



R Baker (Electrical) Limited Terms of Business

Evans Road, Speke, Liverpool, L24 9PB.

Tel: 0151 486 6760

Fax: 0151 448 1225

Email: mail@rbaker.co.uk

Directors: R. Baker & B. Baker

Registration Number: 1650221

VAT No. 320 277 195

Issue / Revision	Date	Description	Reviser	Checked
1	19/12/11	First Issue	G. Baker	R. Baker



1. Interpretation

1.1 These are the terms and conditions upon which the Seller offers and agrees to contract and no alteration whatsoever shall be valid or binding unless previously agreed in writing between the parties hereto.

1.2 No employee of the Seller below the level of Managing Director shall have the authority to make any such alteration.

1.3 In this Contract:

"Buyer" shall mean the other contracting party with the Seller for the purpose of the Products;

"Contract" shall mean these terms and conditions, which shall constitute the contract between the Buyer and the Seller for the sale and supply of the Products;

"Delivery" shall have the meaning set forth in Clause 5;

"Delivery Date" shall mean the time or date for Delivery stated by the Seller;

"Intellectual Property" shall mean a patent, trade mark, service mark, registered design, copyright or any other proprietary right, whether registered or unregistered;

"Prepayment" A payment to be made by the Buyer pursuant to Clause 4.6 to be used at the Seller's discretion for the purchase of materials and/or towards the costs of labour and other costs relating to the supply of Products.

"Products" shall mean the goods subject to the Contract;

"Price" shall mean the price for the Products notified by the Seller to the Buyer;

"Purchase Order" shall mean the Buyer's order for the Products as communicated to the Seller, which Purchase Order incorporates the terms of the Contract, as amended pursuant to Clause 23;

"Recommendations" The recommendations (if any) relating to the for use storage, handling, application and/or use of the Products contained in the Seller's Marketing Materials or other published literature (or, if relevant, a Supplier) or any recommendations made in writing by the Seller or an authorised representative of the Seller (or, if relevant, a Supplier).

"Seller" shall mean R Baker (Electrical) Limited, a company incorporated in England and Wales with company registration number 1650221 and includes any associated or subsidiary company thereof or any duly authorised agent;

"Seller's Marketing Materials" shall mean Seller's catalogues, pamphlets, price lists, marketing or advertising literature; and

"Services" shall mean the services subject to the Contract;

"Website" shall mean <http://www.rbaker.co.uk>.



- 1.4 Any reference in this Contract to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.5 The headings in this Contract are for convenience only and shall not affect their interpretation.
- 1.6 In the event of conflict between this Contract and the terms of the Buyer (whether stated in the Buyer's Purchase Order or otherwise) this Contract shall prevail.
- 1.7 If the Seller having accepted a Purchase Order from the Buyer (who will have previously been furnished with a copy of this Contract) delivers to the Buyer any of the Products ordered by the Buyer, the Buyer shall be deemed to have acknowledged and accepted this Contract.
- 1.8 The Seller's employees or agents are not authorised to make any representations concerning the Products unless confirmed in writing by a director of the Seller. In entering into the Contract the Buyer acknowledges that it does not rely on any representations which are not so confirmed.
- 1.9 The Uniform Law on International Sale of Goods and the Uniform Law on the Formation of Contracts for International Sales of Goods are expressly excluded from this Contract.
- 1.10 A reference to a singular number shall include the plural and vice versa, references to one gender shall include the other gender and references to persons shall include bodies corporate, unincorporated associations and partnerships.
- 1.11 In relation to all obligations of the Buyer under this Contract, the time for performance is of the essence.
- 1.12 The headings in this Contract are inserted for convenience only and shall not affect its construction.
- 1.13 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes and subordinate legislation for the time being in force made under it.
- 1.14 In this Contract "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms has the same meaning in the Contract.

2. Enquiries, Orders and Quotations

- 2.1. All Purchase Orders, enquiries, applications for quotations and orders should be made directly to the Seller. Contact details and methods of ordering can be found at the Website.
- 2.2. When ordering, the prospective Buyer should indicate; size, weight, quantity, specification, together with a cross reference to quotation, if known.
- 2.3. Any quotations or estimates ("Quotations") given by the Seller either verbally or in writing shall not in any way constitute an offer to contract on the terms of this Contract or any other terms.
- 2.4. The Seller reserves the right to amend the specification of its products and services from time to time so that the descriptions thereof as set out in the Seller's Marketing Materials may not be identical with those set out in the Quotation and the Buyer is advised to check the specification set out in the Seller's quotation before placing a Purchase Order.
- 2.5. Quotations are provisional and are subject to alteration by reference to any changes in the delivery dates and / or the price of raw materials, component parts, any item to be acquired by the Seller from a third party, rates of wages, other costs of production and any other circumstances beyond the Seller's control taking place after the date of the Quotation.



