

2.4 The contract constitutes the entire agreement between the Seller and the Buyer. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the contract nor shall they have any contractual force.

2.6 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of [20] Business Days from its date of issue.

3. Price and Payment

3.1 The price of the Goods shall be the price set out [overleaf] [in the Seller's written acceptance of the Buyer's order].

3.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.

3.3 The price of the Goods is exclusive of VAT and the Buyer will pay to the Seller any VAT and any similar replacement or additional tax payable in relation to the sale of the Goods.

3.4 Any additional [work required of] [cost incurred by] the Seller by reason of the Buyer supplying inadequate, incomplete or incorrect instructions [or insufficient materials] or being late in the giving [or delivery] of the same shall be charged for by the Seller.

3.5 The Seller shall invoice the price of the goods [on delivery] [within [10] Business Days after delivery] and the Buyer shall pay the Seller's invoice in full and in cash or in cleared funds [by the end of the month following the month the invoice was dated] [within 20 Business Days of the date of the invoice]. Payment shall be made to the bank account nominated in writing by the Seller. [Time of payment is of the essence.]

3.6 If Credit Facilities have been granted in accordance with clause 4, payment is due by the end of the month following the month of invoice.

3.7 [If any sum remains unpaid by the due date [payment charges will apply, in accordance with s5A and/or s6 of the Late Payment Commercial Debt (Interest) Act 1998 or any subsequent enactment and in addition, all invoices will become due and payable immediately and will be treated as overdue with appropriate charges applied and all costs reasonably incurred in collecting the debt payable by the Buyer.]]

[If the Buyer fails to make any payment due to the Seller under the contract by the due date for payment (**due date**), then the Buyer shall pay interest on the overdue amount at the rate of [4]% per annum above [FULL NAME OF BANK]'s base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.]

3.8 The Buyer shall pay all amounts due under the contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part.

3.9 Should the delivery of the Goods be suspended or delayed by the Buyer for any reason other than the Seller's default (including any failure to provide adequate delivery instructions or any other instructions necessary in relation to the contract) the Seller shall be entitled to charge for storage of the Goods. Should such suspension or delay extend beyond [10] Business Days the Seller shall be entitled to immediate payment for the Goods and any other additional costs it reasonably incurs or suffers.

3.10 If the Buyer fails to pay the Seller any sum on its due date the Seller may suspend its performance of the contract until the date of actual payment of the overdue amount.

3.11 If the Buyer disputes any invoice it shall immediately notify the Seller in writing and provide full details of the disputed matter. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. If the parties have not resolved the dispute within [20 Business Days] of the Buyer giving notice to the Seller the dispute shall be resolved by mediation or by bringing legal proceedings in the courts. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date.

4. Credit Facilities

Credit facilities may be granted to applicants who complete the Seller's Credit Account Application Form and who satisfy the Seller's criteria as set out from time to time. Where credit facilities are granted the Seller reserves the right to withdraw them at any time, without having to give its reasons therefor and, in such a case, all outstanding invoices shall become due and payable immediately.

5. Delivery

5.1 [The Seller shall deliver the Goods to the location set out overleaf (**Delivery Location**) [Unless otherwise agreed in writing, (in which case an extra charge may be made) delivery will be to kerbside at the Buyer's address and the Buyer will make arrangements for off-loading and for any additional transportation to its [storage facility] [own facilities].

Subject to any agreement as per [previous paragraph] delivery involving difficult access and/or unreasonable distance from vehicular access shall entitle the Seller to make an extra charge to reflect its extra costs.]

[The Buyer shall collect the Goods from the Seller's premises at [Insert] [set out overleaf] or such other location as may be advised by the Seller prior to delivery (**Delivery Location**) within [3] Business Days of the Seller notifying the Buyer that the Goods are ready].

5.2 Delivery of the Goods shall be completed [on the Goods' arrival at the Delivery Location] [on the collection of the Goods by the Buyer at the Delivery Location].

5.3 Delivery of the Goods shall be accepted by the Buyer on the Delivery Date.

5.4 Unless otherwise agreed in writing by the Seller the Delivery Date is an estimate only and, whilst the Seller will make every effort to adhere to the Delivery Date, time is not of the essence of the contract. The Seller shall not be liable to the Buyer for any loss of contract, loss of profit or loss of business or any indirect loss, consequential loss or third party claims occasioned by delay in delivering the Goods or for any loss to the Buyer arising from delay in transit, whether as a result of the Seller's negligence or breach of contract or otherwise.

5.5 Should expedited delivery be agreed the Seller shall be entitled to make an extra charge to cover any additional costs it may incur.

5.6 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately.

5.7 The Seller shall have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by the Buyer's failure to comply with its obligations under the contract.

