

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition shall apply in these conditions;
 - Company:** Cabins and Containers (UK) Limited;
 - Conditions:** these Terms and 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 sale of Goods, incorporating these Conditions;
 - Customer:** the person, firm or company who purchases the Goods from the Company;
 - Goods:** any goods agreed in the Contract to be sold by the Company to the Customer (including any part or parts of them);
 - Input Material:** any documents, plans, drawings, patterns, designs or other materials, and any instructions, specifications, data or other information provided by the Customer to the Company relating to the Goods;
 - Intellectual Property Rights:** 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;
 - Output Material:** any documents, plans, drawings, patterns, designs or other materials, and any data or other information provided by the Company to the Customer relating to the Goods;
 - Site:** the premises agreed in the Contract at which the delivery of the Goods shall take place.
- 1.2 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.
- 1.3 Any reference to **parties** means the parties to the Contract, and **party** shall be construed accordingly.
- 1.4 Any reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 A reference to **writing** or **written** includes faxes and e-mails.
- 1.6 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.
- 1.7 Words in the singular include the plural and in the plural include the singular.
- 1.8 A reference to one gender includes a reference to the other gender.
- 1.9 Condition headings do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document, and including any terms and conditions which may be implied by custom, practice or course of dealing).
- 2.2 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.
- 2.3 These Conditions apply to the sale of all Goods by the Company and any variation to these Conditions and any representations about or related to the Goods shall have no effect unless expressly agreed in writing and signed by a duly authorised director or officer of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made, given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition 2.3 shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each written purchase order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions.
- 2.5 No order placed by the Customer shall bind the Company until the Customer's order has been accepted by the Company verbally or in writing.
- 2.6 Any quotation is given on the basis that no Contract shall come into existence until the Company has accepted the Customer's order pursuant to Condition 2.5 above. Any quotation is valid for a period of 30 days only from its date (unless otherwise specified), provided that the Company has not previously withdrawn it.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.8 No order placed by the Customer and accepted by the Company pursuant to Condition 2.5 may be cancelled, varied, or deferred by the Customer, (in whole or in part) 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), charges and expenses incurred by the Company as a result of such cancellation, variation or deferment.

3. DESCRIPTION

- 3.1 The quantity and description of the Goods shall be as set out in the Company's acceptance of the Customer's order issued pursuant to Condition 2.5.
- 3.2 Although reasonable precautions will be taken by the Company to ensure the accuracy of such information, all descriptive matter, weights, dimensions, measurements and performance data supplied by the Company and any descriptions and illustrations contained in the Company's data sheets, technical bulletins, catalogues, price lists, website and other advertising matter are approximate only and are intended merely to convey a general description of the Goods; they are not (unless it is expressly so stated in the Contract) deemed to form any part of any Contract and are not to be regarded as a warranty or representation.
- 3.3 The Customer shall be responsible to the Company for ensuring the accuracy and completeness of the terms of any order submitted by the Customer and for giving the Company all necessary information relating to the Goods within a sufficient time to enable the Company to fulfil its obligations under the Contract.
- 3.4 The Company reserves the right at its sole discretion to reject any Input Material submitted by the Customer which appears to the Company to be unsuitable for the purposes of fulfilling its obligations under the Contract. Notwithstanding the foregoing, the Company shall have no responsibility for checking the accuracy or completeness of any Input Material. No responsibility is accepted by the Company for any loss or damage, howsoever arising, due to any Input Material being inaccurate or incomplete.
- 3.5 The Customer warrants that any Input Material submitted by the Customer shall not cause the Company to infringe any Intellectual Property Rights of any other person. 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 submitted by the Customer.
- 3.6 The Customer warrants that any Input Material submitted by the Customer shall not contravene any applicable safety or other statutory or regulatory requirement. 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 as a result of any breach of this warranty.
- 3.7 All Goods are supplied on condition that the Customer undertakes at all times to take notice of and comply with all instructions, statements and recommendations issued with or relating to the Goods and the Company shall have no liability for any loss or damage arising from the Customer's failure to abide by the provisions of this Condition 3.7.
- 3.8 The Company may effect minor modifications to the specification of the Goods without the Customer's approval in order to comply with any applicable safety or statutory requirements, or to effect enhancements to the Goods. The Company will notify the Customer in writing of any proposed material modifications to the specification of the Goods and the Customer shall be deemed to have accepted such modifications unless notice in writing to the contrary shall be received by the Company within 3 days of the date of the Company's notice to the Customer.

- 3.9 Subject to the provisions of Condition 9.1 (b), the Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.
- 3.10 Any recommendation, instruction or advice given by the Company to the Customer that directly or indirectly relates to the Goods is given without liability on the part of the Company.

