

# CONDITIONS OF SUPPLY



## 1. DEFINITIONS AND INTERPRETATION

- 1.1 The following terms as used herein shall have the meaning as stated:

**Company:** Euro Group UK;

**Conditions:** these Conditions of Supply;

**Confidential Information:** any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential;

**Contract:** any contract between the Company and the Customer for the supply of any Goods and/or Services, incorporating these Conditions;

**Customer:** any person, firm, company or other organisation who is the addressee of the Company's quotation or acknowledgment of order issued by the Company and shall include any successor-in-title of the Customer and any company or entity arising (wholly or partly) by way of any merger, amalgamation, reorganisation or acquisition of the Customer;

**Delivery Point:** the place where delivery of any Goods is to take place under clause 5;

**Goods:** any goods or materials agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them), including any goods agreed to be supplied with, or in relation to, any Services;

**Initial Maintenance Term:** the initial and minimum period of 5 years for which the Company is to provide the maintenance services to the Customer under the Contract, which shall commence on the date of issuance of the Company's acknowledgment of order;

**Input Material:** any documents, plans, drawings, designs or other materials and any specifications, data or other information provided by the Customer to the Company relating to the Goods and/or Services;

**Intellectual Property Rights:** any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;

**Maintenance Notice Period:** the period of notice of 6 months which is required to be given by either party to the other in order to terminate the Contract in respect of the maintenance services in accordance with clause 3.3;

**Maintenance Renewal Term:** a period of equal duration to the Initial Maintenance Term (with the first such Maintenance Renewal Term commencing immediately upon the expiration of the Initial Maintenance Term) during which the Company is to

provide the maintenance services to the Customer under the Contract, subject to clause 3.3;

**Output Material:** any documents, plans, drawings, designs or other materials and any specifications, data or other information provided by the Company to the Customer relating to the Goods and/or Services;

**Services:** any services agreed in the Contract to be performed by the Company for the Customer (including any part or parts of them) including any installation work and any maintenance services to be undertaken in relation to the Goods;

**Site:** the premises at which the delivery of any Goods and/or the performance of any Services shall take place, (which shall be the Customer's principal place of business, unless otherwise agreed in writing by the Company);

**Supplies:** the Goods and/or the Services, depending on the context;

**Working Day:** Monday to Friday inclusive, excluding any public or bank holidays;

**Working Hours:** between 09.00 and 17.00 on a Working Day.

- 1.2 A reference to a clause is to a clause of these Conditions. Clause headings shall not affect the interpretation of these Conditions.
- 1.3 Any reference to "**parties**" means the parties to the Contract and "**party**" shall be construed accordingly.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Words in the singular include the plural and in the plural include the singular.
- 1.6 A reference to one gender includes a reference to the other gender.
- 1.7 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.

## 2. APPLICATION OF CONDITIONS AND DESCRIPTION OF GOODS AND SERVICES

- 2.1 All quotations are made and all orders are accepted by the Company subject only to these Conditions of Supply, which shall prevail to the exclusion of any other terms including any conditions, warranties or representations written or oral, express or implied, even if contained in any of the Customer's documents which purport to provide that the Customer's own terms shall prevail. No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract. Any representations about any Goods shall have no effect unless expressly agreed in writing and

signed by an authorised signatory of the Company.

- 2.2 Any quotation is given on the basis that no Contract shall come into existence until the Company accepts the Customer's order in accordance with the provisions of clause 2.3. Any quotation is valid for a period of three months only from its date, provided that the Company has not previously withdrawn it.
- 2.3 The placing of an order following any quotation or other indication of price and delivery shall not be binding on the Company unless and until acknowledged by the Company in writing.
- 2.4 The Customer shall ensure that the terms of its order and any Input Material are complete and accurate.
- 2.5 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acknowledgment of order, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.6 No order of the Customer may be cancelled, varied, altered or deferred by the Customer, except with the agreement in writing 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 up to and including the date of such cancellation, variation, alteration or deferment (including in respect of any surveys undertaken or samples supplied). The level of the cancellation charge for confirmed bookings for installation or any other work to be undertaken at the Site will depend upon the period of notice of cancellation given by the Customer. Similar charges shall also apply where the Customer changes the date or time of any such confirmed booking.
- 2.7 The Company reserves the right to charge the Customer for any Output Material provided to the Customer.
- 2.8 Any surplus fittings or materials shall remain the property of the Company and shall be returned to it.
- 2.9 The quantity and description of any Goods and/or Services shall be as set out in the Company's quotation or acknowledgment of order.
- 2.10 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. Unless otherwise agreed by the Company in writing, they shall not form part of the Contract and this is not a sale by sample.
- 2.11 The specification for the Goods shall be based upon standard contract specification, unless varied expressly in the Customer's order and accepted by the Company.

