

PURCHASING TERMS & CONDITIONS

1. Acceptance

1.1 Unless other terms and conditions are expressly accepted by Blue Diamond Pumps Incorporated (hereforth referred to as BDP INC) and associated companies by means of a specific written amendment hereto signed by BDP INC and associated companies or a director of BDP INC and associated companies the contract relating to the goods to be supplied ("the goods" which expression includes any of them or any part of them) and work to be done (and the expression "work" includes work done in connection with products or free issue materials provided by BDP INC and associated companies) will be on the terms and conditions set out below ("the Contract Terms") to the exclusion of any other terms and conditions (except those implied in favour of BDP INC and associated companies which are not inconsistent with the Contract Terms) whether or not the same are endorsed upon, delivered with or referred to in any quotation or other document delivered or sent by the Supplier to BDP INC and associated companies. Any reference overleaf to the Supplier's quotation specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such quotation specification or like document will have effect to the exclusion or amendment of the Contract Terms.

2. Definition

2.1 The expression "goods" includes all chattels, other than things in action and money. Where the contract is for the supply of services, and the context permits, the expression "services" shall be substituted for "goods" herein.

3. Pre-Delivery Inspection

3.1 Prior to delivery to BDP INC and associated companies the Supplier shall adequately inspect and test the Goods and work and if BDP INC and associated companies so requires the Supplier shall furnish BDP INC and associated companies with test certificates. The Supplier shall allow BDP INC and associated companies or its authorised representative unrestricted access to any area of any premises where the Goods or any part are being manufactured or stored or where any of BDP INC and associated companies' Goods are being kept in order that BDP INC and associated companies or its authorised representative may inspect test or inspect tests of the same or verify conformance of goods with the specification requirements of BDP INC and associated companies. The Supplier shall afford BDP INC and associated companies or its authorised representative such use of the Supplier's equipment and employees as is reasonable in the circumstances in order to facilitate such inspection testing or verification.

3.2 No inspection or testing by BDP INC and associated companies pursuant to this Clause shall imply any acceptance of the Goods or work by BDP INC and associated companies or in any way relieve the Supplier of its obligations and duties under the Contract or otherwise.

4. Identification

4.1 All goods supplied against our drawings must be marked with our drawing number except where such a number cannot be incorporated. Packages containing goods supplied against our drawings, part numbers or catalogues must be marked with the appropriate reference.

5. Packaging and carriage and delivery

5.1 Transit and offloading shall be at the Supplier's risk and no charges for packing, carriage or insurance will be allowed unless so specified by BDP INC and associated companies.

5.2 Unless otherwise agreed in writing the Goods (or other materials) are to be delivered carriage and duty paid (DDP) to the address designated by BDP INC and associated companies.

5.3 Time shall be deemed to be of the essence of the contract. The goods must be delivered not later than the required delivery date or where delivery is to be by installments, not later than the required delivery dates. BDP INC and associated companies shall be under no obligation to accept delivery of goods before or after the required delivery date.

5.4 Unless BDP INC and associated companies expressly agrees otherwise in writing containers and packing must be supplied free but will be returned, if required, at the Supplier's risk and expense.

5.5 All Goods (or other materials) must be accompanied by a detailed Delivery Note stating BDP INC and associated companies Order number and giving full particulars (including the part number) of the Goods (or other materials) supplied.

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5.6 Any Goods which are not accepted by BDP INC and associated companies will remain at the Supplier's risk and BDP INC and associated companies may return the same to the Supplier at the Supplier's risk and expense.

6. Quality

6.1 Without prejudice to any other Contract Terms including terms implied in favour of BDP INC and associated companies.

- a. All Goods and work will comply in every way with the specification, drawings, samples or other descriptions.
- b. All work will be carried out with reasonable skill and care and be suitable for the purposes indicated or to be reasonably inferred from the specification and as may be made known by BDP INC and associated companies to the Supplier prior to the contract being entered into.
- c. Any Goods supplied or installed under the contract shall be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health and comply with all British, American and European Standards or other recognised standards of health and safety including the health and safety requirements of the Health & Safety at Work Act. Any Goods which are (or will be upon supply in the European Community) within the scope of the CE marking requirements of any relevant EC Directive or local laws implementing the same shall satisfy the relevant requirements and shall bear a properly affixed CE mark, have a certificate of conformity and all necessary technical specifications. Goods must meet all relevant health and safety requirements applicable to Goods both in the state or form supplied to BDP INC and associated companies and when combined with other goods. It is the responsibility of the Supplier to acquaint itself with the purpose for which the Goods are to be supplied.
- d. All Goods will be supplied with full instructions for their proper use maintenance and repair and with any necessary warning notices clearly displayed.
- e. Without prejudice to any other of the Contract Terms BDP INC and associated companies will have the benefit of any guarantee given by the Supplier.

