

## TERMS AND CONDITIONS OF SALE

### 1. Interpretation

#### 1.1 In these Conditions:

**'Account Application Form'** means the application form provided by the Seller to the Buyer to enable the Buyer in order for the Buyer to apply for an account with the Seller and under which the payment terms are agreed;

**'Buyer'** means the person(s), firm, company, public authority or agency whose Purchase Order for the Goods is accepted by the Seller pursuant to Condition 2.4;

**'Conditions'** means the terms and conditions of sale set out in this document

**'Confidential Information'** means all information in respect of the business of the Seller including, but not limited to, know-how or other matters connected with the Goods, and any other information which, if discussed with or disclosed to third parties by the Buyer, will be liable to cause the Seller harm;

**'Contract'** means the contract between the Seller and the Buyer for the sale and purchase of the Goods formed in accordance with Condition 2.2.

**'Delivery Point'** means the place where delivery of the Goods is to take place under Condition 4;

**'Force Majeure'** means any cause preventing the Seller from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Seller including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of the Seller or otherwise), protest, act of God, war, or national emergency, an act or threat of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, utilities failure, flood, storm, epidemic or default of suppliers or sub-contractors;

**'Goods'** means any Goods which the Seller is to supply to the Buyer (including any of them or any part of them) under a Contract;

**'Intellectual Property Rights'** means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**'Order Confirmation'** means the Seller's written acceptance of the Purchase Order;

**'Price'** means the price for the Goods as referred to in Condition 8.1;

**'Purchase Order'** means the Buyer's order for Goods (whether oral or in writing and including, without limitation, the acceptance of a Quotation by the Buyer);

**'Quotation'** means any quotation (either in writing or orally) given to the Buyer by the Seller for any Goods;

**'Seller'** means Americhem Europe Limited (registered in England under company number 01009410).

1.2 Any reference in these Conditions to any provision of a statute or a statutory instrument shall (unless otherwise specified) be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Any reference in these Conditions to the neuter shall include the masculine and feminine and to the singular shall include the plural if the context so requires.

1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.5 Any reference in these Conditions to "the Seller's negligence" shall be construed as including a reference to the negligence of any individual for whom the Seller is, in respect of such negligence vicariously liable.

### 2. Formation

2.1 Subject to any variation under Condition 2.6, each Contract will be upon and subject to these Conditions to the exclusion of all other terms and conditions express or implied save (where applicable) in respect of any payment terms agreed between the parties in an Account Application Form (including any terms or conditions which the Buyer purports to apply under any Purchase Order, confirmation of Purchase Order, acceptance of a Quotation or similar document). No other action on the part of the Seller (whether delivery of the Goods or otherwise) shall be construed as an acceptance of any other terms and conditions and no terms or conditions endorsed upon, delivered with or contained in the Purchase Order, confirmation of Purchase Order, acceptance of a Quotation or similar document will form part of the Contract simply as a result of a reference to such document in the Contract.

2.2 Any Quotation is given on the basis that no Contract will come into existence unless and until the Seller accepts the Purchase Order from the Buyer in accordance with the Condition 2.4. The Seller reserves the right to amend any errors and/or omissions in any Quotation provided prior to acceptance of the Purchase Order by it. Any Quotation is valid for such a period of time as specified in the Quotation, or if not specified in the Quotation, for a period of 1 month only from the date of the Quotation provided the Seller has not previously withdrawn the Quotation.

- 2.3 The Seller may vary or withdraw a Quotation at its discretion.
- 2.4 Each Purchase Order for Goods shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions. No Contract will come into existence unless and until the Seller accepts the Purchase Order by issuing an Order Confirmation to the Buyer.
- 2.5 The Buyer must ensure that the terms of its Purchase Order and any applicable specification are accurate.
- 2.6 Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Seller.
- 2.7 These Conditions (as modified in relation to the Contract in accordance with Condition 2.6) and the Quotation embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications made by either party. Acceptance of delivery of Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.8 Subject to Condition 4.5, no Purchase Order which the Seller has accepted may be cancelled by the Buyer except with the written agreement of the Seller and on terms that the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by the Seller as the result of such cancellation.
- 2.9 The Seller shall be entitled to decline or withdraw without reason any Account Application Form submitted to it by the Buyer.

