

## TERMS AND CONDITIONS OF SALE

The Customer's attention is particularly drawn to the provisions of clause 12.

### 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.7.

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

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

**Delivery Location:** has the meaning set out in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 15.

**Goods:** the goods (or any part of them) set out in the Order.

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

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Nett monthly basis:** means in respect of payment by the Customer pursuant to the Contract, on or before the last day (or the day prior if the last day of the month is not a Business Day) of the month following the month in which the invoice is raised.

**Order:** the Customer's written acceptance of the Supplier's quotation or the Customer's purchase order form in respect of the Goods.

**Supplier:** These terms and conditions cover Preconomy Limited, registered in England and Wales with company number 03904224 and any of its subsidiary companies.

**Supplier's premises:** The suppliers registered office

**Tools:** any dies, patterns, moulds, or other tooling, jigs and fixtures required or produced (or manufactured) by the Seller for the purpose of manufacturing the Goods.

1.2 Construction. In these Conditions, the following rules apply:

(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) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) 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; and

(e) a reference to writing or written includes faxes and e-mails.

## **2. BASIS OF CONTRACT**

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

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date). The Customer acknowledges that it may be requested to provide references from third parties or third party guarantees as to the performance of the Customer's obligations under the Contract, whether before or after the Commencement Date.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

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

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods except where application to one or the other is specified.

## **3. GOODS AND PRICE QUOTED**

3.1 The price quoted by the Supplier shall be an ex works price and exclude (and the Customer shall be liable for any taxes including, but not limited to, value added tax), duties or other charges levied by any governmental or other authority in respect of or by reason of the sale, delivery, export or import of the Goods or any part thereof, but excluding taxes assessed on profits or gains; (ii) any transportation costs (including where the Customer has requested express, same day overnight delivery or any other similar service); storage costs (if any) under clause 4.1.

3.2 The price quoted by the Supplier will 'ordinarily' be changed on a monthly basis in line with free market process. Ordinarily, this will be based on the free market prices issued in the publication, Metal Bulletin on the last Wednesday of the previous but one calendar month; or alternatively prices issued by the London Metal Exchange plus the requisite premiums. The Customer acknowledges that the movement in price from one month to the next will be applied to the cost of aluminium and processing thereof, and this will result in the price changing accordingly (on an increasing or decreasing basis).

3.3 Any alterations by the Customer in design, weight, quantities or specification and any lack of instructions on the part of the Customer will be reflected in adjustments of the agreed or quoted prices if

the Supplier is adversely affected by the costs incurred in connection with such alterations (or lack of instructions).

3.4 For the avoidance of doubt, the Customer acknowledges that a certificate or determination by the Supplier as to costs and any revised price for the Goods having regard to the provisions of clauses 3.1 to 3.3 (inclusive) shall (in the absence of any manifest error) be conclusive evidence of such costs and any revised price for the Goods.

3.5 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification or for any other action whatsoever and howsoever arising. This clause 3.5 shall survive termination of the Contract.

3.6 Where the Supplier submits a sample of Tools to the Customer for approval, the Customer shall be deemed to have approved the same for use in the manufacture of the Goods if it has not served notice on the Supplier within 28 days from receipt of such Tool samples and/or in any event if the Customer has used the Tools for production.

#### **4. DELIVERY OF GOODS**

4.1 The Supplier shall ensure that:

(a) the Goods are delivered at the Delivery Location in accordance with any special instructions (notified to the Supplier by the Customer in writing);

(b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable)); and

(c) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be as agreed between the parties.

4.2 The Customer shall collect the Goods from the Supplier's premises or such other location as may be advised by the Supplier (or agreed with the Customer) before delivery (Delivery Location) within three Business Days of the Supplier notifying the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.

4.5 The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

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

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

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

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

## **5. QUALITY OF GOODS**

5.1 The Supplier warrants that on delivery, and for a period of three months from the date of delivery (warranty period), the Goods shall:

(a) conform in all material respects with their description and any applicable Goods Specification; and

(b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing to the Supplier (marked for the attention of "the Quality Manager") during the warranty period within a reasonable time of discovery (not exceeding 14 days) that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, (i) repair or replace the defective Goods; (ii) refund the price of the defective Goods in full; or (iii) require the Customer to retain the Goods and refund the price of the defective Goods in part.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

(a) during the warranty period, the Customer fails to notify the Supplier in writing (marked for the attention of "the Quality Manager") within 14 days of discovery of any defect in respect of which a claim for a breach of warranty in clause 5.1;

(b) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

(c) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

(d) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

(e) the Customer alters or repairs such Goods without the written consent of the Supplier;

(f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

(g) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

## **6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery pursuant to the provisions of clause 4.3 at the Delivery Location.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

(a) the Goods; and

(b) any other goods that the Supplier has supplied to the Customer.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) hold the Goods on a fiduciary basis as the Supplier's bailee;

(b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

(e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m);

(f) permit the Supplier to enter upon the Customer's premises to examine the Goods at any time during the hours of 9.00 am and 5.00 pm and upon giving the Customer reasonable notice thereof; and

(g) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business as agent of and on account for the Supplier, provided that (i) the Customer's right of use and resale shall cease immediately without notice upon the occurrence of any of the events listed in clause 13.2 (b) to clause 13.2 (m), and clause 13.3; and (ii) the proceeds of sale received and/or receivable by the Customer are to held on trust for the Supplier.

