GCE Ltd.
GENERAL BUSINESS TERMS AND CONDITIONS

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GENERAL

1. These conditions shall govern any contract made by us for or in connection with the supply or sale by us in the United Kingdom of machinery, equipment and welding consumables, herein called 'the goods'. In default of our written Agreement expressly overriding these conditions or one or more of them.

   a) No other terms or conditions howsoever arising whether express or implied, being inconsistent with these conditions, whether contained in any order form or otherwise, shall govern or affect any such contract whatsoever by us including any collateral contract and these conditions shall prevail.

   b) Any performance or partial performance by us of any order placed with us shall be carried out on these terms and no others.

   c) no representation purporting to be made by us or on our behalf in respect of or in connection with the goods and without prejudice to the generality of the foregoing, whether as to the description, nature, condition, conformity with sample or quality of the goods or as to their fitness for any purpose whatsoever, shall bind us or become a term of any contract and we shall be under no liability to you in respect thereof. You may rely solely upon your own skill and judgement unless you wish to rely upon any representation by us in which event you must make an express agreement in writing with us in that respect.

   d) We accept no responsibility or liability otherwise than may be expressly provided by these conditions.

PRICE

a) The price payable will be that agreed prior to despatch in the form of our valid current quotation or current list price, less any formally agreed discount. Copies of our current Price List are available on request. We reserve the right to change prices at any time, but agree to give 30 days notice in writing of our intention prior to implementation. Any fixed price contracts will be individually agreed and confirmed in writing.

b) Carnage of goods below the value specified in our separate term "Small Order Charge" may at our discretion be charged by us and constitute an increase in the contract price.

LIMITS OF CONTRACT

Any offer by us includes only such goods and services as are expressly specified in writing and we shall be under no liability whatsoever to supply any other goods or services whatsoever.

DOCUMENTS

In the interests of continuous product improvement, we reserve the right to change the design or specification of any of our goods without prior notice. Any documents containing drawings, specifications, particulars of weight, dimensions or illustrations etc. shall not form or represent any part of any contract unless expressly agreed in writing.

TESTS

i. Machinery and Equipment

   a) Type tests are carried out to ensure that in any test conditions prescribed by the authority administering any relevant National or International Standard quoted by us, the performance criteria of the authority are met.

   b) In the case of machinery and equipment being constructed or modified to your requirements, tests will be carried out to ensure that the machinery and equipment complies with our obligations under clause 6(ii)(a).

ii. Welding Consumables Goods manufactured by us are where practicable, subjected to a system of sample testing at our works.

iii. Machinery, Equipment and Welding Consumables. If tests other than those specified or tests in the presence of your representative are required, a reasonable charge will be made. In the event of any delay on your part in attending such tests or in carrying out any inspection required by you. The test will proceed after seven days notice of our readiness and our results will be deemed to be accurate, whether or not you have attended.

PERFORMANCE

i. Machinery and Equipment where machinery and equipment is constructed or modified to your requirements, our liability shall only be to carry out such construction or modification to meet those requirements based strictly on the measurements, assembly tolerances and details of components and materials supplied by you, or as amended by agreement, and no conditions or warranties

are given that the machinery or equipment as constructed or modified will meet any other requirements whatsoever, including compliance with any legal requirements.

ii. Machinery, Equipment and Welding Consumables

a) All technical data, specifications and performance figures are given by us based on the National or International Standard where shown, or otherwise on the detail of the item currently in production on our own operating experience, and on the tests we or our supplier have carried out in normal test conditions. We accept no responsibility for and you are solely responsible for assessing if goods, whether alone or in combination, are suitable and sufficient for your purposes, and whether your operating conditions will enable any goods to reproduce their test performance.

b) All conditions and/or warranties which might be implied under Section 13, 14 and/or 15 the Sale of Goods Act 1979, as amended or by any other Statute amending or replacing the same, are hereby expressly excluded.