7. Loss or Damage in Transit

7.1 We will advise you and the carrier (if any) in writing, otherwise than by qualified signature on any delivery note, of any loss or damage within the following time limits:

Partial loss, damage, defects, or non-delivery of any separate part of a consignment shall be advised within 7 days of date of delivery of the consignment or part consignment.

Non-delivery of whole consignment shall be advised within 21 days of notice of despatch.

You will make good free of charge to us any loss of or damage to or defect in the goods where notice is given by us in compliance with this condition provided that we shall not in any event claim damages in respect of loss of profits.

8. Post-delivery Inspection

8.1 Goods supplied shall be subject to BDP INC and associated companies' inspection and right of rejection at any time within 12 months of delivery where they fail to comply with the contract in any way. When Goods are rejected either in part or in total they will be returned at the Supplier's expense.

9. Defects after Delivery

9.1 All goods supplied by you under this order shall be in accordance with the contract. You will make good by repair, or at your option by the supply of a replacement, defects which, under reasonable use, appear within a period of 15 months from the date of delivery to us free of charge to us.

10. Guarantee and Indemnity

10.1 Without prejudice to BDP INC and associated companies' rights under any condition warranty or other term implied herein by statute or by Common Law or under any term of the contract, the Supplier will be liable to BDP INC and associated companies for and indemnify and keep BDP INC and associated companies indemnified against any liability claim cost (on a full indemnity basis) proceeding loss or damage (including the stopping of or interference with the production or manufacture or supply or recall by BDP INC and associated companies of any Goods or works):

1) Caused by any defect in any Goods supplied or work done by the Supplier or by their not complying with the appropriate specification.

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- 2) In the event of delays, defaults or non-deliveries arising other than as a result of negligence on the part of BDP INC and associated companies, against any increase in:-
- The cost of labour or material required to produce the Goods or obtain the work elsewhere
 - The cost of transportation
 - The cost of any other item in connection with the Goods or work which would not have been incurred but for such delay, default or non-delivery.
- 3) Incurred by BDP INC and associated companies under contracts entered into by BDP INC and associated companies the performance of which has been delayed or rendered impossible by the Supplier's breach of its obligations hereunder.
- 4) Arising directly or indirectly out of any breach by the Supplier of the contract terms. Any sums expended by BDP INC and associated companies so caused or arising shall be reimbursed to BDP INC Limited and associated companies by the Supplier on demand.
- 5) In connection with any liability claim proceeding loss or damage under this Clause the Supplier must provide all such facilities assistance or advice as BDP INC and associated companies may request for the purpose of contesting the same and further must, if so requested by BDP INC and associated companies accept as final and binding the decision of any Court (anywhere in the world) in relation to the same.
- 6) The Supplier consents to BDP INC and associated companies transferring any guarantee or similar rights given by the Supplier to BDP INC and associated companies in relation to the Goods or works supplied to any other person or company to whom BDP INC and associated companies sells hires or disposes of such goods or services to the intent that such guarantee or similar right may be enforced against the Supplier not only by BDP INC and associated companies but also by any other person or company claiming through BDP INC and associated companies.

11. Progress and Inspection

11.1 Our representatives shall have the right to progress and inspect all goods at your works and the works of your sub-contractors at all reasonable times and to reject goods that do not comply with the terms of the contract. Any inspection, checking, approval or acceptance given on our behalf shall not relieve you or your sub-contractors from any obligation under the contract.

11.2 The goods will not be subject to inspection by us and will be considered fit for purpose on delivery to us. If during manufacture or use, the goods are found to be faulty at a reasonable time after delivery they will be rejected and goods may be returned to you at your expense. We will advise you of any rejects, and thereafter all risks in the rejected goods will revert to you. If not collected by you within a reasonable time, we shall have the right to levy a reasonable storage charge, but shall not be liable for any loss or damage.

