

STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS

The Buyer's attention is particularly drawn to clause 14.

1. Application of Conditions

- 1.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with:
- 1.1.1 any quotation expressed to be an offer; or
 - 1.1.2 offer of the Seller which is accepted by the Buyer; or
 - 1.1.3 any order of the Buyer which is accepted by the Seller,
- subject in each case to these Conditions.
- 1.2 These Conditions shall govern the Contract to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. Interpretation

- 2.1 In these Conditions:

"Business Day"	means any day other than a Saturday, Sunday or bank holiday;
"Buyer"	means the person or firm who purchases the Goods from the Seller
"Contract"	means the contract for the purchase and sale of the Goods between the Buyer and the Seller under these conditions;
"Conditions"	means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller, or in accordance with clause 17.3;
"Delivery/Collection Date"	means the date on which the Goods are to be delivered or collected as stipulated in the Order;
"Design"	has the meaning set out in clause 6.1.
"Hard Copy Plates"	means the plates used to print the Design under the Order.
"Force Majeure Event"	has the meaning set out in clause 11.
"Order"	the Buyer's order for the Goods, as set out in the relevant document referred to in clause 1.1, which includes the Goods Specification;
"Goods"	means the Goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions;
"Goods Specification"	any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Buyer and the Seller;

“month”	means a calendar month;
“Seller”	means Rosenflex UK Ltd, a company registered in England and Wales under No. 05958138; and
“Services”	means storage of Goods. Service shall be construed accordingly;
“writing”	includes any communications effected by email, facsimile transmission or any comparable means.

- 2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision as amended or re-enacted.
- 2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 A reference to a party includes its personal representatives, successors or permitted assigns.
- 2.5 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.
- 2.6 The headings in these Conditions are for convenience only and shall not affect their interpretation.

3. Basis of Contract

- 3.1 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing.
- 3.2 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.
- 3.3 Sales literature, price lists and other documents issued by the Seller in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance.
- 3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

4. Orders and specifications

- 4.1 The Buyer is responsible for ensuring the terms of the Order are complete and accurate.
- 4.2 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 4.3 Every offer submitted by the Seller and accepted by the Buyer must be confirmed in writing by the Buyer's authorised representative and confirm acceptance of these Conditions in relation to the Contract.
- 4.4 Once an Order has been accepted in accordance with either clause 4.2 and 4.3 the Contract will come into existence.

- 4.5 The specification for the Goods shall be those set out in the Seller's sales documentation unless varied expressly in the Order.
- 4.6 To the extent that the Goods are to be manufactured in accordance with an Order supplied or modified by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Order. This clause 4.6 shall survive termination of the Contract.
- 4.7 The Goods will only be supplied in the minimum units (or multiples) stated in the Seller's published price list at the time the Order is made. Orders received for quantities other than these will be adjusted upwards to the nearest unit. The Goods delivered will be subject to the provisions of clause 8.5.
- 4.8 Excluding any Design agreed in writing between the Seller and the Buyer any samples, drawings, Illustrations, photographs or descriptions whether in catalogues, brochures, or other documents issued by the Seller are intended to give an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 4.9 The Seller reserves the right to:
 - 4.9.1 make any changes to the specification of the Goods and/or Goods Specification which are required to conform with any applicable safety or other statutory or regulatory requirements; or
 - 4.9.2 make changes to the specification of the Goods, where the Goods are to be supplied to the Seller's specification, which does not materially affect the quality or performance of the Goods.
- 4.10 Unless otherwise provided under this Contract, no Order that has been accepted may be cancelled by the Buyer except with the agreement in writing of the Seller on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation, to the extent that the Buyer is not able to recover those losses by reselling the Goods (provided it is able to make that resale within 28 days of cancellation), if unsaleable utilising the materials the Goods are made or scrapping the Goods.
- 4.11 A quotation for the Goods given by the Seller shall not constitute an offer unless otherwise stated. A quotation for the Goods shall only be valid for a period of 14 days from its date of issue, or such lesser time as the Seller may specify.

