CONDITIONS OF SLITTING AND/OR OTHER CONTRACT PROCESSING

1. THE AGREEMENT

(a) These Conditions shall be deemed to be incorporated in all agreements for the slitting or other processing by Wieland Nemco Ltd (hereinafter called "Nemco") of the metal for the person, firm or company named in Nemco’s Order Acknowledgement ("the Order Acknowledgement") as the buyer or customer (in either case hereinafter referred to as "Customer") and are, together with any other agreements, understandings, conditions, representations and terms set out or referred to in the Order Acknowledgement, hereinafter called the "Services Agreement" which represents the complete agreement of Nemco and Customer regarding the slitting or other processing of goods listed or referred to in the Order Acknowledgement ("Goods").

(b) Customer and Nemco acknowledge that in entering into the Services Agreement they do not rely on any representations which are not set out or referred to in the Order Acknowledgement.

(c) All orders are subject to acceptance by Nemco by issue of an Order Acknowledgement. Accepted orders may not be amended or cancelled except with Nemco’s approval in writing and agreed on its behalf by one of its Directors.

(d) Nemco’s catalogues, price lists and quotations do not constitute offers made by Nemco.

(e) No variation of these Conditions shall be binding on Nemco unless in writing and signed by one of its Directors.

(f) The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Services Agreement.

(g) The headings of these Conditions do not form part of the Conditions and shall not affect the interpretation thereof.

2. PRICES

(a) The price for slitting or otherwise processing the Goods shall be as set out in the Order Acknowledgement.

(b) Unless otherwise stated in the Order Acknowledgement all Customer’s payments for Goods and/or services and all charges and other liabilities, tariffs and surcharges of whatsoever nature now or hereafter levied or imposed in any country or territory shall be paid in full and directly or indirectly in respect of the slitting or other processing of the Goods by Nemco or payment for such work upon or upon any other terms and conditions. Terms of payment are as set out in the Order Acknowledgement.

(c) Terms of payment are as set out in the Order Acknowledgement. Customer reserves the right to charge Customer for amendments to accepted orders.

3. PAYMENT TERMS

(a) Unless otherwise agreed payment for slitting or otherwise processing the Goods shall be made in pounds sterling on the date specified in the Order Acknowledgement.

(b) If any payment under the Services Agreement shall become due to Customer and are additional to the prices stated in the packaging, insurance, carriage, freight or other charges shall be borne by Customer and are additional to the prices stated in the Order Acknowledgement.

(c) Customer agrees to pay due regard to any information or advice relating to the use of the Goods or as it processed which Nemco may at any time furnish to it and agrees that before the Goods are delivered or forwarded to the Customer and Nemco’s order acknowledges any such event, Nemco may, at its option, either require Customer to carry out a risk assessment or refuse to deliver the Goods.

4. DELIVERY AND RISK

(a) While Nemco shall make every reasonable effort to adhere to delivery dates specified in the Services Agreement or by Nemco elsewhere, they are approximate only and cannot be guaranteed. Subject to the foregoing provisions of this paragraph (a) in the event of non-delivery by a carrier other than Customer’s transport by a delivery date so specified, Customer shall notify Nemco in writing or by fax or email as soon as possible and in any event within twenty four hours of such date. All such dates shall be deemed to be dates of acceptance of the goods.

(b) Each delivery or part delivery of part of an order shall be considered a separate contract and Nemco’s failure to make any delivery or part delivery shall not affect or vitiate the Services Agreement as to other deliveries.

(c) Where the Services Agreement does not specify a delivery date, Nemco shall not be bound to give Nemco delivery instructions within thirty days of Nemco notifying Customer that the slitting or otherwise processing of the Goods are ready for dispatch to it and if Customer refuses to accept delivery on a delivery date specified in the Services Agreement Nemco may charge the Customer for the storage of such Goods from the date of the said notification or the specified delivery date (as the case may be).

5. CUSTOMER’S WARRANTIES

(a) Customer warrants that—

(i) the Goods are not hazardous and do not pose any risk to the safety of Nemco’s employees, agents or subcontractors.

