

# CPL Distribution Limited

## Terms and Conditions of Sale

**NOTICE TO CONSUMERS: THESE TERMS AND CONDITIONS OF SALE CONTAIN IMPORTANT TIME LIMITS WHICH YOU MUST COMPLY WITH IN THE EVENT THAT YOU ARE UNHAPPY WITH ANY OF THE GOODS SUPPLIED TO YOU BY US. IT IS THEREFORE ESSENTIAL THAT YOU READ AND UNDERSTAND THESE TERMS AND CONDITIONS.**

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:
- 1.2 **"Affiliates"** means in relation to CPL Industries Ltd any group undertaking of CPL Industries Ltd, where group undertaking has the meaning given to it in section 1161(5) of the Companies Act 2006 (as amended).
- "Conditions"** means these terms and conditions of sale.
- "Consumer"** shall have the same meaning as set out in the Unfair Terms in Consumer Contract Regulations 1999.
- "Contract"** means a contract for the sale of Goods made by or on behalf of the Supplier with a Customer.
- "Customer"** means a person to whom the Supplier supplies or is to supply Goods pursuant to a Contract.
- "Distance Contract"** shall have the same meaning as set out in the Consumer Protection (Distance Selling) Regulations 2000.
- "Goods"** means the goods which the Supplier supplies pursuant to a Contract.
- "Incoterms"** means the International Chamber of Commerce standard terms for the international supply of goods 2000.
- "Order"** means an order in writing for the Goods received by the Supplier from the Customer.
- "Supplier"** means CPL Distribution Limited a company registered in England and Wales under number 544782 whose registered office is at Mill Lane, Wingerworth, Chesterfield, Derbyshire S42 6NG or one of its Affiliates as stated in the Contract.
- "Working Day"** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday.
- 1.3 In these Conditions (unless the context otherwise requires):
- 1.3.1 construction of these Conditions shall ignore the headings (all of which are for reference only);
- 1.3.2 any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision; and
- 1.3.3 in the event that any provisions of the Contract conflict with these Conditions then the provisions of the Contract shall prevail.

### 2. APPLICATION

- 2.1 These Conditions shall govern and be incorporated into every Contract, and shall prevail over any terms or conditions (whether or not inconsistent with these Conditions) contained or referred to in any correspondence, Order, documentation submitted by the Customer or elsewhere or implied by custom, practice or course of dealing. Where the Customer is dealing as a Consumer and wishes to rely on any variation to these Conditions, then the Customer must ensure that such variation is notified to and agreed by the Supplier in writing before requesting delivery of the Goods.
- 2.2 The Customer's acceptance of delivery of the Goods shall (without prejudice to Condition 3 or any other manner in which acceptance of these Conditions may be evidenced) constitute unqualified acceptance of these Conditions.
- 2.3 All samples, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's advertising materials are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

### 3. QUOTATIONS AND ACCEPTANCE

- 3.1 A quotation by the Supplier does not constitute an offer and the Supplier reserves the right to revise a quotation prior to acceptance of an Order.
- 3.2 In the case of a business Customer, the Supplier's acceptance of any Order shall be effective only where such acceptance is in writing on the Supplier's order acceptance form and signed by an authorised representative of the Supplier or, if earlier, the Supplier delivers the Goods to the Customer.
- 3.3 Where the Customer is dealing as a Consumer, any quotation or estimate given by the Supplier is an invitation to the Customer to make an offer only. The offer of delivery by the Supplier will constitute a counter offer subject to these Conditions and acceptance of delivery by the Customer will amount to acceptance of the counter offer

made by the Supplier under these Conditions.