5. Price of Goods

- 5.1 The price of the Goods shall be the price listed in the Seller's published price list current at the date of acceptance of the Order or such other price as may be agreed in writing by the Seller and the Buyer.
- 5.2 Where the Seller has quoted a price for the Goods other than in accordance with the Seller's published price list the price quoted shall be valid for 14 days only or such lesser time as the Seller may specify.
- 5.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery or collection, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to:

- 5.3.1 any factor beyond the control of the Seller (including any foreign exchange fluctuations, alteration of taxes or duties, increases in the costs of labour, materials or other costs of manufacturing); or
- 5.3.2 any change in delivery or collection dates, quantities or specifications for the Goods which is requested by the Buyer; or
- 5.3.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 5.4 The Seller will allow the Buyer quantity discounts subject to and in accordance with the conditions set out in the Seller's published price list for the Goods current at the date of acceptance of the Order.
- 5.5 Any settlement discount specified by the Seller in the Contract will be allowed by the Seller to the Buyer in respect of Goods for which payment is received by the Seller on or before the due date and otherwise in accordance with the payment terms set out in these Conditions and provided that no other amounts owing by the Buyer to the Seller are overdue and unpaid.
- 5.6 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices (for Orders of more than £1,000 (excluding value added tax ("VAT"))) are inclusive of the Seller's charges for packaging, insurance (if carriage and freight) and transport to the location in the United Kingdom specified in the Order.
- 5.7 Unless otherwise stated the price for the Goods is exclusive of any amounts in respect of VAT, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller on presentation of a valid VAT invoice or other document evidencing the tax.
- 5.8 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit for the cost of the pallets and returnable containers will be given to the Buyer provided the pallets and containers are returned at the Buyer's expense undamaged to the Seller.

6. Goods Specification

- 6.1 If an Order contains a Goods Specification to include a print, logo or brand ("Design") to be printed on the Goods:
 - 6.1.1 The Seller will create the parameters of the printing capacity, dimensions and printing areas of the Design.
 - 6.1.2 Unless otherwise agreed in writing, the Seller owns the copyright and all other intellectual property rights in the aspect(s) of the Design detailed in clause 6.1.1 and any other aspect(s) of the Design the Seller creates.
 - 6.1.3 Unless otherwise agreed in writing, the Buyer owns the copyright and all other intellectual property rights in the aspect(s) of the Design the Buyer creates.
 - 6.1.4 Unless otherwise agreed in writing or in the Order the Seller is not under an obligation to provide the Buyer with the aspects of the Design detailed in clause 6.1.1 or the parts of the Design created by the Seller.
 - 6.1.5 The Buyer is under an obligation to provide the Seller with the aspects of the Design created by the Buyer.

- 6.1.6 The Seller will provide the soft copy of the Design in PDF format (or other electronic format) to the Buyer to obtain the Buyer's approval to the Design before it is put into production.
- 6.1.7 Subject to clauses 6.1.8 and 6.1.9, the Seller will produce one set of Hard Copy Plates to print the Design, the cost of which is included in the Order.
- 6.1.8 If the Buyer changes the Design or the Seller is required to change the Design under clause 4.9.1 the Seller will charge the Buyer for the increase in cost to production of the Design caused by the change. If the Hard Copy Plates had already been produced before the change, this will include the production costs of making new Hard Copy Plates.
- 6.1.9 If more than one set of Hard Copy Plates is required to fulfil an Order because the original Hard Copy Plates have broken or cracked during the printing process the Buyer will not be charged for the additional set of Hard Copy Plates, however, the Seller reserves the right to charge the Buyer if excessive amounts of Hard Copy Plates are used to fulfil an Order. To give an example of what is excessive 1 set of Hard Copy Plates would usually be required to produce an Order of between 100,000 to 200,000 pcs Goods, whereas if 3 sets of Hard Copy Plates were required for the same Order, this would be considered excessive.
- 6.1.10 The Buyer will own the Hard Copy Plates once paid for in full and if they are still useable after printing 100,000 pcs Goods. If the Hard Copy Plates break after printing 100,000 - 200,000 pcs Goods any additional set(s) of Hard Copy Plates will be owned by the Seller unless and until paid for in full by the Buyer. Subject to those Hard Copy Plates being paid for in full and still being usable once all of the Goods have been produced and finalised, the Seller will send the Buyer the Hard Copy Plates (if requested within 28 days from delivery or collection of the Goods). If the Hard Copy Plates are not requested within this time the Hard Copy Plates may be destroyed. If, at the end of the printing process, the Hard Copy Plates are not useable but the Buyer would like to own a set of Hard Copy Plates relating to their Order, the Buyer can request that the Seller produces another set of Hard Copy Plates, which the Buyer will own, once the Hard Copy Plates have been paid for in full.
- 6.1.11 If more than one set of Hard Copy Plates are required due to a change in Design, the Buyer will own the original Hard Copy Plates that were produced before the Design change and when paid for the first set of Hard Copy Plates after the Design change, subject to those Hard Copy Plates being paid for in full and still being usable once all of the Goods have been produced and finalised, the Seller will send the Buyer the Hard Copy Plates (if requested within 28 days from delivery or collection of the Goods). If the Hard Copy Plates are not requested within this time the Hard Copy Plates may be destroyed.

