STANDARD TERMS AND CONDITIONS OF SALE

1. Application of terms and conditions

1.1 Unless otherwise agreed in writing, these terms and conditions of sale ("Conditions") apply exclusively to each transaction for the sale of goods ("Goods") by any of the following group of companies, namely **Avon Material Supplies Limited** (a company incorporated and registered in England & Wales with company number 01615220, with its registered office at Unit 26-28 Thorne Way, Woolsbridge Industrial Estate, Three Legged Cross, Wimborne, Dorset, England, BH21 6FB), **Avon Material Supplies (Holdings) Limited** (a company incorporated and registered in England & Wales with company number 08179185, with its registered office at Unit 26-28 Thorne Way, Woolsbridge Industrial Estate, Three Legged Cross, Wimborne, Dorset, England, BH21 6FB), **Avon Material Supplies (Transport) Limited** (a company incorporated and registered in England & Wales with company number 07659774, with its registered office at Unit 26-28 Thorne Way, Woolsbridge Industrial Estate, Three Legged Cross, Wimborne, Dorset, England, BH21 6FB), **Avon Material Supplies (Plant Hire) Limited** (a company incorporated and registered in England & Wales with company number 03830153, with its registered office at Unit 26-28 Thorne Way, Woolsbridge Industrial Estate, Three Legged Cross, Wimborne, Dorset, England, BH21 6FB (in each case to be referred to herein as the "Seller") to a buyer of Goods from the Seller ("Buyer").

1.2 No terms and conditions or contractual provisions specified or stipulated by the Buyer at any time, whether prior to or after the Conditions have been brought to the attention of the Buyer, shall be binding on the Seller. The delivery of Goods shall amount to the unequivocal and irrevocable acceptance of the Conditions by the Buyer and exclusion of all other terms and conditions howsoever arising.

1.3 Whenever reference is made in these Conditions to an authorised representative of the Seller, such authorised representative shall be a director of the Seller or a person authorised in writing by a director of the Seller. It shall be for the Buyer to determine that a person purporting to act on behalf of the Seller is an authorised representative.

2. Basis of sale

2.1 Once the Seller's quotation has been supplied to the Buyer (and acknowledged by

the Buyer whether verbally or otherwise), the contract whereby the Seller shall sell and the Buyer shall buy the Goods ("Contract") shall be formed by the earliest of:

2.1.1 the authorised representatives of each of the parties signing and exchanging a form of contract relating to the sale and purchase of the Goods; or

2.1.2 the Seller acknowledging in writing the order for Goods submitted by the Buyer; or

2.1.3 the delivery of the Goods; or

2.1.4 the presentation to the Buyer of the Seller's invoice for the Goods when done so prior to the delivery of the Goods.

2.2 No quotation given by the Seller to the Buyer shall amount to an offer capable of being accepted but shall constitute an invitation to treat. For the avoidance of doubt, no Contract shall come into effect unless the Seller has agreed in writing to supply the Goods at the contracted price and specification.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods outside the normal course of their duties unless confirmed in writing by an authorised representative of the Seller. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 No variation to these Conditions or the Contract shall be binding unless agreed in writing between the authorised representatives of the Seller and the Buyer.

2.5 Sales literature, price lists and other documents issued by the Seller in relation to the Goods do not constitute offers to sell the Goods which are capable of acceptance.

2.6 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Specification

3.1 The specification for the Goods shall be that set out in the Seller's sales documentation unless varied expressly in the Contract and agreed to in writing by the authorised representative of the Seller. The Goods will only be supplied in the

minimum units thereof stated in the Seller's sale documentation or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly.

3.2 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Seller are intended as a guide only and shall not be binding on the Seller.

3.3 Where the specification for the Goods is dependent on information supplied by the Buyer, the Buyer warrants such information is complete and accurate, and the Seller shall bear no liability to the Buyer and/or the Buyer shall be precluded from receiving any refund or reimbursement from the Seller in the event that the Goods fail to meet the Buyer's requirements (or the requirements of any person purchasing the Goods or the Buyer's products incorporating the Goods) as a consequence of any deficiency or inaccuracy in such information.

3.4 It shall be strictly the responsibility of the Buyer to advise the Seller in writing prior to the formation of the Contract of any special, legal, administrative or regulatory requirements applying in the territory in which the Buyer is to import, use or sell the Goods (including without limitation any requirements as to the composition of the Goods or their labelling or generally as regards the distribution or sale of the Goods) and the Buyer must advise the Seller immediately of any change made in such requirements.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.

4. Price

4.1 The price of the Goods is the Seller's quoted price and, unless otherwise stated out in the Contract, is exclusive of VAT (or similar sales tax), delivery, packaging, carriage, and insurance.

4.2 Unless otherwise specified by the Seller in its quotation, import or customs duty or other official taxes or charges or any port surcharges arising from or necessary to enable delivery of the Goods (together, "Import Charges") shall be for the Buyer to settle directly with the authorities in question. Where, notwithstanding the Buyer being contractually obliged to pay the Import Charges, the Seller deems it

appropriate to settle any part of them in order to ensure delivery of the Goods, the amount paid out by the Seller shall be reimbursed by the Buyer forthwith upon demand.