12. Prices

12.1 Prices shall remain firm as quoted by you for the whole of this order and shall not be subject to variation unless we have been given 28 days notice in writing of the variation and it has been accepted in writing by us. If we do not accept the variation we shall be entitled to cancel the whole or any part of the order.

13. Payment

13.1 The period agreed for payment shall not begin to run until the goods have been delivered and we have received a correctly drawn invoice quoting the Purchase Order number.

14. Proprietary rights

14.1 You will indemnify us against any claim of infringement of proprietary rights by use or sale within the United Kingdom of any article or material supplied by you to us and against all costs and damages which we may incur in any action for such infringement or for which we may become liable in any such action; provided always that this indemnity shall not apply to any infringement which is due to your having followed a design or instruction furnished or given by us or to the use of such article or material in a manner or for a purpose not specified by us or disclosed to you, or to any infringement which is due to the use of such article or material not supplied by you. We will give you immediate notice of any such claim and permit you to defend the same and to conduct litigation that may ensue and negotiations for a settlement of the claim. We on our part warrant that any design or

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instruction furnished or given by us shall not be such as will cause you to infringe any proprietary rights in execution of the order.

15. Waiver

15.1 The terms of this order must be strictly complied with notwithstanding that we may on an earlier occasion or occasions have waived our rights under these Conditions.

16. Set Off

16.1 Without forfeiting any right we may have to cash and/or other discounts, we reserve the right to offset any sum owing to you against any sum owing to us, but only where the latter is overdue for payment.

17. Force Majeure

17.1 If a delivery by you or the acceptance by us of a delivery, is delayed or prevented because the manufacture of the goods or their delivery to Buyer's works by usual route has been or is being prevented or hindered by circumstances beyond your reasonable control, including any form of Government intervention, strikes and lockouts relevant to the contract, breakdown of plant, delays by sub-contractors (but only where such delays were beyond the reasonable control of the sub-contractor concerned), such delivery shall be suspended, and if it cannot be made within reasonable time after the due date, the delivery may be cancelled in writing by either party or at our request you will arrange for storage, and the reasonable cost of such storage shall be borne by us. Where more than one delivery is to be made against the order deliveries not cancelled will be resumed as soon as the circumstances causing the delay cease, but, except where both parties otherwise agree, the period during which deliveries are to be made will not be extended.

18. Descriptions

18.1 You warrant that any descriptions will not be such as will cause us to contravene the provisions of the Trade Descriptions Act, 1968, if the goods are subsequently sold by us under that description.

19. Free Issue

19.1 Full responsibility must be accepted for our property sent out on a Free Issue basis which must be insured against loss or damage. In addition, where free issue components are supplied to you direct by one of our subcontractors in chargeable packing, the packing must be returned direct to the supplier with a copy Advice Note to our Bought Ledger Department.

20. Drawing/Specifications

20.1 All drawings, specifications etc. supplied by us shall remain our property and the contents in them shall not be disclosed to any third party without our written permission.

21. Law and Arbitration

21.1 This contract shall be governed by English law. Any dispute which the parties are unable to settle between them shall be submitted to arbitration by an arbitrator to be appointed by the Arbitration Court, London.

22. Authorisation

22.1 We accept no liability for any Goods delivered or service provided unless the order has been placed or amended on our behalf by or an authorised signatory/BDP INC Director

23. Warranty

23.1 If within twelve months after the Goods have been put under normal use attributable in our opinion to faulty design, materials or workmanship or latent defect caused by damage in transit you shall remedy the defect at our option either by replacement or repair at your own expense. You will not

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be entitled to reject any claim made in respect of any defect arising within the Warranty period on the basis that we failed to make the complaint during such period.

23.2 The provisions of this Condition shall apply to any goods so replaced or repaired (whether under Warranty or otherwise) and shall be effective from the date of such replacement or repair, but shall not prejudice any of our rights of rejection or rescission under Condition 17 hereof or at law resulting from any defects in the Goods.

24. Changes in Specification

24.1 BDP INC and associated companies may at any time make changes in writing relating to the contract, including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increase in cost of, or time required for, the performance of the contract, an equitable adjustment shall be made to the price, delivery schedule or both. Any claim or adjustment by the Supplier must be approved by BDP INC and associated companies in writing before the Supplier proceeds with such change.

25. Property and Risk

25.1 The property and risk in the Goods will pass to BDP INC and associated companies at the time and place delivery unless otherwise specifically agreed.

