

TERMS & CONDITIONS OF SALE OF IN WOOD DEVELOPMENTS LIMITED ("Conditions")

We draw your attention to the limitations of liability contained in these Conditions and in particular to the provisions of clause 9 (Warranties) and clause 10 (Liability and Limitation of Liability) below. We also draw your attention to clause 4.10 (obligation to inspect the Goods)

These Conditions form the basis of the Contract that will govern our dealings with you. They apply to every supply of Goods we make to you. Please ensure that you read them carefully to ensure that you understand the terms on which we are contracting with you. If there are any aspects that are unclear, please contact us to discuss them. Any specific terms or alterations to these Conditions will be contained in the Order Confirmation Form. Please read it carefully.

- (f) a reference to writing or written includes faxes and e-mails; and
- (g) references to the masculine, feminine or neuter genders shall include each and every gender.

1. **DEFINITIONS**

1.1 The following definitions, unless the context requires otherwise, apply to these Conditions:

"**you**" or "**your**" means any person or persons, firm or firms, company or companies, authority or authorities who shall order or purchase the Goods;

"**we**", "**us**" or "**our**" means In Wood Developments Limited a company registered in England and Wales under number 03757630 and referred to at the beginning of the Order Confirmation Form;

"**Additional Charge**" means the additional charges set out in clauses 7.3 to 7.5;

"**Business Days**" means a day (other than Saturday, Sunday or a public holiday) when banks in London are open for business;

"**Charges**" means the Price and any Additional Charges payable in respect of a Contract;

"**Contract**" means the individual contract for the supply of Goods to you in accordance with these Conditions;

"**Deliver**" means delivery of the Goods as specified in clauses 4.6 and/or 5.1 (as applicable);

"**Force Majeure Event**" has the meaning given to such term in clause 12;

"**Goods**" means the goods or materials supplied or sold by us to you and as specified in the Order Confirmation Form;

"**Good Industry Practice**" means the exercise of such high degree of skill and care as would reasonably be expected from an appropriately skilled and experienced person with expertise in the relevant area, including the handling of and dealing with goods the same as or similar to the Goods;

"**Late Payment Charge**" has the meaning given to it in clause 7.4;

"**Order**" means your order for the supply of Goods as set out in your purchase order;

"Normal Delivery hours" has the meaning given to such term in clause 4.3;

"**Order Confirmation Form**" means the document entitled order confirmation form and generated by us and provided to you confirming an Order.

"**Price**" has the meaning given to such term in clause 7.1;

"**Unexpected Defect**" has the meaning given to such term in clause 14.2;

"**VAT**" means value added tax at the relevant prevailing rate.

1.2 Reference to any statute or statutory provision (including any subordinate legislation made under a statute or statutory provision) includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

1.3 To the extent of any conflict between these Conditions and any special conditions contained in any Order Confirmation Form, the conditions in the Order Confirmation Form shall prevail.

1.4 Reference to any clause is to a clause of these Conditions.

1.5 In this document and in any special conditions:

- (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 successors or permitted assigns;
- (c) 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 those terms;
- (d) the headings are for convenience only and shall not affect the interpretation of this document or any special conditions in the Order Confirmation Form;
- (e) the use of the plural shall include the singular and the use of the singular shall include the plural;

2. **APPLICABILITY OF TERMS**

2.1 The Order constitutes an offer by you to purchase the Goods in accordance with these Conditions. These Conditions apply to all Contracts between you and us to the exclusion of all other terms and conditions. Any terms or conditions which you put forward whether endorsed on, delivered with or contained in your Order or included in any other documents, do not form part of any Contract and any attempt by you to exclude, vary or limit any of these Conditions shall be void.

2.2 We may provide you with a quotation for the Goods in person, by phone or in writing. Any quotation given by us shall not constitute an offer and is only valid for 30 days, provided that we do not withdraw it (which we are free to do at any time).

2.3 No Contract shall be formed between you and us unless and until an Order Confirmation Form has been sent by us to you. Each Order which you place and which is accepted by us shall form a separate Contract.

2.4 We shall be entitled to rely in all respects and in all circumstances on the contents of the Order Confirmation Form as stating the quantity and specifications of the Goods that are to be supplied. Accordingly it shall be your sole responsibility to check the Order Confirmation Form and to notify us as soon as practically possible (and in any event within 2 Business Days) after receipt of the same where the Goods are not properly stated in the Order Confirmation Form.

