

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions:

Customer means the party who purchases the Goods and/or Services from the Supplier;

Confidential Information means technical or commercial know-how, trade secrets, specifications, designs, drawings, plans, inventions and processes;

Contract means any contract between the Supplier and the Customer for the sale and purchase of the Goods and/or Services incorporating these Conditions;

Delivery Point means the Customer's place of business or such other place as the Supplier and the Customer shall agree in writing;

Force Majeure Event has the meaning given to it in Condition 20.1;

Goods means any goods agreed in the Contract to be supplied to the Customer by the Supplier (including any part or parts of them);

Goods Specification means any specification for the Goods, including any relevant designs or drawings, that is agreed in writing by the Customer and the Supplier;

Insolvency Event means:

- (i) a party suspends, or threatens to suspend the payment of its debts or is unable to pay debts as they fall due or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (ii) a party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of a party other than for the sole purpose of a scheme for a solvent amalgamation or solvent reconstruction;
- (iv) a creditor or encumbrancer of a party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (v) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is

given or if an administrator is appointed over a party;

- (vi) a floating charge holder over the assets of a party has become entitled to appoint or has appointed an administrative receiver;
- (vii) a person becomes entitled to appoint a receiver over the assets of a party or a receiver is appointed over the assets of a party;
- (viii) any event occurs, or proceeding is taken, with respect to a party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (i) to (vii) (inclusive); or
- (ix) a party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in Confidential Information and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

LCIA Rules means the rules of arbitration of the London Court of International Arbitration;

Order means the Customer's acceptance of the Supplier's quotation, or order for the supply of Goods and/or Services, as set out in any order form, purchase order, specification or other form received by the Supplier;

Supplier means the Macfarlane Group Company specified in the quotation and/or in the Supplier's written acceptance of an Order;

Services means any services provided by the Supplier to the Customer in conjunction with the sale and purchase of Goods under any contract incorporating these Conditions, including, but not limited to drawings, designs and specifications produced by or on behalf of the Supplier;

Working Day means any day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

1.2 In these Conditions:

- 1.2.1 references to any statute or statutory provision shall, unless the context

otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced; and

1.2.2 the headings contained in these Conditions are for convenience of reference only and shall not affect the construction or interpretation of these Conditions.

2. SUPPLIER'S CONDITIONS OF SALE APPLY

2.1 These Conditions shall apply to and govern any Contract between the Supplier and the Customer and shall prevail over any terms issued by the Customer to the exclusion of any other conditions of sale and/or purchase including but not limited to terms or conditions contained on or in any order form, letter, purchase order, confirmation of order, specification, receipt, acknowledgement, or other document or verbal or written communication emanating from the Customer.

2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.3 For the avoidance of doubt, these Conditions shall not be construed as creating a joint venture, partnership or the like between the Customer and the Supplier.

2.4 In the event that there is a conflict between the terms of these Conditions and/or the Order and the Supplier's acknowledgement of the Order, the Order and/or the Supplier's acknowledgement shall prevail over these Conditions, provided always that any such term that conflicts with Condition 2.1 hereof shall not prevail.

2.5 In the event that there is a conflict between the Order and the Supplier's acknowledgement of that Order, the Supplier's acknowledgement shall prevail.

3. BASIS OF CONTRACT

3.1 Each Order that is received by the Supplier shall be deemed to be an offer by the Customer to purchase Goods and/or Services from the Supplier subject to these Conditions.

3.2 No Order placed by the Customer shall be deemed to be accepted by the Supplier until an acceptance of the Order is given by the Supplier, either in writing or verbally, or (if earlier) the Supplier delivers the Goods to the Customer or performs the Services at which point and on which date the Contract shall come into existence.

3.3 Any price quotation given by the Supplier shall not constitute an offer for sale capable of acceptance by the Customer, and will not make any representation that the Goods and/or Services referred to in the quotation shall be available for sale.

3.4 Any samples, drawings, photographs, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of previously supplied goods contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an

approximate idea of the services or goods described in them.