- 2.12 Unless otherwise agreed in advance by the Company in writing, the Customer shall be solely responsible for determining the accuracy of any measurements which may be required to be furnished to the Company in relation to the supply of any Goods.
- 2.13 The Company has no obligation to accept any variation to the Contract requested by the Customer, whether by addition, substitution or omission (or to the Goods/and or Services to be provided under the Contract) and no such request shall be deemed to be accepted in the absence of the Company's written agreement to the variation.
- 2.14 If any Goods are to be manufactured, ordered, designed, built, configured, altered, adapted, or subjected to any process by or on behalf of the Company for the Customer and/or any Services are to be performed by the Company, in each case in accordance with any Input Material submitted by the Customer, the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any Intellectual Property Rights of any other person resulting from the Company's use of any Input Material so submitted.
- 2.15 The Customer shall ensure that any specification submitted by the Customer does not contravene any applicable safety or other statutory or regulatory requirement.

### **3. OBLIGATIONS OF THE CUSTOMER**

- 3.1 With respect to any Services to be performed under the Contract, the Customer shall, at its sole cost:
  - (a) be responsible for preparing and maintaining any relevant part of the Site for the performance of the Services and for reinstating any such part of the Site and undertaking any required making good and clean-up work once performance of the Services has been completed;
  - (b) ensure that conditions at the Site are suitable for the performance of the Services and that any amenities required to perform the Services thereon are readily available and in good working order, including electricity and adequate lighting (and a lift, where the Site is equipped with one);
  - (c) if requested to do so by the Company and without charge, provide facilities at the Site for the off-loading and storage of the Goods and the Company's tools and equipment in a readily accessible and secure storage area protected from theft and damage and shall be solely responsible for the safekeeping of the Goods and the Company's tools and equipment whilst the same are stored at the Site;
  - (d) take all steps to ensure the health and safety of the personnel of the Company whilst they are in attendance at the Site in connection with the performance of the Services and be solely responsible

# CONDITIONS OF SUPPLY



for ensuring the safety of any and all persons who are or may be present at the Site during the performance of the Services, including restricting access to those areas of the Site where the Services are or are to be performed to those individuals engaged in performing the Services, or providing assistance to those so engaged;

- (e) provide the Company with prompt and unobstructed pedestrian and vehicular access to and egress from the Site and all relevant parts of the Site;
- (f) inform the Company of any unusual layout, composition or construction of the Site or its parts and report any unusual conditions or obstacles to the performance of the Services at the Site to the Company and where possible, ameliorate any such conditions and remove any such obstacles;
- (g) notify the Company of the nature of the flooring at the Site on which the Goods are to be installed, including the composition of the flooring (i.e. whether the flooring is or will be composed of concrete or wood or any other material) so as to enable the Company to determine the correct type of fixings that will be required to install the Goods;
- (h) ensure that all flooring required to support the Goods has been completed in advance of installation (where the flooring is composed of plywood, the flooring must consist of two cross-laid 18 millimetre sheets) and that all necessary tests of said flooring have been undertaken so as to ensure that the flooring will be capable of holding the fixings (which is of particular concern with wood flooring), as the Company shall not have any liability for any loss or damage arising from the fixings due to an unsuitable floor, sub-floor or floor covering;
- (i) ensure that the floor surface is free of any irregularities that could obstruct proper installation of the Goods and make certain that any degree of incline corresponds to the Company's agreed specifications;
- (j) ensure (where any additional works are to occur with respect to or in relation to the Goods following completion of the installation work), that the condition of the Goods as at handover of the installation work is immediately evaluated and recorded by a qualified person;
- (k) at all times during the performance of the Services ensure, insofar as it is reasonably practicable to do so, that other trades or operations are not undertaken on that part of the Site where the performance of the Services is to take place, so as to ensure that the Services can be performed in one continuous, uninterrupted operation during Working Hours;
- (l) be responsible (other than for statutory obligations placed solely on the Company) for obtaining all consents, permissions, easements and licences necessary for the performance of the Services in accordance with these Conditions and for conforming with all Statutes and Orders, Regulations and By-Laws which are applicable at any time to the Services and shall indemnify and keep indemnified the

