

CONDITIONS OF PURCHASE

1. Definitions and Interpretation

- 1.1 The definitions and rules of interpretation in this condition shall apply in these conditions.
- (a) **"Buyer"** means The Boro Foundry Limited;
 - (b) **"Conditions"** means these terms and conditions;
 - (c) **"Contract"** means the Contract between the Buyer and the Seller for the sale and purchase of the Goods consisting of the Order, these Conditions, and other documents (or parts thereof) specified in the Order (as if fully set out in the Order) and the Seller's written acceptance of the Order;
 - (d) **"Goods"** means the Goods or Services (and any parts thereof) to be supplied to the Buyer pursuant to the Contract and any reference in these Conditions to Goods shall also include Services, except where Services are separately identified;
 - (e) **"Intellectual Property Rights"** means any patent, registered design, copyright, database right, design right, topography right, trade or service mark, trade or business name, domain name, trade secret, know-how and right of confidence and any other intellectual property right of any nature, in all cases whether or not registered or registrable in any country, for the full term of such rights, including any extension or renewal of the terms of such rights and including registrations and applications for registration of any of such rights anywhere in the world;
 - (f) **"Order"** means the Order placed by the Buyer whether in writing, verbally, electronically or otherwise for the supply of Goods;
 - (g) **"Services"** means the services (if any) described in the Order to be undertaken by the Seller;
 - (h) **"Seller"** means the person, firm or company to whom the Order is addressed.
- 1.2 The headings in these Conditions are intended for reference only and do not affect their construction.
- 1.3 A reference to a clause is a reference to a clause of these Conditions.
- 1.4 Any reference to a **"party"** means a party to the Contract and **"parties"** shall be construed accordingly.
- 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.

1.8 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2. Application of Conditions and Contract Formation

2.1 All Goods purchased by the Buyer are purchased subject to these Conditions, which shall be the sole terms and Conditions governing any purchase of Goods by the Buyer from the Seller.

2.2 These Conditions will prevail over any other terms and conditions contained or referred to in any acknowledgment of Order, form of contract, letter or other communication sent by the Seller to the Buyer and acceptance of the Order by the Seller shall indicate unqualified acceptance of these Conditions.

2.3 No Goods shall be deemed to have been purchased by the Buyer and no Contract shall come into existence until the Seller accepts the Order in writing.

2.4 Without prejudice to any of the Seller's obligations under these Conditions, the Seller acknowledges that any forecasts, forward projections or schedules of volume provided to the Seller by the Buyer are given only as an indication of the Buyer's requirements, are not binding and are subject to change without notice.

2.5 In the event that the Goods are not likely to be available at the time required for fulfilment of the Order and will prevent the Order from being fulfilled on time, the Seller shall notify the Buyer as soon as reasonably practicable of such unavailability. No substitutes shall be used without the consent of the Buyer.

2.6 No variation to the Order or these Conditions shall be binding unless expressly agreed in writing by a Director of the Buyer.

2.7 Without prejudice to any of its rights under clause 18, the Buyer shall be entitled to cancel an Order at any time prior to delivery or performance and pay the price of the Goods or Services so cancelled, less the savings in cost to the Seller arising from such cancellation.

3. Buyer's Property

3.1 All specifications, drawings, designs, patterns, tools, dies, moulds and other items furnished by the Buyer to the Seller:

- (a) are confidential and shall not be disclosed by the Seller to any other person without the prior consent of the Buyer;

- (b) shall not be copied or used for any other purpose other than for the carrying out of the Seller's obligations under the Contract;
- (c) shall at all times remain the sole and exclusive property of the Buyer;
- (d) shall be returned at the Seller's risk and expense in good order and condition to the Buyer immediately upon request or upon completion or termination of the Contract; and
- (e) shall be insured against all risks by the Seller whilst they are in its possession.

3.2 Where the Goods are designed, created or otherwise developed by or for the Seller pursuant to the Contract, then all Intellectual Property Rights therein or relating thereto throughout the world shall belong to the Buyer absolutely. The Seller hereby assigns all such Intellectual Property Rights to the Buyer with the intent that upon the making or creation thereof the Intellectual Property Rights shall automatically vest in the Buyer.