#### 4. ONLINE SALES

- 4.1 This Condition 4 only applies where the Customer is purchasing Goods from the Supplier via [www.coals2u.co.uk](http://www.coals2u.co.uk), [www.logs2u.co.uk](http://www.logs2u.co.uk) or [www.creativegardenideas.co.uk](http://www.creativegardenideas.co.uk). the ('**Supplier's Website**').
- 4.2 The display of Goods for sale on the Supplier's Website is an invitation to the Customer to make an offer.
- 4.3 By completing and submitting the electronic order form on the Supplier's Website the Customer is making an offer to purchase the goods, which if accepted by the Supplier, will result in a binding contract.
- 4.4 Upon receipt of the Customer's order form the Supplier will send an acknowledgment of receipt of the offer. This does not mean that the offer has been accepted.
- 4.5 The Supplier will send a formal "acceptance" email within 1 days of receipt of the Customer's order.
- 4.6 The contract will be formed at the time when the Supplier despatches a communication of acceptance.
- 4.7 Payment for all Products must be by credit or debit card. The Supplier accepts payment by VISA, Mastercard, Maestro and Solo
- 4.8 The Customer's card will be debited once payment details are submitted, however, this does not mean that the Customer's offer has been accepted.
- 4.9 The Customer's card will be credited with a full refund if the offer is refused.
- 4.10 If the Customer is purchasing goods from the Supplier's Website and there is any conflict between this Condition 4 and any other provision detailed in these Conditions, this Condition 4 will take precedence.

#### 5. DELIVERY

- 5.1 In the case of a business Customer:
  - 5.1.1 the dates mentioned in any quotation, Order, acceptance form or elsewhere for delivery of the Goods are approximate only and time for delivery is not of the essence and shall not be made so by the service of any notice. The Supplier accepts no liability for failure to deliver on or by a particular date or dates; and
  - 5.1.2 the Supplier will have fulfilled its contractual obligations in respect of each delivery of Goods provided that the quantity actually delivered is not more than 10% more or less than the quantity specified in the Contract. The Customer shall pay for the actual quantity delivered.
- 5.2 Where the Customer is dealing as a Consumer:
  - 5.2.1 the Supplier will do all they reasonably can do deliver the Goods within the agreed timescale (or, if none has been agreed, within 14 days of the day after the Customer's Order), however, the Supplier cannot be held responsible for delays due to Force Majeure Events as defined in Condition 19. If the Goods are not supplied within 14 days and a revised date for delivery cannot be agreed then provided that one of the aforementioned events has not occurred, the Customer will be able to cancel the Contract without penalty and will be refunded any monies paid under the Contract within a period of 14 days from such cancellation; and
  - 5.2.2 if the Supplier delivers more of the Goods than are specified in the Contract, then the Customer may refuse to accept any excess Goods and shall pay only for the actual quantity ordered.
- 5.3 The Supplier will deliver the Goods to the location specified in the Contract or as otherwise agreed with the Supplier.
- 5.4 The cost of delivery within the area specified in the Contract is included in the price but the Supplier will make an additional charge for delivery outside of this area or within this area but otherwise than by its normal carrier or for express delivery.
- 5.5 The Customer is solely responsible for ensuring that the delivery of the Goods can be made safely without injury or damage to any person or property, and for unloading the Goods at the point of delivery. Unless otherwise agreed in writing by the Supplier, the Customer shall unload the Goods immediately on their arrival at the place of delivery. The Customer shall indemnify the Supplier against each loss, liability and cost arising as a result of the Supplier or its sub-contractors assisting the Customer in the unloading, loading or other removal of the Goods from the point of delivery.
- 5.6 The Customer shall upon delivery arrange for an authorised representative to sign the delivery note and such delivery note shall constitute absolute proof of delivery. If no such signature can be obtained the Goods may not be delivered and if so shall be deemed to have been refused under the provisions of Condition 5.6. Where a date and time for delivery has been agreed with the Customer, and either:
  - 5.6.1 the Customer fails to take delivery on the agreed date and time and in accordance with this Condition 5.6; or
  - 5.6.2 the Supplier is unable to complete the delivery of the Goods, due to conditions at the Customer's premises being unsafe, in the reasonable opinion of the delivery driver, having due regard to all the circumstances, the supplier shall be entitled to recover from the Customer the cost of re-delivering the same goods
- 5.7 If the Customer refuses or fails to take delivery of Goods delivered in accordance with a Contract or fails to take any action necessary on its part for delivery or shipment of the Goods:
  - 5.7.1 in the case of a business Customer, the Supplier is entitled to terminate the Contract with immediate effect; or
  - 5.7.2 where the Customer is dealing as a Consumer, the Supplier shall attempt to arrange another date for delivery with the Customer, but if the Customer again refuses or fails to take delivery of the Goods, the Supplier shall be entitled to terminate the Contract on reasonable notice to the Customer, and the supplier may then dispose of the Goods as the Supplier may determine and recover from the Customer any loss or additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery.