Company against any actions, proceedings, costs, charges, claims or demands arising out of or in connection with any breach of this clause 3.1 (l);

- (m) provide the Company with all information, co-operation and support that may be required to enable the Company to carry out its obligations to the Customer; and

- (n) effect and maintain appropriate insurance at the Site on an all risks basis and in an adequate amount.

3.2 Where the Company has agreed to undertake maintenance services in respect of the Goods, the following clauses 3.3 to 3.8 shall govern the supply of maintenance services, without prejudice to the provisions of any other clause of these Conditions.

3.3 Subject to earlier termination under clause 13, the maintenance services shall be provided for the Initial Maintenance Term and shall continue to be provided thereafter for subsequent Maintenance Renewal Terms, unless the Contract is terminated in respect of the maintenance services by one of the parties giving to the other notice of termination in compliance with the Maintenance Notice Period, such Maintenance Notice Period to expire on the last day of the Initial Maintenance Term or the last day of the relevant subsequent Maintenance Renewal Term, as applicable. Termination of the Contract in respect of the maintenance services in accordance with this clause 3.3 shall not affect the validity nor the continuance in force of the remainder of the Contract.

3.4 Preventative maintenance service visits to the Site shall be undertaken at quarterly intervals within Working Hours.

3.5 Dates for performance of the preventative maintenance services shall be suggested by the Company to the Customer and mutually agreed in advance. The Company reserves the right to levy a re-scheduling charge should the Customer wish to change any agreed dates for performance of the preventative maintenance services less than 7 days prior to any date so agreed.

3.6 During the preventative maintenance visit, (or otherwise thereafter, where appropriate) the Company shall check all aspects of the Goods and replace or repair any faulty Goods (or any faulty component of the Goods).

3.7 All defective parts removed from the Goods by the Company shall become the property of the Company and their replacements shall become the property of the Customer.

3.8 The maintenance services shall not include:

- (a) any work in relation to anything which does not form a part of the Goods;
- (b) any maintenance or repair work with respect to any modification of, or addition to, the Goods, if any such modification or addition has been undertaken without the Company's prior consent;
- (c) the repair of any damage to the Goods caused by fire,

# CONDITIONS OF SUPPLY



water, frost, lightning, wind, damage in transit, burglary, vandalism, or explosion;

- (d) the remedy of any defect resulting from any misuse of, neglect of, tampering with, or wilful or accidental damage to the Goods, or from any failure to follow any instructions contained in any operation or maintenance manual published for the Goods, or from any failure to follow any written or oral instructions of the Company, or from any failure to maintain a suitable environment for the Goods at the Site.

3.9 The Customer shall not, without the prior written consent of the Company, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf), at any time from the date of first provision of the Services to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.

3.10 Any consent given by the Company in accordance with clause 3.9 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.

## 4. PRICE

4.1 Prices for the Supplies, howsoever given, are based on conditions ruling on the date of their giving and are subject to change. The effective price for the Supplies shall be the price confirmed by the Company in its written acknowledgment of the Customer's order pursuant to clause 2.3.

4.2 The Company reserves the right, by giving notice to the Customer at any time, to increase the price for the Supplies to reflect any increase in the Company's costs, charges or expenses which is due to any factor beyond the reasonable control of the Company (including any foreign exchange fluctuation, currency regulation, alteration of duties, any increase in the costs of labour, materials, fuel or other costs of production or performance), or any matter attributable to the Customer, including any change in delivery or performance dates, quantities or specifications for the Supplies, or any delay, problem or other issue caused by, arising from or related to the Customer or the failure of the Customer to give the Company adequate, accurate or complete information or instructions.