### 3. **Description**

- 3.1 Any Contract is not a contract for sale of goods by description.
- 3.2 All descriptive matter, specifications, colour and advertising issued by the Seller (or the manufacturer of the Goods) and any descriptions, colours or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them, and any samples of masterbatch, concentrates, colour matches or polymer additives (powder or concentrate) are issued for the sole purpose of giving an approximate idea of the colour. They will not form part of the Contract and no Contract shall be a contract for sale by sample but if the Buyer accepts the colour match, that will form part of the Contract.
- 3.3 The Seller may make any changes to the specification, design, materials or finishes of the Goods which:
  - 3.3.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or
  - 3.3.2 do not materially affect their quality of performance.

### 4. **Delivery**

- 4.1 Delivery of the Goods shall be made ex-works (as defined in Incoterms 2000) unless the Delivery Point is otherwise agreed between the Seller and the Buyer in accordance with Condition 4.6. In the event of any conflict between the provisions of ex-works (as defined in Incoterms 2000) and these Conditions, then these Conditions shall prevail.
- 4.2 If the delivery of the Goods is ex-works under Condition 4.1, the Buyer will take delivery of the Goods within 3 days of the Seller giving the Buyer notice that the Goods are ready for delivery.
- 4.3 Delivery of the goods shall be during the Seller's usual business hours.
- 4.4 Any dates specified by the Seller for delivery of the Goods (including, without limitation, any despatch date given by the Seller) are approximate only and may not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 4.5 The Seller will use reasonable endeavours to deliver the Goods in accordance with Condition 4.4. If, despite those endeavours, the Seller is unable for any reason to fulfil any delivery of the Goods on the specified date, the Seller will be deemed not to be in breach of the Contract, nor (for the avoidance of doubt) will the Seller have any liability to the Buyer for any direct, indirect or consequential loss (all three of which terms includes, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in this Condition 4.5. Any delay in delivery will not entitle the Buyer to cancel the Purchase Order (or part of the Purchase Order) unless and until the Buyer has given 60 days' written notice to the Seller requiring the delivery to be made and the Seller has not fulfilled the delivery within that period. If the Buyer cancels the order in accordance with this Condition 4.5 then:
  - 4.5.1 the Seller will refund to the Buyer any sums which the Buyer has paid to the Seller in respect of that Purchase Order (or part of the Purchase Order) which has been cancelled; and
  - 4.5.2 the Buyer will be under no liability to make any further payments under Condition 9.2 in respect of that Purchase Order (or part of the Purchase Order) which has been cancelled.
- 4.6 If the Delivery Point is agreed to be other than the Seller's premises in accordance with Condition 4.1 then, unless otherwise agreed in writing between the Seller and the Buyer, the Goods shall be delivered to the notified Delivery Point by such means as the Seller thinks fit unless the Buyer has specified in its Purchase Order the details of the contract with a carrier which it reasonably requires having regard to the nature of the Goods and the other circumstances of the case and providing always that the Buyer shall be responsible for ensuring the Goods are adequately insured during carriage of the Goods in accordance with the Contract. The Buyer accepts that where the Seller appoints a carrier for the carriage of the Goods in accordance with this Condition 4.6, the Seller does so as the Buyer's agent except for the purposes of sections 44, 45 and 46

of the Sale of Goods act 1979. The Seller shall in no way be responsible for any damage, destruction or loss of Goods in transit, and shall be under no liability to effect any insurance in this respect unless otherwise agreed in writing between the parties.