2.5 Where there is a conflict between the Order Confirmation Form and any quotation or estimate that we may have provided, the Order Confirmation Form shall prevail.

3. **GOODS**

3.1 Our only responsibility shall be to Deliver the Goods in accordance with the relevant specification or where we have confirmed that we are able to do so, in accordance with any formal written specification referred to in the relevant Order Confirmation Form. You also acknowledge that you are not entitled to cancel any Contract and shall be responsible for all Charges payable under such Contract and agree to indemnify us against any costs, expenses, damages, liabilities and losses (whether direct or indirect) which arise as a result of your cancellation.

3.2 You shall be responsible for ensuring that the Goods, when supplied are in accordance with the specification as set out in clause 3.1. We shall not be obliged to undertake any tests in respect of the Goods unless specified in writing and at your cost.

3.3 Notwithstanding clauses 3.1 and 3.2 where the Goods are pre-packaged goods that are sold on by us in the same packaging as they are bought by us and/or goods that we do not manufacture/process ourselves then, our only obligation shall be to use our reasonable endeavours to pass on to you the warranties given to us by the seller of the Goods to us.

3.4 You are responsible for ensuring that the terms of the Order are complete and accurate.

3.5 Any questions or comments regarding the Goods must be raised by you when placing the Order. Any technical advice regarding particular products or performance issues must be raised with us in writing. Our sales personnel are not able to provide technical advice. Any response we provide in relation to a question raised by you will only be given to the best of our knowledge and belief without any liability on our part.

3.6 We each acknowledge that we are not entering into the Contract in reliance upon any representation, warranty, collateral contract or other assurance (except those set out in the Contract and the documents referred to in it) made by or on behalf of either you or us before the execution of the Contract. We each waive all rights and remedies which, but for this clause, might otherwise be available to you and us in respect of any such representation,

warranty, collateral contract or other assurance, provided that nothing in this clause 3.6 shall limit or exclude any liability for fraud.

4. DELIVERY OF GOODS

- 4.1 Unless otherwise agreed in writing, you shall collect the Goods from our premises as specified in the Order Confirmation Form or such other location as we may advise before Delivery ("**Delivery Location**") within 3 Business Days of us notifying you that the Goods are ready for collection. If we agree any other method of Delivery we will confirm this in writing to you and shall be entitled at our discretion, to charge additional sums for such alternative means of Delivery. This charge will be itemised on the invoice.
- 4.2 Where we agree or state a specified delivery date, we shall use reasonable endeavours to make the Goods available for Delivery on or before the relevant date, but we shall be under no obligation to do so. If no date is specified, we will make the Goods available for Delivery within a reasonable period of time. However, any delivery dates are estimates only and we cannot guarantee that the Goods will be available for Delivery on or by any particular date or time. Please be aware that our business is subject to marked seasonal fluctuations in production and demand and that poor driving conditions may affect the availability of the Goods. You must therefore allow extra time for the Goods to be made available for Delivery and factor this into any Orders you place.
- 4.3 We shall not be obliged to make the Goods available to you at any specified time. You shall be obliged to collect the Goods during the hours of [8:30 a.m.] and [4:30 p.m.] on a Business Day (the "**Normal Delivery Hours**"). If you request that the Goods be made available at a specified time or outside the Normal Delivery Hours and the same is recorded in the Order Confirmation Form, we will use our reasonable endeavours to make the Goods available for Delivery on at the specified time. We may, in our absolute discretion, make an additional charge for this.
- 4.4 Time shall not be of the essence with respect to any of our obligations arising under the Contract. We shall not be liable for a failure to Deliver and/or make the Goods available for Delivery resulting from a Force Majeure Event or from your failure to provide us with adequate information or instructions which are relevant to the supply of the Goods.
- 4.5 We shall not be liable in respect of any loss incurred by you arising from any delay in Delivery of the Goods.
- 4.6 Delivery of the Goods will be deemed to have taken place on the date shown on the signed delivery note.
- 4.7 Where the Goods are Delivered in some manner other than as specified in clause 4.6 above, Delivery will be deemed to have taken place when the Goods leave our premises or those of our appointed manufacturer of the Goods.
- 4.8 The provisions of clauses 4.6 and 4.7 above are subject to any contrary provision of the Order Confirmation Form which may specify a different date for deemed delivery.
- 4.9 The Goods may be Delivered in one or more separate instalments. Each instalment will be invoiced and must be paid for separately and in accordance with the provisions of the Contract. Each separate instalment shall be a separate Contract. Any failure, suspension or delay by us in respect of any part-Delivery of the Goods or the discovery of any defect in any of the Goods so Delivered shall not entitle you to cancel any other Contract and shall not affect your obligations in respect of any other Contract.
- 4.10 You must in respect of each Delivery of the Goods:
- ensure that all necessary arrangements are put in place for the safe acceptance of each Delivery including (without limitation) providing adequate and appropriate equipment for accepting Delivery ensuring that any storage facilities are clearly marked and comply with any and all applicable laws and regulations;
 - in the case of highly flammable Goods and for other similar Goods comply with any and all applicable laws and regulations and maintain any and all appropriate licences required by all applicable laws and regulations;
 - comply with and ensure that any employees, agents, authorised representatives or contractors acting on your behalf comply with all of our health and safety requirements,

