

## Terms and Conditions of Sale

TERMS AND CONDITIONS OF SALE governing all contracts for the sale or supply of goods and/or services by Ontic Engineering & Manufacturing UK Limited ("the Company"). In these Conditions the following words shall have the following meanings (unless the context otherwise requires): -

"Acknowledgement of Order"	means the Company's written acknowledgement of the Buyer's purchase order for Goods and/or Services;
"Buyer"	means any person at whose request Goods and/or Services are supplied by the Company;
"Conditions"	means these terms and conditions of sale;
"Contract"	means the contract between the Company and the Buyer for the sale and purchase of Goods and/or Services which shall be formed in accordance with Condition 2.1;
"Goods"	means any goods or replacement goods, and including any part of parts of them, supplied to the Buyer by the Company under a Contract;
"Insolvent"	a party is Insolvent where it: <ul style="list-style-type: none"> <li>(a) gives notice under section 84 Insolvency Act 1986 of or proposes or passes a resolution for, its winding up (save for the purpose of a solvent reconstruction or amalgamation previously approved in writing by the other party);</li> <li>(b) has a winding-up order or a notice of striking off made in respect of it;</li> <li>(c) <ul style="list-style-type: none"> <li>(i) has an administration order or an application for an administration order made in respect of it; or</li> <li>(ii) has a notice of appointment of an administrator or a notice of intention to appoint an administrator filed in respect of it at any court;</li> </ul> </li> <li>(d) proposes, makes or is subject to: <ul style="list-style-type: none"> <li>(i) a company voluntary arrangement;</li> <li>(ii) a composition with its creditors generally;</li> <li>(iii) an application to a court of competent jurisdiction for protection from its creditors generally; or</li> <li>(iv) a scheme of arrangement under Part 26 Companies Act 2006 (save in the latter case for the purpose of a solvent reconstruction or amalgamation previously approved in writing by the other party);</li> </ul> </li> <li>(e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;</li> <li>(f) ceases to trade or appears, in the reasonable opinion of the other party, to be likely to cease to trade;</li> <li>(g) <ul style="list-style-type: none"> <li>(i) is unable to pay its debts as they fall due; or</li> <li>(ii) the value of its assets are less than its liabilities, including its contingent and prospective liabilities;</li> </ul> </li> <li>(h) <ul style="list-style-type: none"> <li>(i) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction; or</li> <li>(ii) is the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000); or</li> <li>(iii) is the subject of an application for the recognition of a foreign insolvency proceeding under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030);</li> </ul> </li> </ul>
"Intellectual Property Rights"	means (a) patents and applications for patents, trade marks, service marks and domain names and applications for the same, unregistered trade marks and rights in trade names and business names, copyright and moral rights (including copyright in computer software), know how, database rights, rights in designs and rights in inventions; and (b) rights of the same or similar effect or nature as any of those in paragraph (a) of this definition;
"Price"	the price(s) set out in the Company's quotation for the relevant Goods or Services;
"Services"	means any services which the Company supplies to the Buyer (including any of them or any part of them) under a Contract.

Unless the context otherwise requires: References to any statutory provision shall be construed as references to such provision as amended, consolidated or re-enacted (without substantial amendment) from time to time; the headings are for convenience only and shall not affect construction of these Conditions; words in the singular include the plural and in the plural include the singular; a reference to one gender includes a reference to the other gender; the words "include", "includes", "including", "in particular" or any similar words shall be construed without limitation; the rule known as the ejusdem generis rule shall not apply.

## 1. Application of Terms

- 1.1. Subject only to any variation under Condition 1.3, every Contract shall incorporate the Acknowledgement of Order and these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 1.2. No terms or conditions endorsed on, delivered with or contained in the Buyer'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.
- 1.3. These Conditions apply to all the Company's sales and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director or other authorised person on behalf of the Company.