- 4.7 If the Buyer fails to take delivery of any of the Goods within 3 days of the Seller giving notice they are ready for delivery (if delivery is ex-works) or fails to accept delivery (if delivery is other than ex-works) or fails to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Seller's fault):
- 4.7.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Seller's negligence);
  - 4.7.2 the Goods will be deemed to have been delivered, and
  - 4.7.3 (without prejudice to its other rights) the Seller may store or arrange for the storage of the Goods until the actual delivery or sale and charge the Buyer for all related costs and expenses (including storage, insurance and any costs of carriage) and/or following written notice to the Buyer sell any of the Goods at the best price reasonably obtainable in the circumstances and (after deducting all amounts payable by the Buyer to the Seller) account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the Contract.
- 4.8 The quantities of any consignment of Goods are recorded by the Seller upon despatch from the Seller's place of business and shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary. The Seller may deliver to the Buyer Goods up to 15% more or 15% less than the quantity ordered (where the Purchase Order is for up to 100 kilogrammes) and 10% more or 10% less than the quantity ordered (where the Purchase Order is for over 100 kilogrammes) without any adjustment in the price and the quantity delivered shall be deemed to be the quantity ordered.
- 4.9 Subject to Condition 4.8, the Buyer shall notify the Seller in writing within 7 days of the Goods being delivered of any irregularity between Goods ordered by the Buyer pursuant to a particular Purchase Order and the Goods delivered under that Purchase Order in accordance with Condition 4.1. Failure to provide such notification within 7 days of delivery of the Goods shall be conclusive evidence of the Buyer's acceptance that the delivered Goods comply with such Purchase Order.
- 4.10 Upon receipt by the Seller of the written notification in accordance with Condition 4.9 the Buyer shall at the request of the Seller return any such Goods to the Seller and if any irregularity under Condition 4.9 is proven to the satisfaction of the Seller the Seller will, at its option, replace or refund the purchase price of the Goods (if already paid by the Buyer) and the reasonable cost of return of such Goods to the Seller and this shall be the Buyer's sole and exclusive remedy.
- 4.11 In the case of Goods for export, the Buyer shall be responsible for obtaining all import licences (or equivalent authorisation) necessary in respect of the importation of the Goods into the country to which they are consigned and for the payment of all import or similar duties.
- 4.12 A signature of qualified acceptance on a carrier's delivery note shall not be written notice to either the carrier or the Seller for the purpose of these Conditions.

## 5. **Delivery by Instalments**

- 5.1 The Seller may make delivery of the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.
- 5.2 Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract.
- 5.3 Failure by the Buyer to pay for any one or more instalments in accordance with the Contract shall entitle the Seller (without prejudice to its other rights and remedies):
- 5.3.1 to suspend without further notice deliveries of Goods or goods under any other contract between the Seller and Buyer pending payment by the Buyer; and/or
  - 5.3.2 to treat that Contract as repudiated by the Buyer.

## 6. **Force Majeure**

- 6.1 The Seller shall not be liable to the Buyer in any manner or be deemed to be in breach of a Contract because of any delay in performing or any failure to perform any of the Seller's obligations under any Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in Condition 6.2.
- 6.2 If the Seller's performance of its obligations under a Contract is affected by Force Majeure:
- 6.2.1 it will give written notice to the Buyer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure;
  - 6.2.2 subject to the provisions of Condition 6.3, the date for performance of such obligations will be deemed suspended for a period equal to the delay caused by such event.
- 6.3 If the Force Majeure in question continues for more than three months, the party not subject to the Force Majeure may give written notice to the other party to terminate the Contract. The notice to terminate must specify the termination date which must not be less than 15 days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