procedures and processes regarding access to, and conduct at our premises; and

- (d) (without limitation to the obligations imposed on you by clause 9.2) inspect and check (to the extent reasonably practicable) the Goods to ensure that they conform to the Contract and ensure that your authorised representative signs a delivery note (or equivalent documentation provided by us) to confirm the Goods are as ordered and undamaged. If you/your authorised representative/agent fails to do so, the Goods shall be conclusively presumed to have been received and accepted by you without any claim for any defect, shortage, damage or loss.

If you are unsure as to the obligations referred to above regarding the safe receipt of the Goods then it is your responsibility to raise this with your own health and safety representative or to take professional advice. It is your responsibility to ensure that your carriage, storage and offloading facilities are adequate and suitable.

- 4.11 We shall ensure that each Delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type, quantity and description of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being Delivered by instalments, the outstanding balance of Goods remaining to be Delivered. In the absence of clear contrary evidence this shall be deemed to be conclusive proof as to the date of Delivery and the volume and type of Goods Delivered. If you believe that the information which we have recorded, and which is set out on your delivery notice or invoice, is incorrect then you must notify us in writing providing full details of any disputed element(s) as soon as is reasonably practicable (and in any event within 5 Business Days of the date of receipt of the relevant delivery note or invoice).
- 4.12 If we require you to return any packaging material to us we will notify you in writing on the delivery note. You shall make any such packaging materials available for collection at such times as we shall reasonably request. Returns of packaging materials shall be at our expense.

5. FAILURE TO ACCEPT DELIVERY

- 5.1 If you fail to collect the Goods within 3 Business Days of a notice in writing from us stating that the Goods are ready for collection, or you wish to delay collection then except where such failure or delay is caused by a Force Majeure Event or by our failure to comply with these Conditions:
- Delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which we notified you that the Goods were ready; and
 - we shall store the Goods until physical delivery takes place, and charge you for all related costs and expenses (including insurance) of doing so.
- 5.2 If 5 Business Days after we have notified you that the Goods are ready for collection you have not collected them and/or notified us that you will collect them, we may, in our absolute discretion resell or otherwise dispose of all or part of the Goods and after deducting reasonable storage and selling costs, charge you for any shortfall below the price of the Goods. This may mean that our ability to subsequently Deliver replacement Goods to you may be delayed.

6. RISK AND TITLE

- 6.1 The risk in the Goods passes to you on completion of Delivery.
- 6.2 Notwithstanding Delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to you until we have received payment in full (in cash or cleared funds) for:
- the Goods; and
 - any other goods that we have supplied to you in respect of which payment has become due.