## 2. Formation & Parties

- 2.1. The Buyer's order (in whatever manner communicated) to the Company is and shall be deemed to be an offer by the Buyer to purchase the Goods and/or Services upon these Conditions. Acceptance occurs and the Contract is formed only upon the Company despatching to the Buyer its Acknowledgement of Order or (if earlier) the Company delivers the Goods to the Buyer and/or commences performance of the Services.
- 2.2. A quotation by the Company does not constitute an offer. Quotations are valid for the period of 30 days from date of issue and may be withdrawn at any time.
- 2.3. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.4. The Contract is not cancellable by the Buyer without express written agreement of a director or other authorised person on behalf of the Company and subject to Condition 2.5 below.
- 2.5. If the Company agrees cancellation by the Buyer, the Buyer shall indemnify the Company in full against all expenses incurred up to the time of cancellation together with all loss of profits (direct and indirect) incurred or suffered by the Company arising from or in connection with such cancellation in any way whatsoever.

## 3. Price

- 3.1. Unless otherwise set out in the Acknowledgement of Order, any Goods supplied by the Company to the Buyer under a Contract shall be FCA (Company's premises as set out on Acknowledgement of Order) (as defined in Incoterms 2010). To the extent only of any conflict or inconsistency between the delivery terms set out in the Acknowledgement of Order forming part of this Contract and this Condition 3.1, the terms of the Acknowledgement of Order shall take precedence.
- 3.2. Subject to Condition 3.3, the Price will be firm fixed or, if agreed by the parties in writing, subject to an agreed variation of price dependent on the time scale and prevailing economic conditions.
- 3.3. The Company reserves the right to vary the Price due to a change in or insufficiency of Buyer's instructions or attributable to reasons relating to duties, taxes, exchange rates, bank or other finance handling charges or other costs of whatever nature including (but not restricted to) those applicable to yearly price lists where the Price is determined by the date of delivery.

## 4. Delivery

- 4.1. Unless otherwise agreed in writing delivery dates are estimates only. Time of delivery is not of the essence of the Contract. Unless otherwise stated, delivery periods commence from date of Acknowledgement of Order. The Company shall use its reasonable endeavours to deliver the Goods by the stated delivery date (or if no delivery date is stated, within a reasonable time) and perform the Services at the time(s) specified in the Acknowledgement of Order (or if no performance time is stated, within a reasonable time), but may suspend or delay delivery and/or performance and, subject to the other provisions of the Contract, 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 whatsoever caused directly or indirectly by any late delivery or any non-delivery of Goods (or any instalment) or any later performance or non-performance of Services owing to any occurrence whatsoever beyond the Company's reasonable control. The Buyer shall not be entitled to refuse to accept late delivery and/or performance or treat late delivery and/or performance as grounds to terminate or rescind the Contract unless such delay exceeds 270 days.
- 4.2. The Company may at its option deliver by instalments; each instalment shall constitute a separate Contract. Default in delivery or defect in any one such instalment shall not entitle the Buyer to repudiate the Contract nor to cancel subsequent instalments.
- 4.3. The Buyer shall take delivery of the Goods within seven days of the Company giving it notice that the Goods are ready for delivery.
- 4.4. In relation to Services, the Company shall supply the Services to the Buyer in accordance with the Contract in all material respects.
- 4.5. If for any reason the Buyer has failed to collect Goods on the expiry of the seventh day following notification of readiness for despatch or has otherwise failed to take delivery or caused the Company to be unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisations, then upon the seventh day following notification of the readiness of the Goods for despatch:
  - (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
  - (b) the Goods shall be deemed to have been delivered;
  - (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6. In respect of credit, stated delivery periods shall commence only upon receipt of a letter of credit complying in all respects with the Company's requirements.

- 4.7. The quantity of any consignment of Goods as recorded by the Company on delivery shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.8. Without prejudice to the other provisions of these Conditions, any liability of the Company for non-delivery of Goods shall be limited to (at the Company's option) replacing the Goods within a reasonable time, or issuing a credit note at the pro rata Contact rate against any invoice raised for such Goods.
- 4.9. Unless otherwise expressly agreed by the parties in writing and/or the Contract is expressly made subject to a conflicting Incoterm (in which case such Incoterm shall prevail), the Buyer shall provide at the delivery point (or shall procure there is provided) at the Buyer's sole expense adequate and appropriate equipment and manual labour for loading the Goods.