DESPATCH

The time given for despatch is to date from receipt by us, both of a written order to proceed upon these terms and of all necessary information to enable us to put work in hand. Unless the date of despatch has been guaranteed by us in writing and you have suffered loss as a result of delay in despatch and there is a written agreement whereby we are liable for liquidated damages, all liability of our part for failure to achieve despatch within the time given is hereby expressly excluded in all cases, whether a time for despatch has been guaranteed or not. Should despatch on any work or service to be carried out by us be hindered or delayed by you, your servants or agents, whether directly or indirectly, any loss or damage caused to us shall be reimbursed by you and shall constitute an increase in the contract price.

LFORCE MAJEURE etc.

Our performance of any term of any contract and in particular but without prejudice to the generality of the foregoing, of any guarantee of any delivery, is open to variation by agreement and in default of agreement any contract is subject to cancellation by us in the event of act of God, war, civil commotion, strike, lock-out. Government order or regulation, national or local emergency, fire, flood, drought, tempest, fog, accident, shortage or non-supply of materials or labour or transport and without prejudice to the generality of the foregoing in the event of any other matter beyond our control, which causes major disruption of or which prevents our performance, such disruption or prevention to be within our sole and unchallengeable judgement.

DELIVERY

a) We shall be entitled to deliver and invoice all and any goods by instalments and any such goods shall be deemed to be the subject of a severed and separate contract.

b) Unless otherwise agreed in writing, we shall have the right to choose the mode of delivery which will normally be the most economical means of transport. If you require delivery by any special or different form of transport, any additional cost shall be payable by you, on invoice.

TERMS OF PAYMENT

a) In respect of all sums payable to us, time of payment shall be of the essence and unless other terms are expressly agreed in writing, our terms of payment are nett cash payment in full within one month following the month of invoice. No discount, set-off or allowance may be made unless expressly agreed in writing by us. Where goods are supplied in instalments or at different times, each may be invoiced separately whether or not the proportionate price thereof has been agreed.

b) If you fail to comply with our terms of payment, without prejudice to our other rights we reserve the right to discontinue forthwith the provision to you of any further goods or services whatsoever under any agreements then existing between us without any liability whatsoever on our part and to treat or defer treating any or all agreements as repudiated by you. Upon discontinuance and before acceptance of repudiation, we shall be entitled to make a charge payable forthwith for that part of the cost of any contract already incurred by us together which would have been obtained, less the scrap value of any item retained.

c) Further or alternatively we shall be entitled at our sole discretion to make a surcharge upon all sums remaining unpaid after the due date at a rate not exceeding 5 per cent per annum above Lloyds Bank Base Lending Rate calculable from day to day with monthly rests.

RETENTION OF TITLE AND TRANSFER OF RISK

a) Goods supplied by us shall be at your risk immediately on delivery to you or into custody on your behalf and you should be insured accordingly.

b) Property in goods supplied hereunder will pass to you when:

i. the goods the subject of this contract: and

ii. all other goods the subject of any other contract between us and you which at the time of payment of the full price of the goods sold under this contract, have been delivered to you but not paid for in full, have been paid for in full.

c) Until full payment has been received by us, you shall hold the goods in fiduciary capacity for us in a manner which enables them to be identified as our goods and you shall immediately return the goods to us should our authorised representative so request. All the normal incidents associated with a fiduciary relationship shall apply.

d) Your right to possession of the goods shall cease if you do anything or fail to do anything which would entitle a Receiver, Liquidator or Administrator to be appointed in respect of your trustees to take possession of any assets or would entitle any person to present a petition for winding-up.

e) You grant us an irrevocable license to enter at any time any vehicles or premises owned or occupied by you or in your possession for the purpose of repossessing and removing any such goods.

f) You must ensure that if the goods are or become affixed to any land or building they shall be capable of being removed without material injury to such land or building and to take all necessary steps to prevent title to the goods from passing to the landlord of such land or building. You shall warrant to repair and make good any damage caused by the affixation of the goods to or their removal from any land or building and to indemnify us against all loss damage or liability we may incur or sustain as a result of such affixation or removal.

g) Notwithstanding paragraph c) hereof, you shall be permitted to sell the goods to third parties in the normal course of business. In this respect you shall act in the capacity of a Commission Agent and the proceeds of any such sale shall be held in trust for us in a manner which enables proceeds to be identified as such. We as Principal shall remunerate you as Commission Agent a commission depending upon the surplus which the Commission Agent can obtain over and above the sum, stipulated under the original contract of supply, which will satisfy the Principal.