4. PRICES

4.1 All price quotations are calculated from costs available to the Supplier at the date of such quotation and include delivery, unless otherwise agreed in writing, but are exclusive of VAT and, in the case of palletised deliveries, those charges which may be payable in terms of Condition 11.12, for which the Customer is additionally liable.

4.2 Any price quotation provided by the Supplier shall not constitute an offer and shall be valid for a period of thirty days only or for such other period of time as agreed in writing by the Customer and the Supplier.

4.3 If there is an increase in such costs to the Supplier including, but not limited to foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs, between the date of quotation and the date of acceptance of the Order, then the Supplier may increase the quoted price accordingly by giving written notice to the Customer of such increase.

4.4 Where applicable, artwork, origination, stereo and/or forme costs will be detailed separately in any price quotation, all of which are additionally payable by the Customer.

4.5 All preliminary work carried out at the Customer's request, whether experimentally or otherwise, shall be charged.

4.6 Proofs of all work may be submitted for the Customer's approval and the Supplier shall incur no liability for any errors not corrected by the Customer.

4.7 Where proofs are provided by the Supplier to the Customer, any Customer's alterations and additional proofs necessitated thereby shall be charged extra.

4.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services at the same time as payment is due for the supply of the Goods or Services.

5. QUALITY, DESCRIPTION AND SPECIFICATION

5.1 The quality, description and specification of the Goods and/or Services shall be as set out in the Supplier's quotation or, if one is issued by the Supplier, as set out in the Supplier's acknowledgement of the Order.

5.2 The Supplier warrants that on delivery the Goods shall:
5.2.1 conform in all material respects with their description and any applicable Goods Specification. Improved manufacturing techniques mean that less product weight and/or thickness is required to achieve the same performance standard recognised by

- its nominal specifications (thereby making the packaging lighter and/or more efficient). References to the weight or thickness of the Goods supplied may not therefore constitute the actual weight and/or thickness supplied but instead indicate the performance standard of the Goods supplied in accordance with the specific nominal specification;
- 5.2.2 be free from material defects in design, material and workmanship; and
- 5.2.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.3 The Supplier warrants that the Services shall:
- 5.3.1 materially comply with all requirements of the Contract and all instructions, drawings or specifications relating to the Order; and
- 5.3.2 be performed with due skill and care in accordance with good industry practice.
- 5.4 Subject to Condition 5.5, if:
- 5.4.1 the Customer gives notice in writing within five Working Days of delivery that some or all of the Goods and/or Services do not comply with the warranty set out in Conditions 5.2 or 5.3 (as appropriate);
- 5.4.2 the Supplier is given a reasonable opportunity of examining such Goods and/or Services; and
- 5.4.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Goods or re-perform the Services, or refund the price of the defective Goods and/or Services in full.
- 5.5 The Supplier shall not be liable for the Goods' and/or Services' failure to comply with the warranty in Conditions 5.2 and 5.3 (as appropriate) if:
- 5.5.1 the Customer makes any further use of such Goods and/or Services after giving a notice in accordance with Condition 5.4;
- 5.5.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 5.5.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by or on behalf of the Customer;
- 5.5.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 5.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 5.5.6 the Services differ from their description or the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 Where the Goods are required for a purpose other than the usual purpose for which such Goods are commonly supplied, then no condition or warranty of fitness for that unusual purpose is granted or shall be implied unless the Customer has made known to the Supplier in writing prior to conclusion of the Contract the exact purpose to which such Goods are intended to be put, and the Supplier has expressly acknowledged in writing prior to or on conclusion of the Contract that such Goods shall be fit for such purpose.
- 5.7 Not used.
- 5.8 Not used.
- 5.9 Not used.
- 5.10 Not used.
- 5.11 Not used.
- 5.12 Proofs of work for printed items may be prepared by the Supplier and submitted to the Customer for approval. The Supplier shall incur no liability for any errors in such proofs not corrected by the Customer in proofs so submitted.
- 5.13 Where the Goods consist of printed items, alterations from the original copy on or after the first proof, including alterations in style will be charged as an extra expense at the Supplier's standard rates, which the Customer shall pay in addition to the price for the Goods.
- 5.14 The Supplier shall not be required to print any matter which in its opinion is or may be of an illegal or libelous nature. The Supplier shall be indemnified by the Customer in respect of any claims, costs (including reasonable legal fees), expenses, damages and losses arising out of any libelous matter.
- 6. THE CUSTOMER'S OBLIGATIONS**
- 6.1 The Customer shall:
- 6.1.1 ensure that the terms of each Order and the Goods Specification are complete and accurate;
- 6.1.2 co-operate with the Supplier in all matters relating to the supply of the Goods and/or Services under the Contract;
- 6.1.3 provide the Supplier with such information and materials as the Supplier may reasonably require to perform its obligations under the Contract and ensure that such information is accurate in all material respects;
- 6.1.4 to the extent necessary, prepare the Delivery Point for the delivery of the Goods; and
- 6.1.5 obtain and maintain all necessary licences, permissions and consents which may be