- 2.6. The Seller's agreement to sell and supply the Products and Services therein stated in this Contract shall occur when:
- 2.6.1. the Seller acknowledges the Buyer's Purchase Order (whether orally or in writing), or
- 2.6.2. the Products are delivered, or
- 2.6.3. the Services are provided.
- 2.7. Each Contract shall be treated as a separate contract. If there shall be at any time more than one Contract in course of performance between the Seller and the Buyer any question, dispute and difficulty which may arise in respect of one of such Contracts, the terms on which any of such Contracts may be settled shall not affect in any way the performance of the other Contracts. Nor shall the Buyer be entitled to exercise in relation to any other such Contracts any right of set-off or counterclaim arising under one Contract.
- 2.8. The Buyer shall be solely responsible to the Seller for ensuring:
- 2.8.1. the accuracy of the terms of any Purchase Order, including any necessary information relating to the Products within a sufficient time to enable the Seller to perform the Contract in accordance with its terms; and
- 2.8.2. that any confirmation of an existing Purchase Order is prominently marked as being a confirmation and not a new Purchase Order. The Buyer acknowledges that any Purchase Order or confirmation which is not appropriately marked may be treated as accepted by the Seller as a new Contract in addition to any pre-existing Contract from a previously placed Purchase Order, which may cause duplication.
- 2.9. The Seller does not guarantee the accuracy of any statements, descriptions, figures, illustrations, plans, renderings, photographs, drawings, weights or any other matters contained in the Seller's Marketing Materials, as they are intended merely to represent a general outline of the Seller's products and shall not form part of the Contract nor shall they be regarded as a warranty or representation relating to the Products or Services. All terminology used in the Seller's Marketing Materials is, subject to this Contract, that as understood by general usage in the trade.

3. Intellectual Property

- 3.1. Where Products are supplied to the Buyer's own specification, or where standard goods of the Seller are altered in accordance with the Buyer's instructions the Buyer undertakes full responsibility for the suitability and fitness of the specification, pattern or design but also that such specification, pattern or design does not infringe any Intellectual Property of any third party and the Buyer shall indemnify and keep the Seller indemnified in full against any losses, damage or expense whatsoever (including costs) which the Seller may incur in or arising from the performance of the Contract by reason of any infringement of any such Intellectual Property.
- 3.2. The Seller reserves the right to change the Buyer's specification as required to ensure that the Products comply with any health, safety or other statutory requirement or provision and no such change by the Seller will constitute a breach of contract or impose upon the Seller any liability whatsoever.
- 3.3. Unless otherwise agreed in writing, the Seller will be the sole owner of all inventions, formulations, tools, patterns, designs or other similar items and the Intellectual Property in all documents and drawings made or produced by it in preparing a Quotation for the Buyer or in the course of work on any Contract with the Buyer.



4 Price and Payment

- 4.1 In the absence of manifest error or omission and subject to this Contract and in particular Clause 4.4 below, be final.
- 4.2 The Price payable will be as shown on the written quote received by the Buyer from the Seller following the Buyer's placing of the Purchase Order. While the Seller will ensure that all Prices are accurate, it will be under no obligation to honour any price if there are any reasonably noticeable typographical or other errors resulting in difference from actual price. If the Seller discovers an error in the Prices, it will inform the Buyer. The Buyer will have the option of reconfirming its Purchase Order at the correct price or cancelling it in such case.
- 4.3 Any other charges incidental to the transportation of the Products and Delivery shall be for the account of the Buyer.
- 4.4 Notwithstanding Clause 4.1 above, the Seller reserves the right, at its absolute discretion, including but not limited to reasons of market forces, to adjust the Price if the Seller suffers an increase in the cost to it of supplying the Products, howsoever caused. The Seller will use its reasonable endeavours to minimise any such adjustment and shall notify the Buyer thereof as soon as reasonably practicable.
- 4.5 The Prices are exclusive of Delivery costs and VAT and any other tax or duty which must be added to the total Price payable. VAT will be charged at the rate applicable at the time the Purchase Order is accepted. The Price shall be paid in accordance with the method of payment stipulated by the Seller and defined in Clause 4.10 and the time of payment shall be of the essence of the Contract.
- 4.6 In the Seller's absolute discretion, a Prepayment in respect of the Contract may be required to be paid by the Buyer to the Seller on the terms set out in this Clause. The Prepayment shall be applied as follows:
- 4.6.1 In the event that the Contract is performed in full by both parties the Prepayment shall be retained by the Seller in reduction of the total Price payable by the Buyer under the Contract; and
- 4.6.2 In the event that the Buyer is either in default of any of its obligations under the Contract or cancels or suspends the Contract in accordance with Clause 15 the Prepayment shall be set off by the Seller against its proper costs losses or damages arising in connection with the default and/or cancellation or suspension.
- 4.7 Interest shall accrue on the non-payment of any amount due in accordance with this Clause 4 from the specified date(s) of actual payment of the Price. The rate of interest applied to the unpaid amounts shall be 3% above the prevailing base rate as stated by Barclays Bank plc and the payment of interest shall be made upon the written demand of the Seller (a partial month being treated as a full month for the purpose of calculating interest).
- 4.8 Without prejudice to any other rights, the Seller reserves the right to suspend or cancel (or first suspend then cancel) further Deliveries under any Contract with the Buyer, should the price or any part thereof not be paid by the relevant payment date(s).
- 4.9 Unless otherwise agreed the Price shall be due and payable at the Seller's offices 30 days after the date of the Seller's invoice.