- 6.3 Until title to the Goods has passed to you, you will:
- hold the Goods on a fiduciary basis as our bailee;
 - store the Goods separately from all other goods held by you so that they remain readily identifiable as the our property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of Delivery;
 - notify us immediately if you become subject to any of the events listed in clauses 11.1(b) 11.1(l);
 - give us such information relating to the Goods as we may require from time to time; and
 - deliver up the Goods on written request from us to do so and if you fail to do so, you will allow us (or any employee, authorised representative, agent or contractor) to enter upon your premises or the premises of any third party where the Goods are stored and repossess the Goods,
- but you may resell the Goods before ownership has passed to you if such sale is a sale of the relevant Goods on your own behalf dealing as principal in the ordinary course of your business at full market value.
- 6.4 You hereby grant us, our agents and employees an irrevocable licence to access and enter any premises at which the Goods are stored at any time to inspect them or (where your right to possession has ended) to recover them.
- 6.5 You are not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain our property, but where you do so all monies owed by you to us shall (without prejudice to any other right or remedy we may have) immediately become due and payable.
- 6.6 We are entitled to recover payment for the Goods in accordance with these Conditions notwithstanding the fact that ownership of the Goods may not have passed to you at that time.
- 6.7 If we repossess any Goods or you deliver up any Goods, in accordance with these Conditions, the Contract(s) in respect of those Goods shall be rescinded.
- 6.8 Your right to possession of the Goods shall terminate immediately upon the occurrence of any of the matters listed in clauses 11.1(b) to 11.1(l).
- 6.9 If any of the events listed in clause 6.8 occur before title to the Goods passes to you or if we reasonably believe any such event is about to occur and we notify you accordingly then, you will deliver up any Goods which remain in your possession, upon request by us and/or we may exercise our rights under clause 6.4.
- 6.10 The provisions of this clause shall continue to apply following termination of the Contract.

7. CHARGES

- 7.1 Save as otherwise agreed in writing by us or as indicated in the Order Confirmation Form, the price of the Goods will be that prevailing at the time of Delivery stated as a price in pounds sterling ("**Price**") and shall exclude all other charges, including without limitation, insurance, taxes, duties and any inspections required and/or container charges which shall be payable by you and be charged separately (if applicable) and shown separately on the invoice.
- 7.2 Save as expressly stated otherwise by us in writing, the Prices quoted are exclusive of VAT, which shall be added by us at the appropriate prevailing rate. Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as may be chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 7.3 If we are unable to Deliver the volume you ordered due to some act or omission on your part (for example the vehicle you have provided to accept the Goods has insufficient storage capacity) then we may, in our absolute discretion, include an additional charge, set at a reasonable level to cover our costs in storing the Goods and making

them available to you at a future date. This charge will be itemised on the invoice.

- 7.4 If you fail to pay any of the Charges in accordance with the Contract then we may require you to pay an additional charge (the "**Late Payment Charge**") by way of compensation to us for your breach of the Contract. The Late Payment Charge will be detailed on your invoice and we may apply it automatically if you are late in paying the relevant Charges.
- 7.5 We reserve the right to charge you a reasonable card processing fee if you pay any costs by credit card. The cost will be detailed on your invoice and is to cover our costs and the fees that we incur from credit card companies. There is no additional charge for payments made by debit card.

8. PAYMENT

- 8.1 We shall be entitled to submit an invoice to you at any time before or on or after Delivery.
- 8.2 Unless otherwise notified to you, you will pay each of our invoices in full prior to the Delivery of goods other than for account customers with an approved credit account. However, we may in our absolute discretion require you to pay some or all of the Charges in advance at the time you place the relevant Order.
- 8.3 For approved account customers unless otherwise notified to you, you will pay each of our invoices in full 30 days from the date of invoice.
- 8.4 Payment shall be made to the bank account nominated in writing by us and will be deemed to have been received only on receipt of cash or cleared funds from you. All sums payable to us under a Contract shall become due immediately upon its termination and time for payment shall be of the essence of the Contract.
- 8.5 All payments due under the Contract shall be made in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise (except as may be required by court order).
- 8.6 We may require (further) security from you in connection with the performance and discharge of your obligations under any Contract or for any other reason we consider reasonable. You confirm that you will use your best endeavours to ensure that any additional security we require (including a third party guarantee) is promptly provided and shall be entitled to suspend delivery of Goods until such time as the additional security is provided. If the additional security is not provided within a reasonable period we shall be entitled to terminate the Contract.
- 8.7 Without limiting any other rights or remedies we may have, including that set out in clause 7.4 (Late Payment Charge), if you do not pay us on time and/or if any of the events in clauses 11.1(b) to 11.1(l) occur, we may do all or any of the following:
- without notice suspend or cancel Delivery of the Goods under the Contract, and any other Contract you have with us, until you pay the outstanding amounts in full;
 - cancel or suspend the Contract (and any other Contracts we have with you) and/or any outstanding quotations;
 - cancel any discount we previously offered to you under the Contract; and/or
 - charge interest on the outstanding amount, calculated on a daily basis from the due date for payment up to the date of actual payment. You must pay us this interest together with the overdue amount. The rate of interest shall be determined in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