## 5. Risk

- 5.1. Subject to Condition 4.5(a), the Goods are at the risk of the Buyer from the time of delivery.
- 5.2. Unless otherwise expressly agreed by the parties in writing and/or the Contract is expressly made subject to a conflicting Incoterm (in which case such Incoterm shall prevail), the Company shall not be liable for loss or damage to Goods in transit.

## 6. Inspection

- 6.1. The Buyer shall inspect the Goods immediately upon receipt and shall be deemed to have accepted the Goods as delivered if it fails to notify the Company of any defect or lack of conformity with the Contract within 10 days after receipt.
- 6.2. The Company shall make good shortages notified to it under Condition 6.1 as soon as reasonably practicable but shall not be liable for any other losses, claims, demands, actions, costs, expenses and liabilities whatsoever arising from such shortage.

## 7. Warranty

- 7.1. The warranty periods for Goods delivered and Services performed by the Company under any Contract shall be 12 months from delivery of Goods in accordance with Condition 4 or completion of the relevant stage of performance in respect of Services (as applicable) (the "Warranty Period"). Where Goods are delivered to the Buyer in connection with the performance of any Services, the shorter of the Warranty Period for Goods and the Warranty Period for Services shall be the only applicable Warranty Period.
- 7.2. The Company warrants that Goods and/or Services (as applicable) will be free from defects in material and workmanship under normal use and service for the Warranty Period (the "Warranty"). If, prior to expiry of the relevant Warranty Period, and subject always to the other provisions of this Condition 7:
  - (a) any Goods are found to be defective in material or workmanship, the Company shall, at its option, repair or replace such Goods at its expense with reasonable promptness;
  - (b) any Services are found to be defective in materials used or workmanship, the Company shall, at its option, re-perform the Services at its expense with reasonable promptness or refund the Price.
- 7.3. Where a defect in the Goods (which was not discoverable on inspection of the Goods in accordance with Condition 6.1) arises after acceptance of the Goods in accordance with Condition 6.1 and in respect of all defects in the Services, the Buyer shall provide the Company with written notice of a claimed defect within 14 days after the defect becomes apparent to the Buyer. Said notice will contain reasonable proof that the claimed defect is covered by the Warranty set-out in these Conditions, and this shall remain subject to confirmation and verification by the Company. The Company's Return Material Authorization ("RMA") number(s) for any Goods the subject of the Warranty claim will be used to authenticate the claim upon receipt by the Company. Failure to have the Company's RMA number(s) for Goods marked on the Buyer's notice of claim will invalidate Warranty consideration.
- 7.4. Any Goods and/or Services determined by the Company to have a No Fault Found ("NFF") shall result in the Buyer being liable to the Company for inspection, test and recertification charges (including, where applicable, transportation charges) and any relevant Goods shall be returned to the Buyer FCA (Company's premises as set out on Acknowledgement of Order) (as defined in Incoterms 2010).
- 7.5. If the Company approves a Warranty request, the Company's obligation under the Warranty (and the Buyer's remedy) is limited to the repair or replacement of the relevant Goods and/or re-performance or refund of the Services (as applicable). In the event that the Company agrees to replace defective Goods, the Buyer shall dispose of the defective Goods in accordance with the Company's instructions. The Company shall ship any repaired or replaced Goods to the Buyer DAP (as defined in Incoterms 2010).
- 7.6. The Company's liability under the Warranty applies only to defects appearing before the Buyer makes any modification or alteration to the Goods and/or any materials connected to the Services (as applicable) and whilst the Goods and/or other relevant materials are being properly used, handled, maintained or stored in accordance with the Company's instructions. In particular the Company shall not be liable in the case of defects arising from normal deterioration or improper or faulty handling, operation, maintenance or processing by the Buyer or any third party.
- 7.7. The Warranty does not extend to any new materials or components forming part of Goods and/or Services (as applicable) which are not of the Company's manufacture. In respect of such items the Buyer shall be entitled only to the benefit of any manufacturer's warranty or guarantee the benefit of which the Company is able to obtain.
- 7.8. Where the Buyer has entered into a maintenance agreement with the Company in respect of Goods, the Company shall not be liable under the Warranty unless the Buyer has complied in all material respects with its obligations under such maintenance agreement.
- 7.9. The Warranty set out herein is exclusive. All warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) (save for the conditions set out in section 12 of the Sale of Goods Act 1979 and Sections 2 and 13 of the Supply of Goods and Services Act 1982) are excluded from the Contract.