- 4.10 If payment is made:
- 4.10.1 by card or any other means of payment where a charge is incurred on the part of the Seller, the Seller reserves the right to apply 2.5% service charge for credit card payment or £1 for debit card payment to the total invoice cost of the Purchase Order (i.e. the Price plus any additional charges) prior to the Purchase Order being accepted and despatched; or
 - 4.10.2 by cheque, the Products will not be delivered until the cheque has cleared to the Seller's bank account. For the avoidance of doubt, no payment shall be deemed to have been received until the Seller has received cleared funds.
- 4.11 The Seller reserves the right to reduce a customer's credit limit or remove credit facilities completely if payment is not made when due or when information comes to light of an adverse nature.
- 4.12 Credit will only be given in the form of credit notes which can be used against further purchases from the Seller and are not transferable.
- 4.13 All payments payable to the Seller under the Contract (whether or not then due and payable) shall become due immediately upon termination of the Contract notwithstanding any other provision.
- 4.14 The Buyer shall not be entitled to withhold payment of any amount due to the Seller by reason of any disputed claim by the Buyer in connection with the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any amount which is not then due and payable by the Seller or for which the Seller disputes liability and shall make all payments due under the Contract without any deduction, whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Buyer has a valid court order requiring; an amount equal to such deduction to be paid by the Seller to the Buyer.
- 4.15 If the Buyer fails to make any payment on the due date then. Without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 4.15.1 Cancel the Contract or suspend any further Products or deliveries to the Buyer;
 - 4.15.2 Appropriate any payment made by the Buyer to such of the Products (or the goods supplied under any other contract between the Buyer and the Seller), as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
 - 4.15.3 Charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 1.5 per cent per annum above the base lending rate from time to time of Barclays Bank PLC accruing on a daily basis from the due date for payment until payment in full from the Buyer; and
 - 4.15.4 Recover from the Buyer the Price of any Products delivered to the Buyer notwithstanding that the payment for such Products has not yet fallen due.
- 4.16 All costs, charges and expenses incurred by the Seller in recovering any debt due by the buyer shall be paid by the Buyer on a full indemnity basis.
- 4.17 Unless otherwise stated, the Seller's quotation includes the Price, together with the additional costs, if any, including packaging, carriage, and (save as provided in Clause 4.18) insurance. In respect of supplies of Products in the United States of America, Canada and Japan the Price also excludes import duties and sales taxes (if any). In respect of supplies of Products in other countries the Price does not include import duties or VAT or sales taxes which will be extra charges based on prevailing rates.



- 4.18 Where the Buyer requests a particular means of delivery, the Price set out in the Seller's quotation does not include insurance, which is to be arranged at the responsibility of the Buyer.

5. Delivery

- 5.1. "Delivery" as used in this Contract shall be deemed to take place:

- 5.1.1. when Delivery is made (by the Seller or the Seller's employees, servants or agents or any other person acting upon the Seller's instructions) to the Buyer's address (or to such other address as shall be agreed for Delivery), when they arrive prior to unloading; or
- 5.1.2. where Products are collected by or on behalf of the Buyer by its servants or agents, or where Products are collected in accordance with a means of delivery specifically requested by the Buyer, when the same are collected; or
- 5.1.3. where Products are sold FOB (Free On Board) or CIF (Cost, Insurance and Freight), when they pass the ship's rail or are loaded onto the aircraft.
- 5.1.4. in the case of Services, at the time of completion by the Seller of the Services.

- 5.2. Whilst every effort shall be made to ensure prompt Delivery of Products or Services, the Delivery Date is an estimate only and if no time is agreed, Delivery will be within a reasonable time. The Seller accepts no liability whatsoever for Delivery beyond the Delivery Date and the time for Delivery shall accordingly not be of the essence and any failure to adhere to the Delivery Date shall not entitle the Buyer to claim damages or to rescind or cancel the Contract. The Products may be delivered in advance of the Delivery Date at the Seller's discretion, upon giving reasonable notice to the Buyer. The Seller accepts no liability whatsoever for any loss or expense suffered by the Buyer including any special consequential or indirect loss or damage as a result of any delay in or failure of Delivery.

- 5.3. The method of Delivery shall be at the Seller's absolute discretion.

- 5.4. The Buyer shall accept part deliveries unless specifically agreed with the Seller in writing.

- 5.5. If the Buyer refuses to accept Delivery for any reason whatsoever, then the Buyer shall nevertheless pay the Seller:

5.5.1. the Price; and

5.5.2. any additional expenses incurred by the Seller as a result of such refusal, including but not limited to any amounts payable by the Seller to its agents, employees or sub-contractors.

- 5.6. If the Buyer fails to take Delivery of the Products or fails to give the Seller adequate Delivery instructions at the time stated for Delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:

5.6.1. Store the Products until actual Delivery and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); or

5.6.2. Sell the Products at the best price readily obtainable and charge the Buyer for any shortfall below the Price under the Contract.