25.2 Where any advance payment or progress payment is made by BDP INC and associated companies property, but not the risk, in any materials purchased or allocated by the Supplier for the purpose of the contract shall immediately vest in BDP INC and associated companies.

26. Dies, tools, patterns and equipment

26.1 Invoices for dies, tools, patterns and equipment ordered by BDP INC and associated companies shall be invoiced separately. Payment of such invoices shall not be authorised until BDP INC and associated companies approves the quality of samples produced from Tooling.

26.2 Dies, tools, patterns and equipment ordered or supplied by BDP INC and associated companies for use in the manufacture of the goods or performance of the work ("Tooling") shall be kept securely in good condition by the Supplier adequately protected from and insured against all risks (including fire, theft and weather) without expense to BDP INC and associated companies.

26.3 No Tooling or drawings, data, information or intellectual property supplied by or for BDP INC and associated companies for use in the manufacture of the Goods or performance of the work shall be used in the production, manufacture or design of any other goods without the prior written consent of BDP INC and associated companies.

26.4 At the termination of the contract Tooling will be delivered at the Supplier's expense to BDP INC and associated companies premises or as BDP INC and associated companies direct.

26.5 The Supplier shall not dispose of use, transfer or otherwise encumber the Tooling without the written consent of BDP INC and associated companies.

26.6 Tooling which is to be paid for by BDP INC and associated companies in whole or in part shall at all times be the property of BDP INC and associated companies.

27. BDP INC and associated companies' Goods

27.1 Any dies, tools, patterns, equipment, negatives, documentation, data or goods supplied by BDP INC and associated companies to the Supplier for any purpose in connection with the contract or which is in the possession or custody of the Supplier and belongs to BDP INC and associated companies by virtue of this contract, including Tooling, are herein referred to as "BDP INC and associated companies Goods".

27.2 BDP INC and associated companies' Goods shall not be removed from the Supplier's premises without the written instructions of BDP INC and associated companies except for the purpose of fulfilling the contract.

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27.3 The property in BDP INC and associated companies' Goods shall remain with BDP INC and associated companies who may retake possession thereof at any time without notice. The Supplier shall keep BDP INC and associated companies' Goods separate and apart from all property of other persons and shall clearly mark BDP INC and associated companies' Goods "Property of BDP INC and associated companies".

27.4 BDP INC and associated companies is granted irrevocable authority to enter upon the Seller's premises or other premises where BDP INC and associated companies' Goods are located by its employees or agents to take possession of BDP INC and associated companies' Goods and (if necessary) to dismantle BDP INC and associated companies' Goods from anything to which they are attached.

27.5 The Supplier hereby agrees to indemnify BDP INC and associated companies against loss of or damage to BDP INC and associated companies' Goods during the time they are in the Supplier's possession, custody or control. During such time the Supplier shall adequately insure BDP INC and associated companies' Goods in the name of and for the benefit of BDP INC and associated companies at the Supplier's expense with a reputable insurance company against loss or damage arising from any cause whatsoever and shall produce to BDP INC and associated companies on demand the policies of such insurance and the receipts for premiums paid thereon.

27.6 The Supplier hereby waives any lien that it might otherwise have (whether at the date hereof or subsequently) on any of BDP INC and associated companies' Goods for work done thereon or otherwise but this Clause shall not be construed as a waiver of any other right of recovery of any charges that may be due to the Supplier for such work.

27.7 The Supplier shall keep BDP INC and associated companies' Goods free of all mortgages, charges or other encumbrances and will procure that any lien over BDP INC and associated companies' Goods is discharged forthwith.

27.8 The Supplier shall promptly pay BDP INC and associated companies on demand the full replacement value of any of BDP INC and associated companies' Goods which are not returned or satisfactorily accounted for.

28. Exclusive manufacture and Confidentiality

28.1 The Supplier will not either during the period of the contract or at any time thereafter:

Manufacture or procure to be manufactured for any person or company other than BDP INC and associated companies any goods to designs or specifications originated or owned by BDP INC and associated companies; or

Disclose to any person or company any manufacturing process, design, negative, engineering drawing or data, information, or any other trade secret of whatsoever nature belonging to BDP INC and associated companies or relating to BDP INC and associated companies or to the Goods or work being supplied to BDP INC and associated companies under the contract to the extent that the Goods or work are supplied to designs or specifications originated or owned by BDP INC and associated companies provided always that this restriction shall not apply to any information:

Which at the time of disclosure is in the public domain or which becomes public after disclosure otherwise than through the actions of the Supplier which the Supplier can show by satisfactory proof to have been in its possession prior to disclosure hereunder.