required for the Goods and/or Services before the date on which the Goods are ordered and/or the Services are to commence.

6.2 If the Supplier's performance of any of its obligations in respect of the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

6.2.1 the Supplier shall, without limiting its other rights or remedies, have the right to suspend performance of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations; and

6.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations.

7. MATERIALS AND PROPERTY PROVIDED BY THE CUSTOMER

7.1 Items such as type, plates, moulds, stereotypes, electrotypes, film-setting, negatives, positives and the like supplied to the Supplier by the Customer for use in producing the Goods and Services shall remain the Customer's property.

7.2 Type may be destroyed and lithographic, photogravure or other work effaced immediately after the order is executed unless written arrangements are made to the contrary between the Supplier and the Customer.

7.3 The Supplier shall be entitled to make a reasonable charge for the storage of the Customer's property left with the Supplier before receipt of the order or after notification to the Customer of completion of the work.

7.4 The Customer's property and all property supplied to the Supplier by or on behalf of the Customer shall, while it is in the possession of the Supplier or in transit to or from the Customer, be deemed to be at the Customer's risk unless otherwise agreed.

7.5 The Supplier may reject any paper, films, plates or other materials supplied or specified by the Customer which appear to the Supplier to be unsuitable. Where materials are so supplied or specified, the Supplier will take every care to secure the best results, but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified.

7.6 A charge may be made to cover any additional work involved where copy supplied is not clear and legible.

8. HEALTH, SAFETY AND DELICATE SUBSTANCES

8.1 In so far as the Supplier is under a duty pursuant to Section 6 of the Health & Safety at Work Act 1974 in respect of the design, manufacture and supply of an

article for use at work, the Customer shall be deemed to have been afforded by the Supplier reasonable opportunity for the testing and examination of a sample of Goods or materials prior to the delivery to the Customer in respect of their safety and any risk to health. The Customer shall also be deemed to have been afforded by the Supplier adequate information about the Goods and materials in respect of the use for which they are designed and have been tested and of any conditions necessary to ensure that when put to use they will be safe and without risk to health whether or not the said information has been requested by the Customer. The Supplier shall bear no responsibility or liability for any such risk, and the Customer agrees to indemnify the Supplier and keep the Supplier indemnified fully against any and all liability, losses, costs, claims and expenses arising directly or indirectly from any such articles, Goods or materials.

8.2 Where the Goods supplied consist of containers, wrappers or other articles intended for use in connection with any food, drug or substance of a volatile or delicate nature, the Customer shall satisfy himself that such food, drug or other substance is not or is not likely to be affected by any material used by the Supplier in the manufacturing of or printing of such containers, wrappers or other articles. The Supplier shall not be liable to the Customer in respect of any claim alleging that such food, drug or other substance has been adversely affected by the Goods and the Customer shall indemnify and keep indemnified fully the Supplier from and against any and all liability, losses, costs, expenses and claims by third parties in respect of any claim that any such food, drug or other substance has been adversely affected and caused the third party loss, damage or expense.