6. Quantities, Instalments and Storage

- 6.1. Where Products are delivered or services are provided by instalment each instalment shall be deemed to be sold under a separate Contract and the party in default in respect of any instalment shall be liable accordingly, but no default in respect of any one instalment shall effect due performance of the Contract as regards other instalments.
- 6.2. The Seller will endeavour to deliver the quantity of Products ordered and every delivery shall be deemed to comply with the Purchase Order. If there is a surplus or shortage of Products which is no more than 10% of the quantity specified in the Purchase Order the Buyer shall be deemed to have accepted the Products and shall pay for the actual quantity delivered.
- 6.3. If Products or Services are to be delivered by instalments, the Seller shall be entitled to invoice each instalment as and when delivery is made and payment for all delivered instalments shall be due notwithstanding the non-delivery of other instalments or other default by the Seller. Failure by the Buyer to make payment by the due date for any one instalment for whatever reason shall entitle the Seller to suspend deliveries of Products or provision of Services under the Contract but without prejudice to any other right the Seller may have under any of the other provisions of this Contract.
- 6.4. Notwithstanding that risk shall have passed to the Buyer pursuant to Clause 9 the Seller may in its absolute discretion:
 - 6.4.1. arrange for storage of the Products either at the request of the Buyer or as a result of the failure by the Buyer to take delivery of the Products under Clause 5. The Seller may insure the Products whilst in storage and the Buyer shall indemnify and keep indemnified the Seller in full against all costs, losses, damages and expenses whatsoever arising in connection with the storage provided for hereunder and such costs, losses, damages and expenses will be added to and form part of the Price of the Products.
 - 6.4.2. sell or otherwise dispose of Products kept in storage as provided in Clause 6.4.1.

7 Packaging

- 7.1 Until used, the Products shall at all times remain in the packaging in which they are supplied.

8 Exclusion of other Terms

- 8.1 Subject to the provisions of the Unfair Contract Terms Act 1977, all expressed or implied conditions and warranties, statutory or otherwise not included in this Contract are in relation to each Contract.

9 Risk and Retention of Title

- 9.1 Ownership of and title to the Products shall remain vested in the Seller until the Seller has received payment in full of the Price and all monies due to the Seller under the Contract notwithstanding Delivery and the passing of risk in the Products or any other provision of this Contract.
- 9.2 Risk of damage to or loss of the Products shall pass to the Buyer:
 - 9.2.1 In the case of the Products to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Products are available for collection; or
 - 9.2.2 In the case of the Products delivered otherwise than at the Seller's premises, at the time of Delivery,



9.2.3 If the Buyer fails to take Delivery of the Products in accordance with this Clause 9.2, the time when the Seller has tendered Delivery of the Products.

9.3 Until payment has been made in full:

9.3.1 the Buyer shall, notwithstanding the reservation of title contained in Clause 9.1, keep the Products insured with a reputable insurer from the time the Products are delivered against all risk to their full replacement value, including injury to persons or damage to property;

9.3.2 the Products shall be clearly marked as the property of the Seller; and

9.3.3 the Seller or its agents may repossess the Products and for this purpose the Buyer hereby grants to the Seller an irrevocable licence.

10 Inspection, Defective Products and Acceptance of Products

10.1 The Products are of a highly specialised nature and must be treated with the utmost care. It is the full responsibility of the Buyer and is essential to the conditions of this Contract that the Buyer checks that they correspond in all respects with the Buyer's requirements and that they are fit and suitable for the purposes for which the Buyer requires them in the conditions in which they will be used. Any discrepancies should be notified to the Seller immediately. The Buyer undertakes to ensure that all Products are unpacked and handled only by persons qualified to deal with such specialised products, to safeguard against injury to the Products or to the Buyer's personnel.

10.2 The Buyer shall inspect the Products and/or monitor the Services and carry out such tests to ensure the Products and/or Services conform with the description of the Products and/or Services in the Purchase Order(s) within 7 days of Delivery and whether or not the Buyer carries out such obligation to inspect and test, no claims for non-delivery, shortages in quantity of units delivered, defective Products or Services, non-conformity to description or partial loss or damage to Products will be accepted by the Seller and the Buyer will be deemed to have accepted the Products and/or Services, unless:-

10.2.1 they are notified in writing by the Buyer to the Seller within 10 days after the Delivery Date (in the case of partial loss, damage, non-conforming or defective Products or Services) or 14 days after the date of the invoice (in the case of non-delivery);

10.2.2 the Products in respect of which a claim is made (together with all the relevant packing) are preserved intact as received for a period of 35 days from notification of any such claim and the Buyer permits the Seller or its servants or agents full and free right of access to inspect the Products and investigate the claim; and

10.3 For the avoidance of doubt;

10.3.1 if the Buyer fails to give the appropriate notice as specified in Clause 10.2 the Buyer's claim will be deemed to have been waived and will be absolutely barred, and

10.3.2 any Product or part thereof returned by the Buyer to the Seller will be tested by the Seller on its return and if such Product passes the Seller's electrical or mechanical testing, the Seller will not be liable to the Buyer for the cost of the Product nor will the Seller be under any obligation to the Buyer to issue a replacement Product.