- 7.10. The Buyer agrees that, following delivery, any work performed on, or the incorporation of any parts into, or repairs made to any of the Goods, which, in each case are not performed or otherwise approved by the Company, shall result in any unexpired portion of the Warranty in respect of those Goods immediately becoming void and disclaimed by the Company, and cause the Buyer to indemnify and keep indemnified the Company in respect of any and all damages and liability resulting from the work performed on, parts incorporated into, or repairs made to the relevant Goods.

## **8. Items Supplied by Buyer & Use of Purchased Parts**

- 8.1. The Buyer shall be liable for all drawings, specifications and/or instructions issued to the Company with orders or pursuant to the Contract and shall indemnify and keep indemnified the Company against all losses, claims, demands, actions, costs, expenses and liabilities directly or indirectly arising out of any error in or omission from such drawings, specifications and instructions and against all costs claims demands and expenses whatsoever in respect of the infringement or potential infringement of any Intellectual Property Rights arising out of the Company's use of such drawings, specifications and/or instructions.
- 8.2. Repairs, maintenance and modification of equipment comprising or containing parts purchased as Goods under the Contract must be performed as specified in the applicable component maintenance or overhaul manual and/or service bulletin by technically competent and appropriately qualified personnel. Any such repairs, maintenance and/or modification must also be performed using tooling and test equipment as specified in the relevant manual or service bulletin and be performed in a repair facility approved by the appropriate governing airworthiness authority (as applicable). In the event Buyer does not comply with the provisions of this Condition 8.2, Buyer agrees to defend, indemnify and hold harmless the Company from any and all claims, loss or expense resulting directly or indirectly from such non-compliance.
- 8.3. The Buyer shall comply with all applicable import and export control laws and regulations and shall hold and continue to hold all licenses, consents, authorisations and permissions required to lawfully receive and use the Goods and/or Services and/or technical data from the Company on the basis set out in the Contract.
- 8.4. The Buyer shall be liable for, and shall indemnify and keep indemnified the Company against, any claims by third parties in respect of or arising out of any use of any Goods purchased under the Contract, save where such liability has arisen as a direct result of the negligence of the Company.