3.3 The Seller shall at the Buyer's request (and notwithstanding the termination of the Contract) sign and execute and procure the signature and execution of all such documents and do all such acts as the Buyer may reasonably require:

- (a) to vest the legal title in, apply for, obtain and maintain in force in the Buyer's sole name (unless it otherwise directs) the Intellectual Property Rights;
- (b) to resist any objection or opposition to obtaining, and any petitions or applications for revocation of, any of the Intellectual Property Rights;
- (c) to bring any proceedings for infringement of any of the Intellectual Property Rights.

3.4 The Seller irrevocably undertakes that it shall not assert against the Buyer any moral rights in or relating to the Intellectual Property Rights and warrants that all such moral rights are irrevocably waived and extinguished. For the purpose of this clause 3.4, moral rights shall have the meaning ascribed thereto by the Copyright, Designs and Patents 1988 Act and shall include all rights similar or corresponding thereto subsisting in any other country of the world from time to time.

4. Seller's Obligations

4.1 Without prejudice to any other rights the Buyer may have, the Seller warrants to the Buyer that:

- (a) the Goods shall be fit for all purposes of the Buyer made known to the Seller, or which should otherwise be reasonably apparent to the Seller. The Seller shall satisfy itself that it fully understands the Buyer's requirements so as to be in a position to comply with its obligations under this clause 4.1 (a) and also to prevent delay on account of any modifications to the Goods which may be necessary to meet the Buyer's requirements. The cost of any such modifications shall be deemed to be included in the price of the Goods;

- (b) the Goods comply in all respects with all relevant British, European and international statutory requirements, regulations, orders and standards relating to the Goods and the Seller expressly warrants that the Goods supplied under the Order have been or will be manufactured and sold free from all liens, charges, claims and encumbrances and in compliance with all relevant laws and regulations in force in the United Kingdom.

4.2 Without prejudice to clause 4.1, the Seller warrants that all Goods supplied under the Order shall:

- (a) be of the quality, quantity, size, description, specification and dimensions specified in the Order or otherwise indicated by the Buyer;
- (b) be of sound materials and of proper workmanship and design;
- (c) be free from all defects, including latent defects;
- (d) conform to any drawings or designs contained in or referred to in the Order;
- (e) conform to any material relating to the Goods and Services contained in any advertisements, catalogues, literature or correspondence published or issued by the Seller, or appearing on the Seller's website;
- (f) be equal in all respects to any samples provided by the Seller which have been approved by the Buyer;
- (g) be capable of any standard of performance specified in the Order and/or the Seller's quotation;
- (h) be supplied at no additional cost with all instructions, handbooks, training materials and safety data sheets required for the safe and proper use and operation of the Goods; and
- (i) be supplied at no additional cost with adequate spares and an after-sales service for the period specified in the Order, or if no such period has been specified in the Order, for such period as is reasonable, having regard to the type, value and proposed use and maintenance requirements of the Goods.

4.3 Without prejudice to clauses 4.1 or 4.2, the Seller warrants that:

- (a) it shall for the duration of the Contract maintain sufficient manufacturing capacity and stocks of Goods to enable it to meet any Order and shall at all times maintain full quality and traceability records;
- (b) it shall obtain and maintain in force at its sole expense for the duration of the Contract all licences, permissions, authorisations, consents and permits needed to produce, supply and deliver the Goods in accordance with the Contract;

- (c) it shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the production, packing, packaging, marking, labelling, storage, handling, supply and delivery of the Goods;
- (d) the Services will be performed by appropriately qualified and trained personnel in a timely and good and workmanlike manner and to the highest standard of quality prevailing in the industry at the time of performance and that the Seller shall observe any instructions given to it by the Buyer in connection with the performance of the Services, including any instructions regarding the health and safety and security policies that apply at the Buyer's premises (and the Buyer may exclude any of the Seller's personnel from the Buyer's premises for any actual or threatened breach of any such policies);
- (e) it has disclosed to the Buyer any information or requirements affecting the Buyer under the Health and Safety at Work Act 1974 and that any written information required to be supplied pursuant to that Act has been delivered to the Buyer.