9. INTELLECTUAL PROPERTY

9.1 The Customer shall indemnify the Supplier against all claims for infringement or alleged infringement of a third party's Intellectual Property Rights and all liabilities, costs (including reasonable legal fees), expenses damages and losses suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply of Goods and/or the Services in accordance with the Customer's designs, plans and/or specifications.

9.2 The Intellectual Property Rights in all drawings and designs produced by or on behalf of the Supplier in connection with the Contract shall remain the exclusive property of the Supplier.

9.3 The Customer shall not reproduce any drawings or designs produced by or on behalf of the Supplier in connection with the Contract, whether in whole or in part, and articles must not be made to any such drawings or designs by the Customer or on the Customer's behalf by any third party, without the express prior written consent of the Supplier.

9.4 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred by the Supplier arising out of or in

- connection with any breach of Conditions 9.2 to 9.3 (inclusive).
- 9.5 The Supplier reserves the right to amend the Goods if required by any applicable statutory or regulatory requirements.
10. **LABEL PRODUCTS SHELF LIFE GUARANTEE**
- 10.1 Where the Goods consist of labels, these will be guaranteed for one year from the date of conversion (the **Guarantee Period**). Labels which have been subject to special processing conditions e.g. obliterating varnishes used to reduce or eliminate normal adhesive characteristics for specific label applications, will be guaranteed for a shorter period to be mutually agreed between the parties at the time of manufacture (the **Limited Guarantee Period**). The Limited Guarantee Period shall in no circumstances be longer than the Guarantee Period.
- 10.2 The Supplier will accept no liability for defective labels outwith the Guarantee Period or, if applicable, the Limited Guarantee Period. The Guarantee will be void if the following storage conditions are not satisfied;
- 10.2.1 labels should be stored at 22 degrees Celcius, plus or minus 2 degrees; and at 50% relative humidity, plus or minus 5%;
- 10.2.2 labels should be kept clean and dry and be stored in their original packaging; and
- 10.2.3 labels should not be subjected to prolonged exposure to direct sunlight, fluorescent tube lighting or high relative humidity or to extremes of temperature.
11. **DELIVERY**
- 11.1 Unless otherwise agreed in writing by the Supplier the Goods shall be delivered, carriage paid, to the Delivery Point and the Customer shall be bound to accept the Goods.
- 11.2 If the Customer fails to take delivery at the time required by the Contract, the Supplier shall be entitled, without prejudice to any other rights it may have whether under these Conditions or otherwise to invoice the Customer for the Goods whereupon payment in full shall become due forthwith, or to treat the Contract as at an end and to resell the Goods (and in either case to charge at rates giving an economic return for the handling and storage of Goods from the invoice date to the eventual date of delivery to the Customer or disposal elsewhere (as the case may be)).
- 11.3 The Customer shall be liable to pay any premium in respect of the insurance of such Goods from the date of delivery.
- 11.4 If Goods are contracted to be delivered by instalments, late delivery or non-delivery of one instalment shall not entitle the Customer to reject any other instalment under the Contract.
- 11.5 The Supplier will endeavor to deliver the correct quantity of Goods ordered by the Customer, but if the Supplier delivers to the Customer a quantity of Goods of up to 10% more or less than that ordered by the Customer, the Customer shall not be entitled to reject the Goods or any of them by reason of the surplus or shortfall, and charges for such Goods shall be made on the basis of the quantities supplied.
- 11.6 Time of delivery and time of performance of the Services shall not be of the essence of the Contract. The Supplier shall use all reasonable endeavours to deliver the Goods to the Customer and/or perform the Services in accordance with any date agreed in writing with the Customer. In the absence of any agreed delivery date, any date of delivery given by the Supplier to the Customer shall be an estimate only.
- 11.7 Any delay in delivering the Goods or performing the Services shall not entitle the Customer to terminate or rescind the Contract unless such delay exceeds 45 days.
- 11.8 If the Goods are delivered to the Delivery Point before any agreed or estimated delivery date, the Customer shall be bound to accept delivery of the Goods.
- 11.9 The Customer will provide, at its own expense at the Delivery Point, adequate and appropriate equipment and manual labour for unloading the Goods.
- 11.10 The quantity of any consignment of Goods as recorded by the Supplier upon dispatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery, unless the Customer can prove otherwise.
- 11.11 Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.
- 11.12 Where palletised deliveries are requested or necessary, pallets and other packaging and delivery materials may be charged as an extra expense at the Supplier's standard rates, which the Customer shall pay in addition to the price for the Goods.
- 11.13 The means of transportation used by the Supplier to affect delivery to the Customer shall be wholly and entirely within the discretion of the Supplier.
- 11.14 The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 11.15 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 11.16 No order which has been accepted by the Supplier may be cancelled in whole or in part or otherwise modified by the Customer except with the agreement of the Supplier in writing and on terms that the Customer will indemnify the Supplier in respect of all loss, costs, damages, charges and expenses incurred by the Supplier as a result of such cancellation or modification.
12. **RISK**
- All Goods shall be at the Customer's risk from when delivery takes place at the Delivery Point in accordance