4.3 Unless otherwise stated, the price quoted will be exclusive of Value Added Tax which will be charged at the rate which is applicable at the date of dispatch of the Goods or commencement of performance of the Services.

4.4 Unless otherwise agreed in writing between the Customer and the Company, all prices for the supply of Goods are given by the Company on an ex works basis and the Customer shall be liable to pay the

Company's charges for transport, packaging and insurance.

4.5 The Company's time-based rates are calculated from the time of dispatch or departure from the Company's premises to the time of return thereto. A mileage charge is also charged, as applicable, to overtime rates and call out costs whether or not incurred in an emergency and will be applied based upon such rates and costs as are published by the Company from time to time.

4.6 Any waiver or reduction of any price will only be applicable if agreed by the Company in writing.

## 5. DELIVERY AND PERFORMANCE

5.1 Whilst the Company will reasonably endeavour to provide the Supplies in accordance with the Customer's requirements, the Company will not be liable for any consequences of any delay in the provision of the Supplies, howsoever caused.

5.2 The delivery of the Goods and the performance of the Services shall take place at the Site.

5.3 If so stipulated in the Company's written acknowledgment of order, the Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading and reloading the Goods.

5.4 If delivery involves difficult access to or at the Delivery Point and/or the Delivery Point is located at an unreasonable distance from any feasible vehicular access point, the Company reserves the right to levy an extra delivery charge.

5.5 The Company may deliver the Goods by separate instalments and perform the Services in separate tranches. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

5.6 Each instalment shall be a separate contract.

5.7 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.

5.8 If for any reason the Customer fails to accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, the Company will charge the Customer an abortive delivery charge and:

- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including storage and insurance); or
- (d) sell the Goods at the best price readily obtainable and



# CONDITIONS OF SUPPLY



(after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the Contract price for the Goods.

5.9 Prior to performance of the Services, the Customer shall remove any item and make good any condition at or adjacent to the Site that could obstruct the performance of the Services. If the Company discovers or is notified of, before or during the performance of the Services, any obstruction, condition, hazard or other problem at or adjacent to the Site which materially affects the Company's ability to undertake the Services in accordance with the Company's standards at the Contract price, it shall be free to vary the Contract price, notwithstanding that the obstruction, condition, hazard or other problem may have existed prior to acceptance of the Customer's order or may have arisen subsequently. Any additional costs caused by any delay or hindrance in the performance of the Services, or any interruption or suspension of performance, at or adjacent to the Site for reasons beyond the control of the Company shall be treated as a variation to the Customer's original order, the Customer shall be liable for any such additional costs and an appropriate extension of time for completion of the Services shall be agreed in respect of any such variation.

5.10 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

## **6. CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION**

6.1 The Customer and the Company agree that in the course of the Company providing Goods and/or Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party. Neither party shall use any Confidential Information for any purpose other than the discharge of its respective obligations under the Contract.

6.2 The Customer acknowledges the Company's ownership of any Intellectual Property Rights in any Output Material and in any Goods and/or Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. The Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the

Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that any and all Intellectual Property Rights developed by the Company in performing any Services or providing any Goods shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this clause 6.2.

6.3 The Customer acknowledges and agrees that any personal data contained in any information provided to the Company by or on behalf of the Customer may be processed by and on behalf of the Company in connection with the supply of any Goods and/or Services under the Contract.

## **7. PAYMENT**

7.1 Subject only to any special terms agreed in writing between the Company and the Customer, the Company shall be entitled to invoice the Customer for the price of the Supplies on or at any time after the date of issuance of the Company's written acknowledgment of the Customer's order.

7.2 The price for the Supplies shall be paid by the Customer to the Company in accordance with the requirements set out in the Company's written acknowledgment of the Customer's order and the price shall be paid by the due date(s) for payment stipulated therein.