29. Disposal of Own Label Goods

29.1 In the event of the non-delivery to BDP INC and associated companies or the return to the Supplier for whatever reason, of any Goods or other materials which are manufactured, packaged or labeled in such a manner as to identify them in any way with BDP INC and associated companies, the Supplier shall not under any circumstances dispose of those Goods or other materials to a third party without the prior written consent of BDP INC and associated companies. Any specific instructions given by BDP INC and associated companies in respect of such disposal shall be strictly adhered to by the Supplier and, in any event, all references to BDP INC and associated companies' name, address, trade marks and any other indication of BDP INC and associated companies' identify shall be totally removed by the Supplier prior to disposal so that no such reference remains which might lead any third party to associate the Goods or other materials with BDP INC and associated companies.

30. Inventions, improvements and discoveries

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30.1 Where BDP INC and associated companies commissions the Supplier under the contract to create any work (including any designs or artwork) or any invention or improvement, ownership of such works, inventions and improvements including any intellectual property rights therein is hereby assigned to BDP INC and associated companies and shall vest in BDP INC and associated companies upon their creation and be the sold and absolute property of BDP INC and associated companies.

30.2 The Supplier hereby assigns to BDP INC and associated companies all inventions, improvement and discoveries (whether such is patentable or not) conceived in the performance of the contract which are based on information, designs, test data and ideas disclosed by BDP INC and associated companies to the Supplier made by any person employed by or working under the direction of the Supplier. On completion of the contract, the Supplier shall give to BDP INC and associated companies all design, negatives, engineering drawings and data and information of whatsoever nature in its possession and cause its employees to sign any documents necessary to enable BDP INC and associated companies to file applications for patents throughout the world and to obtain title thereto and the Supplier shall use its best endeavors to facilitate the same.

30.3 The supplier irrevocably appoints such person as may be nominated by BDP INC and associated companies to be the Attorney of the Supplier to act for and on its behalf in completing any assignments and other documents to put into effect the Suppliers agreement in Clauses 10.1 and 10.2.

31. Patents and Designs

31.1 The Supplier warrants that the sale or use of Goods supplied or results of work performed pursuant to the contract will not infringe any intellectual property right including Patent, Registered Design, Industrial Design, Design Right, Topography Right, Trade Mark or Trade Name or other protected right in any country and undertakes to indemnify BDP INC and associated companies against all judgments, decrees, orders, damages, costs and expenses arising from actual or alleged infringements of the same except that this indemnity shall not apply to the extent that such loss or damage arises out of the Goods being manufactured or work being performed in accordance with designs or specifications provided by BDP INC and associated companies.

32. Right to terminate

32.1 BDP INC and associated companies shall be entitled to terminate the contract without liability to the Supplier and without prejudice to BDP INC and associated companies' other rights in any of the following circumstances:

32.2 The Supplier fails to deliver the Goods or perform the work on the date set out or in any delivery schedule, time being of the essence, or

32.3 The Goods supplied or work performed by the Supplier is such that they do not comply in any way with the Contract, or

32.4 The Supplier has had a bankruptcy order made against him or has made an arrangement or composition with is creditors or actions of the Supplier which the Supplier can show by satisfactory proof to have been in its possession prior to disclosure hereunder.

29. Disposal of Own Label Goods

29.1 In the event of the non-delivery to BDP INC and associated companies or the return to the Supplier for whatever reason, of any Goods or other materials which are manufactured, packaged or labeled in such a manner as to identify them in any way with BDP INC and associated companies, the Supplier shall not under any circumstances dispose of those Goods or other materials to a third party without the prior written consent of BDP INC and associated companies. Any specific instructions given by BDP INC and associated companies in respect of such disposal shall be strictly adhered to by the Supplier and, in any event, all references to BDP INC and associated companies' name, address, trade marks and any other indication of BDP INC and associated companies' identify shall be totally removed by the Supplier prior to disposal so that no such reference remains which might lead any third party to associate the Goods or other materials with BDP INC and associated companies.