with Condition 11.1 above or, if the Customer fails to take delivery of the Goods or delivery is prevented by an act or omission of the Customer, the time when the Supplier has tendered delivery of the Goods.

13. RETENTION OF TITLE

- 13.1 Goods shall remain the property of the Supplier as legal and equitable owner until payment of all sums due to the Supplier from the Customer in respect of the Contract have been received in full by the Supplier in cleared funds.
- 13.2 Notwithstanding Condition 13.1, Goods shall remain the property of the Supplier as legal and equitable owner until payment of all sums due to the Supplier from the Customer on any account have been received in full by the Supplier in cleared funds.
- 13.3 Until the property in the Goods is vested in the Customer, in accordance with Conditions 13.1 and 13.2 above, the Customer shall not pledge and shall store separately and mark the Goods (at no cost to the Supplier) so that they are readily identifiable as the property of the Supplier and shall hold the Goods on a fiduciary basis as agent for the Supplier.
- 13.4 Until otherwise notified by the Supplier pursuant to Condition 13.5 below, or until the happening of an Insolvency Event:
- 13.4.1 the Customer may use the Goods in the normal course of its business;
- 13.4.2 the Customer may sell the Goods in the ordinary course of its business, in which event the Customer shall hold the proceeds of the sale upon trust for the Supplier and if within thirty days of such sale the Customer has not received the proceeds of such sale the Customer will, if requested to do so in writing, assign to the Supplier all rights it may have against the purchaser of such Goods; and
- 13.4.3 the Customer shall maintain the Goods in a satisfactory and saleable condition, and at the Customer's own expense insure the Goods for their full market price against all risks to the reasonable satisfaction of the Supplier, to whom the Customer shall on request exhibit documentary evidence of such insurance within three Working Days of the request having been made by the Supplier.
- 13.5 The Supplier shall be entitled to serve notice on the Customer indicating its intention to retake possession of its Goods and/or terminating the Customer's authority to use or sell the Goods under Condition 13.4 above if the Customer is in breach of the payment terms under this Contract. On receipt of such notice from the Supplier or on the happening of an Insolvency Event:
- 13.5.1 the Customer's authority to use or sell the Goods shall forthwith cease; and
- 13.5.2 all Goods which are the property of the Supplier shall be immediately delivered to the Supplier or to its order, and the Supplier

by its employees or agents shall have the right to enter upon any land, building or vehicles of the Customer to take possession of its Goods, the Customer shall procure that the Supplier by its agents or employees shall have the right to enter upon any land, buildings or vehicles of any third party to take possession of the Goods and any expenses, including legal fees, incurred by the Supplier in so taking possession shall be payable by the Customer.

