

## Terms and Conditions of Sale

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### 1. Interpretation

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Buyer:** the person, firm or company who purchases the Goods from the Company.

**Company:** Avonmouth Engineering Services Limited a company incorporated under the laws of England with registered number 12661724 and its registered office at Unit 1 St. Andrews Road, Avonmouth, Bristol, BS11 9HS.

**Contract:** any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4.

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

- 1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these conditions.

### 2. Application of terms

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written

acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

### 3. Description

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order or if there is no acknowledgement of order the quotation.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.3 The Company reserves the right (but does not assume the obligation) to make any changes in the specification of the Goods which are required to conform with any applicable legislation or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance. Where the Company is not the manufacturer of the Goods, the Company shall use reasonable endeavours to transfer to the Buyer the benefit of any warranty or guarantee given by the manufacturer to the Company.

### 4. Minimum order value

- 4.1 A minimum order value of £100 (net) applies to every order.
- 4.2 Where the value of the order is below this minimum order value Avonmouth Engineering Services reserve the right to add a small order administration charge of £75 to the order.

### 5. Delivery

- 5.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's place of business.
- 5.2 The Buyer shall take delivery of the Goods within 3 days of the Company giving it notice that the Goods are ready for delivery.
- 5.3 The Buyer shall be responsible (at the Buyer's cost) for preparing the delivery location for the delivery of the Goods and for the provision of all necessary access and facilities reasonably required to deliver and install the Goods. If the Company is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Company may levy additional charges to recover its loss arising from this event.
- 5.4 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

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- 5.5 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 5.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 5.6.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 5.6.2 the Goods shall be deemed to have been delivered; and
- 5.6.3 the Company may store the Goods until delivery, whereupon the shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.7 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 5.8 The Company shall be responsible for any damage, shortage or loss in transit, provided that the Buyer notifies it to the Company (or its carrier, if applicable) within three days of delivery or the proposed delivery date of the Goods and that the Goods has been handled in accordance with the Company's stipulations. Any remedy under this condition 5.8 shall be limited, at the option of the Company, to the replacement or repair of any Goods which is proven to the Company's satisfaction to have been lost or damaged in transit.
- 5.9 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.10 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 5.11 Unless otherwise agreed between the parties the Company shall be responsible for arranging carriage of the Goods once the Buyer's consent to the proposed method of transport has been given.
- 6. Non-delivery**
- 6.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 6.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 7. Risk/title**
- 7.1 The Goods are at the risk of the Buyer from the time of delivery.
- 7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 7.2.1 the Goods; and
- 7.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the or any third party in such a way that they remain readily identifiable as the Company's property;
- 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 7.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 7.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 7.5.1 The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph

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- 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 7.5.2 The Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 7.5.3 The Buyer encumbers or in any way charges any of the Goods.
- 7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 7.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.
- 8. Responsibility during Trial or Hire**
- 8.1 During any trial or hire period the Buyer shall make good any loss or damage to the Goods, howsoever caused, fair wear and tear excepted, and shall also completely indemnify the Company from all losses.
- 8.2 Where damage is suffered any hire charges shall continue to be levied until such reasonable time that repair can be made to the Goods.
- 9. Price**
- 9.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's quotation provided to the Buyer.
- 9.2 Unless the quotation states that the price includes value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, these costs shall be paid in addition to the price by the Buyer when it is due to pay for the Goods.
- 9.3 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of such of the Goods as has not been delivered to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the
- Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
- 10. Warranty**
- 10.1 The Company warrants to the Buyer that the Goods are free from defects of workmanship and materials. The Company undertakes (subject to the remainder of this condition 10), at its option, to repair or replace Goods (other than consumable items) which are found to be defective as a result of faulty materials or workmanship within twelve months from the date of despatch of the Goods to the Buyer.
- 10.2 The Company shall not be liable for a breach of the warranty contained in condition 10.1 unless:
- 10.2.1 the Buyer gives written notice of the defect to the Company (such notice to contain sufficient detail regarding the defect to enable the Company to investigate the claim) within seven days of the time when the Buyer discovers or ought to have discovered the defect; and
- 10.2.2 after receiving the notice, the Company is given a reasonable opportunity of examining and/or testing such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.
- 10.2.3 The Buyer shall reimburse the Company for the costs it incurs carrying out a site survey or site testing if it is found that the Goods are not defective.
- 10.3 The Company shall not be liable for a breach of the warranty in condition 10.1 if:
- 10.3.1 the Buyer makes any use of Goods in respect of which it has given written notice under condition 10.2.1; or
- 10.3.2 the defect arises because the Buyer failed to follow the Company'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; or
- 10.3.3 the Buyer alters or repairs the relevant Goods without the written consent of the Company.
- 10.4 Any repaired or replacement Goods shall be under warranty for six months from the date of despatch from the Company's Service Centre.
- 10.5 The Company shall not be liable for any damage or defect to the Goods caused by improper use of the Goods or use outside its normal application.
- 11. Remedies**
- 11.1 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer (other than by reason of a Force Majeure Event under condition 15), the Buyer shall be liable to pay to the Company all reasonable costs, charges or losses sustained by it as a result, subject to the Company notifying the Buyer in writing of any such claim it might have against the Buyer in this respect.