h) If our goods are admixed with goods the property of any person other than you, the product thereof shall be deemed to be owned in common with that other person.

i) You are licensed by us to process the said goods but in so doing confirm a bailment for processing relationship with us. The new product or products or any chattel created shall be separately stored and marked so as to be identifiable as our property as bailer.

j) If any of the material supplied is incorporated in or used as material for other goods before payment, the property in the whole of such goods shall be and remain with us until such payment has been made. Any sale of such goods shall take place upon commission agency terms. We as Principal shall remunerate you as Commission Agent a commission depending upon the surplus which the Commission Agent can obtain over and above the price which will satisfy the Principal.

CANCELLATION OF ORDERS

The Company reserves the right not to accept cancellation of orders. Where cancellation is accepted the Company will charge the customer a 25% handling charge of the net order value subject to a minimum handling charge of £20 per order. Under no circumstances will cancellations be accepted for items specifically manufactured or ordered by the customer.

RETURN OF GOODS

The Company reserves the right not to accept the return of goods. Where return is accepted this can only be as a result of our own internal complaint procedure and must be confirmed in writing prior to acceptance of return of goods.
On receipt of the returned goods a credit note will be raised for the net order value less a 25% handling charge subject to a minimum handling charge of £20 per credit note. Under no circumstances will return of goods be accepted for items specifically manufactured for the customer.

DELAY AND STORAGE

If we are not given forwarding instructions sufficient to enable us to despatch the goods within 14 days after the date of notification that they are ready for despatch you shall take delivery at the premises from which the goods are available for despatch or arrange storage. If you do not do so, delivery shall be deemed to have occurred and we shall be entitled to arrange and charge for storage wherever we choose as your agents and at your risk and all charges, storage, insurance and demurrage shall be payable by you on invoice. All payments shall be due as if delivery has been made and until all payments due from you to us have been made we shall have a general lien on the goods.

Gas Control Equipment

LOSS OR DAMAGE IN TRANSIT

When the price quoted includes delivery we will repair or replace the goods lost or damaged in transit free of charge provided that both the carriers and ourselves receive notification of such loss or damage within 3 working days of the delivery of the goods or the receipt of the invoice charging for those goods, followed by written confirmation within 7 days of such an event but all other liability on our part is hereby expressly excluded.

CLAIMS FOR SHORTAGES etc

In the event of incomplete delivery arising otherwise than through loss or damage in transit, we shall be under no liability whatsoever unless we receive notification of all relevant details within 3 days, followed by confirmation in writing within 7 days of delivery and in no circumstances will we be liable for any indirect or consequential losses.

OUR LIABILITY

a) Subject to Clause 19 in the case of goods not of our manufacture, whether they constitute or form part of goods supplied by us, all liability whatsoever on our part, save liability for death or personal injury resulting from our negligence, is hereby expressly excluded and without prejudice to the generality of the foregoing, all such liability for loss and damage howsoever arising whether caused directly or consequentially is hereby excluded, but we will use our best endeavours to ensure that any benefit available to us in respect of goods supplied to us is made available to you.

b) In the case of goods of our own manufacture, we will make good, by repair or, at our option, by the supply of replacement goods, defects which after proper use appear in the goods within a period after delivery or deemed delivery which arise solely from faulty design, materials or workmanship on our part, provided always that defective goods or parts of goods are promptly returned by you at your expense to our works unless otherwise agreed in writing. Repaired or replacement parts will be delivered by us in accordance with Clause 9(a) and (b) where by agreement with you we cause one of our servants or agents to carry out work of repair or replacement at your premises, we shall have the right to charge for the whole or any part of the cost and overheads involved in such additional services, which shall be payable on invoice.

c) We shall not be liable, either in part or in full, for any claim whatsoever for failure of products or fabrications to meet specifications or performance criteria of any form or type. It is expressly the responsibility of the buyer to determine that use of the products supplied by us are fit for the purpose to which you put them.

d) We shall not be liable in any manner whatsoever to the buyer for any loss of profit, market or contract or for any consequential loss sustained or alleged to be sustained by the buyer.

e) We shall not be liable for the cost of removal and/or replacement of weld material proven or suspected to be unsuitable for the purpose to which it was put by the buyer or its customer whether or not this is due or believed to be due to failure of the Company's products to meet specifications or performance criteria claimed by the Company.

f) In no case whatsoever shall the liability of the Company exceed the price of the Goods sold.