## **9. Limits of Liability**

- 9.1. The Goods are supplied strictly on the terms that the Buyer has satisfied itself of their suitability for its purposes. The Buyer acknowledges that all specifications and details in catalogues, quotations or acknowledgements of order or similar documents or by word of mouth and all forecasts of performances, howsoever given, are approximate only and do not form part of the Contract and that in respect of such specifications, details and forecasts the Company shall be under no liability nor shall the Buyer be entitled to any remedy under the provisions of the Misrepresentation Act 1967.
- 9.2. In the event the Buyer claims the Company has breached any of its obligations under the Contract (whether of warranty or otherwise), the Company may request the return of the Goods (at the Company's expense) and (following return of the relevant Goods) refund to the Buyer the Price (or any part thereof) already paid by the Buyer for those Goods.
- 9.3. Other than as expressly provided in Condition 9.2, in all cases where Buyer claims against the Company pursuant to the Contract, whether such claims are based in contract, tort (including negligence), or under any other legal or equitable theory of law or arise out of or relate to the sale, delivery or use of defective Parts or damage resulting therefrom, Buyer's exclusive remedies, and the Company's sole liability, shall be limited to those specifically provided in Condition 7 (Warranty) and Condition 9.6.
- 9.4. Notwithstanding any other provision of the Contract, the Company shall have no liability to the Buyer for any loss of profit (direct or indirect); loss of revenue, loss of production or loss of business (in each case whether direct or indirect); loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect); loss of anticipated saving or loss of margin (in each case whether direct or indirect); loss of use of (whether complete or partial) or damage to the Goods or any other property or equipment (whether direct or indirect); liability of the Buyer to third parties (whether direct or indirect); or indirect, consequential or special loss, arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and also including any liability under an indemnity contained in the Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Company's obligations under the Contract.
- 9.5. Nothing in the Contract shall be construed as limiting or excluding the Company's liability under Part 1 of the Consumer Protection Act 1987 or for death or personal injury resulting from its negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977) or for fraud or fraudulent misrepresentation or for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 9.6. Subject to Condition 9.4 and Condition 9.5, the Company's maximum aggregate liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and also including any liability under an indemnity contained in the Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Company's obligations under the Contract shall be limited to 120% of the Price paid and/or payable under the Contract (plus interest).

## **10. Retention of Title and Termination for Insolvency**

- 10.1. Until the Company has received payment in full of:
- (a) all sums due to it in respect of the Goods; and
  - (b) all sums owed to it on any account by the Buyer, whether arising out of this or any other contract,

legal and beneficial ownership in the Goods shall remain in the Company.

- 10.2. Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee ;
  - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (d) not, without the Company's prior written consent, annex any Goods to its premises;
  - (e) maintain the Goods in satisfactory condition; and
  - (f) keep the Goods insured for their full price against all risks to the reasonable satisfaction of the Company, whenever requested by the Company produce a copy of the policy of insurance to the Company and procure that any insurance proceeds received in respect of lost or damaged Goods are paid to the Company, to the extent required to satisfy the indebtedness of the Buyer to the Company.
- 10.3. The Buyer may use and resell the Goods in the ordinary course of its business before ownership has passed to it, provided that the Buyer shall be permitted to make sales solely on the following conditions:
- (a) any sale shall be effected at full market value;
  - (b) any sale shall be a sale of the Buyer's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale;
  - (c) the Buyer shall hold such part of the proceeds of sale as represents the amount owed by the Buyer to the Company in trust for the Company and shall account to the Company accordingly; and
  - (d) the Buyer shall include a retention of title clause in the form of this Condition 10 in its sale contract with its customer.
- 10.4. The Buyer's right to possession, use and resale of the Goods shall terminate immediately:
- (a) if the Buyer becomes Insolvent;
  - (b) on the Company giving the Buyer written notice that it has any concerns regarding the financial standing of the Buyer;
  - (c) if the Buyer is in breach of any of its obligations under the Contract or any other contract between the Company and the Buyer;
  - (d) if the Buyer encumbers or in any way charges any of the Goods; or
  - (e) if the Contract expires or terminates for any reason.
- 10.5. The Company shall be entitled to recover payment for the Goods (including by way of court action) notwithstanding that ownership of any of the Goods has not passed from the Company.
- 10.6. The Buyer grants the Company, its agents, employees and sub-contractors an 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 Buyer's right to possession, use and resale has terminated, to recover them.
- 10.7. Where the Company is unable to determine whether any goods are the Goods in respect of which the Buyer's right to possession, use and resale has terminated, the Company shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 10.8. If the Buyer's right to possession, use and resale of the Goods terminates in accordance with Condition 10.4, the Company shall be entitled to issue the Buyer with a credit note for all or any part of the price of the Goods together with value added tax thereon.
- 10.9. The Company's rights contained in this Condition 10 shall survive expiry or termination of the Contract however arising.
- 10.10. Notwithstanding any other provision of this Condition 10, the Company may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer becomes Insolvent.
- 10.11. The Buyer shall notify the Company immediately in the event that it becomes or is likely to become Insolvent.