(ii) the Goods are in good condition and will not cause any damage to Nemco’s machinery in the course of the slitting or other processing thereof.

(iii) it is entitled as principal to place the Order with Nemco for the slitting or other processing of the Goods.

(b) Customer agrees to indemnify Nemco against all actions, claims, costs, expenses and damages incurred by Nemco by reason of any breach by Customer of the warranties and indemnities contained in these Conditions and shall not affect the interpretation thereof.

6. NEMCO’S WARRANTY

(a) Nemco warrants the slitting or otherwise processed Goods against defects in workmanship in slitting or processing which become apparent within one month after delivery of the slitted or processed Goods to Customer, if Customer shall have agreed to collect the slitted or otherwise processed Goods, within one month after the date when the slitted or otherwise processed Goods are available for collection from Nemco’s works (the "Warranty Period").

(b) (i) Nemco’s liability under the said Warranty ("the Warranty") is limited to repairing any such defects found in the slitting or processing during the Warranty Period, if any successful claim is made by Customer against Nemco and such claim is not made within the Warranty Period.

(ii) Customer agrees to collect the slitted or otherwise processed Goods, within one month after the date when the slitted or otherwise processed Goods are available for collection from Nemco’s works ("the Warranty Period").

(c) If Customer becomes aware of a slitting or processing defect in the slitted or processed Goods during the Warranty Period, Customer shall promptly supply Nemco with written particulars of such defects and provide all necessary access and other reasonable facilities and all information required to enable Nemco to ascertain and verify the nature and cause of the defect. Customer shall give to Nemco a warranty certificate (the "Warranty Certificate") within thirty days of discovery of any such defect.

(d) The Warranty shall neither apply to any defect which results from any circumstances other than those set forth in sub-paragraph (a) above nor to any defect which results from any circumstances other than those set forth in sub-paragraph (b) above.

(e) The Warranty shall neither apply to any defect which results from any circumstances other than those set forth in sub-paragraph (a) or (b) above.

(f) Customer shall be entitled to the benefit of the Warranty which is given in lieu of all warranties, exclusions and disclaimers all and every condition or warranty whatsoever, whether express or implied, by statute, common law, trade usage, custom or otherwise.

(g) The Warranty shall not be deemed to apply to any defect which results from any circumstances other than those set forth in sub-paragraph (a) above.

(h) Customer shall be entitled to the benefit of the Warranty which is given in lieu of all warranties, exclusions and disclaimers all and every condition or warranty whatsoever, whether express or implied, by statute, common law, trade usage, custom or otherwise.

8. CUSTOMER’S RIGHTS AND REMEDIES

(a) If Nemco’s liability is established, notwithstanding Conditions 12, 13 and 14, Nemco shall be under no obligation to pay damages arising from loss of damage of any type referred to in these Conditions or proceeding the price payable under the Services Agreement for the slitting or other processing of the Goods.

(b) For the purposes of the Services Agreement "legal liability" shall include the legal liability of Nemco’s employees, agents or subcontractors as found by any Court or competent authority and shall include in particular, (i) breach of any contractual obligation by virtue of the express or implied terms of the Services Agreement and any fundamental breach and/or breach of fundamental term (ii) negligence arising by virtue of any act or omission whether in the course of a trade to take reasonable care or exercise reasonable skill (iii) any misrepresentation or misstatement made by or on behalf of Nemco and (iv) any other breach of duty.

(c) This Condition shall not confer any rights or remedies on Customer to which Customer would not otherwise be entitled.

9. LIMIT OF DAMAGES FOR BREACH OF WARRANTY

If, notwithstanding Nemco’s attempts to comply with its obligations under Condition 7, it is unable so to do, it shall pay monetary damages in the lowest possible amount considering the price payable under the Services Agreement for the slitting or other processing of the Goods and the cost of any repairs thereto carried out by third parties with Nemco’s express written permission.

10. DAMAGE TO TANGIBLE PROPERTY

Nemco shall not be liable in respect of any loss or damage of whatsoever kind or however caused whether by reason of Nemco’s negligence or otherwise. The term "Tangible Property" means all or any other tangible property other than loss or damage to the Goods caused by Nemco’s negligence.

