CONDITIONS OF SALE

The following standard conditions apply to every order accepted by or contract entered into by Shirley Technologies Limited ("the Company") for the provision of testing, investigation, evaluation, consultancy and research services, certification, accreditation and training services.

1. DEFINITIONS

1.1 In these Conditions:-

"Condition" means a condition or clause of these Conditions;

"Conditions" means the Company's standard conditions of sale set out in this document (which supersede any earlier set of conditions appearing in the Company's brochure or elsewhere) together with any other special conditions specified on the Quotation or otherwise;

"the Contract" means the Quotation, the Order and the Company's acceptance thereof, together with the Conditions;

"Delivery" means, where the Services comprise the production of reports or test results, the dispatch by the Company of those results or reports by post or other carrier to the Customer and the expression "delivered" shall be construed accordingly;

"the Customer" means the person specified on the Quotation whose Order is accepted by the Company;

"the Goods" means the goods, materials and/or other items which may be part of the Contract and upon which the Services are to be conducted and shall include any part of them;

"the Order" means the written order placed by the Customer on the Company for the provision of the Services;

"the Quotation" means any written quotation or tender submitted by the Company or any verbal quotation or tender which is subsequently confirmed in writing;

"the Services" means the services described in the Order to be performed by the Company;

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. OFFER AND ACCEPTANCE

2.1 The Company shall supply and the Customer shall receive the Services in accordance with any Quotation which is accepted by the Customer, or any Order which is accepted by the Company in writing subject to any variation set out in such acceptance, subject in either case to these Conditions.

2.2 All Quotations are made and all Orders are accepted subject to the Conditions. These Conditions override any other terms, conditions or warranties which the Customer may subsequently seek to impose.

2.3 No variation or supplement to the Conditions shall be binding on the Company unless expressly accepted by the Company in writing.

2.4 No Contract shall come into existence until the Customer's Order has been accepted in writing by the Company.

2.5 Quotations shall be available for acceptance for a maximum period of 30 days from the date when given (or such longer period as the Company specifically agrees in writing) and may be withdrawn by the Company within such time period at any time by written or oral notice.

2.6 If any statement or representation has been made to the Customer by the Company or its servants or agents upon which the Customer relies other than in the documents enclosed with the Quotation or acknowledgement or acceptance of Order then the Customer must set out that statement or representation in a document to be attached to or endorsed on the Order and in any such case the Company may confirm, reject or clarify the point and submit a new Quotation.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acknowledgement of Order, invoice or other document issued by the Company shall be subject to correction without any liability on the part of the Company.

2.8 The Company shall be at liberty to withdraw from any negotiations or otherwise until such time as the Contract shall have become binding without being under any liability whatsoever to the Customer.

2.9 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

3. ORDERS AND SPECIFICATIONS

3.1 No Order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.

3.2 The Customer shall be responsible for ensuring the accuracy of the terms of the Order and shall give the Company any necessary information to enable the Company to proceed with the Contract. Any failure to do so will allow the Company to charge the Customer an additional price for any delay or to terminate the Contract immediately.

3.3 The Customer shall indemnify the Company and its sub-contractors against all claims, damages, costs, penalties and expenses incurred by the Company or its sub-contractors to which the Company may become liable if any work done in accordance with the Customer's specifications or requirements involves an infringement of a registered design, trademark, patent or other intellectual property right.

3.4 No Order which has been accepted by the Company may be cancelled by the Customer except with the written agreement of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

3.5 Subject to condition 3.6 below, all Services are confidential to the Customer and any report or certificate issued by the Company shall not be issued or reproduced by the Customer (in whole or in part) to any third party without the Company's written authorisation.

3.6 The Company shall be free to disclose details of all Services and the content of any report or certificate where:

3.6.1 such disclosure is required pursuant to any law or regulation or order of any court of a competent jurisdiction;

3.6.2 the Company makes such disclosure to a governmental or regulatory body; or

3.6.3 the Company believes, in it's reasonable opinion, that the Customer is wrongfully using the report or certificate in breach of the provisions of condition 3.7, in which circumstance the Company shall be at liberty to disclose the report or certificate to all interested parties.