- 5.8 Unless otherwise expressly agreed, the Supplier may effect delivery in one or more instalments. If delivery is effected by instalments, each instalment shall be treated as a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

## 6. EXPORT SALES

- 6.1 If the Goods are sold CIF or FOB or on the basis of another Incoterm, the meaning of such Incoterm shall apply, except where inconsistent with any of the provisions contained in these Conditions.
- 6.2 Unless agreed otherwise, the Customer shall secure the price of any Goods sold under an international supply contract as defined by section 26 of the Unfair Contract Terms Act 1977 by establishing in the Supplier's favour an irrevocable letter of credit on terms satisfactory to the Supplier immediately upon receipt of the Supplier's acceptance of an Order and confirmed by a UK bank acceptable to the Supplier.

## 7. RISK AND TITLE - BUSINESS CUSTOMERS

- 7.1 Risk for the Goods passes on delivery but title to the Goods (whether separate and identifiable or incorporated in or mixed with other goods) remains with the Supplier until the Customer pays to the Supplier:
- 7.1.1 the agreed price for the Goods (together with any accrued interest at the rate specified in Condition 10.5); and
  - 7.1.2 all other amounts which are or which become due to the Supplier from the Customer on any account.
- 7.2 Until title to the Goods passes to the Customer under Condition 7.1, the Customer shall:
- 7.2.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
  - 7.2.2 store the Goods (at no cost to the Supplier) separately from all other goods and readily identifiable as the property of the Supplier;
  - 7.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.2.4 maintain the Goods in satisfactory condition; and
  - 7.2.5 not attach the Goods to any other property without the Supplier's consent.
- 7.3 If the Customer resells any Goods in which title has not passed to the Customer, such resale shall be in the ordinary course of the Customer's business at full market value.
- 7.4 At any time before title to the Goods passes to the Customer (whether or not any payment to the Supplier is then overdue or the Customer is otherwise in breach of any obligation to the Supplier), the Supplier may (without prejudice to any other of its rights):
- 7.4.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Customer hereby authorises;
  - 7.4.2 require delivery up to it of all or any part of the Goods.
- 7.5 The Supplier may at any time appropriate sums received from the Customer as it thinks fit, notwithstanding any purported appropriation by the Customer.
- 7.6 The Customer grants the Supplier, its agents and employees and irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or where the Customer's right to possession has terminated, to recover them.
- 7.7 From the time of delivery until title in the Goods passes to the Customer in accordance with Condition 7.1, the Customer shall insure the Goods for their full value with a reputable insurer and, if the Supplier so requests, ensure that the Supplier's name is noted on the insurance policy. Until title in the Goods passes to the Customer, the Customer shall hold the proceeds of any claim on such insurance policy on trust for the Supplier and shall immediately account to the Supplier with the proceeds.
- 7.8 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this condition 7 shall remain in effect.

## 8. RISK AND TITLE - CONSUMER TRANSACTIONS

- 8.1 Risk for the Goods passes on delivery but title to the Goods (whether separate and identifiable or incorporated in or mixed with other goods) remains with the Supplier until the Customer pays to the Supplier the agreed price for the Goods (together with any accrued interest at the rate specified in Condition 10.5).
- 8.2 The Supplier may at any time appropriate sums received from the Customer as it thinks fit, notwithstanding any purported appropriation by the Customer.