10.4 The Buyer acknowledges that the Seller shall be under no liability of any description to the Buyer if the Products prove to be unsuitable for whatever reason for application or use notwithstanding that the Seller may, at the request of the Buyer, have given in good faith technical or other advice in relation to the proposed application or use of the Products and the Buyer shall indemnify and keep indemnified the Seller in full against any and all liability of any kind arising out of or connected with the application or use of the Products.



- 10.5 Section 3 Sale and Supply of Goods Act 1994 shall not apply.
- 10.6 Pursuant to the notification procedures set out in this Clause 10:
- 10.6.1 if any of the Products upon Delivery are shown to the satisfaction of the Seller, to be defective, the Seller at its option shall either (i) replace or (ii) credit the Buyer for the full Price of, such defective Products;
- 10.6.2 no return of Products is accepted by the Seller unless the Seller has agreed in writing that the Buyer may return them. The returned Products shall be accepted into the Sellers' premises only if accompanied by an explicitly stated authorisation code as provided by the Seller prior to return of the Products. The Seller's procedure for return of Products can be set out and amended by the Seller at its sole discretion.
- 10.7 The undertakings set out in Clause 10.6 hereof shall not apply to any of the Products which have been:
- 10.7.1 repaired or altered otherwise than by the Seller or its agents or not in accordance with the instructions of the manufacturer of the Products;
- 10.7.2 used to create composite products;
- 10.7.3 subjected to any accident or damage; and /or
- 10.7.4 improperly stored, maintained or used.
- 10.8 The Buyer shall be liable for the cost of returning the Products and for any damage to the Products prior to receipt by the Seller of such returned Products.

11 Indemnity

- 11.1 The Buyer shall indemnify and hold the Seller harmless against any claim by or loss or damage to any person or property directly or indirectly occasioned by or arising from the use or operation of any of the Products otherwise than in accordance with the Seller's operating instructions or the instructions of the manufacturer of the Products, if different. This indemnity shall extend to any costs and expenses incurred by the Seller and shall continue in force notwithstanding the termination of the Contract and the sale and purchase arrangements between the Buyer and the Seller.
- 11.2 The Buyer undertakes to ensure compliance by his employees, servants or agents with any safety precautions or instructions for safe handling of the Products given by the Seller.

12 Limitation of Liability

- 12.1 Nothing in this Contract shall operate to exclude or limit the Seller's liability for any liability which cannot be excluded or limited under applicable law.
- 12.2 Notwithstanding the foregoing Clause 12.1, the Seller shall not be liable to the Buyer for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 12.3 If any liability shall arise on the part of the Buyer for any loss or damage howsoever caused, including but not limited to the negligence of the Seller or its suppliers, all such liability for loss or damage shall be limited to the replacement value of the Products and in no event shall the Seller be liable for loss of profit, damage to plant or for other consequential, special or indirect loss or damage sustained by the Buyer or any third party.
- 12.4 For the avoidance of doubt, the Seller's liability in respect of any claims based on defective Products shall in no circumstances exceed the value of such defective Products.



12.5 All Purchase Orders, enquiries, applications for quotations, offers or other similar devices carry the limitations set forth in Appendix A.

13 Seller's Warranty

13.1 In substitution for any other rights which the Buyer might or would have had but for this Contract and subject to Clause 10, the Seller shall make good by replacement any failure in the Products or Services which results from defects in the Seller's materials or workmanship and which appear not later than 12 months after the Delivery Date and shall replace any Products or Services which do not conform with the description in the Purchase Order.

13.2 The function of the replacement of any failure in the Products or Services shall be performed at a location at the Seller's discretion.

13.3 Notwithstanding the provisions of Clause 13.1, in the case of a claim falling within Clause 13.1, the Seller reserves the right at its sole discretion to credit the Buyer in full the price paid by the Buyer to the Seller.

13.4 The Seller's liability under this Clause shall automatically cease if:

13.4.1 the Buyer has not paid for all Products or Services supplied under any Contract by the payment due date or is otherwise in breach of this or any other Contract made with the Seller; or

13.4.2 the Seller or its servants or agents are denied full and free right of access to the allegedly defective Products; or

13.4.3 the Buyer has not properly maintained the Products or has not complied with any Recommendations; or

13.4.4 the defect or failure is caused by a breach by the Buyer of its undertakings and warranties contained in Clause 14; or

13.4.5 the Buyer has failed to notify the Seller in writing of any defect or suspected defect within 14 days of the same coming to the knowledge of the Buyer.

13.5 The warranty set out in Clause 13.1 shall be in lieu of any warranties, conditions or undertakings whether express or implied by statute, common law or otherwise, which warranties, conditions and undertakings are hereby expressly excluded, except that such exclusions will not apply to any implied condition that the Seller has or will have the right to sell the Products when the property is to pass.