3.7 If a Customer wishes to copy any report produced by the Company as part of the Services, it must obtain written permission from the Company on each such occasion. The Company shall be entitled to withhold its consent in its absolute discretion and in particular no report may be copied or provided by the Customer to any third party where payment has not been received in full for the Services by the Company. Subject as aforesaid only complete reports may be copied and passed to third parties. No omissions, alterations or additions are allowed. Results supplied in reports shall not be used in advertising or promotional literature without the Company's express permission.

3.8 The Customer shall and must inform the Company at the outset if the Services are known to be required for the purpose of litigation. If the presence of the Company's staff will be required at a court or other judicial or quasi-judicial hearing, or the report required as evidence in a dispute, ample advance notification is required in order to provide time for discussion between expert witness and legal representatives and/or for consideration of all relevant documentation. The Company must be shown full particulars of any claim which is pursued or defended.

3.9 Results of all tests quoted in reports issued by the Company, relate only to the sample supplied and should not be construed or interpreted in any other way. The Customer is advised to ensure that a sufficiently large sample, securely packaged and clearly identified, is supplied for the tests requiredAny opinion, interpretation or comments marked "Not UKAS" in a report are not included in the UKAS Accreditation Schedule for the Company and are outside the scope of UKAS accreditation.

3.10 Tests marked "Not UKAS" accredited in a report are not included in the UKAS Accreditation Schedule for the Company's laboratories and are outside the scope of the Company's accreditation.

3.11 Where a report is produced as part of the Services, the report together with the Contract shall constitute the entire agreement and understanding between the Company and the Customer in respect of the Services and supersedes all other agreements, statements, representations or warranties (other than any made fraudulently) which may have been made verbally by or between the parties and all prior representations and expressions of opinion by any party (or its agent) to any other party (or its agent).

3.12 Save as specifically and expressly set out in any written report issued by the Company, the Company gives no warranty that the Goods (being of the Customer's design and manufacture) will be of satisfactory or merchantable quality and/or reasonably fit for their purpose.

3.13 Note that all tests listed on the UKAS schedule for Geosynthetic materials will be reported in the Company's standard shortened version unless otherwise requested.

4. PRICE

4.1 The price for the Services shall be the price quoted on the Quotation or in the absence of any price being quoted, on the Company's current list price ruling at the time the Order was made. Until an Order has become binding on the Company all specifications and prices are subject to change without prior notice. A verbal Quotation shall only be binding to the extent it is confirmed in writing.

4.2 All prices are exclusive of value added tax and similar taxes, levies, courier charges or duties, which the Customer shall be additionally liable to pay to the Company.

4.3 The Company reserves the right, by giving notice to the Customer, at any time before completion of the Services, to increase the price of the Services to reflect any increase in the cost to the Company in executing the Contract due to any factor beyond the reasonable control of the Company (such as, without limitation, any increase in the cost of labour, raw materials, overheads, or currency), any change in completion dates, quantities, or specifications for the Goods arising as a result of any error or omission or changes deemed necessary by the Customer, or any delay or interruption in the Contract not attributable to the Company.

5. TERMS OF PAYMENT

5.1 Unless otherwise agreed in writing, the Company shall be entitled to invoice the Customer on completion of the Services or, where the Services are of a long term nature, on an interim basis from time to time.

5.2 The Company reserves the right, at its option, to require payment in part or in full for the Services prior to the work being done and reserves the right to withhold any test result or certificate until such payment is received.

5.3 Unless otherwise agreed by the Company in the Contract the terms of payment shall be 30 days from the date of invoice. Receipts for payment will only be issued on request.

5.4 The time of payment of the price shall be of the essence of the Contract.

5.5 No right of set-off shall exist in respect of any claims by the Customer against the Company unless and until such claims are accepted in full by the Company in writing and the Customer shall not withhold all or any part of any sum which has become due for payment under the Contract.

5.6 If the Customer fails to make any payment due to the Company (whether under the Contract or otherwise) on the due date then, without prejudice to any other right or remedy available to the Company, the Company reserves the right to:-

5.6.1 cancel the Contract so far as any Services remain to be performed under it;

5.6.2 withdraw any report or certificate which has been given by the Company (in which event the Customer shall immediately destroy all copies of the report or certificate it holds); and

5.6.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 per cent per annum above National Westminster Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. COMPLETION

6.1 The Services shall be performed at such place to be determined within the Company's accreditation rules.

6.2 The Services will be completed at the time of Delivery of the Company's final report.

6.3 Unless otherwise specifically agreed in writing, the Company shall be obliged only to complete the work within a reasonable time having regard to its work load at the time.