## 9. PRICE

- 9.1 The price for each of the Goods to be paid by the Customer to the Supplier are the prices ruling at the time of despatch. Where the Customer is dealing as a Consumer, in the event that the price of the Goods at the date of despatch is more than the price of the Goods on the date of the Supplier's acceptance of the Order, the Customer shall be entitled to cancel the Contract.
- 9.2 The Supplier may at any time prior to delivery of the Goods:
- 9.2.1 withdraw any discount from its normal prices; and/or
  - 9.2.2 revise prices to take account of increases in costs including, without limitation, the cost of any goods, raw materials, transport, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.
- 9.3 The Supplier shall (if applicable) add to the price of the Goods, and the Customer shall pay, an amount equal to any VAT or other sales tax or duty applicable from time to time to sales or supplies of such Goods.

## 10. PAYMENT

- 10.1 The Customer may apply for a credit account with the Supplier at any of the Supplier's branches (subject to acceptable credit references being obtained by the Supplier) and such credit may be used in connection with any Contract between the Customer and the Supplier. The Supplier is under no obligation to grant such credit facility and may at any time withdraw or reduce such credit facility.
- 10.2 The Customer shall make all payments due to the Supplier under any Contract by cash on the date of the acceptance of the Order and where the Customer is to utilise any credit account available to them held with the Supplier then all payments due to the Supplier under any Contract shall be made into the Supplier's bank account in pounds sterling by the 25th day of the month following the date of the relevant invoice. No payment shall be deemed to have been received until the Supplier has received cleared funds.
- 10.3 Time of payment is of the essence of a Contract and the Supplier reserves the right to suspend the provision of Goods to the Customer where any amounts are overdue under any Contract until all such amounts have been paid.
- 10.4 The Customer is not entitled to withhold payment of any amount due to the Supplier by way of any set-off or counterclaim.
- 10.5 If the Customer fails to pay any amount due to the Supplier under any Contract on the due date, interest shall be added to such amount at the rate of 8% (eight per cent) per annum over the base rate for the time being of the National Westminster Bank plc for the period from and including the date of receipt (whether before or after judgment).
- 10.6 If, in the Supplier's view, the Customer's credit-worthiness deteriorates before delivery of the Goods, the Supplier may require payment in full or in part of the price prior to delivery, or the provision of security for payment by the Customer in such form as is acceptable to the Supplier.
- 10.7 The Supplier reserves the right to alter or withdraw at any time any credit allowed to the Customer. If the credit facility is reduced or withdrawn, all debts owed to the Supplier by the Customer shall become immediately due and payable.
- 10.8 The Supplier may offset any amount owing to it from the Customer against any amount owed to the Customer by the Supplier.
- 10.9 Notwithstanding any appropriation by the Customer to the contrary, all payments made by the Customer to the Supplier shall be appropriated first to Goods which have been resold by the Customer and then to Goods which remain in the Customer's possession or control.

## 11. DATA PROTECTION

- 11.1 The Supplier is the data controller of the information it holds about the Customer. The Supplier will collect such information from the Customer itself and, where the Customer applies for credit with the Supplier, from credit reference agencies.
- 11.2 The Supplier may store and process information about the Customer, including but not limited to name, postal and email addresses, telephone numbers, date of birth, salary and bank account details on its computers (and on the computers of any other company in the Supplier's group of companies (each a "group company")) and in any other way. This will be used by the Supplier and such group companies for purposes in connection with the Contract, including but not limited to processing the Customer's Order, delivering the Goods, credit or financial assessments, making payments, recovering monies, training, preparing statistics and direct marketing by telephone, email and post. The Customer may notify the Supplier at any time that the Customer does not wish to receive such direct marketing by contacting the Data Protection Officer at the address set out in Condition 11.6 below.
- 11.3 The Supplier may search the Customer's record at a credit reference agency of its choice, which will involve sharing the Customer's personal data with that agency, and make other enquiries in accordance with its normal procedures. By applying for a credit account with the Supplier, the Customer consents to the sharing of his personal data in this way and the making of these searches and enquiries.
- 11.4 The Customer's record at such credit agency will include searches made and information given by other businesses. Details of the Supplier's searches will be kept by such agency and recorded in the Customer's credit history and may be seen by other organisations that made searches with the agency.
- 11.5 Credit reference agencies may have made links between the Customer and other individuals (such as partners, family members, joint applicants for accounts or credit or other individuals the Customer has a financial connection to). The Supplier may use information about associated individuals' credit histories. The Supplier will also provide information about associations to credit reference agencies and such associations may be taken into account in future applications by the Customer and associated individuals and will continue until the Customer or associated individual successfully files a notice of disassociation with the credit reference agency.
- 11.6 The Customer has a legal right to details of the credit reference agencies from whom the Supplier obtains and to whom it may give information about the Customer. The Customer may obtain these details by writing to Data Protection Officer, CPL Distribution Limited, Mill Lane, Wingerworth, Chesterfield, Derbyshire S24 6NG. The Customer also has a legal right to a copy of the personal data held about him by the Supplier. This can be obtained by writing to the same address. However a fee may be payable for the provision of a copy of this information.