13.6 Nothing in this Contract excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

13.7 Subject to Clauses 13.5 and 13.6:

13.7.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the amount paid for the Products or Services under the Contract; and

13.7.2 the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (however caused) which arise out of or in connection with the Contract.



14 Buyer's Warranties

14.1 The Buyer warrants to the Seller that:

- 14.1.1 The Buyer will install, operate or otherwise use or store the Products strictly in accordance with the Recommendations and with all relevant or applicable statutory or other regulations governing the installation, operation, use or storage of the Products; and
- 14.1.2 Any collection vehicle, container, ship or other means of transport provided by the Buyer or any agent of the Buyer will comply with all relevant legislation and regulations relating to health and safety requirements; and
- 14.1.3 The storage and transport facilities and all parts thereof and all equipment used in connection therewith is suitable for storage (both short term and long term) and transport of the Products and complies with any statute, regulation, bye law or other rule having the force of law and relating to the storage of goods of the nature of the Products; and
- 14.1.4 The Buyer will ensure that the Products are stored in conditions appropriate to goods of that nature and will comply with any recommendations as to the storage of Products notified to it by the Seller from time to time.

14.2 The Buyer shall indemnify and keep indemnified the Seller in full against any claim, loss or damage (including, without limitation, damage to the reputation of the Seller) arising directly or indirectly from any breach of the warranty contained in Clause 14.1.

15 Termination of Contract

15.1 Without prejudice to its rights to claim damages and to any other rights it may have at law or otherwise, the Seller shall have the right to rescind and to cancel any Contract forthwith, including stopping any Products in transit and suspending any further deliveries or Services and without notice, if subsequent to the date of the Contract:

- 15.1.1 any distress or execution is levied upon any goods or property of the Buyer or the Buyer makes a voluntary arrangement with creditors, or becomes subject to an administration order, or (being an individual or firm) becomes bankrupt, or (being an incorporated company) takes corporate action or applies to any court for its winding up or the appointment of a liquidator or a receiver or similar officer of all or part of the undertaking or assets of the Buyer or any liquidation, bankruptcy, insolvency, reorganisation or similar proceedings are initiated by or against the Buyer in any jurisdiction; and/or
- 15.1.2 the Buyer makes default in or commits a breach of the Contract or any other of its obligations to the Seller and fails to remedy the same within 7 days of receiving the Seller's request in writing to do so.

15.2 Should the Seller rescind or cancel the Contracts in accordance with Clause 15.1:

- 15.2.1 the Seller may (without prejudice to any other remedies) repossess the Products with or without prior notice and enter upon any premises under the control or the occupation of the Buyer in which the Products may be for the purpose of repossession; and
- 15.2.2 if any part of the Products or Services have been delivered but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement to the contrary but without prejudice to the Seller's right to any unpaid Price for Products or Services delivered under the Contract and to damages for loss (both direct and consequential) suffered in consequence of such determination.



- 15.3 Unless the Seller otherwise agrees in writing the Buyer shall not be entitled to cancel the Contract. If however, the Buyer's cancellation of the Contract is accepted, at the sole discretion of the Seller, any costs, charges or expenses (both direct and consequential) incurred by the Seller up to the date of cancellation and the value of all loss or damage (both direct and consequential) incurred by the Seller by reason of such cancellation will be reimbursed by the Buyer to the Seller forthwith. Acceptance by the Seller of any cancellation by the Buyer will only be binding upon the Seller if it is made in writing.
- 15.4 In the event of the Seller other than in any of the circumstances set out in Clause 15.1 being prevented or hindered from completing the Contract either wholly or in part in accordance with the terms thereof for any reason whatsoever beyond its reasonable control which, for the avoidance of doubt and without prejudice to the generality of the foregoing, shall include fire, flood, strike or other labour disturbances, any war, terrorist attack, revolution, Acts of God, government act or embargo, inability to obtain raw materials and component supplies through normal channels at normal prices, or transportation or revocation of export and/or import licences then further performance of the Contract shall be totally or partially suspended for the period during which the Seller is so prevented provided that in the event of the Contract being suspended for a continuous period of more than 3 months then either party may give the other notice in writing to terminate the Contract forthwith and in such circumstances the Buyer shall pay for all Products or Services supplied to the date of such termination such payment to be made on or before the last day following the month during which termination was effected. The Seller shall not be liable for and direct or consequential loss, damage or injury to the Buyer, its agents, employees or sub-contractors, for the delay in or failure of Delivery or late Delivery caused by conditions beyond the Seller's control. Delivery of the Products may be totally or partially suspended by the Seller during any period in which the Products cannot be produced or delivered by reason of any of the above causes.
- 15.5 The Seller's rights contained in Clause 14 (but not the Buyer's rights) shall continue beyond the discharge of the parties' primary obligations under the Contract consequent upon its termination.
- 15.6 The termination of the Contract for whatever reason will be without prejudice to the rights and duties of either party accrued prior to termination.
- 15.7 For the avoidance of doubt, if satisfactory references and information on the Buyer are not provided within seven days of a request therefore by the Seller, or if, following the provision of such information, the Seller is unable to obtain satisfactory trade indemnity or similar cover in respect of its dealings with the Buyer, the Seller may terminate the Contract and the rights and liabilities of the parties shall be the same as if the Contract had been cancelled in accordance with the provisions of Clause 15.3.