4.4 The Seller hereby agrees to indemnify and keep indemnified and hold the Buyer harmless from all loss, damage, expenses, costs, charges, claims, demands or actions, whatsoever incurred or suffered by the Buyer and/or for which it may be liable to any third party due to, arising from or in connection with:

- (a) all claims of whatsoever kind and from whomsoever arising for damage or injury to property or persons arising out of the act or omissions or the negligence of the Seller, its employees, servants, agents, subcontractors or others in connection with the performance of its obligations under the Contract save insofar as the same is attributable solely to the negligence of the Buyer or its employees, servants, agents or subcontractors;
- (b) the breach of any provision of the Contract by the Seller (including any negligent performance or failure or delay in performing any obligation under the Contract);
- (c) any breach of any warranty given by the Seller in clause 4.1, 4.2 or 4.3;
- (d) any breach of the warranty given by the Seller in clause 8.1;
- (e) any defect in the workmanship, materials or design of the Goods or their packaging;
- (f) any claim made by or against the Buyer and arising out of, or in connection with, the supply of the Goods or the Services;
- (g) any failure of the Goods or Services to comply with any law or regulation applicable to them;
- (h) any infringement or alleged infringement of any Intellectual Property Rights for or relating to the Goods or to the importation, use or resale of the Goods (save where said infringement arises directly from the Buyer's instructions to the Seller);

- (i) any liability under the Consumer Protection Act 1987 in respect of the Goods.
- 4.5 The Seller shall insure adequately against all loss, damage or injury or other claims which may be incurred by the Seller or the Buyer which may arise in any way whatsoever out of the Contract and without prejudice to the generality of the foregoing, shall be adequately insured for third party and employer's liability. At the request of the Buyer, the Seller shall provide evidence of such insurance and payment of the current premiums.
- 4.6 The Seller shall:
 - (a) do nothing to invalidate any insurance policy or to prejudice the Buyer's entitlement under it; and
 - (b) notify the Buyer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 4.7 The Seller's liabilities under the Contract shall not be deemed to be released or limited by the Seller taking out the insurance referred to in clause 4.5.
- 4.8 If the Seller fails or is unable to maintain insurance in accordance with clause 4.5, or fails upon request by the Buyer to provide evidence that it has paid the current premiums in accordance with clause 4.5, the Buyer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Seller.
- 5. Samples, Testing and Inspection**
- 5.1 The Seller shall submit samples of the Goods for the Buyer's approval before the Goods are delivered if requested by the Buyer. Such samples of Goods should be marked by the Seller clearly and appropriately for identification and will be retained by the Buyer until after the Goods have been delivered.
- 5.2 The Buyer or its authorised agent shall be entitled to make such tests or carry out such inspections of Goods during manufacture, processing and storage and inspect any equipment used to manufacture such Goods. The Seller shall at its own cost provide or shall procure the provision of all facilities as may be reasonably required and give all assistance and make available all pertinent drawings and plans to the Buyer or its authorised agent for such tests or inspections. Before despatching the Goods, the Seller shall carefully inspect them for compliance with the Order approved samples and/or the specification and shall give the Buyer reasonable notice of any tests to be carried out so that the Buyer may be represented at such tests. The Seller shall at the request of the Buyer supply to the Buyer a copy of the Seller's test and/or inspection reports certified by the Seller to be a true copy and the Seller shall retain the original documents for a period of three years.
- 5.3 If as a result of any test or inspection report under clause 5.2 above, the Buyer considers that the Goods do not comply with the Order or Order samples approved by the Buyer and/or specification (if any), or are unlikely on completion of manufacture or processing so

to comply, the Buyer shall notify the Seller in writing and the Seller shall promptly take such steps as may be necessary to ensure such compliance at its sole cost.

5.4 The Buyer shall have the right to inspect any Services performed by the Seller pursuant to the Contract and the Seller shall allow all reasonable access and assistance to the representatives of the Buyer to enable such representatives to carry out the inspection promptly, including providing the Buyer with any information that may be reasonably required.

5.5 No testing or inspection undertaken pursuant to this clause 5 (nor any results thereof) shall diminish any other obligation of the Seller under the Contract, nor shall any such inspection or testing or any results thereof be deemed to amount to, or to be tantamount to, acceptance of the Goods.

6. Price

6.1 The price of the Goods shall be the price stated in the Order and shall not be subject to change without the prior written consent of the Buyer and shall include all charges for packing, packaging, carriage, insurance and delivery of the Goods to the Buyer and any clearance charges, import taxes or duties or other duties whatsoever. Without prejudice to the foregoing provisions of this clause 6.1, all Goods imported into the United Kingdom by or on behalf of the Seller shall be Delivered Duty Paid (**DDP**) as that term is defined in the Incoterms 2010 Rules.

