

# Q.E.P. CO. UK. LTD - Conditions of Sale

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability), which limit the Supplier's liability to the Customer.

## 1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods in accordance with these Terms.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Delivery:** the collection of the Goods from the Supplier's premises or the delivery of the Goods to the Delivery Location;

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 18.

**Goods:** any tiling or other goods (or any part of them) set out in the Order, supplied under any QEP world wide brands.

**Goods Specification:** the Goods as described in the Supplier's website or brochure, any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Insolvency Event** means any one or more of: (i) a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed; (ii) a petition for a winding up or an administration or bankruptcy order being presented, or such an order being made; (iii) any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness; (iv) suspension of payments to all or any creditors and/or ceasing; (v) any action anywhere similar or analogous to any of the foregoing or affecting any person under common control with that party or an owner of partner in that party; (vi) the other party having reasonable grounds for believing that any of the foregoing is imminent.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods, as set out in the standard Supplier order form or submitted by any of the following: EDI, post, fax, telephone or a Supplier website.

**Supplier:** Q.E.P. CO. U.K. Ltd registered in England and Wales with company number 04988177.

**Terms:** these terms and conditions as amended from time to time in accordance with clause 19.8.

### 1.2 Interpretation:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to writing or written includes emails.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods in accordance with these Terms.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Goods contained in the Supplier's catalogues or brochures 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 or have any contractual force.

2.4 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 days from its date of issue.

2.6 By the act of placing the order the Customer expressly represents and warrants to the Supplier that it is not insolvent and is not subject to an Insolvency Event.

2.7 No alteration to these Terms shall be effective unless expressly agreed to in writing by a director of the Supplier.

2.8 Following acceptance by the Supplier of the Customer's order, no cancellation and/or suspension, either in whole or in part, may be made by the Customer other than with the prior written consent of a director of the Supplier and upon terms that the Customer shall indemnify the Supplier in full against all loss (including without limitation loss of profit) damages, costs (including without limitation the cost of all labour, manufacture and materials), expenses and other liabilities awarded against or incurred by the Supplier as a result of or in connection with the cancellation and/or suspension.

## 3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

3.4 Where samples are to be supplied by the Supplier they shall be delivered at the Customer's risk and expense and risk in the samples shall remain with the Customer until such time as they are returned to the Supplier. The Customer shall as soon as reasonably practicable and in any event within 30 days after receipt of the same notify the Supplier in writing that the samples are in all respects satisfactory or of any respect in which the samples are not satisfactory. In default of such notification the Customer shall be deemed to have given notification that the samples are satisfactory in all respects and the Supplier shall be entitled but not bound to proceed in the manufacture of the remainder of the Contract.

## 4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

(a) Each Delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) It states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier shall make the Goods available for Delivery at its premises, or deliver the Goods to the United Kingdom mainland location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Where a Delivery Location has been agreed, Delivery of the Goods shall be completed on the when the Supplier places the Goods at the Customer's disposal at the Delivery Location. In the event that unloading at the Delivery Location is delayed other than due to the act or omission of the Supplier, the Customer shall pay to the Supplier a reasonable unloading delay charge notified to it by the Supplier.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 The Supplier shall be entitled to deliver the Goods in advance of the estimated delivery date.

4.6 Where delivery of the Goods is to be made by the Supplier in bulk, the Supplier reserves the right to deliver up to 10 per cent more or less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered. The Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for the Goods in accordance with the quantity ordered.

4.7 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods. Any failure to deliver must be notified to the Supplier within 14 days of the date of the invoice for the Goods.

4.8 If the Customer fails to accept delivery of the Goods or fails to give the Supplier adequate delivery instructions promptly on the Supplier notifying the Customer that the Goods are ready for delivery, then except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready or attempted delivery; and

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

4.9 If ten Business Days after the Supplier notified the Customer that the Goods were ready for Delivery the Customer has not taken accepted Delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.10 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer within 72 hours of delivery that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.11 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. QUALITY OF GOODS

- 5.1 The Supplier warrants that on Delivery the Goods shall:
- (a) conform in all material respects with the Goods Specification; and
  - (b) be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace defective Goods, or refund the price of defective Goods in full if:
- (a) the Customer gives notice in writing within 72 hours of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's risk and cost.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions (including a drawing) as to the installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 These terms shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.6 The warranty in clause 5.1 shall not extend to parts, materials or equipment not manufactured by the Supplier. In respect of such items, the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier and can be transferred to the Customer.
- 5.7 All dimensions of Goods are subject to tolerances which are either reasonable or within industry norms. No lack of conformity with the Goods Specification within such tolerances shall be considered a breach of the warranty in clause 5.1 above.