## 7. Risk/Title

- 7.1 Risk of damage to or loss of Goods shall pass to the Buyer at the time when the Buyer is notified by the Seller the Goods are placed at the disposal of the Buyer at the Seller's premises, or, where the Delivery Point is agreed to be other than the Seller's premises in accordance with Condition 4.6, immediately prior to the Goods being loaded on to the carrier's vehicle on behalf of the Buyer at the Seller's premises unless otherwise agreed in writing between the Seller and the Buyer.
- 7.2 Property in the Goods (both legal and equitable) shall not pass to the Buyer until the Seller has received in full (in the currency specified in the relevant Quotation and in cash or cleared funds):
- 7.2.1 the price for the Goods plus all carriage insurance duties and value added tax payable in connection with the Goods and their delivery; and
- 7.2.2 all other sums (whether payable under the Contract or not) which are or will afterwards become due or owing from the Buyer to the Seller.
- 7.3 Until property in the Goods has passed to the Buyer, the Buyer shall:
- 7.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 7.3.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or third parties and identify them as the Seller's property;
- 7.3.3 not destroy or deface any identifying mark on the packaging of the Goods;
- 7.3.4 keep the Goods in satisfactory condition insured on the Seller's behalf for the full price of the Goods against "all risks" to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
- 7.3.5 hold the proceeds of insurance referenced to in Condition 7.3.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 7.4 At any time before the property in the Goods has passed to the Buyer pursuant to Condition 7.2 the Seller may by written notice end the Buyer's right to use the Goods and the Buyer shall immediately return the Goods to the Seller (at the Buyer's cost). After giving such notice the Buyer shall no longer be in possession of the Goods with the consent of the Seller. The Buyer grants the Seller, its agents and employees an irrevocable licence at anytime 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 has terminated, or recover them.
- 7.5 Nothing in this Condition 7 shall change the Buyer's obligation to pay for the Goods and on termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this Condition 7 will remain in effect.
- 7.6 Before the property in the Goods has passed to the Buyer, the Buyer may use the Goods in the preparation of its products and sell those products to a third party on an arm's length basis, but this Condition 7.6 does not make the Buyer the agent of the Seller for any such sale and no contractual rights will be acquired by such third party against the Seller and any sale shall be effected in the ordinary course of Buyer's business at full market value and the Buyer shall account to the Seller accordingly.
- 7.7 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

## 8. Price

- 8.1 The Price for the Goods shall be the price set out in the Order Confirmation.
- 8.2 The Price for the Goods is exclusive of any value added tax or any other applicable sales tax or duty, levies or tariffs (including any import duty) which the Buyer shall pay in addition when it is due to pay for the Goods.
- 8.3 Unless the Price is given on an ex-works basis, the Price shall include the costs of packaging and transport. If the Buyer changes the requirements for delivery as specified in the Order Confirmation, the Buyer shall pay any additional transport costs incurred as a result of such changes. If the Price for the Goods is given on an ex-works basis, where the Delivery Point is other than at the Seller's premises, the Buyer shall pay the Seller's charges including, without limitation, for export duties, packaging, loading, unloading, and insurance in addition when it is due to pay for the Goods.
- 8.4 The Seller may at any time before delivery increase the Price to reflect any increase in the cost of manufacture or distribution of the Goods which is due to:
- 8.4.1 any factor beyond the reasonable control of the Seller including, without limitation, foreign exchange fluctuation, currency regulation, alternation of duties and taxes, increase in cost of labour, materials and other manufacturing costs and transport costs; and/or
- 8.4.2 any change in delivery dates or quantities for the Goods requested by the Buyer; and/or
- 8.4.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

Any dispute as to the amount of any increase in Price shall be determined by the Seller's auditors whose decision shall be conclusive and binding on the Seller and the Buyer.

## 9. Payment

- 9.1 Unless the Seller notifies the Buyer [in the Order Confirmation] that payment of the Price (whether in whole or part) is required in advance of the Goods being supplied by the Seller to the Buyer, the Seller may invoice

the Buyer for the Goods at any time after the Goods have been despatched (or, if the delivery is ex-works, after delivery or deemed delivery).