9. WARRANTIES

- 9.1 Save as expressly provided in these Conditions or in any individual Contract, all terms, conditions and warranties implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 9.2 You are solely responsible for satisfying yourself and others as to the suitability of the Goods for any particular purpose and you acknowledge that you are relying solely on your own skill and judgment and not ours in determining such suitability. If you

- become aware that you are in possession of the wrong or defective Goods then you must stop using those Goods with immediate effect and notify us as soon as practicable regarding the same.
- 9.3 Without limiting the warranties in the Contract, if the relevant Goods do not conform with the warranties provided by us we shall in our absolute discretion either replace such Goods or issue a credit note or refund to you at the Price such sum in respect of the Goods provided that you have given to us: (i) written notice of any alleged breach of warranty or as provided by the relevant Contract within 5 Business Days of the time when you discover or ought to have discovered such breach; and (ii) a reasonable opportunity, after receiving the notice, to examine the relevant Goods.
- 9.4 We have no liability for any defect which arises as a result of your (or any third party's) negligence, failure to follow any instructions as to the storage, use or maintenance of the Goods or to comply with Good Industry Practice or if you make any further use of the Goods after identifying that there is any issue with them, if you alter, modify, mishandle or try to remedy such Goods without our prior consent or fail to adopt Good Industry Practice in handling and using the Goods.
- 9.5 If we comply with our obligations under clause 9.3 our liability shall be limited to our undertaking our chosen option and we shall have no further liability to you in respect of such Goods.
- 9.6 These Conditions apply equally to any replacement Goods we supply to you pursuant to clause 9.3.
- 10. LIABILITY AND LIMITATION OF LIABILITY**
- 10.1 Nothing in these Conditions shall limit or exclude our liability for:
- death or personal injury caused by our negligence;
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
 - defective products under the Consumer Protection Act 1987; or
 - any other matter for which it would be illegal or unlawful for us to exclude or attempt to exclude our liability,
- save that nothing in this clause 10 shall confer on you a right or remedy to which you would not otherwise be entitled.
- 10.2 These Conditions and in particular, but without limitation, this clause 10 sets out our entire liability (including any liability for the acts and omissions of our employees, agents or sub-contractors) to you in respect of:
- a breach of our contractual obligations;
 - a tortious act or omission for which we are liable;
 - an action arising out of a misrepresentation made by us or on our behalf arising in connection with the performance or contemplated performance of this Contract or out of an act done or omission made as a consequence of the entry into this Contract by us.
- 10.3 The total liability which we shall owe to you in respect of all claims shall not exceed the price of the Goods unless agreed otherwise by us and set out in the Order Confirmation Form.
- 10.4 You shall only be entitled to bring a claim against us where you issue legal proceedings against us within the period that is the lesser of (i) the shelf life of the Goods and (ii) the period of 12 months commencing on the date upon which you ought reasonably to have known of your entitlement to bring such a claim.
- 10.5 Subject to clauses 10.1 we shall not be responsible for any indirect losses or any losses that you suffer as a result of any breach of contract, except for those losses which are direct losses. In particular, but without limitation, we shall not be responsible for losses that result from a failure to comply with the Contract which fall into the following categories:
- loss of income or revenue or any pure economic loss;
 - loss of profit;
 - loss of business;
 - loss of contracts;
 - loss of anticipated savings; or
 - any waste of time.
- 10.6 You shall be liable to pay us (on written demand) for, and indemnify us against, all reasonable costs and expenses and/or losses sustained or incurred by us (including any direct, indirect or consequential losses, loss of profit or reputation, damage to property, loss of opportunity to deploy resources elsewhere, and legal costs) which arise in connection with your fraud, negligence or breach of the Contract.
- 10.7 The exclusions from and limitations of liability set out in this clause 10 shall be considered severable. The validity or unenforceability of any one paragraph or sub-paragraph of this clause 10 shall not affect the validity or enforceability of any other part of this clause.
- 10.8 This clause 10 shall survive termination of this or any part of this Contract.
- 11. TERMINATION AND CONSEQUENCES OF TERMINATION**
- 11.1 Without limitation to our other rights we may terminate the Contract with immediate effect by giving written notice to you if:
- you commit a material breach of your obligations under this Contract and (if remediable) you fail to remedy it within 10 Business Days of receipt in writing of notice of such breach;
 - you suspend, or threaten to suspend, payment of your debts or are unable to pay your debts as they fall due or you admit inability to pay your debts or (being a company) you are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) you are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) have any partner to whom any of the above apply;
 - you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;
 - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up (being a company) other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;
 - you (being an individual) are the subject of a bankruptcy petition or order;
 - one or more of your creditors or encumbrancers attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
 - an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you (being a company);
 - a floating charge holder over your assets (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
 - any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(b) to clause 11.1(i) (inclusive);
 - you suspend, threaten to suspend, cease or threaten to cease to carry on, all or substantially the whole of your business; or
 - you (being an individual) die or, by reason of illness or incapacity (whether mental or physical), you are incapable of managing your own affairs or become a patient under any mental health legislation.
- 11.2 We may without limiting our other rights and/or remedies terminate the Contract:

- (a) in our absolute discretion, if you or we suffer a Force Majeure Event which continues for more than 30 days; and/or
 - (b) on 2 month's notice.
- 11.3 Without limiting our other rights or remedies, we shall have the right to suspend the supply of further Goods under the Contract or any other contract between us and you if:
- (a) you fail to pay any amount due under this Contract on the due date for payment; or
 - (b) you become subject to any of the events listed in clauses 11.1(b) to 11.1(l), or we reasonably believe that you are about to become subject to any of them.
- 11.4 On termination of the Contract for any reason:
- (a) you shall immediately pay to us all outstanding Charges payable pursuant to any and all contracts between us and you, including without limitation any interest payable;
 - (b) the accrued rights and remedies of the parties as at termination shall not be affected, 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 of the Contract; and
 - (c) the Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

12. FORCE MAJEURE

- 12.1 In the Contract, “**Force Majeure Event**” means an event wholly beyond the reasonable control of the party claiming the benefit of the clause (including its sub-contractors) including, without limitation, an act of God, war, riot, civil commotion, compliance with a law or governmental order, rule, regulation or direction, fire, flood, storm, riot, strike or other industrial action (including without limitation strike or other industrial action by our employees or the employees of our strategic partners), failure by any statutory undertaker, utility company, local authority or like body to provide services, any failure, shortage of power, fuel, raw material, Goods bought from third parties or transport, and any act or omission of any third party to the extent that performance of any obligation of the party claiming the benefit of the clause relies on.
- 12.2 We shall not be liable to you in respect of any failure to perform or delay in performing any of our contractual obligations (other than an obligation to pay monies) attributable to any Force Majeure Event and no such failure or delay shall be deemed for any purpose to constitute a breach of contract.
- 12.3 Our obligations under the Contract are suspended for the period that the Force Majeure Event continues, and we will have an extension of time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Conditions can be performed despite the Force Majeure Event.
- 12.4 If we suffer any temporary interruptions or shortages in supply (whether or not due to a Force Majeure Event) then both you and we will use our reasonable efforts to minimise any adverse impact. If we need to ration or allocate our available supplies of the Goods then we will do so fairly having regard to the circumstances. You acknowledge that in such circumstances we may allocate supplies to public utilities and emergency services before Goods are rationed and allocated to other customers.

13. CONFIDENTIALITY

Each party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of the other party which may in future come to our knowledge and we each party agrees to use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