6.2 No additional charges shall be accepted by the Buyer without the prior consent of the Buyer in writing.

6.3 Unless otherwise agreed by the Buyer in writing, any costs incurred by the Seller in respect of secondary packaging (including the cost of pallets) are the Seller's responsibility and shall be included in the price of the Goods.

6.4 The Buyer shall be entitled to:

- (a) any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller; and
- (b) the benefit of any other cost saving incurred by the Seller, whether or not shown on its own terms and conditions of sale.

7. Payment

7.1 Unless otherwise agreed in writing by the Buyer, payment shall be made 60 days from the end of the month of receipt by the Buyer of the Seller's invoice, or delivery of the Goods or performance of the Services specified in the Contract, whichever is later.

7.2 The Buyer shall be free to make payment to the Seller by whichever method and in whatever currency the Buyer chooses.

- 7.3 If any sum under the Contract is not paid when due, the Seller shall not be entitled to suspend delivery of the Goods as a result of any sums being outstanding.
- 7.4 The Buyer shall be entitled to set off against the sum shown to be due, all sums due from the Seller to the Buyer or the amount of any claim against the Seller from the Buyer in respect of the Order, or any other contract or transaction between the Buyer and the Seller.
- 7.5 Payment of the invoice by the Buyer shall not constitute acceptance of the Goods and is without prejudice to any claims the Buyer might have against the Seller.
- 7.6 All invoices shall:
- (a) be rendered with the Order and the Order number;
 - (b) be supported by an appropriate statement of accounts;
 - (c) be in respect of one Order only; and
 - (d) be sent to the address notified to the Seller.
- 7.7 Any failure to submit invoices in accordance with the requirements of clause 7.6 will result in the invoice being returned to the Seller.

8. Product Recalls

- 8.1 The Seller warrants that it shall immediately notify the Buyer in writing providing all relevant details if it discovers:
- (a) that there is or may be a defect in the Goods which have been delivered to the Buyer at any time;
 - (b) any error or omission in the instructions for the use and/or assembly of the Goods;
 - (c) a risk that the Seller suffers or will suffer any incident that may damage the Buyer's reputation;
 - (d) that any such defect, error or omission represents a breach of any warranty which causes or may cause any risk of death, injury or damage to property; or
 - (e) that it receives any complaints relating to the Goods from its customers.
- 8.2 Where any of the circumstances in clause 8.1 apply, the Buyer may in its absolute discretion, or by order of any authority, at the Seller's expense:
- (a) recall any Goods or any other Goods into which the Goods have been incorporated and sold by the Buyer to its customers (whether for a refund, credit or replacement, which shall in each case be undertaken by the Seller at the Buyer's discretion); and/or

(b) issue any notification whether in writing or otherwise to its customers about the manner of use or operation of any Goods or any other Goods into which the Goods have been incorporated and sold by the Buyer to its customers; in each case on the basis of the identification whether by the Buyer, its customers or any third party of any defect in the relevant Goods or any error or omission in the instructions for their use or assembly (whether or not that defect, error or omission represents a breach of any warranty) which the Buyer reasonably concludes affects or may affect any of the Goods supplied which causes or may cause any risk of death, injury or damage to property.

8.3 The Buyer will wherever practicable notify the Seller prior to taking such decision as detailed in clause 8.2 and afford the Seller the opportunity to make representations.

8.4 If the Buyer conducts a recall of Goods, the Seller shall cooperate with the Buyer and provide all assistance that is reasonably required to ensure that the Goods are recalled promptly and effectively. The parties shall have the following responsibilities:

(a) the Seller shall follow local procedures covering recall of Goods subject to any directions received from the Buyer;

(b) the Seller must ensure that it retains all batch records and product information relating to the recalled Goods and that these records are made available to the Buyer within four hours of notification of a Product recall;

(c) upon the Buyer's request, the Seller shall cease delivering the recalled Goods to the Buyer;

(d) the Seller shall only supply Goods replacing the recalled Goods upon the Buyer's request in writing.

8.5 The Seller shall reimburse the Buyer for losses as a result of or in connection with such recall of Goods and/or for arising out of the Seller's performance, or purported performance of, or failure to perform its obligations under the Contract.