- 9.2 Subject to Condition 9.1, payment of the Price is due upon the receipt of the invoice by the Buyer unless the Seller has accepted in writing the Buyer's Account Application Form prior to the existence of a Contract pursuant to Condition 2.4 whereupon payment will be due in accordance with the terms of the relevant account agreed between the Seller and the Buyer.
- 9.3 Time for payment shall be of the essence.
- 9.4 No payment shall be deemed to have been received until the Seller has received payment in full in the currency specified in the Quotation and in cleared funds. In the case of Goods for export, payment shall be against an irrevocable letter of credit confirmed by a UK clearing bank prior to manufacture of the Goods, if the Seller so requires.
- 9.5 All payments payable to the Seller under this Contract shall become due immediately upon termination of this Contract despite any other provision.
- 9.6 The Buyer shall make all payments due under this Contract without any deduction whether by way of set-off, restriction or condition and without any deduction or withholding of any nature for or on account of any counterclaim unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 9.7 The Seller may appropriate any payment made by the Buyer to the Seller to such of the Goods as the Seller thinks fit despite any purported appropriation by the Buyer.
- 9.8 If the Buyer fails to make any payment under this Contract on the due date then (without prejudice to its other rights and remedies) the Seller may charge the Buyer interest (both before and after judgement) on the amount unpaid at the annual rate of 3% above National Westminster Bank plc's base rate from time to time accruing on a daily basis until payment is made in full.
- 9.9 Where any sum owed by the Buyer to the Seller under this or any other contract is overdue the Seller may withhold any deliveries of Goods due to be made under this or any other Contract until arrangements as to payment or credit have been established which are satisfactory to the Seller.
- 9.10 Any amount paid under any Contract in a currency other than the currency specified in the Quotation may (at the Seller's option) shall be converted into the currency specified in the Quotation at the official rate of exchange in London at the close of business on the due date of payment and the Buyer hereby irrevocably and unconditionally indemnifies the Seller against any loss suffered or incurred by the Seller arising out of or in connection with fluctuating exchange rates.
- 9.11 As from the date when sterling is replaced by a single European currency ("Euro") according to the uniform monetary system of the European Union then any amounts referred to in a Contract denominated in sterling which is replaced by the Euro shall then be converted into Euros in accordance with the applicable exchange rate.

## 10. **Quality**

- 10.1 Subject to Conditions 10.2, and 10.3, the Seller will, free of charge, within a period of 3 months from the date of delivery of Goods which are proved to the reasonable satisfaction of the Seller to be defective due to defects in material or workmanship, at its option, replace such Goods (or the defective part) or refund the price paid for such Goods.
- 10.2 The obligation in Condition 10.1 will not apply unless:
  - 10.2.1 the Buyer gives written notice of the defect or suspected defect to the Seller within 7 days (unless the defect is as a result of damage in transit where written notice must be given to the Seller within 3 days) of the date of delivery where the defect should be apparent on reasonable inspection, or within 7 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 1 month from the date of delivery; and
  - 10.2.2 the Seller is given a reasonable opportunity after receiving the notice of examining such Goods and any product in which the Goods have been used and the Buyer (if asked to do so by the Seller) returns such Goods (if any remain unused) and any product in which the Goods have been used to the Seller's place of business for the examination to take place there.
- 10.3 The obligation in Condition 10.1 will not apply if:
  - 10.3.1 the Buyer makes any further use of such Goods after giving such notice or after noticing any defect in the Goods; or
  - 10.3.2 the defect arises because the Buyer fails to follow the Seller's oral or written instructions as to the storage or use of the Goods or (if there are none) general trade practice; or
  - 10.3.3 if the Buyer does not store the Goods in a good clean dry safe area; or
  - 10.3.4 the Buyer alters such Goods without the written consent of the Seller; or
  - 10.3.5 the Buyer uses such Goods other than as a colour or additive for adding to bulk resin or uses such Goods in a resin which is not the resin specified in the Buyer's Purchase Order or uses such Goods other than in accordance with the addition rate recommended by the Seller; or

- 10.3.6 the Buyer does not order and use a food approved pigment as a colour additive for adding to bulk resin which is used for food and drink packaging or does not notify the Seller of all legislation and regulations with which the Goods must comply; or
  - 10.3.7 the Goods conform to a colour match accepted by the Buyer pursuant to Condition 3.2; or
  - 10.3.8 the defect in such Goods arises from any defect in any design, colouration or specification supplied by the Buyer; or
  - 10.3.9 the defect is due to any fault or defect in the products with which the Goods are combined or used.
- 10.4 Subject to Conditions 11.2, Condition 10.1 shall be the Buyer's sole remedy for any breach of the warranty given by the Seller in Condition 10.1 (including, without limitation, by reason of the Seller's negligence).
- 10.5 If the Seller complies with Condition 10.1 it shall have no further liability for a breach of any of the warranty in Condition 10.1 in respect of such Goods.
- 10.6 Any Goods which have been replaced will belong to the Seller. Any replacement Goods will be liable to replacement under the terms specified in Condition 10.1 for the unexpired portion of the 3 month period from the original date of delivery of the replaced Goods.