11. ECONOMIC AND OTHER CONSEQUENTIAL LOSS AND CLAIMS BY THIRD PARTIES

Nemco shall not be liable for:

(i) economic loss, which, for the purposes of the Services Agreement, shall include, without limitation, loss of profit, reputation, goodwill, business, use of interest, services of employee or agent, anticipated savings, expenses rendered futile by the breach and expenses caused by the breach;

(ii) any consequential or indirect loss or damage of any kind or howsoever caused whether or not described in Conditions 11 (i) above, or

(iii) any claim made against Customer by any other party, for damage or claim caused and however arising, whether by reason of Nemco’s negligence or otherwise, and for any loss, damage or claim was or ought reasonably to have been, in the partial or complete contemplation at the date of the Services Agreement as being likely to occur.

12. EVENTS BEYOND NEMCO’S CONTROL

Nemco shall not be liable under the Services Agreement where the delay or failure by either of them to perform any of their obligations is prevented, frustrated, impeded and/or delayed as a consequence of any “force majeure” and/or any circumstances whatever and however arising beyond its reasonable control. Nemco undertakes to use its reasonable endeavours to overcome any such difficulties, but reserves the right to cancel, suspend or vary its obligations under the Services Agreement.

13. INSURANCE

Customer agrees that it is best able to estimate the extent and nature of any loss or damage and to cover available for its business and property from time to time and can affect at more economical rates than Nemco, the appropriate insurance cover for its business and property including cover against loss, damage, costs, claims and expenses referred to in Conditions 12, 11 and 12 against loss or damage to the Goods whilst in Nemco’s custody. Customer therefore acknowledges that it is reasonable for him, the Goods or other Goods slit or otherwise processed during the price therefore on the basis of the Warranty. The exclusion and limitation of liability set out in these Conditions and Customer agrees that it will be reasonable for effecting such insurance cover as may be appropriate to its business and property including (but not limited to) such insurance cover as may be provided by Nemco.

14. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

Customer shall indemnify Nemco against all damages, claims, costs and expenses arising out of any infringement or alleged infringement of any patent, copyright design, trademark or other intellectual property right which Nemco incurs arising out of its compliance with Customer’s requirements. Nemco shall not be bound to defend any proceedings brought by Nemco against any person, firm or company, third party in respect of any such actual or alleged infringement.

15. FINANCIAL RISK

If Customer makes any composition or arrangement with creditors or goes into liquidation, whether voluntary or compulsory, or goes into administration, or he or any partner commits an act of bankruptcy or if a receiver or manager, administrator or liquidator is appointed in respect of any of Customer’s assets or if Customer fails to pay for the slitting or other processing of any of Goods or comply with any other requirement of the Services Agreement or if at any time Nemco considers in its absolute discretion that the financial circumstances of Customer do not comply with the terms and conditions of the Services Agreement, Nemco may in its absolute discretion at any time prior to the completion of any further work for Customer, suspend or terminate all or any part of or in respect of the Services Agreement.

16. HEALTH AND SAFETY

Customer agrees to pay due regard to any information or advice relating to the use of the Goods as slit or processed which Nemco may at any time furnish to it and agrees that before the Goods are delivered or forwarded to the Customer and Nemco’s order acknowledges any such event, Nemco may, at its option, either require payment in cash before slitting or processing or claim damages from the Goods remaining to be slit, processed or delivered or may cancel any agreement in respect of the Goods and return the Goods to whatever prejudice to any other rights or remedies of Nemco.

17. ASSIGNMENT

Customer shall not assign or otherwise transfer all or any of its rights, interests or obligations under the Services Agreement without Nemco’s prior written consent.
18. SEVERABILITY
If any provision of the Services Agreement 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 Services Agreement and the remainder of such provision shall continue in full force and effect.

19. ENGLISH LAW
The Services Agreement shall be governed by English Law. Customer and Nemco hereby agree to submit to the non-exclusive jurisdiction of the English Courts.