16 Export Terms

- 16.1 Where the Products are supplied for export from the United Kingdom, subject to any special terms agreed in writing between the Buyer and the Seller, the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties thereon. Payment of all amounts due to the Seller shall be made as agreed in writing between the Buyer and the Seller before delivery and in the absence of such agreement payment shall be made pro forma.
- 16.2 Where the Products are supplied for export from the United Kingdom then unless otherwise agreed in writing between the Buyer and the Seller:
- 16.2.1 the provisions of Incoterms shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply but if there is any conflict between the provisions of Incoterms and this Contract, the latter shall prevail;



16.2.2 the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and (save in respect of the United States of America, Canada and Japan) for the payment of any duties and taxes thereon unless payment for these is included in the Contract;

16.2.3 the Buyer shall be deemed to have satisfied itself that such Products comply with the safety regulations of any country or state in which the Products are to be used outside the United Kingdom and the Buyer shall indemnify and keep indemnified the Seller in full for any loss or damage whatsoever which the Seller may incur if such Products do not comply with such safety regulations.

16.3 The Products shall not be used in any country other than that for which the Seller was aware they were originally ordered without the Seller's consent in writing.

16.4 The Buyer undertakes not to offer the Products for resale in any country notified by the Seller at or before the time the Purchase Order is placed, or to sell the Products to any person if the Buyer knows or has reason to believe that person intends to resell the Products in any such country.

17 Forbearance

17.1 Failure in the exercise by the Seller of any right or power contained in this Contract shall not operate as a waiver thereof or preclude or prevent any subsequent enforcement or insistence thereof (whether or not the Seller is aware of its rights or powers and whether or not the failure and delay occurs more than once).

18 Severability

18.1 If at any time any one or more provisions of this Contract is or becomes invalid, illegal, or unenforceable in any respect under any law the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.

19 Notices

19.1 Any notice or other information required or authorised by this Contract to be given by either party to the other may be given by hand or sent by post, or electronic means to the other party at the address last provided for that type of communication;

19.2 Any notice or other information given by post shall be deemed to have been given on the third day after it was posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, or that it has not been so returned to the sender, shall be sufficient evidence that it has been duly given;

19.3 Any notice or other information sent by electronic means shall be deemed to have been duly sent on the date of transmission;

19.4 Service of any legal proceedings concerning or arising out of this Contract shall be affected by causing the same to be delivered to the party to be served at his main place of business or its registered office, or to such other address as may from time to time be notified in writing by the party concerned.

20 Third Party Rights

20.1 A person who is not a party to the Contract shall have no right to enforce any term of the Contract by virtue of the Contract (Rights of third Parties) Act 1999.



21 Entire Agreement

- 21.1 This Contract together with any matter set out in the Seller's quotation or acceptance / acknowledgement of the Purchase Order contains the entire agreement and obligations between the Seller and the Buyer. In the case of any inconsistency between any letter or quotation incorporating or referring to this Contract and any Purchase Order, letter or form of contract sent by the Buyer to the Seller, whatever may be their respective dates, the provisions of this Contract shall prevail. In the event of the Seller entering into the Contract without the Seller having submitted a written quotation or other letter or document incorporating or referring to this Contract but in circumstances where the Buyer has had prior notice of this Contract then all Products or Services supplied shall be subject to this Contract.

22 Assignment

- 22.1 The seller reserves the right to assign, sub-contract the Contract or any part thereof. The Buyer shall not be entitled to assign the benefit or burden of the Contract without the consent in writing of the Seller.

23 Variation or Waiver

- 23.1 No variation of the Contract by the Buyer shall be binding upon the Seller unless made in Writing and signed by or on behalf of the Seller by Seller's Managing Director. In the event of such variation the Buyer shall indemnify and keep indemnified the Seller in full against all losses, which term shall include (but without prejudice to the generality thereof) loss of profit, costs (including the cost of labour and materials), damages, charges and expenses incurred (directly or indirectly) by the Seller as a result of such variation.

24 Representations Excluded

- 24.1 Any representations (except fraudulent misrepresentations) or warranties made by or on behalf of the Seller prior to the Contract (whether verbally or in writing) are hereby expressly excluded and shall be of no effect.

25 Governing Law and Jurisdiction

- 25.1 This Contract shall be governed by and construed in accordance with the law of England and Wales, and the Buyer agrees that any legal action or proceeding arising out of or in connection with this Contract may be brought at the High Court of Justice in England and the buyer irrevocably submits to the non-exclusive jurisdiction of that court.