## 12. RETURNS

- 12.1 The Supplier reserves the absolute right to refuse to accept the return of any Goods (where such return is not as a result of the Goods being defective) but shall have the discretion to accept the return of Goods from the Customer and refund the appropriate cost of the Goods (less a minimum restocking charge of 10% of the cost of the Goods) if such return is supported by the invoice number or delivery note number of the Goods in question.

- 12.2 In the case of a business Customer, in order for the Supplier to accept the return of Goods by the Customer, such Goods must be:
- 12.2.1 in a re-saleable condition, accompanied by original packaging in a re-saleable condition;
  - 12.2.2 within the relevant shelf life for such Goods; and
  - 12.2.3 complete and as sold, in unopened, full and original packaging.
- 12.3 Any credit granted by the Supplier to a business Customer for returned Goods shall be offset against other purchases from the Supplier and no cash refund will be given by the Supplier for returned Goods.
- 12.4 For the avoidance of doubt, where the Customer is dealing as a Consumer, nothing in this Condition 11 shall in any way affect the Customer's statutory rights under relevant consumer legislation from time to time, nor the Customer's right to exercise the Cancellation Right under Condition 14.4.

### 13. WARRANTY AND LIABILITY

- 13.1 The Supplier warrants that the Goods will upon delivery:
- 13.1.1 comply with their specification; and
  - 13.1.2 be substantially free from defects in materials and workmanship.
- 13.2 The warranties in Condition 13.1 are given on the condition that the Supplier is not liable for a defect in the Goods:
- 13.2.1 caused by fair wear and tear, abnormal or unsuitable conditions of storage or use or an act, neglect or default of the Customer or a third party;
  - 13.2.2 if the Customer makes any further use of such Goods after notifying the Supplier of the defect; or
  - 13.2.3 unless it is notified to the Supplier:
    - 13.2.3.1 in the case of a business Customer, within 15 Working Days of the date of delivery or, if the defect would not be apparent on reasonable inspection, within one month of the date of delivery; or
    - 13.2.3.2 where the Customer is dealing as a Consumer, within 30 Working Days of delivery.
- 13.3 The Supplier is not liable for:
- 13.3.1 non-delivery unless the Customer notifies the Supplier of the claim within:
    - 13.3.1.1 5 Working Days of the date of the Supplier's invoice in the case of a business Customer; or
    - 13.3.1.2 14 Working Days of the date of the Supplier's invoice where the Customer is dealing as a Consumer;
  - 13.3.2 shortages in quantity delivered in excess of those permitted by Condition 5.2 unless the Customer notifies the Supplier of a claim within:
    - 13.3.2.1 3 Working Days of receipt of the Goods in the case of a business Customer; or
    - 13.3.2.2 7 Working Days of receipt of the Goods where the Customer is dealing as a Consumer;
  - 13.3.3 damage to or loss of all or part of the Goods in transit (where the Goods are carried by the Supplier's own transport or by a carrier on behalf of the Supplier) unless the Customer notifies the Supplier within:
    - 13.3.3.1 3 Working Days of receipt of the Goods in the case of a business Customer; or
    - 13.3.3.2 7 Working Days of receipt of the Goods where the Customer is dealing as a Consumer.
- 13.4 Except as set out in this Condition 13, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, use of or failure to supply the Goods are excluded to the extent permitted by law.
- 13.5 Subject to the provisions in Condition 13.7 below, the Supplier is not liable to the Customer in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any of the following losses or damages, whether direct or indirect, and even if such losses and/or damages were foreseen, foreseeable or known, or the Supplier was advised of the possibility of them in advance:
- 13.5.1 loss or damage incurred by the Customer as a result of third party claims;
  - 13.5.2 loss of actual or anticipated profits;
  - 13.5.3 loss of business opportunity;
  - 13.5.4 loss of anticipated savings;
  - 13.5.5 loss of goodwill; or
  - 13.5.6 any indirect, special or consequential loss or damage howsoever caused.
- 13.6 The entire liability of the Supplier under or in connection with the use of, supply of or failure to supply the Goods, whether for negligence, breach of contract, misrepresentation or otherwise, is limited, in respect of each event or series of connected events, to the net amount invoiced to the Customer for the defective, damaged or undelivered Goods which gave rise to such liability.
- 13.7 Nothing in these Conditions shall operate to exclude or restrict the Supplier's liability for:
- 13.7.1 death or personal injury resulting from negligence;
  - 13.7.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979;
  - 13.7.3 fraud, fraudulent misrepresentation or deceit;