## 6. PRODUCT RECALL

- 6.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (Recall Notice) it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice.
- 6.2 Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier's instructions about the process of implementing the withdrawal.

## 7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on Delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) Hold the goods on a fiduciary basis as the Supplier's bailee;
  - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (c) not modify the Goods or their packaging, or 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 on the Supplier's behalf from the date of delivery;
  - (e) notify the Supplier immediately if it becomes subject to an Insolvency Event; and
  - (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 Subject to clause 7.6, the Customer may resell or use the Goods at full market value in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Supplier's agent;
  - (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs; and
  - (c) the Customer shall first dispose of the Goods that it has paid for any payments received by the Supplier from the Customer shall first be appropriated to Goods disposed of by the Customer.
- 7.5 The Supplier shall be entitled at any time to revoke the Customer's power to use, sell and deal with the Goods under clause 7.4.
- 7.6 If before title to the Goods passes to the Customer the Customer becomes subject to an Insolvency Event or encumbers or in any way charges any of the Goods, then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
  - (b) the Supplier may at any time:
    - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7.7 Upon termination of the Customer's power to deal with the Goods, the Customer shall place the Goods at the disposal of the Supplier and the Supplier and its servants and agents are hereby irrevocably authorised without the need for consent of any third party but using only such force as may be necessary, to enter upon any premises of the Customer or any third party for the purpose of removing the Goods.

7.8 Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.

7.9 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this Clause 7 shall remain in effect.

7.10 If any of the foregoing provisions of this Clause 7 shall be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provisions.

## 8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and the Goods Specification are complete and accurate;
  - (b) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods, and ensure that such information is complete and accurate in all material respects;
  - (c) comply with all applicable laws, including health and safety laws in the use of the Goods;
  - (d) comply with any additional obligations as set out in the Goods Specification.
- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- (a) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - (b) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 8.3 The Customer shall (without prejudice to the Supplier's other rights and remedies) indemnify the Supplier in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Supplier as a result of or in connection with any claim brought against the Supplier by a third party arising out any matter in respect of which the Supplier's liability to the customer is excluded under clause 5.

## 9. CONSUMER PROTECTION ACT 1987

9.1 In circumstances where the Supplier supplies parts or products to the Customer for incorporation with, or use ancillary to any composite products to be produced, manufactured, processed or supplied by the Customer then:

- (a) The Customer shall forthwith on demand produce for inspection by the Supplier copies of all written instructions, information and warnings to be supplied by the Customer in relation to the said composite products provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval on the part of the Supplier of such instructions, information or warnings, and or approval on the part of the Supplier of such instructions, information or warnings; and
- (b) the Customer shall indemnify, reimburse and compensate the Supplier for all losses and damages (including costs, expenses and charges for legal actions in which the Supplier may be involved) that the Supplier may incur in the event that any claim or claims are made against the Supplier pursuant to the Consumer Protection Act 1987 relating to the said composite products of the Customer or products in circumstances in which the part or product supplied by the Supplier was either (i) not the defective part of the said composite product, or (ii) was only rendered the defective part or became a defective product by reason or actions or omissions of the Customer, or (iii) was only rendered the defective part or became a defective product by reason or instructions or warnings given by the Customer or other supplier such composite product or products, or (iv) was manufactured in accordance with the Customer's drawings and specification.

9.2 For the purposes of this Clause 9 only the word "defective" shall be interpreted in accordance with the definition of "defect" contained in Part 1 of the Consumer Protection Act 1987.

9.3 The Customer hereby acknowledges that it is under a duty to pass on to its customers (where appropriate) all instructions, information and warnings supplied to it by the Supplier with the Goods.

## 10. CHARGES AND PAYMENT

- 10.1 The price for Goods:
- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order; and
  - (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer. Delivery to the United Kingdom mainland is free of charge on all Orders in excess of £250.00.
- 10.2 The Supplier reserves the right to:
- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
    - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
    - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 10.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery.
- 10.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice, or (if the Goods are collected from the Supplier's premises) by the time of collection; and

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(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

10.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of Goods at the same time as payment is due for the supply of the Goods.