5.8 If the Buyer fails to take delivery of the Goods [on the Delivery Date] [within [3] Business Days of the Seller notifying the Buyer that the Goods are ready for collection], then, except where such failure or delay is caused by the Seller's failure to comply with its obligations under the contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the [Delivery Date] [the third Business Day following the day on which the Seller notified the Buyer that the Goods were ready for collection];

and

(b) the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

5.9 The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a force majeure event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.10 [Every reasonable endeavour will be made to deliver the correct quantity of the Goods ordered, but estimates are conditional upon margins of 5 per cent being allowed for overs or unders the same to be charged or deducted, unless otherwise agreed by the Seller and the Buyer in writing.]

[The Seller and Buyer agree that if, the Seller delivers up to and including [percentage [5]]% more or less than the quantity of Goods ordered, the Buyer shall not be entitled to reject the Goods and a pro rata adjustment shall be made to the Seller's invoice for the Goods delivered.]

6. Quality

6.1 The Goods supplied to the Buyer by the Seller under the contract shall on delivery:

(a) conform in all material respects to the Specification (if any) included in the contract

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller.

6.2 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the contract.

6.3 The Seller shall not be liable for the failure of the Goods to comply with the warranty set out in clause 6.1 in any of the following events:

(a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 8.1;

(b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the Buyer alters or repairs such Goods without the prior written consent of the Seller; or

(d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

7. Risk and Title

7.1. The risk in the Goods shall pass to the Buyer on delivery and the Buyer will insure the Goods accordingly.

7.2 The Goods shall remain the Seller's property until the Buyer has paid for them in full (in cash or cleared funds) and discharged all other debts owing by the Buyer to the Seller.

7.3 If the Buyer becomes subject to Insolvency and the Goods have not been paid for in full (in cash or cleared funds) and provided that the Goods have not been resold and without limiting any other right or remedy the Seller may at any time require the Buyer to deliver up the Goods and, if necessary, enter the Buyer's premises to recover them, or to inspect and/or label the Goods so as to identify them clearly as the Seller's property.

7.4 Until title to the Goods has passed to the Buyer, it shall:

(a) hold the Goods on a fiduciary basis as the Seller's bailee;

(b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(d) maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price from the date of delivery against all risks, and

(e) on request the Buyer shall allow the Seller to inspect the Good

but the Buyer may resell or use the Goods in the ordinary course of its business.

8. Claims and Liability

8.1 Claims

a. Advice of damage, delay or loss of any of the Goods in transit or of non-delivery of the Goods must be given in writing to the Seller and the carrier within 3 Business Days of delivery (or, in the case of non-delivery, within 3 Business Days of notification of despatch of the Goods) and any claim in respect thereof must be made in writing to the Seller and the carrier within 7 Business Days of delivery (or, in the case of non-delivery, within 7 Business Days of notification of despatch). All other claims must be made in writing to the Seller within 10 Business Days of delivery. The Seller shall not be liable in respect of any claim unless such requirements have been complied with except in any particular case where the Buyer proves that (i) it was not possible to comply with such requirements and (ii) the claim was made as soon as reasonably possible.

- b. If the Goods are defective so that the Buyer may in law reject them, such rejection must take place within [5 Business Days] of delivery of the Goods, failing which the Buyer will be deemed to have accepted them.
- c. In the event of all or any claims or rejections the Seller reserves the right to inspect the relevant Goods within [5 Business Days] of the claim or rejection being notified.

8.2 Liability

(a) Insofar as is permitted by law where the Goods are defective for any reason, including the Seller's breach of contract or negligence, the Seller's liability (if any) shall be limited at its option to rectifying such defect or supplying replacements for such Goods at its cost or crediting the value of such Goods against any invoice relating to such Goods and the Buyer shall not be entitled to any further claim in respect of such Goods nor shall the Buyer be entitled to repudiate the contract, refuse to pay for the Goods or cancel further deliveries. Where the Seller offers to replace or rectify defective Goods the Buyer must accept such an offer unless it can show clear cause for refusing so to do. If the Buyer opts to have any repair or rectification done by any third party without reference to the Seller the Buyer automatically revokes its right to any remedy from the Seller, including but not exclusively the right to any credit against sums which have been invoiced in respect of the defective Goods.

(b) Defective Goods must, if requested by the Seller, be returned to the Seller before any replacement or rectification can be arranged or credits can be issued. If the defective Goods are not returned to the Seller, the Buyer shall be deemed to have accepted the Goods and no credits, rectification or replacements will be provided.

9. Limitation of Liability

9.1 Nothing in these terms and conditions shall limit or exclude the liability of the Seller for:

- (a) death or personal injury resulting from its negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective Goods under the Consumer Protection Act 1987; or
- (e) losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability.

9.2 Subject to clause 9.1 the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), or for breach of statutory duty or otherwise, for any:

- (a) [loss of profit; or]
- (b) [loss of contract; or]
- (c) [loss of goodwill; or]
- (d) [loss of business; or]
- (e) [loss of business opportunity; or]
- (f) [loss of anticipated saving; or]
- (g) [loss or corruption of data or information]

or any indirect or consequential loss arising under or in connection with the contract.

[The Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed [£ amount] [[percent]% of the price of the Goods].