9. Delivery and Performance

9.1 Each delivery must be accompanied by a copy of the Order.

9.2 Time of delivery of the Goods and time of performance of the Services shall be of the essence.

9.3 Delivery in instalments shall be permitted only with the consent of the Buyer in writing. Where the Buyer agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment, but failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

- 9.4 In the event that the Buyer is not able to accept delivery of the Goods when due, the Seller shall be responsible for arranging suitable storage at suitable premises for the Goods, advising the Buyer beforehand of the particulars of such proposed storage, and the Seller shall also ensure that the Goods and the premises in which they are stored are properly insured against all the usual risks and shall notify the Buyer of such insurance cover. The Buyer shall be liable for the reasonable cost, including insurance, of so doing.
- 9.5 If the Goods are delivered to the Buyer in excess of the quantities ordered, the Buyer shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.
- 9.6 The Goods shall be delivered at the time or within the period specified in the Order to the address indicated in the Order.
- 9.7 Delivery of the Goods shall be complete on the completion of unloading and stacking of the Goods at the address indicated in the Order. The Seller shall immediately notify the Buyer when delivery has been completed pursuant to this clause 9.7. Delivery shall take place during the Buyer's normal business hours.
- 9.8 The Services shall be performed at the address indicated in the Order or as otherwise directed by the Buyer.
- 9.9 If the Goods or any part thereof are not delivered within the time or times specified in the Contract or any extension of such time or times, the Buyer may recover from the Seller as liquidated damages and not by way of penalty a percentage of that part of the Contract which is properly apportionable to the Goods undelivered and to any other Goods already delivered under the Contract which cannot be effectively and commercially used by the Seller's failure entirely to perform the Contract. In addition to the Buyer's rights under this clause 9.9 as aforesaid, the Buyer may:
- (a) refuse to take any subsequent attempted delivery of the Goods;
 - (b) terminate the Contract with immediate effect;
 - (c) obtain substitute Goods from another seller and recover from the Seller any costs and expenses reasonably incurred by the Buyer in obtaining such substitute Goods; and
 - (d) claim damages for any other costs, expenses or losses directly or indirectly resulting from the Seller's failure to deliver the Goods as aforesaid.
- 9.10 Each delivery shall be accompanied by a delivery note from the Seller showing:
- (a) the Order number;
 - (b) the date of the Order;
 - (c) the type and quantity of Goods included in the Order; and

(d) where the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

9.11 The Seller shall be obliged to obtain the signature of the Buyer's representative on the delivery note required pursuant to clause 9.10, but such signature shall not indicate acceptance of the Goods.

9.12 If the Seller requires the Buyer to return any packaging materials to the Seller, that fact must be clearly stated on the delivery note accompanying the Order, and any such returns shall be at the Seller's expense.

9.13 If the Seller is in the position of being able to supply some but not all of its customers the Buyer shall be given priority over all other of the Seller's customers.

9.14 If delivery is made before the delivery date specified in the Order, the Buyer may return the Goods to the Seller at the Seller's risk and expense. In any event, payment will be withheld and the payment period will begin to run from the delivery date specified in the Order or the date of receipt by the Buyer of a correct invoice, whichever is the later.

10. Risk and Property

10.1 Until delivered by the Seller in accordance with clause 9, the Goods shall remain at the risk of the Seller who shall insure the same against all risks which can be reasonably contemplated as affecting the Goods. Subject to the Buyer's right of rejection of the Goods, the property in the Goods shall pass to the Buyer upon delivery, or payment of the price of the Goods, whichever is the earlier.

10.2 The provisions of clause 10.1 shall apply without limitation to any patterns, tools, dies or moulds procured by the Seller for use in connection with the Goods and which are to remain at the Seller's premises to facilitate the ongoing supply of the Goods. Upon receipt of the Buyer's written request, the Seller shall immediately release such patterns, tools, dies or moulds to the Buyer.

11. Labelling and Packaging

11.1 Prior to despatch, the Goods shall be properly labelled, packed and secured in the manner specified in the Order and in any event in a manner so as to reach their destination in good condition under normal conditions of transport, having regard to the nature and composition of the Goods.