Appendix A

- 1) GENERAL - The transformer units would be designed and manufactured to the highest standards using low loss steel and prime quality components and materials, to give a long service life. Their manufacture, as with all Products, would be rigorously monitored by the working directors, who are always on hand to ensure Seller's high quality standards are maintained.
- 2) CALCULATIONS - It is not, and has never been, the Seller's policy to reveal its electrical calculation methods, as these are commercially confidential.
- 3) LANGUAGE - Purchase Orders and all other communications must be written in the English Language, unless otherwise agreed.
- 4) ACCOUNT HOLDER DISCOUNT - A 'Prompt Payment' discount may be available, for invoices paid before the month end, following the month of invoice. The actual figure is shown on each invoice. Overdue accounts will incur interest charges, and may lead to account closure.
- 5) NON ACCOUNT HOLDERS - May be required to pay 100% of the total Purchase Order value with Purchase Order placement (a proforma invoice would be issued).

Full account status may be obtained after successful trading and receipt of satisfactory trade references.
- 6) NON-UK COMPANY PAYMENT - 85% of full invoice value released at time of Purchase Order placement, the remaining 15% payment to be released on proof of Products ready for shipping or letter of credit. See 'STORAGE' details below.
- 7) STORAGE - Equipment will be stored for a maximum of 14 calendar days from the date of readiness. Thereafter a charge of £50/week will be levied until the Products have been dispatched.
- 8) CUSTOMER DELAYS - Any delay of more than 14 calendar days in [the Buyer's] provision of a Witness for formal Witness Testing, will be deemed to be a constructive delay. Under such circumstances Witness Testing would be performed in full, without that Witness, the job completed and the Unit(s) put into storage. Payment of the full Price, less 10% of the total would then be due immediately. Storage charges will be invoiced on a monthly basis. The remaining 10% would then release the unit(s). If full Witness Testing is required at a later date, it would be quoted for at the time.

On completion of the manufacture and Invoicing of Products that are not subject to Witness testing, any delay of more than 14 calendar days in the acceptance of the Products and / or the provision of delivery details, will be deemed to be a constructive delay. Under such circumstances the Invoice would become payable as agreed in the Tender Offer or similar device. Storage charges will then be invoiced on a monthly basis.
- 9) RETENTIONS - Seller will not agree to 'Retentions', 'Liquidated Damages', 'Performance Guarantees', Letters of Credit or similar devices.
- 10) VALIDITY - Quotations are valid for 14 days from the issue date, unless otherwise stated.
- 11) TRADING TERMS - Prices and lead times given within this quotation are given in good faith. However Seller is dependent to some extent on suppliers and world markets. In recent times some commodities have rapidly increased in price and / or become difficult to obtain. Seller reserves the right to amend delivery prices and / or date(s).

All deposits are Non Returnable.

R Baker Electrical Limited Terms of Business are paramount in all transactions. That condition can only be waived by Seller's Company Directors' written authorisation specific to that particular Purchase Order or Contract.



Seller's trading terms and conditions are available on request or accessible via our Website.

12) VALUE ADDED TAX (vat) – VAT will be charged on all invoices, with the exception of the following situations:

a) Where the Products are proven to be exported outside the European Union (EU). This must be mentioned on the destination part of the Purchase Order, and on the transit document(s). Purchasers will be asked to complete an 'Export from UK to Non E.C. Country' declaration form.

b) Where the Products are sent directly to someone who is registered for VAT in another EU country, and the purchaser has issued Seller with a valid vat registration document verifiable on the website http://ec.europa.eu/taxation_customs/vies/vieshome.do

If the documents mentioned above are not received or are incorrect, vat will be charged and no refund will be allowed.

13) WARRANTY - Warranties are on a strict "Return to Manufacturer's Factory" basis.

14) EMC STATEMENT - With regard to both the EMC (89/336/EEC) & Low Voltage (73/23/EEC) Directives. It is Seller's considered opinion and experience, that a Transformer is an inert, benign electrical apparatus, consisting of a core and windings that will not generate conducted Electromagnetic Interference (EMI).

Although there are radiated emissions, these are only at the electrical supply frequency, and are screened by the Transformers Earthed metal housing (faraday cage principle).

It must, however be noted that any conducted Electromagnetic Interference (EMI) already present on the electrical supply to a Transformer may pass through it to the load, similarly any load generated Interference, may pass back through the Transformer on to the supply. This interference will not be amplified by the Transformer and will, in most cases be attenuated due to the inclusion of an Earthed, metal, inter-winding screen, which is present in all Seller's double wound transformers.

15) MANUFACTURING STANDARDS - The Products and equipment quoted for above will:

A: Be Supplied and inspected in accordance with the conditions and requirements of any Contract / Purchase Order, and, to the best of our knowledge and belief, will conform in all respects to the specifications and / or drawings relevant thereto.

B: Have No Power Driven Moving Parts, and will therefore be outside the scope of the "SUPPLY OF MACHINERY (SAFETY) REGULATIONS 1992-SI 1992/3073" or (Amendment) 1994-SI 1994/2063.

C: Comply, where applicable, with the "C.E. MARKING AND CERTIFICATION" requirements within the terms of the EMC DIRECTIVE 89/336/EEC, and the Low Voltage Directives 73/23/EEC & 93/68/EEC through conformity with the relevant International Standards (ISO).

END OF TERMS OF BUSINESS