4.3 Where the Seller has quoted a price for the Goods, it shall be valid for 14 days unless otherwise specified in the Seller's quotation.

4.4 All payments shall be made to the Seller in the manner indicated on the invoice issued by it.

4.5 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond its control (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, 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 are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.6 Unless the Seller has agreed in advance that payment for Goods shall be on credit terms, delivery of Goods will be made only after payment in full of the price (together will all amounts for VAT (or similar sales tax), delivery, packaging, carriage, import duties and insurance) has been received by the Seller. Unless the parties agree otherwise, the Buyer will pay the price of the goods (together with all amounts for VAT (or similar sales tax), delivery, packaging, carriage, import duties and insurance (as may be applicable depending on the trade terms specified in the Seller's quotation)) where credit terms have been agreed within 30 days of the date of the invoice raised in respect of the Goods.

5. Delivery

5.1 Delivery of the Goods shall be made by the Seller conveying the Goods to the place specified in the Contract or, if no place of delivery is so specified, by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.

5.2 The Seller shall endeavour to comply with the shipping instructions for the Goods given by the Buyer, but the Seller reserves the right to make part shipments and to ship by vessels, aircraft or vehicles of the Seller's choice from any point of

departure in the United Kingdom or elsewhere.

5.3 The delivery date given by the Seller is approximate only, and time for delivery shall not be of the essence unless previously agreed in writing by an authorised representative of the Seller. The Goods may be delivered by the Seller in advance of the delivery date upon giving reasonable notice to the Buyer.

5.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract, and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

5.5 If the Buyer fails to take delivery of the Goods or any part of them on the delivery date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the Seller shall be entitled upon giving written notice to the Buyer to store or arrange for the storage of the Goods, and then, notwithstanding the provisions of Condition 7.1, risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place and the Buyer shall pay to the Seller all costs and expenses including storage and insurance charges arising from such failure.

5.6 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

6. Inspection and shortages

6.1 The Buyer is under a duty whenever possible to inspect the Goods on delivery or on collection as the case may be.

6.2 Where the Goods cannot be examined, the carrier's note or such other note as appropriate shall be marked "condition and contents unknown".

6.3 The Seller shall be under no liability for any shortages that would be apparent on reasonable careful inspection if the provisions of this Condition 6 are not complied with and, in any event, will be under no liability if a written complaint is not delivered to the Seller within seven business days of delivery detailing the alleged shortage.

6.4 In all cases where shortages are complained of, the Seller shall be under no liability

in respect thereof unless:

6.4.1 the shortage in question exceeds 1% (whether by weight, quantity or volume) of the Goods delivered; and

6.4.2 an opportunity to verify the shortage is given to the Seller before any use is made of the Goods or any alteration or modification is made to them by the Buyer.

6.5 Subject to Conditions 6.3 and 6.4, the Seller shall make good any shortage in the Goods as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage.

7. Defective or damaged Goods

7.1 If on delivery any of the Goods are defective or damaged in any material respect and either the Buyer lawfully refuses delivery of the defective or damaged Goods or, if they are signed for on delivery as "condition and contents unknown", the Buyer gives written notice of such defect or damage to the Seller within seven business days of such delivery, the Seller shall at its option:

7.1.1 replace the defective or damaged Goods within 20 business days of receiving the Buyer's notice; or

7.1.2 refund or credit to the Buyer the price for those Goods (or parts thereof, as appropriate) which are defective or damaged, but the Seller shall have no further liability to the Buyer in respect thereof, and the Buyer may not reject the Goods if delivery is not refused or notice given by the Buyer as set out above.

7.1.3 No Goods may be returned to the Seller without the prior agreement in writing of an authorised representative of the Seller. Subject thereto, any Goods returned which the Seller is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at the Seller's sole discretion it shall refund or credit to the Buyer the price of such defective or damaged Goods, but the Seller shall have no further liability to the Buyer.

7.1.4 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, the failure to store the Goods securely or properly protected, subjection to normal conditions, failure to

follow the Seller's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Seller's prior approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.

7.1.5 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

7.1.6 The Buyer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Buyer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority, and the Buyer will indemnify the Seller against any liability loss or damage which the Seller might suffer as a result of the Buyer's failure to comply with this Condition.

8. Risk and retention of title

8.1 All risk of damage to or loss of the Goods shall pass to the Buyer at:

8.1.1 in the case of Goods to be delivered at the Seller's premises, the time when the Seller notifies the Buyer that the Goods are available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received in cleared funds payment in full of the price of the Goods together with all additional sums to cover VAT (or similar sales tax), delivery, packaging, carriage, import duties and insurance (as may be applicable depending on the trade terms specified in the Seller's quotation).