6.4 Time of completion of the Contract shall not be of the essence, and the Customer shall not be able to cancel the Contract on account of any delay howsoever caused.

6.5 Where the Company is unable to carry out the Services due to circumstances beyond its reasonable control and it gives notice to the Customer informing it of the relevant circumstances, its obligation to complete the work within a reasonable time shall be suspended while those circumstances subsist, subject to Condition 6.6.

6.6 On receipt of a notice under Condition 6.5 the Customer may cancel its instructions by written notice to the Company and neither party shall then be under any further liability to the other, except that the Customer shall pay for any tests the results of which have already been delivered to him.

7. RISK

7.1 The risk of damage to or loss of the Goods shall only pass to the Company, in the case of Goods to be delivered at the Company's premises, at the time when the Goods are unloaded safely and are in the Company's possession and control.

7.2 Risk shall pass back to the Customer ten business days following the date of the Company's final invoice and the Company shall no longer be responsible for the insurance or storage thereof, save where, and to the extent that, any rules and regulations applicable to the Company provide for or require the Company to store a sample of the Goods with the final report.

7.3 Unless specifically agreed otherwise in writing it shall be at the discretion of the Company as to whether the Services require destructive testing and in such circumstances, where it determines that this is required, the Company shall have the right to destroy the Goods (or part of the Goods).

7.4 Without prejudice to any other right of disposal the Company may have under these Conditions, the Company shall have the right to destroy Goods after six months have expired from the completion of the Services save where the Services are for certification or legal cases whereby the Company shall have the right to destroy the Goods after ten years or six years respectively.

7.5 When Goods have not been collected by the Customer following a written request to do so from the Company the Company shall be entitled to render a reasonable charge to the Customer for the cost of storing and/or disposal of the Goods.

8. TITLE

8.1 Title in the Goods or any part of them shall not pass to the Company, unless the Customer has informed the Company to the contrary before delivering them to it.

8.2 It is the Customer's responsibility to deliver the Goods which form part of the Services and to collect them upon completion of the Services.

8.3 Title in any report or certificate produced by the Company shall not pass to the Customer until payment for the Services have been received in full.

9. TRAINING

9.1 The Company reserves the right at any time to cancel any advertised training course or conference if, in its opinion, insufficient bookings have been received to justify proceeding with it, or the services of suitable speakers or instructors are not available for any reason and the Company reserves the right to substitute speakers or instructors without prior notice.

9.2 Where a Customer withdraws from any conference or seminar (other than a special conference or seminar arranged for that Customer's personnel alone) not less than 1 week before its date, the fee paid will be returned less a deduction of 20% for administration charges. No refund can be made for cancellations received at less than 7 days' notice or for any cancellation by the Customer of a seminar or conference arranged for a Customer's personnel alone.

9.3 The Company shall not be liable to the Customer for any loss or damage suffered as a result of the information provided at any conference or seminar being false, inaccurate, out of date or misleading in any respect.

10. LIMITATION OF LIABILITY

10.1 Where the Goods are delivered to the Company for the Services and such Goods are, under the Contract, returnable to the Customer then if the Company is unable for any reason to return the Goods to the Customer (taking into account Condition 7.3), the Company's liability in respect of the missing Goods shall not exceed the replacement cost of goods of the same description, if available in the United Kingdom, or if they are not available there, their cost to the Customer.

10.2 Where the Customer supplies inconsistent instructions on any matter relating to the Services, the Company shall not be liable for any loss, damage, error or mistake which results from following any of those instructions in good faith.

10.3 Subject to Condition 10.11 the Company shall not be liable to the Customer for any loss or damage, whether direct, consequential or otherwise, resulting from any inaccuracy in the results reported unless caused by the Company's negligence.

10.4 Subject to Condition 10.11 and further to Condition 3.5 and 3.6, the Company shall not be liable to any third parties who rely on the information given in any report produced as part of the Services.

10.5 Reports are based on the law, methods, technology and conventional wisdom and knowledge available or current at the time and the Company shall not be liable to the Customer for any changes in the same which become available after the date of any such report.