11.2 Subject to clause 11.1, all export shipments must meet all export shipping requirements and must be adequately boxed or crated with any special handling clearly marked and contents waterproofed and otherwise protected to prevent damage in transit.

12. Acceptance and Rejection

- 12.1 Without prejudice to any other of its rights, the Buyer may by notice in writing to the Seller reject any or all of the Goods or Services if the Seller fails to comply with any of its obligations under the Contract. Section 15A of the Sale of Goods Act 1979 shall not apply.
- 12.2 The Buyer shall not be deemed to have accepted any Goods or Services until the Buyer has had a reasonable time to inspect them following delivery or performance, or if later, within a reasonable time after any latent defect has become apparent.
- 12.3 If any Goods are rejected by the Buyer in accordance with clause 12.1, then the Buyer may:
- (a) require the Seller to replace the rejected Goods at the Seller's risk and expense within 5 business days of being requested to do so;
 - (b) terminate the Contract with immediate effect;
 - (c) refuse to pay the Contract Price for the rejected Goods, without liability to the Seller;
 - (d) where the Goods have already been paid for in part or in full, require the Seller to repay the Contract Price for the rejected Goods in part or in full, as applicable (whether or not the Buyer has previously required the Seller to replace the rejected Goods); and
 - (e) claim damages for any other costs, expenses or losses resulting directly or indirectly from the Seller's delivery of the rejected Goods.
- 12.4 The Buyer's rights and remedies under clause 12.3 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the Contract by the Sale of Goods Act 1979.
- 12.5 Clause 12.3 shall apply, without limitation, to any replacement Goods supplied by the Seller.
- 12.6 If the Seller fails to promptly replace rejected Goods in accordance with clause 12.3 (a), the Buyer may, without affecting its rights under clause 12.3 (e), obtain substitute Goods from a third party Seller and the Seller shall reimburse the Buyer for the costs it incurs in doing so.
- 12.7 The Seller shall promptly re-perform any Services found to have been performed defectively within 12 months of the date of their performance.

13. Buyer's Identification

- 13.1 The Seller agrees that any identification used by the Buyer such as trademarks, trade names, logos or any markings or decorative styling shall be used only on articles supplied to the Buyer.

14. Advertising

14.1 The Seller shall not without the prior written consent of the Buyer advertise or make it known to third parties that the Seller supplies Goods to the Buyer.

15. Shipping Documents

15.1 Shipping documents must be sent by first class mail to the Buyer's office indicated on the Order on the day on which shipment is made. When Goods are invoiced by the Seller but shipped by a third party the invoice shall bear the name of the shipper and the point from which shipment originated.

16. Assignment

16.1 The Seller may not assign or transfer the Order or any rights or obligations thereunder to any other person, firm, Buyer or third party without the prior written consent of the Buyer.

17. Subcontracts

17.1 The Seller shall not subcontract any of the work contemplated to be performed by the Seller under the Order without the prior written consent of the Buyer. If such written consent is granted, the Seller shall if requested furnish unpriced copies of all subcontracts to the Buyer.

18. Termination

18.1 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith without liability to the Seller if:

- (a) the Seller commits a material breach of any of these Conditions and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach; or
- (b) the Seller repeatedly breaches any of these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these Conditions; or
- (c) any distress, execution or other process is levied upon any of the assets of the Seller, or the Seller 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 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 over the Seller or notice of intention to appoint an administrator is given by the Seller 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 Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or

- (d) any event occurs, or proceeding is taken, with respect to the Seller under the laws of any jurisdiction to which the Seller is subject, that has an effect equivalent or similar to any of the events or proceedings mentioned in clause 18.1 (c); or
- (e) the Seller ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- (f) the financial position of the Seller deteriorates to such an extent that in the reasonable opinion of the Buyer, the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

18.2 The termination of the Contract, however arising, shall be without prejudice to the rights of the Buyer accrued prior to termination. Any Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

18.3 Without prejudice to the generality of clause 18.2, upon termination of the Contract the Buyer shall be entitled (at its entire discretion):

- (a) to return to the Seller at the Seller's risk and expense any of the Goods already delivered but which cannot be effectively and commercially used by reason of the Seller's failure entirely to perform the Contract and to recover any monies paid by the Buyer in respect of such Goods;
- (b) to demand by notice in writing, where applicable, that the Seller shall within a reasonable time replace the Goods in respect of which the Contract has been determined with Goods which are in all respects in accordance with the Contract;
- (c) to recover from the Seller, where applicable, any additional expenditure reasonably incurred by the Buyer in obtaining other Goods in replacement of those in respect of which the Contract has been determined.