8.3 Until payment has been made to the Seller accordance with these Conditions and the Contract and title in the Goods has passed to the Buyer, the Buyer shall be in possession of the Goods as bailee for the Seller, and the Buyer shall store the Goods separately and in an appropriate environment, shall ensure that they are

identifiable as being supplied by the Seller and shall insure the Goods against all reasonable risks. The Buyer must not relinquish possession of the Goods or combine them with other goods for onward use or sale until they have been paid for in full or unless the Seller explicitly agrees in writing.

8.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8.5 The Seller reserves the right to repossess any Goods in which it retains title without notice. The Buyer irrevocably authorises the Seller to enter the Buyer's premises during normal business hours for the purpose of repossessing the Goods in which the Seller retains title or of inspecting the Goods to ensure compliance with the storage and identification requirements of Condition 8.3.

9. Buyer's default

9.1 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:

9.1.1 cancel the order or suspend any further deliveries to the Buyer; and/or

9.1.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Seller and the Buyer) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and/or

9.1.3 levy interest and other charges to which it is entitled on all unpaid amounts under Late Payment of Commercial Debts (Interest) Act 1998; and/or

9.1.4 withdraw all credit facilities extended and require immediate payment of all outstanding invoices issued whether or not they were due for payment.

9.2 This Condition 9.2 applies if:

9.2.1 the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;

9.2.2 the Buyer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the

Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation or is subject to similar legislation or under insolvency proceedings in any other jurisdiction;

9.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;

9.2.4 the Buyer ceases, or threatens to cease, to carry on business; or

9.2.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.3 If Condition 9.2 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price of the Goods (together with all additional sums to cover VAT (or similar sales tax), delivery, packaging, carriage, import duties and insurance (as may be applicable depending on the trade terms specified in the Seller's quotation)) shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Limitation of liability

10.1 Subject to the provisions of Condition 7, the following provisions set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

10.1.1 any breach of these Conditions or the Contract;

10.1.2 any use made (including but not limited to modifications) or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

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

10.2 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.

10.3 Nothing in these Conditions excludes or limits the liability of the Seller:

10.3.1 for death or personal injury caused by the Seller's negligence;

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

10.3.3 for fraud or fraudulent misrepresentation.

10.4 Subject to Conditions 10.2 and 10.3:

10.4.1 the Seller'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 price of the Goods or part of the Goods from which the liability directly arises; and

10.4.2 the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Buyer (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.

11. Confidentiality

11.1 The Buyer will regard as confidential the Contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default.

11.2 The Buyer will not use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.

11.3 The Buyer will use its reasonable endeavours to ensure compliance with this

Condition 11 by its employees, servants and agents.

11.4 The provisions of this Condition 11 shall survive the termination of the Contract.

12. Communications

12.1 All notices under these Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the party giving the notice.

12.2 Notices shall be deemed to have been duly given:

12.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or

12.2.2 on the second business day following mailing, if mailed by national ordinary mail, postage prepaid; or

12.2.3 on the seventh business day following mailing, if mailed by airmail, postage prepaid.

12.3 All notices under the Contract shall be addressed to the most recent address or facsimile number notified to the other party.

12.4 Email is not permissible as a means of giving a notice under the Contract.

13. Force majeure

Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

14. Waiver

The parties agree that no failure by either party to enforce the performance of any provision in these Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

15. Severance

The parties agree that, in the event that one or more of the provisions of these Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, the provision in question shall be deemed severed from the remainder of these Conditions (and, by extension, the Contract). The remainder of these Conditions and the Contract shall be valid and enforceable.

16. Third party rights

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

17. Disputes

17.1 In the event of any dispute arising between the parties, the matter will be referred to a director of each of the Seller and the Buyer who shall endeavour to resolve the dispute in good faith.

17.2 Should for any reason the dispute continue, then the parties agree to submit the matter to mediation on the following basis:

17.2.1 an independent professional person experienced in mediation proceedings ("Mediator") shall be chosen by agreement between the parties to the dispute or, if they are unable to agree upon a Mediator or if the Mediator agreed upon is unable or unwilling to act, any of the parties involved in the dispute may apply to the President for the time being of the Law Society of England & Wales to appoint a Mediator;

17.2.2 the parties to the dispute shall meet with the Mediator as soon as practicable in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;

17.2.3 the mediation shall be held in England; and

17.2.4 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties concerned in any future proceedings.

17.3 In the case of the non-payment by the Buyer of any part of the price of the Goods (including all amounts for VAT (or similar sales tax), delivery, packaging, carriage,

import duties and insurance), the Seller may elect at its discretion to take appropriate recovery action without first raising the matter as a dispute.

18. Law and jurisdiction

18.1 These Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

18.2 Any dispute, controversy, proceedings or claim between the parties relating to these Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) which has not been capable of resolution under Condition 17 shall fall within the exclusive jurisdiction of the courts of England and Wales, save that each party agrees that a party in possession of a judgment obtained against the other party in England and Wales shall be able to enforce the judgment in any other jurisdiction.