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11.2 If the Buyer's claim is subsequently found by the Company to be outside the scope or duration of the warranty in condition 10, the costs of transportation of the Goods, investigation and repair shall be borne by the Buyer.

### 12. Limitation of liability

12.1 Subject to condition 4, condition 6 and condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

12.1.1 any breach of these conditions;

12.1.2 any use made or resale by the of any of the Goods, or of any product incorporating any of the Goods; and

12.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these conditions excludes or limits the liability of the Company:

12.3.1 for death or personal injury caused by the Company's negligence; or

12.3.2 under section 2(3), Consumer Protection Act 1987; or

12.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

12.3.4 for fraud or fraudulent misrepresentation.

12.4 Subject to condition 12.2 and condition 12.3:

12.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the higher of the price paid by the Buyer to the Company for the Goods or the amount that the Company actually recovers in respect of such claim or series of claims by the Buyer pursuant to any indemnity provided under any applicable insurance policy that the Company has in place from time to time; and

12.4.2 the Company shall not be liable to the for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

### 13. Intellectual Property Rights

13.1 If the Company manufactures the Goods, or applies any process to it, in accordance with a specification submitted or prepared by the Buyer or any other information provided by the Buyer, the Buyer shall indemnify and keep indemnified the Company against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation

consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from the Company's use of the Buyer's specification or such other information. The indemnity shall apply whether or not the Buyer has been negligent or at fault and does not limit any further compensation rights of the Company.

13.2 The Buyer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of the Company or (as the case may be) third party.

13.3 The Company shall retain the property and copyright in all documents supplied to the Buyer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of the Company.

13.4 The Company's Intellectual Property Rights in and relating to the Goods shall remain the exclusive property of the Company, and the Buyer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.

### 14. Termination

14.1 Without prejudice to any other right or remedy available to the Company, the Company may terminate the Contract or suspend any further deliveries under the Contract without liability to the Buyer and, if the Goods has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:

14.1.1 the ability of the Buyer to accept delivery of the Goods is delayed, hindered or prevented by circumstances beyond the Buyer's reasonable control; or

14.1.2 an order is made or a resolution is passed for the winding up of the Buyer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Buyer; or

14.1.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the Buyer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Buyer, or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

14.1.4 a receiver is appointed of any of the Buyer's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Buyer, or if any other person takes possession of or sells the Buyer's assets; or



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- 14.1.5 the Buyer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- 14.1.6 the Buyer ceases, or threatens to cease, to trade; or
- 14.1.7 the Buyer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 14.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.
- 15. Assignment**
- 15.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 15.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 16. Force majeure**
- The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the (without liability to the ) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess three days, the shall be entitled to give notice in writing to the Company to terminate the Contract.
- 17. General**
- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 17.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 18. Communications**
- 18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- 18.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the by the Company; or
- 18.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 18.2 Communications shall be deemed to have been received:
- 18.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 18.2.2 if delivered by hand, on the day of delivery; or
- 18.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 18.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.
- 19. Payment**
- 19.1** Subject to condition 19.4, payment of the price for the Goods is due in pounds sterling **within 30 days of the date of the invoice.**
- 19.2 Time for payment shall be of the essence.
- 19.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 19.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 19.5 The Buyer shall make all payments due under the Contract in full 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 Company to the Buyer.
- 19.6 If the Buyer fails to make payment in full on the due date, the whole of the balance of the price of the Goods then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Company, the Company may:
- 19.6.1 terminate the Contract or suspend any further deliveries of Goods (whether ordered under the same contract or not) to the Buyer;

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- 19.6.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Company) as it thinks fit (despite any purported appropriation by the Buyer);
- 19.6.3 charge interest on the amount outstanding from the due date to the date of receipt by the Company (whether or not after judgment), at the annual rate of 8% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- 19.6.4 suspend all further manufacture, delivery, installation or warranty service until payment has been made in full.
- 19.6.5 make a storage charge for any undelivered Goods at its current rates from time to time;
- 19.6.6 stop any Goods in transit; and
- 19.6.7 a general lien on all Goods and property belonging to the Buyer, exercisable in respect of all sums lawfully due from the Buyer to the Company. The Company shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.
- 20.2 Avonmouth Engineering Services official returns paperwork must be used, and be duly completed.
- 20.3 The Avonmouth Engineering Services returns note must accompany the goods on return to Avonmouth Engineering Services. Goods returned without this paperwork cannot be processed and may delay any credit or replacement parts.
- 20.4 Returned goods resulting from a Avonmouth Engineering Services error will be re-stocked with no charge to the customer.
- 20.5 Returned goods resulting from a Customer error or misinformation will be subject to a re-stocking fee. This will be a minimum of 60% of the order value of the item.
- 20.6 Replacement parts will not be despatched until the incorrect or faulty/damaged goods have been received by Avonmouth Engineering Services, accompanied by the correct paperwork.

## 20. Returns

Avonmouth Engineering Services will accept the return of goods, for potential credit or replacement subject to the following criteria and conditions:

- 20.1 Damages, shortages or incorrect items are notified to Avonmouth Engineering Services no later than 7 calendar days from the date of signed delivery receipt by customer. We reserve the right to reject any returns once this period has elapsed.