10.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 16 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.6 will accrue each day at 4% a year above the Yorkshire Bank's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10.8 Where payment is agreed to be made by instalments, any delay or default by the Customer in making payment in respect of any one instalment shall render all the remaining instalments due forthwith, and interest will be charged in accordance with clause 10.6 with immediate effect until the date of actual payment.

## 11. INTELLECTUAL PROPERTY RIGHTS

11.1 As between Supplier and Customer, Supplier shall own all Intellectual Property Rights in the Goods and their manufacture or design.

11.2 All Intellectual Property Rights owned by the Supplier in respect of the Goods or their manufacture and design are reserved to the Supplier.

## 12. CONFIDENTIALITY

12.1 The Customer undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Supplier, except as permitted by clause 12.2.

12.2 Customer may disclose the Supplier's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## 13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

13.1 Nothing in these Terms shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) its liability as a producer under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

13.3 Subject to clause 13.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 100% of the total charges paid under the Contract.

13.4 Save as provided in these Terms 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.

13.5 This clause 13 shall survive termination of the Contract.

13.6 The parties agree that the provisions of this clause 13 constitute a fair and reasonable apportionment of risk.

## 14. INTELLECTUAL PROPERTY INDEMNITY

14.1 If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the Intellectual Property Rights of any other person or any claim is made in respect of passing off or unauthorised use of Confidential Information in relation to the Goods and/or their use or resale the Customer shall forthwith notify the Supplier in writing and the Supplier shall be given full control of any proceedings or negotiations in connection with any such claim. The Customer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations and except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier (which shall not be unreasonably withheld). The Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Supplier may have in relation to such infringement.

14.2 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a specification, design or drawing submitted by the Customer or the Customer's instructions, the Customer shall (without prejudice to the other rights and remedies of the Supplier) indemnify the Supplier in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Supplier as a result of or in connection with:

- (a) any claim for infringement of any Intellectual Property Rights of any other person and/or for passing off and/or unauthorised use of Confidential Information which results from the Supplier's use of the Customer's specifications; or
- (b) any other liability of any kind to any third party including without limitation for defective Goods, personal injury or death to the extent that it arises from the specification and/ or any error or omission therein.

## 15. EXPORT TERMS

15.1 Any term or expression which is defined in the provisions of Incoterms 2000 (or any subsequent revision thereof) shall import the respective obligations of Buyer and Seller into these Terms, but in the event of conflict these Terms shall prevail.

15.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 13 shall (subject to any special terms agreed in writing between the Supplier and the Customer) apply not withstanding any other provision of these Terms.

15.3 Unless otherwise agreed in writing between the Supplier and the Customer, the Goods shall be delivered FOB UK port and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

15.4 The Customer shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on testing or inspection and which is made after shipment, or in respect of any damage during transit.

15.5 Payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Customer in favour of the Supplier and confirmed by a bank in England acceptable to the Supplier or, if the Supplier has agreed in writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Supplier of a bill of exchange drawn on the Customer payable 60 days after sight to the order of the Supplier at such branch of Yorkshire Bank in England as may be specified in the bill of exchange.

## 16. TERMINATION

16.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other becomes subject to an Insolvency Event;
- (b) any sum owing to the Supplier from the Customer on any account whatsoever shall be unpaid after the due date for payment (in which event the Supplier shall have a general lien for any such sum on all and any property of the Customer in its possession); or
- (c) the Customer shall refuse to provide any security for credit; or
- (d) if in its absolute discretion the Supplier considers the Customer's credit to be unsatisfactory.

16.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) there is a change of control of the Customer.

16.3 Without affecting any other right or remedy available to it, the Supplier may suspend all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to an Insolvency Event, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 17. CONSEQUENCES OF TERMINATION

17.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

17.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

17.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 18. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations (except for a payment obligation) under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## 19. GENERAL

### 19.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

### 19.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number;

(b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax 9.00 am on the next Business Day after transmission.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

19.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

19.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

19.6 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

19.7 Third parties' rights. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

19.8 Variation. Except as set out in these Terms, no variation of the Contract shall be effective unless it is agreed in writing and signed by a director of the Supplier.

19.9 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

19.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation. In the case of a Customer who has no assets within the jurisdiction of the English Courts and who is established in a country which will not enforce the judgement of the English Courts the Supplier may if it chooses refer any disputes arising out of the Contract to arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, such arbitration to take place in London.