- 13.7.4 in the case of a Customer dealing as a Consumer, losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
- 13.7.5 any other liability which cannot be excluded or restricted at law.

#### 14. TERMINATION

- 14.1 On or at any time after the occurrence of any of the events in Condition 14.2, the Supplier may:
  - 14.1.1 stop any Goods in transit;
  - 14.1.2 suspend further deliveries to the Customer;
  - 14.1.3 exercise its rights under condition 7;
  - 14.1.4 terminate any Contract forthwith by giving notice to that effect to the Customer.
- 14.2 The events are:
  - 14.2.1 the Customer being in material breach of any obligation under a Contract or these Conditions;
  - 14.2.2 a meeting being convened, a petition presented, an order made, an effective resolution passed, or notice given for the Customer's winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction); or
  - 14.2.3 an application being made, or resolved to be made by any meeting of the Customer's directors or members, for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator being appointed; or
  - 14.2.4 an incumbrancer taking possession, or a receiver or manager or administrative receiver being appointed, of the whole or any part of the Customer's assets; or
  - 14.2.5 the Customer ceasing or suspending payment of any of its debts or being unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or
  - 14.2.6 a proposal being made for a composition in satisfaction of the Customer's debts or a scheme or arrangement of its affairs including a voluntary arrangement within the meaning of part I of the Insolvency Act 1986.
- 14.3 On termination of a Contract pursuant to Condition 14.2 or 19.2, any indebtedness of the Customer to the Supplier shall become immediately due and payable and the Supplier is relieved of any further obligation to supply Goods to the Customer pursuant to that Contract.
- 14.4 In the case of a Distance Contract where the Customer is dealing as a Consumer, the Customer shall have the right to cancel the Order for seven Working Days following delivery of the Goods by the Supplier ("Cancellation Right").
- 14.5 The exercise of the Cancellation Right by the Customer will only be effective to terminate the Contract if written notice of the exercise of the Cancellation right is received by the Supplier within seven Working Days of delivery of the Goods.
- 14.6 Following the exercise of the Cancellation Right, the Customer must ensure that all Goods delivered under the Contract are returned to the Supplier within 30 days. The Customer is responsible for the cost of returning the Goods, and the Supplier reserves the right to charge the Customer for the cost of recovering any Goods from them.

#### 15. CONFIDENTIALITY AND SPECIFICATIONS

- 15.1 The Customer shall treat all product, customer or business information, drawings, designs and specifications submitted to it by the Supplier as confidential and shall not disclose them to any third party without the Supplier's prior written consent or use them for any purpose except where authorised to do so by the Supplier.
- 15.2 Condition 15.1 does not apply to information which:
  - 15.2.1 is at the date of disclosure or becomes at any time after that date publicly known other than by the Customer's breach of this Condition;
  - 15.2.2 can be shown by the Customer to the Supplier's satisfaction to have been known by the Customer before disclosure by the Supplier to the Customer;
  - 15.2.3 is or becomes available to the Customer otherwise than from the Supplier and free of any restrictions as to its use or disclosure;
  - 15.2.4 is required to be disclosed by law.
- 15.3 All drawings, designs, specifications and other particulars of dimensions or weight submitted by the Supplier are approximate only and the Supplier accepts no liability for any deviation from them, nor for any errors, omissions or other defects in any such materials not prepared by the Supplier.

