, drought, or other natural catastrophes, inability to obtain equipment, suitable raw materials, components, fuel, power or transportation, disputes with workmen, strikes or lockouts, shortage of labour or any other cause beyond the control and the Company and the Company will notify the Customer if affected by any of the causes referred to in this sub-clause. In the event that the Company is unable to perform its obligations under the Contract by reason of any of the causes referred to above for a period of three months or more than either party may at any time after the expiration of such three months period terminate the Contract by written notice.

#### **18. TERMINATION**

Without prejudice to any claim or right it might otherwise make or exercise the Company shall have the right forthwith to determine the Contract by notice and to claim for any losses, costs or expenses thereby incurred if the Customer commits any serious breach of any of the terms of these conditions or if the Customer makes or offers to make any arrangement or composition with creditors or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is presented the Customer, or if any resolution or petition to wind up the Customer is passed or presented otherwise than for reconstruction or amalgamation or if a receiver of the Customer's undertaking property or assets or any part thereof is appointed or if a third party seizes or threatens to seize the Products before legal ownership has passed to the Customer in accordance with clause 11 above.

#### **19. CONSENTS**

Where applicable the Company shall endeavour to obtain an export licence and all other necessary consents to enable the Products to be exported from the U.K., in the event that the Company is unable to obtain an export licence or visas or consents for personnel required to provide Services outside the

U.K. the Company shall not be held liable for its failure to perform the Contract. The Customer shall be responsible for obtaining all consents necessary for the import of the Products to the country of its destination.

#### **20. FORWARDING INSTRUCTIONS**

Forwarding instructions where required shall be provided by the customer not later than seven days after being advised that the Products are ready for despatch. If no forwarding instructions are received within the period the Company shall have the right thereafter to deliver the Products and to charge the Customer in accordance with clause 8 above.

#### **21. INSTALLATION AND COMMISSIONING**

If the Services required by the Customer are special services such as installation, commissioning, training, development or management services any additional terms of the Company applicable to such Services will apply except that in the event of any conflict these conditions shall prevail.

#### **22. AMENDMENTS AND CANCELLATIONS**

Once accepted by the Company no Order can be amended or cancelled except with the Company's written approval and upon terms which indemnify the Company against any loss of profit or additional costs resulting therefrom.

#### **23. ENTIRE AGREEMENT**

These conditions supersedes all previous conditions, understandings, commitments, agreements or representations whatsoever whether oral or written relating to the subject matter hereof and shall not be varied except with the company's written consent.

#### **24. TAXES**

(a) Orders for supply within the U.K. All prices are exclusive of Value Added Tax which will be charged at the rate current at the date of invoice.

(b) Orders for supply outside the U.K. All prices are exclusive of all taxes or levies of any kind whether payable on the supply of the Products and/or Services to destinations outside the U.K. or otherwise, and these are payable by the Customer.

#### **25. GOVERNING LAW**

These conditions and the Contract shall be governed, construed and shall take effect in accordance with the laws of England, and shall be subject to the jurisdiction of the English Courts.

#### **26. HEADINGS**

The headings in these conditions shall not be deemed to be part hereof or to be taken into consideration in the interpretation or construction hereof the Contract.

#### **27. CONSTRUCTION**

If any of the words or provisions of these conditions shall be deemed to be invalid for any reason then the conditions shall be read as if the invalid provisions had to that extent been deleted therefrom and the validity of the remaining provisions of the conditions shall not be affected thereby.