7. Terms of Payment

- 7.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

- 7.2 The Buyer shall pay the invoice in full and cleared funds (less any discount or credit allowed by the Seller or amount required by law, but without any other deduction credit or set off) within 30 days of the date of the Seller's invoice or otherwise in accordance with such credit term agreed in writing between the Buyer and the Seller in respect of the Contract. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer, against any amount payable by the Seller to the Buyer.
- 7.3 Payment shall be made on the due date notwithstanding that delivery or collection may not have taken place and/or that the title to the Goods has not passed to the Buyer.
- 7.4 The time of the payment of the invoice shall be of the essence under the Contract. Receipts for payment will be issued only upon request.
- 7.5 All payments shall be made to the Seller in pounds sterling at its office as indicated on the form of acceptance or invoice issued by the Seller.
- 7.6 The Seller is not obliged to accept Orders from any Buyer who has not supplied the Seller with references satisfactory to the Seller; if at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further Goods will be delivered to the Buyer other than against cash payment and notwithstanding clause 7.2 of these Conditions, all amounts owing by the Buyer to the Seller shall be immediately payable in cash or cleared funds.
- 7.7 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 8% per annum above The Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

8. Delivery/collection

- 8.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the place in the United Kingdom specified in the Order, as the location to which the Goods are to be delivered by the Seller ("Delivery Location") or, if no place of delivery is so specified, by the Buyer collecting the Goods at the Seller's premises within 5 Business Days after the Seller has notified the Buyer that the Goods are ready for collection.
- 8.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or, if the Goods are collected by the Buyer from the Seller's premises, on the completion of loading of the Goods at the Seller's premises.
- 8.3 The Delivery/Collection Date is approximate only and time for delivery or collection shall not be of the essence (this is, for example, in case of mechanical breakdown, or other unforeseen issues, including, but not limited to, the availability of goods from the Seller's suppliers, and possible late deliveries by the Seller's suppliers) unless previously agreed by the Seller in writing.
- 8.4 The Goods may be delivered by the Seller in advance, or the Seller may request that the Goods are collected in advance of the Delivery/Collection Date upon giving reasonable notice to the Buyer.
- 8.5 Where delivery or collection of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver or make available for collection up to 10 per cent more or 10 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

- 8.6 Where the Goods are to be delivered or collected in instalments, each delivery or collection shall constitute a separate Contract which shall be invoiced and paid for separately. Any delay in delivery or making Goods available for collection or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 8.7 If the Seller fails to deliver the Goods or make the Goods available for collection, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 8.8 The Seller:
- 8.8.1 shall not be liable for any delay in delivery or making the Goods available for collection; and
- 8.8.2 shall have no liability for any failure to deliver the Goods or make the Goods available for collection
- to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 8.9 If the Buyer fails to take delivery of the Goods or collect the Goods within 5 Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract:
- 8.9.1 delivery or collection of the Goods shall be deemed to have been completed at 9.00 am on the 5th Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and
- 8.9.2 the Seller shall store the Goods until delivery or collection takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 8.10 If 14 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery or collection the Buyer has not taken delivery of them or collected the Goods, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price paid for the Goods or charge the Buyer for any shortfall below the price of the Goods.

9. Risk and Property

- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer on completion of delivery or collection.
- 9.2 Notwithstanding delivery or collection and the passing of risk in the Goods, or any other provision of these Conditions, title to the Goods shall not pass to the Buyer until the earlier of:
- 9.2.1 the Seller receiving (in cash or cleared funds) payment in full of the price:
- (a) of the Goods (in which case title to the Goods shall pass at the time of payment);
- (b) and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due (in which case title to the Goods shall pass at the time of payment);
- (c) the Buyer reselling the Goods (in which case title to the Goods shall pass to the Buyer at the time specified in clause 9.4).