## 11. Payment

- 11.1. Subject to satisfactory trade, banker's and other requisite references, and where no other terms of payment have been specifically agreed in writing, the Company's terms for Services orders and inland Goods orders are cash payment in full without deduction or set-off.
- 11.2. Unless otherwise specifically agreed in writing, payment for export orders of Goods shall be by irrevocable letter of credit confirmed by a London Clearing Bank acceptable to the Company and on presentation of the bills of lading and issued in accordance with the applicable Incoterm.
- 11.3. The Company shall be entitled to invoice the Buyer for the Price for the Goods and, where applicable, any packaging, insurance, carriage and/or delivery costs payable by the Buyer in addition to the Price following delivery of the Goods in accordance with Condition 4.
- 11.4. The Company shall be entitled to invoice the Buyer for the Price for the Services following commencement of performance of the Services.
- 11.5. Each invoice shall be payable by the Buyer within 15 days following the date on which the invoice is issued.
- 11.6. No discount or allowance will be made unless specifically stated by the Company in writing. Interest will be charged on all sums due under or by way of damages for breach of the Contract at the rate of 4% per annum above the base rate of HSBC Bank plc from time to time in force and shall be calculated and accrue on a day to day basis from the date on which payment fell due until payment (whether made before or after judgement has been obtained by the Company against the Buyer).
- 11.7. Time for making payment shall be of the essence of the Contract.
- 11.8. The Company may at any time, in its absolute discretion, appropriate any payment made by the Buyer in respect of goods to such outstanding debt as the Company thinks fit, notwithstanding any purported appropriation to the contrary by the Buyer.
- 11.9. The Company shall be entitled without prejudice to its other rights and remedies to cancel the Contract or to postpone any delivery until payment has been received, upon the occurrence of the Buyer becoming Insolvent, the Buyer being likely to become Insolvent or in the event that the Company has reasonable doubts about the Buyer's ability or willingness to pay on the due date.

- 11.10. The Company reserves the right at any time at its discretion to demand security for payment before continuing with an order or delivering Goods or any instalment.
- 11.11. Without prejudice to Condition 11.7, the Company may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer fails to make any payment due to the Company under the Contract or any other contract between the parties on or before the due date.
- 11.12. VAT will be charged at the rate ruling at the time of despatch of the Goods or, if different, the basic tax point (as defined in regulations governing VAT from time to time in force).

## **12. Premises & Safety**

- 12.1. Where the Company's employees or agents require to enter premises occupied by the Buyer or other premises at which the Contract is required to be performed ("Premises") the Buyer shall:-
  - (a) ensure that the Premises are ready and available so as to enable the Company to perform its obligations and provide to the Company, its employees and agents such information as the Company may reasonably require to permit the Contract to be performed at the Premises;
  - (b) ensure that compliance is being made at the Premises with all relevant provisions of the Health and Safety at Work etc. Act 1974 and other legislation concerning safety and working conditions;
  - (c) draw to the notice of the Company, its employees and agents any hazards on the Premises and issue appropriate warnings and safety equipment;
  - (d) indemnify and keep indemnified the Company against all loss, costs, claims, damages, expenses and other liabilities whatsoever arising out of any failure in whole or in part of the Buyer to comply with its obligations under this Condition 12.1.
- 12.2. If the Buyer shall be in breach of any of its obligations under Condition 12.1 above, the Company shall be entitled to suspend performance of the Contract until such breach shall be remedied to the reasonable satisfaction of the Company.

## **13. Force Majeure**

The Company shall not be liable to the Buyer if unable to carry out any provision of the Contract for any reason beyond its control including (but without limitation) Act of God, change in legislation, war, insurrection, riot, civil commotion, act or threat of terrorism, lightning, earthquake, fire, flood, drought, storm or extreme weather condition, failure of power supply, lock out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute or owing to any inability to procure parts or material required for the performance of the Contract.