10.6 Subject to Condition 10.11 in no circumstances shall the Company be liable to the Customer, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof:

10.6.1 for any increased costs or expenses;

10.6.2 for any loss of profit, business, contracts, revenues or anticipated savings; or

10.6.3 for any special indirect or consequential damage of any nature whatsoever;

arising directly or indirectly out of the provision of the Services or of any error or defect therein, or of the performance, non-performance or delayed performance of the Company.

10.7 The Customer agrees with the Company that if the Customer shall suffer loss or damage as a result of any breach of any of the terms of the Contract by the Company or its servants or agents or as a result of the negligence of the Company or its servants or agents then the liability of the Company in respect of such loss or damage (taking into account Conditions 10.1 to 10.6) shall be limited to the lower of the following:-

10.7.1 the actual amount of any loss or damage suffered by the Customer; or

10.7.2 a sum which is equal to 10 times the price of the Services charged to the Customer; or

10.7.3 the sum of ten million pounds (£10,000,000)

10.8 The limitation of the liability of the Company as referred to in Condition 10.7 shall subsist indefinitely notwithstanding the termination or completion of the Contract.

10.9 The Customer shall be responsible for arranging any insurance cover and paying all premiums to afford protection in respect of any loss or damage which it may suffer as a result of any breach failure or negligence upon the part of the Company or its servants or agents as referred to in Condition 10.7.

10.10 The limitation of liability contained in Condition 10.7 shall extend and apply not only to the Company but also to its servants and duly authorised agents.

10.11 The limitation of liability contained in Condition 10.7 shall not apply to any liability of the Company for any death or personal injury arising as a result of the negligence of the Company, as defined by Section 1.1 of the Unfair Contract Terms Act 1977.

11. ACCEPTANCE OF LIMITATION OF LIABILITY BY THE CUSTOMER

11.1 THE CUSTOMER AGREES AND ACCEPTS THAT, WITH REGARD TO THE LIMITATION OF LIABILITY CONTAINED IN THE PRECEDING CONDITION, SUCH LIMITATION OF LIABILITY IS PERFECTLY FAIR AND REASONABLE HAVING REGARD, INTER ALIA, TO THE FOLLOWING CIRCUMSTANCES:-

11.1.1 THAT THE POTENTIAL LOSSES WHICH COULD OR MIGHT BE CAUSED AS A RESULT OF ANY BREACH OR NEGLIGENCE AS REFERRED TO IN CONDITION 10 ARE GREATLY IN EXCESS AND WHOLLY DISPROPORTIONATE TO THE AMOUNT WHICH IS BEING CHARGED BY THE COMPANY TO THE CUSTOMER IN RESPECT OF THE PROVISION BY THE COMPANY OF THE VARIOUS SERVICES REFERRED TO IN THE CONTRACT;

11.1.2 THAT THE COMPANY IS ANXIOUS TO KEEP ITS CHARGES IN RESPECT OF THE SERVICES PROVIDED BY IT TO AS LOW A LEVEL AS REASONABLY POSSIBLE, FOR THE BENEFIT OF THE CUSTOMER AND ALL THE COMPANY'S OTHER CUSTOMERS;

11.1.3 THAT, WHILE THE COMPANY AND THE CUSTOMER REGARD THE LEVEL OF INSURANCE COVER HELD BY THE COMPANY AS BEING ADEQUATE AND REASONABLE THE COST OF ADDITIONAL INSURANCE COVER WOULD BE DISPROPORTIONATELY EXPENSIVE GIVEN THE NATURE OF THE SERVICES AND THE PRICE BEING PAID BY THE CUSTOMER.

11.2 THE CUSTOMER CONFIRMS THAT:

11.2.1 IT HAS READ AND FULLY UNDERSTANDS THE TERMS OF BOTH CONDITION 10 AND CONDITION 11;

11.2.2 IT HAS BEEN OFFERED THE OPPORTUNITY TO PAY A HIGHER CHARGE FOR THE SERVICES IN RETURN FOR THE COMPANY ACCEPTING A HIGHER LEVEL OF LIABLITY BUT HAS DECLINED TO DO SO;

11.2.3 IT ACCEPTS THE LIMITATION OF LIABILITY IN CONDITION 10 ON THIS BASIS.

12. INDEMNITY

12.1 The Customer undertakes to indemnify the Company against all claims relating to or arising from the Services supplied to the Customer by the Company in respect of any loss, damage or expense sustained by any third party howsoever caused save for death or personal injury caused in whole or in part by the Company's negligence.