19. Warranty

19.1 Without prejudice to any other remedy which the Buyer may have, the Seller shall as soon as reasonably practicable upon a request by the Buyer to do so, replace or (at the Buyer's option) repair all Goods which are or which become defective during the period of 12 months from the date of delivery to the Buyer, where such defect occurs under proper usage and is due to faulty design, or inadequate or faulty materials or workmanship, the Seller's erroneous instructions as to use, or breach by the Seller of a provision of the Contract. Repairs and replacements shall be subject to the foregoing warranty for a period of 12 months from the date of delivery after replacement or repair.

19.2 If the Seller fails to repair or replace any defective Goods in accordance with the requirements of clause 19.1, the Buyer may have the Goods repaired or replaced by a third party and recover the costs of so doing from the Seller.

20. Force Majeure

20.1 The Buyer shall not be liable to the Seller or deemed to be in breach of Contract by reason of any delay due to, or any loss or damage occasioned by, any cause arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the Buyer, including Acts of God, strikes, lock-outs, labour shortages, shortage of power, materials, malicious damage or obligatory voluntary compliance with any request having or appearing to have authority in that regard whether for defence or other national or local governmental purposes or otherwise. In any such case, the Order shall be suspended during such delay and shall again become operative upon the termination of such cause, provided that to meet any altered circumstances occasioned by such delay the Buyer may make such variations to the terms of the Order as are in its opinion, reasonable and if the Seller does not agree thereto the Buyer may cancel the Order insofar as it remains unperformed but shall pay a proportionate part of the quoted price for work done and Goods supplied prior to the event of force majeure. In the event of any dispute as to the proper proportion payable as aforesaid, the matter shall be settled by the Buyer's auditors who shall act as experts and not arbitrators and whose decisions shall be final and binding.

21. Miscellaneous

21.1 No right or remedy conferred upon or reserved to the Buyer is exclusive of any other right or remedy herein or by law or equity provided or permitted but each shall be cumulative of every other right or remedy given hereunder or now hereafter existing and may be enforced concurrently therewith or from time to time.

21.2 If any provision (or part of a provision) of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

21.3 No failure or delay by either party in exercising any right, power or privilege under the Contract will impair or operate as a waiver of the same, nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

21.4 The Contract will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Contract. Neither party will have, nor represent that it has, any authority to make any commitments on the other party's behalf.

21.5 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded

delivery or by commercial courier to the other party and for the attention of the person specified by the relevant party by notice in writing to the other party. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

- 21.6 Subject to the Buyer's liability to pay the Seller for the price of the Goods in accordance with and subject to these Conditions, the Buyer accepts no liability to indemnify the Seller for any loss, damage, expenses, costs, charges claims, demands or actions incurred by the Seller whether under the Contract or otherwise, including any liability to any third party. The aggregate liability of the Buyer under the Contract or otherwise (if any) shall not in any event exceed the price of the Goods. Nothing in this clause 21.6 shall operate so as to exclude or limit the Buyer's liability for personal injury or death attributable to its own negligence, or for fraud or fraudulent misrepresentation, or so as to exclude or limit any other liability of the Buyer that cannot be excluded or limited by law.
- 21.7 In addition to any other confidentiality obligation imposed on the Seller by these Conditions, the Seller undertakes not to disclose any information disclosed to it which has been expressed by the Buyer to be confidential or which should reasonably be supposed by the Seller to be confidential (including any information relating to the Buyer's business, production processes or any trade secrets of the Buyer) and the Seller shall not use any such information other than for the purpose of discharging its obligations under the Contract. Notwithstanding the provisions of this clause 21.7, the Buyer reserves the right to require the Seller to sign a Non-Disclosure Agreement.
- 21.8 No third party shall be entitled to enforce any of the terms of the Contract under the Contracts (Rights of Third Parties) Act 1999.
- 21.9 The Order and these Conditions contain the whole agreement between the parties and supersede and replace any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Order or these Conditions.
- 21.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties irrevocably agree to submit to the exclusive jurisdiction of the English Courts.