4. DELIVERY

- 4.1 Delivery of the Goods shall be made by the Company's third party carrier delivering the Goods to the Site.
- 4.2 The Customer shall be responsible for providing the Company's third party carrier with unobstructed access to and egress from the Site on the delivery date, and for ensuring that any required parking is arranged and authorised prior to the delivery date.
- 4.3 The Customer is to provide a working area and access road at the Site. Such areas must:
- (a) be levelled and prepared prior to the delivery of the Goods;
 - (b) be free from obstructions, including any overhead obstructions;
 - (c) be suitable for use by articulated, heavy transport vehicles and any equipment which may be used in effecting delivery of the Goods; and
 - (d) contain sufficient and adequate hard standing to support delivery vehicles and all equipment referred to in sub-clause (c) above; and
 - (e) if the ground at the Site is soft or unsuitable for any delivery vehicle to travel over, or for the Goods or any equipment used in effecting delivery of the Goods to be transported over, to be placed on, or to work on without timbers or equivalents, the Customer shall supply and lay suitable timbers or equivalents in a suitable position for vehicles to travel over and for the Goods and any equipment to be transported over, to be placed on and to work on; and
 - (f) the Customer shall make good to the Company all loss of or damage to any vehicles, the Goods and any equipment from whatever cause the same may arise, loss or damage arising from the Company's negligence excepted; save where the Company has been negligent as aforesaid, the Customer shall also fully indemnify and hold the Company harmless in respect of all claims by any person whatsoever for injury to persons or property caused by or in connection with or arising out of the transit, transport, unloading, loading, placing, use or storage of any vehicles, the Goods or any equipment (including any damage to the Customer's property or to the Site, to include damage to the pavements, gratings, drains, roads, road margins, forecourts, yards, asphalt areas or any like areas and any overhead obstructions) and in respect of all costs and charges in connection therewith, whether arising under statute or common law.
- 4.4 In addition to the Customer's obligations under Conditions 4.2 and 4.3, the Customer shall, at its sole cost:
- (a) obtain and maintain all requisite planning permissions, building regulation approvals and other statutory or non-statutory consents which are required for the installation and/or use of the Goods at the Site; and
 - (b) effect and maintain appropriate insurance at the Site on an all risks basis and in an adequate amount.
- 4.5 The Company is not responsible for the provision or preparation of any foundations at the Site, or for storing the Goods until any such foundations have been prepared. Delivery shall be deemed to have been made when the Goods have been delivered to the Site whether or not any foundations have been prepared.
- 4.6 If stipulated by the Company in writing, the Customer must provide at its own expense all labour and any necessary machinery for the unloading of the Goods at the Site and onto any foundations.
- 4.7 Connection and disconnection of mains services at the Site is the Customer's responsibility.
- 4.8 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.9 Delivery dates and periods shall be extended as necessary if any delay in delivery is caused as set out in Condition 7.3 of these Conditions or due to any other circumstances beyond the control of the Company. If any such delay causes the Company to revise agreed production schedules, delivery will (subject to these Conditions) be in accordance with such revised schedules, which will be notified to the Customer.
- 4.10 The Customer may request earlier delivery dates than those originally agreed and the Company will, at their discretion, endeavour to accommodate such requests providing that sufficient notice is given. Any additional costs associated with achieving an earlier delivery date will be for the Customer's sole account.
- 4.11 The Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.12 The Customer must examine the Goods upon delivery and within 7 days thereafter notify the Company in writing of any defect in the Goods. In default the Customer will be deemed to have examined and accepted the Goods.
- 4.13 If for any reason the Customer fails to accept delivery of all or 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, or because the Site is not fully accessible or is not properly prepared or is in any way obstructed:
- (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 (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 price for the Goods.
- 4.14 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.15 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 3 days of the time when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK AND TITLE

- 6.1 The Goods shall be at the sole risk of the Customer upon delivery to the Site.
- 6.2 Title to the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 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 Condition 12.1 (c) to (f) inclusive;
- (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 containing a Risk and Title clause which is at least as onerous as this Condition 6);
- (g) not pledge or in any way charge by way of security for any indebtedness any of the Goods (and if the Customer does so, all monies owing by the Customer to the Company shall, without prejudice to any other right or remedy of the Company, forthwith become due and payable); and
- (h) give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business, provided that it shall hold the entire proceeds of any such resale upon trust for the Company until the Goods have been paid for in full and shall keep all such trust monies in a separate bank account which shall not be overdrawn and in which such trust monies are not mingled with its own or any other monies. The Customer acknowledges and agrees that a sale by an administrator or liquidator as part of or in connection with the sale of the assets or part of the assets of the Customer is not in the ordinary course of the Customer's business.