## 11. Limitations of liability

- 11.1 Subject to Conditions 10.1 and 11.2, all warranties, representations, terms and conditions, express or implied regarding the Goods or which might otherwise subsist in favour of the Buyer are excluded from the Contract.
- 11.2 The restrictions in Conditions 10 and 11 relating to the Seller's liability will not apply to any liability in respect of:
- 11.2.1 death or personal injury caused by the negligence of the Seller; and/or
  - 11.2.2 any breach of its obligations implied by Section 12 of the Sale of Goods act 1979; and/or
  - 11.2.3 fraudulent misrepresentation; and/or
  - 11.2.4 fraud; and/or
  - 11.2.5 for any matter for which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 11.3 Subject to Conditions 11.1, 11.2, 11.4 and 11.5:
- 11.3.1 the Seller's total liability arising in connection with the performance or contemplated performance of a Contract by reason of any breach of contract or of statutory duty or tort (including but not limited to negligence), or any failure to perform or delay in performing of any obligations by the Seller under the Contract shall be limited to the Price under the Contract;
  - 11.3.2 the Seller shall not be liable by way of indemnity or by reason of any breach of contract or of statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts, loss of goodwill or cost of downtime or for any indirect or consequential damage whatsoever that may be incurred or suffered by the Buyer.
- 11.4 The Seller does not, unless otherwise expressly provided in the Contract, warrant that the Goods as described or provided or the incorporation thereof within some larger project will satisfy the Buyer's requirement.
- 11.5 The Buyer acknowledges that the above provisions of Conditions 10 and 11 are reasonable and reflected in the Price which would be higher without these provisions, and the Buyer will accept such risk and/or insure accordingly.

## 12. Termination

- 12.1 The Seller may by notice in writing served on the Buyer terminate the Contract forthwith if the Buyer:
- 12.1.1 is in continuing or material breach of any term of the Contract and the breach is incapable of remedy. Failure to pay any sums due in accordance with Condition 9.2 is a material breach of the terms of the Contract which is not capable of remedy;
  - 12.1.2 is in continuing or material breach of any of the terms of the Contract and, the breach is capable of remedy, but the Buyer fails to remedy such breach within 14 days service of a written notice from the Seller, specifying the breach and requiring it to be remedied.
  - 12.1.3 has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;
  - 12.1.4 suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations or duties under the

Contract or any other contract between the Seller and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;

12.1.5 has a change in its management and/or control; or

12.1.6 the equivalent of any of the above Conditions 12.1.3, 12.1.4, 12.1.5 occurs to the Buyer under the jurisdiction to which the Buyer is subject,

or the Seller reasonably anticipates that one of the above set of circumstances is about to occur.

12.2 The termination of the Contract howsoever arising is without prejudice to rights, duties and liabilities of either the Buyer or the Seller accrued prior to termination and the Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

12.3 The Seller will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying a breach under Condition 12.1.2, until the breach is remedied.

### 13. **Effects of Termination**

13.1 In the event of termination the Buyer shall forthwith upon demand deliver to the Seller any Goods which are in the possession or control of the Buyer the property of which remains with the Seller, and in default thereof the Seller shall be entitled to repossess the same and for such purpose to enter into and upon the premises of the Buyer without being liable for any damage caused thereby, and the Buyer shall indemnify the Seller from and against all actions, proceedings, claims and such like arising.

13.2 In the event of termination the Seller shall be entitled by notice in writing to the Buyer to declare that all amounts due are immediately payable (whether under this Contract or any other contract) and all such amounts shall bear interest in accordance with Condition 9.8 from the date of the notice until actual payment.

### 14. **Intellectual Property**

14.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of the Seller, except the right to use, or re-sell the Goods in the Buyer's ordinary course of business.

14.2 All information of any kind (including without limitation drawings, specifications, plans, descriptions, blue prints, designs, documents and technical information) supplied by the Seller to the Buyer is supplied on the strict understanding that the Intellectual Property Rights therein and in the Goods are vested in and shall remain the sole property of the Seller. If the Buyer shall in any way acquire such rights then the Buyer shall immediately inform the Seller and shall take such steps immediately as may be required by the Seller to assign such rights or vest title in such rights in the Seller.