- 9.3 Until such time as the title to the Goods passes to the Buyer, the Buyer shall:
- 9.3.1 keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property;
 - 9.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 9.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery or collection;
 - 9.3.4 notify the Seller immediately if it becomes subject to any of the events listed in clause 13.2; and
 - 9.3.5 give the Seller such information relating to the Goods as the Seller may require from time to time.
- 9.4 Subject to clause 9.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- 9.4.1 it does so as principal and not as the Seller's agent; and
 - 9.4.2 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 9.5 If, before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 13.2, then, without limiting any other right or remedy the Seller may have:
- 9.5.1 The Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 9.5.2 Provided the Goods are still in existence and have not been resold or irrevocably incorporated into another product, the Seller shall be entitled at any time to:
 - (a) require the Buyer to deliver up the Goods to the Seller; and,
 - (b) if the Buyer fails to do so promptly, to enter any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 9.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

10. Storage of Goods

- 10.1 This clause 10 only applies where there is an agreement between the Buyer and the Seller in writing that the Seller will store the Goods.
- 10.2 The Seller shall provide the Services to the Buyer for the duration and for the amount specified in the Order.

- 10.3 The Buyer is responsible for taking delivery or collecting the Goods that the Seller stores in accordance with the Order (or as otherwise agreed in writing between the parties). Delivery or collection of the Goods that have been stored under the Service shall be in accordance with clause 8.1 - 8.8 (inclusive).
- 10.4 If the Buyer does not accept delivery or collect the Goods in accordance with clause 10.3 the provisions of clauses 8.9 and 8.10 will apply.
- 10.5 The Buyer will pay for the Services, the Goods and any costs incurred under clause 10.4 on presentation of an invoice.
- 10.6 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.
- 10.7 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.
- 10.8 The Seller will be responsible for insuring the Goods whilst carrying out the Services. The Buyer will be responsible for insuring the Goods from completion of delivery or collection (as detailed in clause 8.2).
- 10.9 Risk and title to the Goods shall pass in accordance with clause 9.
- 10.10 If, before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 13.2, then, without limiting any other right or remedy the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price paid the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 10.11 If the Buyer is not subject to one of the events listed in clause 13.2 and no longer wants the Goods the Seller is storing for the Buyer, the provisions of clause 4.10 shall apply. For the avoidance of doubt, the indemnity provided by the Buyer under clause 4.10 includes the cost of the Services and for all related costs and expenses (including insurance) incurred by the Seller in relation to provision of the Services.

11. Force Majeure

- 11.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including:
 - 11.1.1 act of God, explosion, flood, tempest, earthquake, loss at sea, epidemic or similar event, national disaster or extreme weather conditions, malicious damage, fire or accident;
 - 11.1.2 war or threat of war, terrorism, sabotage, insurrection, civil disturbance, interference by civil or military authorities, national or international calamity, armed conflict, nuclear, chemical or biological contamination or conic boom;
 - 11.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 11.1.4 failure of energy source, transport network, breakdown of plant or machinery, collapse of building structures or default of Sellers or subcontractors;

- 11.1.5 import or export regulations or embargoes; and/or
- 11.1.6 strikes, lock-outs or other industrial actions or trade disputes (whether involving its own workforce or a third party's).

12. Defective Goods

- 12.1 The Seller warrants that on delivery or collection the Goods shall:
 - 12.1.1 subject to clause 4.9, conform with their description;
 - 12.1.2 be free from material defects in design, material and workmanship; and
 - 12.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 12.1.4 be fit for any purpose held out by the Seller.
- 12.2 Subject to clause 12.1 and 12.4, if:
 - 12.2.1 the Buyer gives notice in writing to the Seller within 14 Business Days of such delivery or collection that some or all of the Goods do not comply with the warranty set out in clause 12.1;
 - 12.2.2 the Seller is given a reasonable opportunity of examining such Goods; and
 - 12.2.3 the Buyer (if confirmed in writing by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,