6.4 If:

- (a) the Customer is late in paying for the Goods; or
- (b) the Customer is late in paying for any other goods 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 Condition 12.1 (c) to (f) inclusive, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then:
- (d) 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 the premises of the Customer or the premises of any third party where the Goods are stored or kept in order to recover them and all and any costs, charges and expenses incurred by the Company in so taking possession of the Goods (including legal fees) shall be payable by the Customer upon demand. The Customer shall not keep the Goods at any premises at which the Customer does not have the right to grant access to the Company. Nothing in this Condition 6.4 (d) shall affect the right of the Company at any time to inspect the Goods whilst the Goods are stored or kept at the Customer's premises or the premises of any third party.

7. PRICE

- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price confirmed in the Company's acceptance of the Customer's order issued pursuant to Condition 2.5.
- 7.2 If the cost to the Company of performing the Company's obligations under the Contract shall be increased by reason of the making or amendment of any law or of any order, regulation, or by-law having the force of law that shall affect the performance of the Company's obligations under the Contract, the amount of such increase shall be added to the Contract price.
- 7.3 The Company reserves the right, by giving notice to the Customer at any time between acceptance of the Customer's order and delivery of the Goods, to increase the price of the Goods to reflect any increase in any cost to the Company which is due to any factor beyond the control of the Company, or if there is any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or if there is any increase in any cost to the Company which is in any other way attributable to the Customer.
- 7.4 Unless otherwise agreed in writing by the Company, the Contract price shall be exclusive of Value Added Tax, which will be charged at the rate which is applicable at the date of delivery of the Goods.
- 7.5 Unless otherwise agreed in writing by the Company, all transportation, packaging and carriage costs related to the delivery of the Goods (including the cost of all related insurance coverage and the cost of loading and unloading the Goods) shall be borne by the Customer.
- 7.6 Any waiver or reduction of any price will only be applicable if agreed by the Company in writing.

8. PAYMENT

- 8.1 Unless otherwise agreed by the Company in writing, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after acceptance of the Customer's order.
- 8.2 Unless otherwise agreed in writing by the Company, payment for the Goods shall be due in full on the first working day following the Customer's receipt of the Company's invoice and prior to the delivery of the Goods.
- 8.3 The time of payment of the price shall be of the essence of the Contract.
- 8.4 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and said cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.
- 8.5 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.
- 8.6 Any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Condition 12.1 (c) to (f) inclusive shall entitle the Company, at any time and without notice or liability to the Customer and without limiting any other remedy available to the Company under these Conditions, the Contract, or otherwise, at its option:
 - (a) to charge interest at the rate of six percent (6%) 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 Goods or any other goods 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 Goods 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 terminate the Contract, or suspend or cancel the further delivery of any Goods or any other goods supplied by the Company, including stopping the delivery of any such Goods or goods in transit; and
 - (g) to cancel any discount (if any) offered to the Customer.
- 8.7 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.8 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.9 For the avoidance of doubt, and notwithstanding the exercise of any remedy by the Company in accordance with Condition 8.6, or under any other of these Conditions, the Contract, or otherwise, the Customer shall remain liable to pay and shall pay the Company at the Contract rate, any and all payments subsisting at the relevant time.
- 8.10 The Company shall retain a general lien on the full value of all Goods until such Goods (together with any other goods sold to the Customer by the Company under any other contract) have been fully paid for.