7.3 The time for payment shall be of the essence of the Contract.

7.4 No payment shall be deemed to have been received until the Company has received cleared funds.

7.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

7.6 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

7.7 Failure by the Customer to pay any invoice by its due date and/or the occurrence of any one or more of the events set forth in clause 13.1 (c) – (d) shall entitle the Company:

- (a) at its option, to charge interest at the rate of five percent (5%) per annum above Lloyds Bank plc's base lending rate from time to time calculated on a daily basis (whether before or after any judgment) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
- (b) to charge the Customer with any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer;
- (c) to suspend any warranty for the Supplies or any other goods or services supplied by the Company to the

Customer, whether or not they have been paid for;

- (d) to appropriate any payment made by the Customer to such of the Supplies as the Company may think fit;
- (e) to set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever;
- (f) to exercise its rights under clause 12.4 in relation to any Goods;
- (g) to terminate the Contract, or suspend or cancel any future delivery of Goods and/or performance of Services;
- (h) to cancel any discount (if any) offered to the Customer; and
- (i) if the Customer has an approved credit account, to withdraw or reduce its credit limit or bring forward its due date for payment without notice.

7.8 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 8. FORCE MAJEURE

The Company reserves the right to defer the date of provision of the Supplies, or to cancel the Contract or reduce the volume of the Supplies 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 circumstances beyond the reasonable control of the Company including Acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 9. WARRANTY

9.1 The Company will endeavour to transfer to the Customer the benefit of any manufacturer's warranty or guarantee given to the Company and the Company warrants (subject to the other provisions of these Conditions) that:

- (a) on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- (b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in its written acknowledgment of the Customer's order that it will supply Goods suitable for that purpose, then the Goods shall be reasonably fit for the purpose so stated; and
- (c) the Services will be performed with reasonable skill and care.

9.2 The Company's liability pursuant to clause 9.1 shall be limited, at the Company's option:

- (a) for Goods, to the replacement of any part of the Goods found to be defective and notified to the Company within the period set forth in clause 9.3 (or, if the claim is on any manufacturer's warranty, within the relevant manufacturer's warranty period); and
- (b) for Services, to re-performing those Services found not to have been performed with reasonable skill and care and notified to the Company within the period set forth in clause 9.3; or
- (c) to refunding that part of the Contract price already paid by the Customer for the Goods and/or Services (as applicable) which is directly referable to the breach of the applicable warranty in clause 9.1.

9.3 Any defect or deficiency in or failure to correspond to specification of the Supplies shall be notified to the Company within 3 days of the date of delivery of the Goods or completion of performance of the Services, as applicable; otherwise, the Supplies shall be deemed to be satisfactory and a charge will be made for additional rectification work. With respect to the Goods, minor variations in wood finish colours shall not be deemed to constitute a defect or deficiency, nor a failure to correspond to specification.

9.4 The Company shall not be liable for any breach of any warranty in clause 9.1, if:

- (a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect;
- (b) the Customer modifies, adjusts, alters or repairs the Goods without the prior written consent of the Company;
- (c) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (d) the defect arises from any Input Material, or from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse of the Goods or from any other cause which is not due to the neglect or default of the Company;
- (e) the defect relates to work external to the Goods, or arises by virtue of any act or omission of the Customer relating to the operation of the Goods, or through transportation or relocation of the Goods not performed by, for or on behalf of the Company, or by subjecting the Goods to any unusual physical or other stress or adverse environmental conditions or by use of the Goods in excess of any performance specifications stated in the Company's catalogue or otherwise stated by the Company;
- (f) the full price for the Supplies has not been paid by the time for payment stipulated in clause 7.2; or
- (g) the defect is of a type specifically excluded by the Company by notice in writing.

9.5 If upon investigation, the Company reasonably determines that any defect or deficiency in or failure to correspond to specification of the Supplies is a result

of, or is excused by, any of the matters referred to in clause 9.4, the Customer shall be liable for all costs reasonably incurred by the Company in investigating the same and determining the cause.