#### 16. PACKAGING

- 16.1 The Customer will dispose of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.
- 16.2 The Supplier is entitled to invoice, and the Customer will pay, for the cost of all packaging materials unless they are stated to be returnable and the Customer returns them to the Supplier carriage paid in good condition within 30 Working Days of the date of receipt by the Customer.

#### 17. LICENCES AND CONSENTS

- 17.1 If a licence or consent of any government or other authority is required for the supply, carriage or use of the Goods by the Customer, the Customer will obtain such licence or consent at its own expense and produce evidence of it to the Supplier on demand.

- 17.2 The Customer is not entitled to withhold or delay payment of the price if it fails to obtain any licence or consent, and will pay any additional costs or expenses incurred by the Supplier as a result of such failure.

#### **18. HEALTH AND SAFETY**

The Customer will take any steps specified by the Supplier from time to time to ensure that the Goods will be safe and without risks to health at all times when they are being stored, used, cleaned or maintained by any person at work, or when they are being handled or disposed of, however it shall be the Customer's sole responsibility to ensure that it obtains all necessary information in order to deal with the Goods in a safe and appropriate manner.

#### **19. FORCE MAJEURE**

- 19.1 In this Condition 19, "Force Majeure Event" means any circumstance beyond the control of the Supplier including, but not limited to acts of God, fire, explosion, adverse weather conditions, epidemic, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by suppliers or materials shortages but, for the avoidance of doubt, nothing shall excuse the Customer from any payment obligations under these Conditions.
- 19.2 If the Supplier is prevented, hindered or delayed from or in supplying the Goods under these Conditions by a Force Majeure Event:
- 19.2.1 the Supplier may, at its sole option, and without being liable for any loss or damage suffered by the Customer as a result:
- 19.2.1.1 suspend deliveries while the Force Majeure Event continues;
- 19.2.1.2 apportion available stocks of Goods between its customers if the Supplier has insufficient stocks to meet orders;
- 19.2.2 both the Supplier and, where dealing as a Consumer only, the Customer, may terminate any Contract forthwith by giving notice to that effect to the other.

#### **20. ASSIGNMENT**

- 20.1 The Customer may not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under, a Contract without the prior written consent of the Supplier.
- 20.2 The Supplier is entitled at any time to assign or deal with the benefit of any Contract, or sub-contract any work relating to any Contract, but this will not reduce any guarantee to which a Customer dealing as a Consumer is entitled.

#### **21. NOTICES**

Any notice given by one party to the other in connection with a Contract must be in writing and may be delivered personally or by pre-paid first class post and in the case of post will be deemed to have been given 2 Working Days after the date of posting. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with a Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.

#### **22. SEVERANCE**

- 22.1 If any of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other Conditions which shall remain in full force and effect.
- 22.2 If any of these Conditions is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

#### **23. THIRD PARTIES**

- 23.1 A person who is not party to a Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of such Contract. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

#### **24. WAIVER**

The rights and remedies provided by any Contract may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Supplier shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of a Contract or of a default under a Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of such Contract.

#### **25. VARIATION**

No variation or alteration of any of the provisions of a Contract or these Conditions shall be effective unless it is in writing and signed by or on behalf of each party.

#### **26. ENTIRE AGREEMENT**

- 26.1 These Conditions together with the Contract constitute the entire agreement and understanding between the parties in respect of the matters dealt with in them and supersedes cancels and nullifies any previous agreement between the parties relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 26.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in these Conditions. The only remedy available to the Customer

in respect of any such statement, representation, warranty or understanding shall be for breach of contract under these Conditions.

**27. GOVERNING LAW AND JURISDICTION**

- 27.1 A Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.
- 27.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with a Contract or the legal relationships established by or in connection with such Contract.

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