## **14. No Waiver**

No waiver of any of the Company's rights under the Contract shall be effective unless in writing signed by an authorised person on behalf of the Company. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Company's rights in relation to different circumstances or the recurrence of similar circumstances.

## **15. Assignment and Sub-Contracting**

- 15.1. The Company may assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract or any part of it to any person, firm or company.
- 15.2. The Buyer shall not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or any part of it without the prior written consent of the Company.
- 15.3. The Company shall be entitled to sub-contract all or any part of the Contract as it may think fit.

## **16. Notices**

Any notice under the Contract shall be properly given in writing and sent by first class post, telex or facsimile to the address of the intended recipient as stated in the Contract or to such address as the Company and the Buyer from time to time notify to each other as their respective addresses for service and shall be deemed served in the case of postal notice, on the expiry of 48 hours from time of posting, in the case of telex on the recording of the "answer back" code on the sender's machine, and in the case of facsimile, on the expiry of 15 minutes from completion of transmission by the sender.

## **17. Proprietary Information**

- 17.1. The Buyer shall keep confidential and shall not use or disclose any information of a proprietary or confidential nature which relates to the Company and/or the Company's Group and/or which is used in or otherwise relates to the business, customers, suppliers or financial or other affairs of the Company and/or the Company's Group, which is disclosed to the Buyer (in any form) by or on behalf of the Company (or any member of the Company's Group, its permitted agents or subcontractors) or learnt by the Buyer (or any member of the Buyer's Group, its permitted agents or subcontractors) in connection with the Contract, the Goods and/or Services. The Buyer shall be permitted to use and disclose the same only to the extent necessary to enable it to perform its obligations under the Contract.

- 17.2. Nothing in these Conditions or any Contract shall operate to transfer to the Buyer or to grant to the Buyer any licence or other right to use any of the Company's Intellectual Property Rights, save that the Buyer may use the Company's Intellectual Property Rights in the Goods solely to the extent necessary to use the Goods for the purpose for which they were supplied.
- 17.3. If the Buyer becomes aware of any actual or potential infringement of any of the Company's Intellectual Property Rights by any person, the Buyer shall promptly give written notice of this to the Company and shall, at the request of the Company, provide such assistance as the Company may require in connection with any action that it takes in relation to the actual or potential infringement.

## **18. Construction & Jurisdiction**

- 18.1. The Contract (incorporating the Acknowledgement of Order and these Conditions) constitutes the entire agreement between the parties and supersedes any prior agreement or communications between the Company and Buyer concerning the subject matter of the Contract.
- 18.2. Except as expressly provided in the Contract, the parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.
- 18.3. The Company's rights and remedies set out in the Contract are in addition to and not exclusive of any rights and remedies provided by law.
- 18.4. If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and this shall not affect the remainder of the Contract which shall continue in full force and effect.
- 18.5. Following expiry or termination of the Contract:
- 18.5.1 Conditions 1, 2, 7, 8, 9, 10, 14, 16, 17 and 18 shall continue in force, together with any other Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract; and
  - 18.5.2 all other rights and obligations shall immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 18.6. In the event a dispute arises under or relates to the Contract (including in relation to any non-contractual obligations), the parties shall diligently attempt to resolve the dispute within thirty (30) days from the date either party gives written notice to the other of its intent to invoke this provision, during which period neither party may commence legal action to assert its rights against the other. In the event the parties do not resolve the dispute within the thirty (30) day period referenced above, either party may institute legal action to pursue any right or remedy it may have against the other party. Nothing in this Condition 18.6 will prevent or delay either party from:
- (a) seeking orders for specific performance, interim or final injunctive relief;
  - (b) exercising any rights it has to terminate a Contract ; or
  - (c) commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.
- 18.7. English Law shall govern construction and operation of the Contract and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts (including in relation to any non-contractual obligations).
- 18.7. Any party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.