- 9.6 Subject to and without limiting the generality of any of the provisions of this clause 9, additional individual warranties apply to certain Goods and aspects of the Goods. The terms of any such warranty (including the warranty period) are contained in a separate warranty document published by the Company, which may be obtained from the Company upon request.

## 10. LIMITATION OF LIABILITY AND INDEMNITY

- 10.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of these Conditions;
- (b) any use made or resale by the Customer of any of the Goods (or of any product incorporating any of the Goods) and any use made by the Customer of the Services; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

- 10.3 Nothing in these Conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2 (3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

- 10.4 Subject to clause 10.2 and clause 10.3:

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

- 10.5 Without limiting any other indemnity of the Customer under these Conditions, the Customer shall hold the Company harmless and keep the Company fully and

promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract or breach thereof, subject to the Company confirming such costs, charges and losses to the Customer in writing.

## 11. CHANGES

The Company reserves the right without prior approval from or notice to the Customer to make any changes in the specification of the Goods and/or Services which are required to conform to any applicable safety or other statutory or regulatory requirements or which, in the reasonable opinion of the Company, do not materially affect the specification of the Goods and/or Services.

## 12. RISK AND TITLE

- 12.1 The Goods are at the risk of the Customer from the time of delivery.

- 12.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full (including any interest or other sums payable) in cash or cleared funds:

- (a) for the Goods; and
- (b) for any other goods or services that the Company has supplied to the Customer in respect of which payment has become due.

- 12.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company'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 against all risks for their full price from the date of delivery and indemnify the Company against all loss or damage of whatsoever nature affecting the Goods;
- (e) notify the Company immediately if it becomes subject to any of the events listed in clause 13.1 (c) or (d);
- (f) not assign to any other person any rights arising from a sale of the Goods without the Company's written consent (and then only subject to a set of terms and

# CONDITIONS OF SUPPLY



conditions containing a Risk and Title clause which is at least as onerous as this clause 12); and

- (g) give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may use or resell the Goods in the ordinary course of its business, provided always that nothing herein shall constitute the Customer the agent of the Company for the purpose of any such resale of the Goods.

12.4 If:

- (a) the Customer is late in paying for the Goods; or
- (b) the Customer is late in paying for any other goods or services supplied by the Company; or if
- (c) before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.1 (c) or (d) or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then provided that the Goods have not been irrevocably incorporated into another product and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, the Company may enter any premises of the Customer or of any third party where the Goods are stored or kept in order to recover them. The Customer shall not keep the Goods at any premises other than such premises specified in writing by the Customer to the Company in the Company's written acknowledgment of order, or otherwise at any premises in respect of which the Customer does not have the right to grant access to the Company.

12.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of the Goods has not passed from the Company.

## 13. TERMINATION

13.1 Without prejudice to any other rights or remedies which the Company may have, the Company may terminate the Contract without liability to the Customer immediately on giving notice to the Customer if:

- (a) the Customer fails to make any payment due to the Company hereunder by its due date; or
- (b) the Customer commits a material or continuing breach of any of the provisions of the Contract and if the breach is capable of remedy, fails to remedy it within 14 days of receiving written notice of the breach; or
- (c) the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over

its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

- (d) the Customer suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security, or the Customer ceases or threatens to cease to trade.

13.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of any Goods and/or Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

13.3 On termination of the Contract (however arising), clauses 9-12 shall survive and continue in full force and effect.

## 14. ASSIGNMENT/SUBCONTRACTING

- 14.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 14.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 14.3 The Company, but not the Customer, shall be entitled to subcontract any or all of its obligations under all or any part of the Contract.

## 15. GENERAL

- 15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 15.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.
- 15.3 If any provision of the Contract is found by any court,



# CONDITIONS OF SUPPLY

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tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 15.4 Failure or delay by the Company 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.
- 15.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 15.7 The Company shall be entitled at its discretion to perform any of the obligations assumed by it and to exercise any of its rights granted to it under the Contract through any other company or subsidiary.
- 15.8 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 15.9 Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society whose decision as to the type, qualifications and experience of such arbitrator shall be final and binding on the parties. The costs of the arbitrator shall be borne by the parties as he directs and his decision on the issue in dispute shall be final.
- 15.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.