9.3 [Except as otherwise provided in these terms and conditions this clause 9 sets out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

- (a) any breach of the contract however arising;
- (b) any use made or resale of the Goods by the Buyer [or of any product incorporating any of the Goods]; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the contract.]

10. Insolvency

Without prejudice to any other rights or remedies, if the Buyer becomes Insolvent, the Seller shall have the right not to proceed further with the contract and shall be entitled to charge for all Goods already delivered (whether or not the contract has been fully performed the cost of all Goods purchased or agreed to be purchased by the Seller from any third party in order to perform the contract with the Buyer whether or not delivered to the Seller and such charges shall be an immediate debt due to the Seller. Any unpaid invoices issued by the Seller shall become immediately due for payment.

11. General Lien

[Without prejudice to any other right or remedies, in respect of all unpaid debts due from the Buyer the Seller shall have a general lien on all goods and property of or provided by the Buyer in its possession (whether worked on or not) and shall be entitled on the expiration of 10 Business Days notice to dispose of such goods or property as agent for the Buyer in such manner and at such price as he thinks fit and to apply the proceeds towards such debts, and shall when accounting to the Buyer for any balance remaining be discharged from all liability in respect of such goods or property.]

12. Force majeure

The Seller shall not be in breach of the contract nor have any liability for any failure or delay in carrying out the contract due to any reason beyond its reasonable control including (without limiting the foregoing): Act of God; legislation; war; fire; flood; drought; inadequacy or unsuitability of any instructions, electronic file or other data or materials supplied by the Buyer; failure of power supply; lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute; or owing to any inability to procure materials required for the performance of the contract and in such circumstances the Seller will be entitled to a reasonable extension of the time for performing the contract. [If such circumstances continue for more than [8] weeks the Seller shall be entitled to terminate the contract forthwith by giving written notice to the Buyer.]

13. Data Protection

13.1 The Buyer is hereby notified that the Seller may transfer personal information about the Buyer to a Credit Agency pursuant to clause 4 [and the Buyer consents to such transfer].

13.2 Both the Seller and the Buyer shall comply with their respective obligations under the Data Protection Act 1998.

14. General

14.1 The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the contract.

14.2 No person other than the Seller and the Buyer shall have any rights to enforce any term of the contract under the Contracts (Rights of Third Parties) Act 1999.

14.3 All clauses of these terms and conditions are severable and if any provision or identifiable part thereof is held to be unenforceable by any court of competent jurisdiction then such enforceability shall not affect the enforceability of the remaining provisions or identifiable parts thereof in the contract. 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.

[14.4 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, agents, consultants or sub-contractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under the contract, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 14.4 as though they were a party to the contract. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- (b) as may be required by law, court order or any governmental or regulatory authority.]

14.5 Any waiver by the Seller of any right under the contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure to exercise or delay in exercising any right or remedy provided under the contract or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy. No single or partial exercise of any right or remedy under the contract shall prevent or restrict the further exercise of that or any other right or remedy.]

14.6 Except as otherwise set out in the contract, any variation to the contract shall only be binding when agreed in writing and signed by the Seller.

15. Termination

15.1 The Seller shall be entitled to terminate the contract with immediate effect by giving written notice to the Buyer if:

- (a) the Buyer fails to pay any undisputed amount due under the contract on the due date and remains in default not less than [5 Business Days] after being notified in writing to make such payment; or
- (b) the Buyer commits a material breach of its obligations under the contract and (if such breach is remediable) fails to remedy that breach within a period of [5/10 Business Days] after receipt of notice in writing requiring it to do so; or
- (c) the Buyer commits a series of persistent minor breaches which when taken together amount to a material breach; or

- (d) the Buyer is Insolvent; or
- (e) the Buyer ceases, or threatens to cease, to carry on all or substantially the whole of its business.

15.2 Termination of the contract shall not prejudice any of the Seller's rights or remedies which have accrued against the Buyer as at termination.

16. Consumers

16.1 Nothing in these terms and conditions is intended to or shall limit any rights the Buyer has if it is a consumer or other statutory rights that may not be excluded.

16.2 If the Buyer is a consumer he can cancel the contract within 7 days of receiving the Goods. The 7 day period starts on the day after the Buyer receives the Goods. If the Buyer wishes to return the Goods he must send them to the Seller and must pay the cost of returning them. In order to cancel the contract the Buyer must send a written notice to the Seller and if the Buyer cancels the contract orally, he must confirm the oral cancellation in writing.

17. Notices

Any notice or other communication required to be given by the Seller or the Buyer to the other shall be in writing and delivered or sent to the address set out [in the contract] [overleaf]. Such notice or communication shall be deemed to be duly given or made: when delivered (in the case of personal delivery); on the second Business Day after posting (in the case of pre-paid first class post or first class post); [or in the case of email, at the time of sending provided that the email is received by the other party. A reply or a read receipt to such email shall (in the absence of evidence to the contrary) be deemed to confirm receipt.] The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

18. Law

The contract shall be governed by and construed in accordance with English law and the Seller and the Buyer agree to submit to the jurisdiction of the courts of England and Wales.

July 2012