the Seller shall, at its option, replace the defective Goods within 14 days of receiving the Buyer's notice under clause 12.2.1, or refund the price of the defective Goods in full, or with the agreement of the Buyer, credit to the Buyer the price of the defective Goods in full to put towards existing or future orders.
- 12.3 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 12.1 in any of the following events:
 - 12.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 12.2.1 or 12.4.1 (if applicable);
 - 12.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 12.3.3 the defect arises as a result of the Seller following any drawing, Design or Order supplied by the Buyer;
 - 12.3.4 the Buyer alters or repairs such Goods without the written consent of the Seller;
 - 12.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 12.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 12.4 Except as provided in this clause 12, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 12.1. If the Buyer purchases any Goods within six months of the launch of such goods the Buyer shall have the right to return the Goods or any part of such order within 2 months of delivery or collection, provided always that the Buyer exercising such right shall:
- 12.4.1 notify the Seller in writing;
 - 12.4.2 return such Goods at the Buyer's risk and cost; and
 - 12.4.3 indemnify the Seller against any cost incurred by the Seller in rectifying any deterioration of the Goods caused by any of the events listed in clause 12.3.
- 12.5 If the Buyer exercises its right under clause 12.4 the Seller shall, credit to the Buyer the price of the defective Goods, less any costs incurred by it under clause 12.4.3, to put towards existing or future orders.
- 12.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.
- 12.8 The Buyer shall be responsible to ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory handling and sale of the Goods by the Buyer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority and the Buyer will indemnify the Seller against any liability loss or damage which the Seller might suffer as a result of the Buyer's failure to comply with this condition.

13. Buyer's Default

- 13.1 If the Buyer becomes subject to any of the events listed in clause 13.2, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer.
- 13.2 For the purposes of clause 13.1, the relevant events are:
- 13.2.1 the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its 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) has any partner to whom any of the foregoing apply;
 - 13.2.2 the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - 13.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;

- 13.2.4 (being a company) 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 the Buyer;
- 13.2.5 (being a company) the holder of a qualifying floating charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- 13.2.6 a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- 13.2.7 (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- 13.2.8 a creditor or encumbrancer of the Buyer 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 its assets and such attachment or process is not discharged within 14 days;
- 13.2.9 any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.1 to clause 13.2.6 (inclusive);
- 13.2.10 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 13.2.11 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 13.2.12 (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 13.3 Without limiting any other right or remedy available to the Seller, the Seller shall be entitled to suspend any further deliveries if the Buyer becomes subject to any of the events listed in clauses 13.2.1 to 13.2.12, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 13.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 13.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 13.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

14. Limitation of Liability –the Buyer's attention is particularly drawn to this clause

- 14.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
 - 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 14.1.2 fraud or fraudulent misrepresentation;

- 14.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 14.1.4 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 14.1.5 defective products under the Consumer Protection Act 1987; or
- 14.1.6 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 14.2 Subject to clause 14.1:
 - 14.2.1 the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 14.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £125 % of the price of the Goods.

15. Confidentiality, Publications and Endorsements

- 15.1 The Buyer undertakes to the Seller that the Buyer will regard as confidential the Contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent. This undertaking shall not apply to:
 - 15.1.1 information which is in the public domain other than by reason of the Buyer's default; and
 - 15.1.2 information that may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.2 The Buyer may disclose the Seller's confidential information:
 - 15.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Buyer's obligations under this agreement. The Buyer shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Seller's confidential information comply with this clause 15; and
 - 15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 the Buyer will not use or authorise or permit any other person to use any name, logo, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises note paper visiting cards advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.
- 15.4 The Buyer shall not use the Seller's confidential information for any purpose other than to perform its obligations under this Contract.
- 15.5 This clause 15 shall survive the termination of the Contract

16. Dispute Resolution

- 16.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("Dispute") then except as expressly provided in the Contract, the parties shall follow the procedure set out in this clause:
- 16.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute;
 - 16.1.2 if the parties are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice and the negotiations were not between senior offices of the parties organisations under clause 16.1.1 the Dispute shall be referred to senior officers' within the parties organisations, who shall attempt in good faith to resolve it; and
 - 16.1.3 if the senior officers' are for any reason unable to resolve the Dispute under clause 16.1.1 or within 30 days of it being referred to them under clause 16.1.2, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.
- 16.2 No party may commence any court proceedings under clause 17.8 in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 16.3 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, unless otherwise agreed between the parties the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 17.8.

17. General

- 17.1 Assignment and other dealings.
- 17.1.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 - 17.1.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.
- 17.2 Notices
- 17.2.1 Any notice or other communication given by a party under or in connection with the Contract shall be in writing addressed to the other party at its registered office (if it is a company) or principal place of business (in any other case) or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

17.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.3 Variation

Except as set out in these Conditions no variation of the Contract, including the introduction of any additional terms and conditions, shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

17.4 Waiver

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

17.5 Severance

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

17.5.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17.6 Third party rights.

A person who is not a party to the Contract shall not have any rights to enforce its terms.

17.7 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 the laws of England and Wales

17.8 Jurisdiction.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).