PATENTS

We will indemnify you against any claim for infringement of Letters Patent, registered design, trade mark or copyright obtaining at the date of delivery or deemed delivery caused by the use of any goods or documents supplied by us to you and against all costs and damages which you may incur in any action for such infringement providing that this indemnity shall not apply to any infringement resulting from a design, requirement, specification or instruction given by you or on your behalf or from use in a manner or for a purpose other than one expressly made known to us at the time of agreement or from use in a foreign country or from use in combination or association with any other goods not supplied by us, provided further that this indemnity is conditional upon prompt notice being given to us by you in writing of any allegation whatsoever of an infringement and also that we may conduct any dealings, negotiation or litigation arising there from in such manner as we may deem appropriate whether in your name or in our own.
Where goods are supplied to meet your design, requirement, specification or instruction, and the same or any of them because any infringement as aforesaid you will indemnify us against all claims whatsoever made against us and the costs thereof provided we give you prompt notice of any allegation of infringement.

LIABILITY FOR ACCIDENTS AND DAMAGE

If our servants or agents are on site for the fulfilment of any agreement, not withstanding the provisions of Clause 17, we will at our option effect repairs or indemnify you against damage or injury directly caused to your servants or agents or to your property by our servants or agents negligence while working on site, but not otherwise, provided that:

a) Our total liability hereunder for damage to property, whether involving a breach of contract or statutory duty or not, shall not exceed £100,000 or the price of the goods or services, whichever is greater, and

b) We shall not be liable to you for any loss of profit or loss of contracts or for any indirect or consequential losses whatsoever and howsoever arising, and

c) Save as provided in Clause 17 we shall not be liable for any damage or injury occurring after our servants or agents have left the site.

TIME OR INDULGENCE

Our rights shall not be prejudiced, waived or affected by any time, forbearance or indulgence extended by us, our servants or agents to you, your servants or agents.

TERMINATION RIGHTS

a) Without prejudice to our other rights and remedies we shall be entitled to terminate any agreement with you forthwith on the happening of any of the following events:

i. Your failure to pay any sums due to us on the due date in respect of any agreement.

ii. Your breach of any condition of any agreement with us.

iii. if you have a Receiver or a Receiver and Manager appointed, or if you go into any form of liquidation, or enter into a composition with your creditors or commit an act of bankruptcy or are the subject of distress or if execution is levied against you.

iv. You cease to be able to pay your debts as and when they fall due.

b) In the event of termination, without prejudice to our other rights and remedies we shall be entitled:

i. To enter upon premises in your possession occupation or control or to which you have any right of access and to repossess any goods beneficially owned by us.

ii. To be paid all sums then due to us by you in respect of all goods and services whatsoever provided by us to you.

iii. To retain all goods still in our possession or stored on your behalf and to dispose of any interest or title therein.

iv. To be paid forthwith on invoice the loss of profit and actual cost of work service and materials of partially completed goods giving credit for such value if any as they may have for us or for the net proceeds of their disposition and to be paid forthwith on invoice the contract price due in respect of completed goods whether delivered or not, less whichever shall be the lesser of their proceeds of sale or the value of their materials.

LEGAL CONSTRUCTION

This agreement shall be governed by and construed in accordance with English Law and each party to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under the agreement.