14.3 Where the Goods or any part of them are manufactured or any process is to be applied to the Goods by or on behalf of the Seller to the specification or any other information or data supplied by the Buyer, then the Buyer shall indemnify the Seller against all liability, actions, proceedings, costs, claims, damages or demands in any way connected with the Contract brought or threatened to be brought against the Seller by any third party as a result of the infringement or alleged infringement of any third party's Intellectual Property Rights. If any such claim is brought or threatened against the Seller then the Seller shall be entitled to suspend deliveries of the Goods.

### 15. **Confidentiality**

15.1 The Buyer shall:

15.1.1 keep confidential all Confidential Information (whether written or oral) which it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance of the Contract;

15.1.2 not disclose the Confidential Information in whole or in part to any other person without the Seller's written consent, save to those of its employees, agents and sub-contractors involved in the implementation of the Contract and who have a need to know the same and are bound to keep it confidential; and

15.1.3 to use the Confidential Information solely in connection with the performance of the Contract and not otherwise or for the benefit of any third party.

15.2 The provisions of Condition 15.1 shall not apply to the whole or any part of the Confidential Information which is:

15.2.1 already in the Buyer's possession other than as a result of a breach of this Condition 15;

15.2.2 in the public domain (other than as a result of a breach of this Condition 15);

15.2.3 necessarily disclosed pursuant to a statutory obligation;

15.2.4 disclosed with the prior written consent of the Seller.

15.3 The provisions of this Condition 15 shall survive any termination of the Contract for a period of 5 years from termination.

### 16. **General**

16.1 Each right or remedy of the Seller under this Contract is without prejudice to any other right or remedy of the Seller whether under this Contract or not.

16.2 If any Condition, part of a Condition, or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other Condition, part of a Condition or part of the Contract and this will not affect any other Conditions of the Contract which will remain in full force and effect.

- 16.3 The Contract contains all the terms which the Buyer and the Seller have agreed in relation to the Goods and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods. The Buyer acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of the Seller which is not set out in the Contract save that this Condition 16.3 shall not exclude any liability which one party would otherwise have in respect of any statements it has made fraudulently to the other party.
- 16.4 Failure or delay by the Seller to enforce any provision of this Contract will not be construed as a waiver of any of its rights under this Contract nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 16.5 A waiver by the Seller of any breach of this Contract by the Buyer will not be construed as a waiver of any subsequent breach of the same or any other provision.
- 16.6 The Seller may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under a Contract without the Buyer's consent.
- 16.7 This Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under a Contract without the Seller's prior written consent.
- 16.8 The Seller and Buyer do not intend that any of the terms in the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 16.9 The formation, construction, performance, validity and all aspects of this Contract are governed by English law and the parties submit to the non-exclusive jurisdiction of the English Courts.

## 17. **Communications**

- 17.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by first class post or sent by facsimile transmission or electronic mail:
- 17.1.1 (in case of communications to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller; or
- 17.1.2 (in the case of communications to the Buyer ) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Seller by the Buyer.
- 17.2 Communications shall be deemed to have been received:
- 17.2.1 if sent by first class post: 2 days (excluding Saturdays, Sundays, and bank holidays) after posting (exclusive of the day of posting);
- 17.2.2 if delivered by hand: on the day of delivery;
- 17.2.3 if sent by facsimile transmission or electronic mail by the Buyer: at the time of transmission provided a confirmatory copy of such facsimile or electronic mail is sent by post in accordance with Condition 17.1; if sent by the Seller, at the time of transmission provided a transmission notice to the correct number is generated.
- 17.3 Communications addressed to the Seller shall be marked for the attention of Customer Service.
- 17.4 In proving service:
- 17.4.1 by delivery by hand: it shall be necessary only to produce a receipt for communications signed by or on behalf of the addressee;
- 17.4.2 by post: it shall be necessary only to prove that the communication was contained in any envelope which was addressed and posted in accordance with Condition 17.1;
- 17.4.3 by facsimile transmission or electronic mail: it shall be necessary to prove that a confirmatory copy of the facsimile or electronic mail was sent in accordance with Condition 17.1, or transmission notice generated (as the case may be).