14. PAYMENT

- 14.1 Each invoice issued by the Supplier to the Customer shall be in Pounds Sterling (£) unless otherwise agreed in writing between the Customer and the Supplier.
- 14.2 Time of payment shall be of the essence of the Contract. Unless otherwise agreed in writing by the Supplier, all sums due to the Supplier shall be paid within 30 days of the date of the invoice.
- 14.3 If the Customer does not pay the whole sums due, on the due date, the Supplier may:
- 14.3.1 suspend delivery of Goods and/or the performance of the Services under all or any of the Contracts with the Customer (in the Supplier's sole discretion); and/or
- 14.3.2 charge interest at the rate of four per cent (4%) per annum over the base rate from time to time of The Bank of England on any overdue account, accruing on a daily basis, from the day following that on which payment was due until payment by way of cleared funds has been received in full.
- 14.4 No payment shall be deemed to have been received until the Supplier has received cleared funds.
- 14.5 All payments payable to the Supplier under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 14.6 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless:
- 14.6.1 the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer; or
- 14.6.2 the Supplier has consented to such a deduction in writing.
- 14.7 The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 14.8 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.

15. **TERMINATION**

15.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within twenty (20) Working Days after receipt of notice in writing of the breach; or

15.1.2 the other party suffers an Insolvency Event.

15.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:

15.2.1 by giving the Customer one month's written notice;

15.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

15.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:

15.3.1 the Customer fails to pay any amount due under this Contract on the due date for payment; or

15.3.2 the Customer becomes subject to, or the Supplier reasonably believes that the Customer is about to become subject to, an Insolvency Event.

15.4 On termination of the Contract for any reason:

15.4.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

15.4.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

15.4.3 Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

16. **CONFIDENTIALITY**

16.1 A party (the **Receiving Party**) shall keep in strict confidence all Confidential Information that has been disclosed to the Receiving Party by the other party (the **Disclosing Party**), its employees, agents or subcontractors, and any other Confidential Information concerning the Disclosing Party's business or its

products or its services which the Receiving Party may obtain.

16.2 The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Condition 16 shall survive termination of the Contract for a period of 3 years following the agreed termination date.

17. **LIMITATION OF SUPPLIER'S LIABILITY**

17.1 Nothing in these conditions excludes or limits the liability of the Supplier:

17.1.1 for death or personal injury caused by the Supplier's negligence, or the negligence of its employees, agents or subcontractors;

17.1.2 for fraud;

17.1.3 for breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); and

17.1.4 for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability.

17.2 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

17.3 The Supplier shall not be liable for any loss incurred by the Customer or in respect of any claim by the Customer for provision of Goods and/or Services under an Order which contains inaccurate terms or specifications.

17.4 If the Supplier is satisfied that there has been under-delivery of Goods (except as provided for in Condition 11.5) or a failure to deliver the Goods or that the Goods have been damaged (whether wholly or in part) prior to delivery, the Supplier will replace them or (in its discretion) accept their return and credit the Customer with the price thereof provided that:

17.4.1 any complaint by the Customer of under-delivery of or damage to the Goods shall have been notified in writing to the Supplier within five Working Days of delivery; or

17.4.2 any complaint by the Customer of failure to deliver shall have been notified to the Supplier by the fifth (5th) Working Day following the agreed delivery date or by the fourteenth (14th) day following the date of dispatch.

17.5 The Supplier shall not be liable in respect of any claim for under-delivery (except as provided for in Condition 11.5), failure to deliver or damage prior to delivery unless the requirements in Condition 17.4 have been complied with, except in any particular case where the Customer proves that:

- 17.5.1 it was not possible to comply with the requirements; and
- 17.5.2 advice (where required) was given by the Supplier and the claim was made as soon as reasonably possible thereafter.
- 17.6 Except as provided for in Conditions 17.1 and 17.4 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss or damage whenever or howsoever arising under or in connection with the Contract, including without limitation loss of profit, loss of revenue, economic loss, depletion of goodwill and pecuniary loss of any kind whatsoever.
- 17.7 Without prejudice to the generality of Condition 17.6, any implied term, condition or warranty statutory or otherwise as to the quality of the Goods sold or their fitness for any particular purpose or as to their correspondence with any description or sample is hereby excluded to the fullest extent permitted by law.
- 17.8 The Supplier shall not be bound by any statement, promise, warranty or representation given by or made on its behalf unless specifically stated in writing and expressly signed stating it is to be incorporated in the Contract.
- 17.9 Subject to Conditions 17.1 and 17.4, the Supplier shall be under no liability if the Goods and/or the Services are not paid for by the due date.
- 17.10 In any event, the Supplier's entire liability shall be limited to the price actually paid by the Customer under the Contract.
- 17.11 This Condition 17 shall survive termination of the Contract.
18. **ASSIGNMENT**
- 18.1 The Customer shall not be entitled to assign any Contract or any part of any Contract without the express prior written consent of the Supplier.
- 18.2 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party and shall be entitled to perform any obligation under a Contract through its subsidiary, holding company or a subsidiary of such holding company.
19. **WAIVER**
- 19.1 Failure or delay by any party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 19.2 Any waiver by a party of any breach of, or any default under, any provision of the Contract by the other party shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
20. **FORCE MAJEURE**
- 20.1 For the purposes of this contract a force majeure event (**Force Majeure Event**) means an event beyond the reasonable control of the Supplier including but not limited to acts of God, war, riot, protests, civil commotion, governmental actions, national emergency, acts of terrorism, malicious damage to plant machinery or equipment, disruption to or failure of a utility service or transport network, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, default of suppliers or subcontractors, extreme and/or adverse weather conditions, trade restrictions or embargos.
- 20.2 The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to one or more Force Majeure Events.
- 20.3 Provided that, if the Force Majeure Event in question continues for a continuous period in excess of 45 days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.
21. **DISPUTE RESOLUTION AND CONDUCT OF CLAIMS**
- 21.1 In the event of a dispute or difference arising between the Parties including, without limitation, the existence, construction, validity, performance and termination of the Contract; or where notice of a claim has been given in accordance with these Conditions (**Dispute**), the matter shall be referred by either party to representatives of each party with authority to settle the Dispute, who shall attempt to resolve the Dispute within 14 days of referral.
- 21.2 If the Dispute remains unresolved after 14 days, the parties shall be referred to directors (or equivalent) or the parties, who shall attempt to resolve the dispute within 14 days of referral (or such number of days as the parties may agree in writing).
- 21.3 If the Dispute cannot be resolved pursuant to Condition 21.2, then subject to Condition 21.4 it shall be referred to and be resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Condition. The number of arbitrators shall be one. The seat, or legal place, or arbitration shall be London. The language to be used in the arbitral proceedings shall be English.
- 21.4 Notwithstanding Conditions 21.1, 21.2 and 21.3, the Supplier shall at any time at its sole option have the right to refer any Dispute to any court with competent jurisdiction, which courts shall have exclusive jurisdiction in relation to the Dispute.
22. **NOTICES**
- 22.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall

be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office or its principal place of business as shall be set out in any document that forms part of this Contract or shall be notified to the other party, or sent by fax to the other party's main fax number.

22.2 Any notice or other communication shall be deemed to have been duly received:

22.2.1 if delivered personally, when left at such addressor;

22.2.2 if sent by prepaid first-class post or recorded delivery, at 10:00 am on the second Working Day after posting;

22.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or

22.2.4 if sent by fax prior to 4pm, at the time of transmission and otherwise on the next Working Day.

22.3 This Condition 22.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this Condition, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

23. VARIATION

23.1 The Supplier reserves the right to update these Conditions from time to time. Any revised or updated versions of these Conditions shall only apply to Orders placed by the Customer on or after the date on which written notice of the revised or updated Conditions has been communicated by the Supplier to the Customer.

23.2 Should the Customer make a request for these Conditions to be varied, any variation of these Conditions shall only be effective if expressly agreed by

the Supplier in writing and signed by an individual who has authority to contract on behalf of the Supplier.

24. SEVERABILITY

24.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

24.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

25. SEPARATE REMEDIES

Each right or remedy of the Parties under the Contract is without prejudice to any other right or remedy of the Parties whether under the Contract or otherwise.

26. THIRD PARTY RIGHTS

A person who is not a party to the Contract shall not have any rights under or in connection with it.

27. GOVERNING LAW AND JURISDICTION

The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.