14. HEALTH AND SAFETY AT WORK

- 14.1 Where required by law, we will each supply safety data sheets and other information regarding the health and safety attributes of the Goods.
- 14.2 You will comply with all health and safety legislation. In particular but without limitation, you shall fully and effectually indemnify us against any costs, claims, losses, expenses and damages incurred by us or for which we may be liable due to or arising directly or indirectly out of:
- (a) an Unexpected Defect (as defined below) in the Goods;
 - (b) a failure to use the Goods in accordance with the health and safety legislation or with the information regarding the health and safety attributes of the Goods supplied by or on behalf of us (whether such failure is on the part of your employees, contractors or agents, or a third party to whom you have supplied the Goods);
- In this clause 14, an “**Unexpected Defect**” means a defect in the Goods other than a failure by the Goods to meet the specification as indicated in the Order Confirmation Form.
- 14.3 You undertake to ensure that all information, including without limitation any health and safety information and/or care, handling, storage or other specific instructions or information that we provide to you in respect of the Goods will be made available to and be brought to the attention of your employees and other persons who may deal with or come into contact with the Goods. You undertake further to impose a similar requirement upon any third party to whom the Goods are sold or supplied.
- 14.4 You will promptly inform us of any incident of which you become aware in which the use of the Goods has or may have given rise to risks to the health or safety of any person.

15. ENTIRE AGREEMENT

The Contract (together with all the other documents to be entered into pursuant to it) sets out the entire agreement and understanding between you and us relating to the matters contemplated by the Contract and all conditions, terms and warranties, whether express or implied are excluded, so far as permitted by law, if they are not expressly set out in the Contract.

16. ASSIGNABILITY

You shall not be entitled to assign the benefit or burden of the whole or any part of the Contract without our prior written consent. We may sub-contract the performance of our obligations as we see fit, provided always that we shall remain responsible for the acts and omissions of our subcontractors.

17. SEVERABILITY

- 17.1 If a provision in this Contract is determined by a Court or tribunal of a competent jurisdiction to be wholly or partly unenforceable for any reason:
- (a) such unenforceability shall not affect the rest of this Contract; and
 - (b) the parties shall in good faith amend and if necessary novate this Contract to reflect as near as may be the spirit and intention behind such unenforceable provision or provisions so that the same comply with the laws of that jurisdiction.

18. WAIVER

Save in respect of a waiver granted in writing, any failure by us at any time to enforce a provision of this Contract or to insist that you comply with your obligations shall not be deemed a waiver of such provision or confirmation that you do not have to comply with your obligations or be deemed a waiver of any other provision of this Contract or of our right thereafter to enforce that or any other provision of this Contract.

19. VARIATIONS

All variations to these Conditions must be made in writing and be signed by our authorised representative and your representative. We shall each at our own cost do and execute, or arrange for the doing and executing of, each necessary act, document and thing

reasonably requested of us by the other party to implement the Contract. No variation or amendment shall be valid unless confirmed by us in writing.

20. GENERAL

- 20.1 Each right or remedy that we have under the Contract is without limit to any other right or remedy we may have whether under the Contract or otherwise.
- 20.2 A person who is not party to the Contract shall have no rights under or in connection with the Contract (and this includes pursuant to the Contracts (Rights of Third Parties) Act 1999).
- 20.3 Unless a Condition expressly provides otherwise, all communications between the parties about the Contract, including any notices to be sent or received under the Contract, must be in writing, sent to the other party's registered office (or such other address as may be notified to the other party for delivery) and signed by an authorised representative. Notices shall be deemed to be served on delivery if delivered by hand, 48 hours after posting if sent by post and on completion of transmission if sent by email or facsimile.
- 20.4 We will accept the return of Goods from you provided that you pay our reasonable costs incurred in receiving and checking the Goods (save where the Goods are defective and subject to clause 9) and the Goods are as fit for sale on their return as they were on Delivery.
- 20.5 We may from time to time request information from you regarding the purpose and intended use of the Goods by you. Where requested you agree to provide us with such information within a reasonable time and in any event within 10 Business Days of such request.

21. DATA PROTECTION & CREDIT CHECKS

- 21.1 In assessing your application for credit, to prevent fraud, to check your identity and to prevent money laundering, we may carry out credit checks and employ the use of a third party to do so. We may also disclose details of how you conduct your account to such third parties. This information may be used by other credit intelligence companies for making credit decisions about your business, you, and the people with whom you are financially associated, for fraud prevention, money laundering prevention and occasionally for tracing debtors. Information used for these purposes will include publicly available information such as corporate accounts and county court judgments.
- 21.2 We may use the personal/business specific information you provide to us to provide you with our Goods and may also use it to inform you, by letter, fax, phone, SMS and email about promotions, news and new products and/or services that we think may be of interest to you. We will only use your information for this purpose in accordance with applicable law.

22. GOVERNING LAW

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.