13. DEFAULT OR INSOLVENCY OF CUSTOMER

13.1 Condition 13 applies if:-

13.1.1 the Customer defaults in any of his commitments with the Company; or

13.1.2 the Customer makes any voluntary arrangement with his creditors or becomes subject to an administration order or becomes bankrupt; or (being a company) goes into liquidation (other than for the purposes of amalgamation or reconstruction); or

13.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property and assets of the Customer; or

13.1.4 the Customer ceases, or threatens to cease, to carry on business; or

13.1.5 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

13.2 If Condition 13 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel any uncompleted Contract forthwith and to withdraw any certificates that have been awarded or offered. The Customer shall immediately be obliged to destroy all copies of any report or certificates it holds.

13.3 In the event of an occurrence as outlined in Condition 13.1, then the Customer shall indemnify the Company against all loss including loss of profit, costs (including the costs of labour and materials used and overheads incurred) and all other expenses and damages connected with the Contract and its cancellation.

13.4 If the Customer shall become aware that any of the circumstances mentioned in Condition 13.1 has or is likely to occur, then the Customer shall inform the Company of the occurrence or likely occurrence of such event immediately.

13.5 The Customer shall indemnify the Company in respect of all legal administration and other costs and expenses resulting from any breach by the Customer of these Conditions, or the Contract or its lawful termination by the Company.

14. FORCE MAJEURE

14.1 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or failure to perform, any of the Company's obligations in relation to the Contract if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:-

14.1.1 Act of God, explosion, flood, tempest, fire or accident;

14.1.2 war or threat of war, sabotage, civil disturbance or requisition;

14.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

14.1.4 import or export regulations or embargoes;

14.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or a third party);

14.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

14.1.7 power failure or breakdown in machinery.

14.1.8 lack of co-operation by the Customer.

15. INTELLECTUAL PROPERTY

All intellectual property including but not limited to copyright in any report or other written material produced by the Company shall belong to the Company and shall not, save as specifically agreed otherwise in writing, be reproduced or copied in whole or in part. Any report delivered to the Customer by the Company shall remain the property of the Company.

16. SUBCONTRACTING

16.1 The Company reserves the right to subcontract the fulfilment of the Order or any part of it and may, at its discretion, subcontract the Services to any laboratory that fulfils the regulations in the current UKAS quality system. For Testing Activities covered by BTTG accreditation to BS EN ISO/IEC 17025:2000, the client will be notified of the requirement for sub-contracting as part of the standard contract review process.

16.2 The Company shall subject to these Conditions be responsible to the Client for the actions and omissions of subcontractor, save where the Client or a regulatory authority has specified which subcontractor is to be used.

16.3 The Company shall maintain a register of all subcontractors that it uses for tests and a record of the evidence of compliance with regulatory bodies.

16.4 Where any part of the Services are performed by any person as subcontractor or agent for the Company, these Conditions shall, mutatis mutandis apply in respect of the work or services performed by that person.

17. GENERAL

17.1 Any notice or report required or permitted to be given by either party to the other under these Conditions or Services shall be in writing addressed to that other party at its registered office or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice or report.

17.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered a waiver of any subsequent breach of the same or any other provision.

17.3 If any of the provisions of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions in question shall not be affected thereby.

17.4 This Contract is between the Company and the Customer and is not assignable without the consent of the Company.

17.5 The breach of any Holding, Subsidiary, or Associated Company (as defined in Section 736 of the Companies Act 1985 as amended) of the Customer of any of the terms and conditions of any contract agreement or other arrangement with the Company shall be deemed to be a breach of the terms of the Contract and shall entitle the Company to take or refrain from taking all acts and remedies to which it is entitled under these Conditions as if such default had been a breach or default under the Contract.

17.6 Save in the case of subcontractors, or other agents of the Company no person who is not a party to the Contract shall be entitled to enforce any provision of the Contract and to that extent the Contract (Rights of Third Parties) Act 1999 shall not apply to any provision of the Contract.

18 JURISDICTION

18.1 The Contract shall be governed by the laws of England and for the purposes of settlement of any disputes arising out of or in conjunction with these Conditions or the Contract the parties hereby irrevocably submit themselves to the exclusive jurisdiction of the English Courts.