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30.2 The Supplier hereby assigns to BDP INC and associated companies all inventions, improvement and discoveries (whether such is patentable or not) conceived in the performance of the contract which are based on information, designs, test data and ideas disclosed by BDP INC and associated companies to the Supplier made by any person employed by or working under the direction of the Supplier. On completion of the contract, the Supplier shall give to BDP INC and associated companies all design, negatives, engineering drawings and data and information of whatsoever nature in its possession and cause its employees to sign any documents necessary to enable BDP INC and associated companies to file applications for patents throughout the world and to obtain title thereto and the Supplier shall use its best endeavors to facilitate the same.

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32. Right to terminate

32.1 BDP INC and associated companies shall be entitled to terminate the contract without liability to the Supplier and without prejudice to BDP INC and associated companies' other rights in any of the following circumstances:

32.2 The Supplier fails to deliver the Goods or perform the work on the date set out or in any delivery schedule, time being of the essence, or

32.3 The Goods supplied or work performed by the Supplier is such that they do not comply in any way with the Contract, or

32.4 The Supplier has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or has suffered or allowed any execution whether legal or equitable to be levied on his property or obtained against him or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver manager administrative receiver or administrator appointed or its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the winding-up of the Supplier or any proceedings have been commenced relating to the insolvency or possible insolvency of the Supplier, or

32.5 The Supplier comes under the ownership or control of a competitor of BDP INC and associated companies, or

32.6 Any breach by the Supplier of a term of these Contract Terms.

33. Payments on Termination

33.1 BDP INC and associated companies may at any time give written notice to the Supplier to terminate the contract forthwith and in such event BDP INC and associated companies shall pay and the Supplier shall accept in settlement of all claims under the contract such a sum as shall reasonably compensate the Supplier for work done and raw materials received and paid for by the Supplier in and for the performance of the contract prior to its termination

34. Spare Parts

34.1 Where agreed the Supplier shall maintain the supply of spare parts for Goods supplied for a period of 5 years from the date of supply.

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35. Advertising

35.1 The Supplier will not without first obtaining the written consent of BDP INC and associated companies any way whatsoever advertise or publish the fact that the Supplier has contracted to supply to BDP INC and associated companies the Goods or works herein mentioned.

36. Health and Safety and Quality Assurance

36.1 The Supplier agrees before delivery to furnish BDP INC and associated companies in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the articles supplied whether in use or otherwise and thereafter information concerning any changes in such properties or ingredients. BDP INC and associated companies will rely on the supply of such information from the Supplier in order to satisfy its own obligations under relevant health and safety requirements including the Health and Safety at Work Act and the Control of Substances Hazardous to Health Regulations. In respect of all Goods supplied and work done the Supplier will maintain or observe quality control and supplier quality assurance standards in accordance with the requirements of BDP INC and associated companies its customers, relevant Standards, statute and regulatory bodies. The Supplier will maintain detailed quality control and manufacturing records for the period of at least 7 years from the date of supply of Goods or work. It is the responsibility of the Supplier to acquaint itself with the purposes for which the Goods or work supplied are to be used.

37. Professional exit

If at any time the supplier decides to terminate any order in process, the supplier agrees that they will notify BDP INC and associated companies, giving its reasons of cancellation, and will honour any outstanding orders in their entirety that have the possible or real impact to any BDP INC and associated companies requirements, without hindrance, lack of support or disruption or additional cost to BDP INC and associated companies, until a satisfactory replacement supplier can be found. BDP INC and associated companies promises to act as quickly as possible to find alternative sources.

38. Conditions prevail

The Supplier agrees that in the action of supplying goods to BDP INC and associated companies they are signaling their total acceptance that these terms and conditions prevail over any other submitted, advertised, counter offered, terms and conditions, verbal, written or otherwise communicated to BDP INC and associated companies for this order and all subsequent orders to BDP INC and associated companies. Only written agreed exceptions to these terms and conditions from BDP INC and associated companies will be honoured under any circumstances.

39. General

39.1 Failure by BDP INC and associated companies to enforce any of the Contract Terms will not be construed as a waiver of its rights.

39.2 The Supplier must perform the Contract personally and no part of it may be assigned sub-let or sub-contracted by the Supplier without BDP INC and associated companies' written permission.

39.3 The contract will be construed and operate in accordance with Law. The Supplier hereby submits himself to the non-exclusive jurisdiction of the Courts.

40. BDP INC and associated companies being:

BlueDiamond Pumps Incorporated