TERMS AND CONDITIONS OF PURCHASE

For details on GCE (Gas Control Systems) Ltd conditions of purchase, please obtain document ref. T&CPRv1/1/96

WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE) COMPLIANCE DECLARATION

Electrical and electronic products placed on the UK market by GCE Ltd are covered by the EU Electrical and Electronic Equipment Waste (WEEE) Directive and its' accompanying UK Delegated Legislation in the form of Statutory Instruments and Regulations. The aims of the Directive are to minimise the amount of WEEE entering the waste stream and to provide funding from treatment facilities in order to maximise recovery and recycling. GCE's WEEE obligations relating to products sold into the industrial and commercial market (also known as Business to Business WEEE or B2B WEEE) involves registering with the relevant agency (i.e. the Environment Agency) or with a compliance scheme as a producer of Electrical and Electronic Equipment (EEE). The term "producer" is defined as a manufacturer, re-brander of distributer of EEE. In our case GCE Ltd is defined as a distributor in that it places EEE on the market. In order to fulfil the requirements of the pan-EU Directive, fulfil the regulatory obligations and to provide an end-of-life recycling solution, GCE Ltd has registered with an approved compliance scheme, the details of which are set out below:

Valpak - Producer Registration Number: RM07706
As commercial products are sold into the UK market to end users via GCE Ltd and through networks, the products may move beyond our reach. In this instance, in order to keep down the cost of the product, it is considered fair that the cost of recycling be met by the end user.

REQUIREMENTS ON WHOLESALE DISTRIBUTION OF MEDICINAL PRODUCTS

Legislation relating to the above requires that wholesale dealers deal only with specified persons. Article 80 of the EU Directive 2001/83/EC, as amended requires that "the holder of a licence must supply medicinal products only to persons who are themselves in possession of the distribution authorization or who are authorized as entitled to supply medicinal products to the public in the member state concerned". Schedule 9 of the UK Regulations requires that "the holder of a wholesale dealers licence shall distribute relevant medicinal products by way of wholesale dealing only to:

a) a holder of a wholesale dealer's licence relating to those products.

b) a holder of an authorization granted by the competent authority of another EEA State authorizing the supply of those products by way of wholesale dealing.

c) any person who may lawfully sell those products by retail or who may lawfully supply them in circumstances corresponding to retail sale, or d) any person who may lawfully administer those products".

c) and d) above relate in the main to pharmaceuticals so a) and b) are the main thrust as far as GCE is concerned.

All customers buying these products need a wholesale dealers licence and cannot under any circumstances rely on GCE's licence.

MEDICAL DEVICES / REQUIREMENTS IN THE TRADE IN MEDICAL DEVICES ACCORDING TO THE MEDICAL DEVICES REGULATION MDR

a) General obligations of the distributor

Definitions as per MDR:

'Distributor' means any natural or legal entity in the supply chain, other than the manufacturer or the importer, that makes a device available on the market, up until the point of putting into service;
'Economic operator' means a manufacturer, an authorised representative, an importer, or a distributor

The customer / distributor recognize his obligations and must at all times act in accordance **with MDR Chapter II, Article 14, "General obligations of the** distributor".

i. Ensure that the information supplied with the product accompanies the product in the original document format or is included in the information package supplied.

b) In case of issues, especially vigilance cases:
   a. Distributors and all economic operators shall co-operate with the manufacturer and authorities to ensure that a root cause investigation can be done. The manufacturer can then decide necessary corrective actions to either bring the device into conformity, to withdraw or to recall it as appropriate.
   b. Affected products are to be made available to the manufacturer on request together with related products such as gas cylinders, valves and other equipment

c) For identification within the supply chain, economic operators such as importers, distributors and healthcare professionals are required to reach an appropriate level of traceability of products with manufacturers in accordance to **MDR Chapter III Article 25**

d) Over a period of 10 years or at least the product lifespan as stated, economic operators must be able to inform the competent authority or the manufacturer about:
   a. Any economic operator to whom they have directly supplied a device;
   b. Any economic operator who has directly supplied them with a device;
   c. Any health institution or healthcare professional to which they have directly supplied a device

e) In addition to obligations defined for economic operators in MDR chapter II and taking into consideration how the product is supplied and used, especially considering patient confidentiality, the following is expected:
   a. Support market corrective actions in case of vigilance, as recall, refurbishment or distribution of safety notices by for example identification of affected users, quarantine and return of suspect products etc. as requested by GCE
   b. On request support collection of clinical and other data as input to Post market clinical follow up and post market surveillance

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Gas Control Equipment

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