9. WARRANTIES

- 9.1 The Company warrants that upon delivery:
- (a) the Goods will conform in all material respects to any specification submitted by the Customer and shall be free from any material defects in design, materials and workmanship; 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 the Company's acceptance of the Customer's order issued pursuant to Condition 2.5 that it will supply Goods suitable for that purpose, then the Goods shall be reasonably fit for the purpose so stated.
- 9.2 The Company shall not be liable for a breach of any of the warranties in Condition 9.1 unless:
- (a) the Customer gives written notice of any defect in the Goods to the Company within 7 days from the delivery date of the Goods; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining the Goods and the Customer arranges for the return of such Goods to the Company's place of business at the Company's cost for the examination to take place there, or at the option of the Company, the Goods are made available at the Customer's premises for inspection by the Company (and if requested by the Company, the Customer provides the Company with photographic evidence of any alleged defect in the Goods prior to the Company examining or inspecting the Goods as aforesaid).
- 9.3 The Company shall not be liable for a breach of any of the warranties in Condition 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; or
 - (b) the defect arises because the Customer failed to follow any oral or written instructions as to the use or storage of the Goods or (if there are none) good trade practice; or
 - (c) the defect arises from any Input Material submitted by the Customer, or from fair wear and tear, wilful damage, negligence, or from any misuse of the Goods; or
 - (d) the full price for the Goods has not been paid by the time for payment referred to in Condition 8.2; or
 - (e) the defect is of a type specifically excluded by the Company by notice in writing.
- 9.4 Subject to Condition 9.2 and Condition 9.3, if the Goods do not conform to the applicable warranties in Condition 9.1:
- (a) the Company shall at its option:
 - (i) replace the Goods ; or
 - (ii) issue a credit note for the Goods at the pro rata Contract rate; and
 - (b) the Company shall, if it opts to replace defective Goods, then deliver replacement Goods to the Customer (at the Company's expense) and ownership of the defective Goods shall, if it has vested in the Customer, re-vest in the Company.
- 9.5 For the avoidance of doubt (but without prejudice to the provisions of Condition 9.4 (a)), the failure of any part of the Goods to conform to the applicable warranties in Condition 9.1 shall only render the Company liable to replace or credit the value of that part of the Goods which is defective and shall not entitle the Customer to cancel the remainder of the Contract.
- 9.6 If the Company complies with Condition 9.4 it shall have no further liability for any breach of the applicable warranties in Condition 9.1.
- 9.7 Subject to and without limiting the generality of any of the provisions of this Condition 9, additional individual warranties apply to certain 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.
- 9.8 For the avoidance of doubt, none of the warranties contained in Condition 9.1 shall apply to any Goods which are marked as "Sold As Seen", further details of which Goods are provided in the separate Warranty document published by the Company.

10. LIMITATION OF LIABILITY

- 10.1 Save for any stipulation as to the Company's liability contained elsewhere in these Conditions, 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; 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) 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 Condition 10.2 and Condition 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 for any claims for indirect, special or consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. INDEMNITY

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 any act or omission of the Customer, or from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

12. TERMINATION

- 12.1 The Company shall have the right at any time by giving notice in writing to the Customer to terminate the Contract forthwith without liability to the Customer if:
- (a) the Customer commits a material breach of any of these Conditions and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified in writing of the breach; or
 - (b) the Customer 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 Customer, or 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 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 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) any event occurs, or proceeding is taken, with respect to the Customer under the laws of any jurisdiction to which the Customer is subject, that has an effect equivalent or similar to any of the events or proceedings mentioned in Condition 12.1 (c); or
 - (e) the Customer ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
 - (f) the financial position of the Customer deteriorates to such an extent that, in the reasonable opinion of the Company, the capability of the Customer to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.2 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 supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
 - (b) the Company shall be relieved of its obligations under the Contract;
 - (c) the Company may exercise its rights under Condition 6 hereof to recover any Goods from the Customer for which payment has not been made in full, whether or not such payment is due; and
 - (d) 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.
- 12.3 On termination of the Contract (however arising), Conditions 3.4 – 3.7, 6 – 11, 13 and 17 shall survive and continue in full force and effect.

13. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Customer and the Company agree that in the course of the Company supplying Goods 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. The Customer shall not use any Confidential Information for any purpose other than to carry out the Customer's obligations to the Company.
- 13.2 The Customer acknowledges the Company's ownership of all and any Intellectual Property Rights in any Output Material and in any Goods 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, nor to do anything which would or could amount to an infringement of 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. No Output Material may be copied or reproduced in whole or in part without the prior written consent of the Company. The Customer further acknowledges that all and any Intellectual Property Rights developed by the Company in supplying all and any Goods shall become vested and shall vest in the Company absolutely. The Company makes no representation or warranty that the use of the Goods will not infringe the Intellectual Property Rights of any third party and the Company accepts no liability in this respect.

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. FORCE MAJEURE

The Company reserves the right to defer the date of delivery, or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company, including Acts of God, governmental actions, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, war, threat of war, sabotage, insurrection, civil disturbance or requisition or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, tempest, accident, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), import or export regulations or embargoes, restraints or delays affecting carriers or any inability or delay in obtaining supplies of adequate or suitable materials, difficulties in obtaining labour, fuel, parts or machinery or power failure or breakdown in machinery 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.

16. GENERAL

- 16.1 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.
- 16.2 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.
- 16.3 If any provision of the Contract is found by any court, 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.
- 16.4 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.
- 16.5 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.
- 16.6 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.
- 16.7 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.

17. COMMUNICATIONS

- 17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or email:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
 - (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a Company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 17.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by fax or email, on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.