6.4 The Supplier shall, to the extent permitted by law, be entitled to recover directly amounts receivable from the Customer's customer and unpaid by such customer, provided that the Supplier shall pay to the Customer any amounts recovered in excess of the amount then owed to the Supplier by the Customer, the Supplier being entitled to deduct from such excess, the costs and expenses incurred by it in recovery of such monies provided that the Customer shall render such assistance (including taking proceedings in its own name against such customer as the Supplier may reasonably require at the cost of the Customer) in connection with recovery of such amounts.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m), or the Supplier reasonably believes that any such event is about

to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6.6 Title in the Tools shall remain the property of the Supplier (and in its possession and control) however such title may be transferred at the Customer's option, upon the Customer serving notice in writing upon the Supplier, whilst at the same time paying to the Supplier in cleared funds the cost of the Tools and all sums due to the Supplier by the Customer howsoever arising ie whether under the Contract or otherwise. The Customer shall bear the risk in the Tools until title therein passes to the Customer pursuant to the provisions of the Contract. Further, the Customer shall bear the responsibility for, and will pay to the Supplier upon written demand, all costs incurred by the Supplier (i) in maintaining the Tools in good repair; and (ii) in replacing the same as is deemed necessary and/or appropriate by the Supplier.

## **7. SUPPLY OF GOODS**

7.1 The Supplier shall use all reasonable endeavours to meet any performance dates for the Goods specified in the Order or as otherwise agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Goods.

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

8.2 Where the Customer collects or arranges collection or delivery of the Goods, the Supplier shall accept no claims that the Goods are not those and in the quantity specified in the order once the Goods have left the premises from where they were collected.

8.3 The Customer must inspect the Goods immediately upon their arrival at the destination to which they are despatched under the Contract and check that the Goods are those and in the quantity specified in the Order.

8.4 Any discrepancy between the Goods delivered and those described in the Order and any damage to the Goods in transit must be notified to the Supplier in writing within one (1) working day of the Customer's receipt of the Goods.

8.5 In the case of non-delivery of the Goods the Customer shall notify the Supplier in writing within three working days of delivery or invoice (whichever is the earlier). No claim in respect of non-delivery or damage in transit will be considered by the Supplier unless the Customer complies with the provisions of this clause.

8.6 Without prejudice to the provisions of clause 5 the Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless the Customer notifies the Supplier in writing of any defect in materials or workmanship or failure to comply with designs drawings specifications or other data supplied by the Customer or any other failure of the Goods to conform with the Contract which would be apparent upon reasonable inspection and testing of the Goods within 14 days.

8.7 The Customer shall:

(a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract; and

(d) immediately notify the Supplier if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer, and the Customer warrants that it has no foreign public officials as officers, employees as at the date of the Contract.

8.8 The Customer shall ensure that any person associated with the Customer who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this clause 8.

8.9 For the purpose of this clause 8, the meaning of foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## **9. CHARGES AND PAYMENT**

9.1 The price for Goods shall be the price set out in the Quotation. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods (unless otherwise stipulated within the Quotation), which shall be paid by the Customer when it pays for the Goods. Unless otherwise agreed in writing between the Supplier and the Customer, all costs and expenses incurred by the Supplier as a result of physical, mechanical, radio-graphical, analytical or other tests of whatsoever nature carried out by the Supplier at the request of the Customer shall be for the account of the Customer and such costs and expenses shall be payable in addition to the price for the Goods as set out in the Order on the terms referred to in the Contract. In addition, the price for Goods does not include the cost of cases, pallets, stillages and other packaging items and materials which are the property of the Supplier and which are to be returned to the Supplier (at the sole cost of the Customer) upon request. Any such items and materials not so returned to the Supplier within 30 days of a request to do so shall be paid for by the Customer at a price as certified by the Supplier and notified to the Customer in writing which amount shall become a debt due and payable to the Supplier by the Customer.

9.2 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

(a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification if accepted by the Supplier; or

(c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery.

9.4 The Customer shall pay each invoice submitted by the Supplier on a nett monthly basis (unless other terms have been agreed in writing) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

9.5 Where Tools are produced, or required, by the Supplier for the purpose of manufacturing the Goods, the price therefore will be as set out in the Order and shall be payable upon delivery of invoice to the Customer in respect thereof. The Customer acknowledges that prices for the Tools shall be subject to variation in respect of all modifications to the Tools undertaken by the Supplier after the Commencement Date.

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

9.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then:

(a) the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Lloyds TSB Bank's base rate from time to time, or any other clearing bank as notified to the Customer by the Supplier. 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 Customer shall pay the interest together with the overdue amount; and

(b) the Supplier, shall upon expiry of seven days' notice served upon the Customer by the Supplier, be at liberty to suspend all work on the manufacture, and deliveries, of Goods until payment of all amounts outstanding to the Supplier howsoever arising is made in full together with any interest due to the Supplier pursuant to the provisions of clause 9.7 (a) without prejudice to any other remedy available to the Supplier under the Contract or in law; and

(c) the Supplier may require the Customer to pay for Goods prior to their despatch.

9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9.9 Nothing in the Contract shall entitle the Customer to (i) return the Goods; or (ii) delay or decline payment.

9.10 The Supplier may, in its absolute discretion, permit the Customer to operate a credit facility with the Supplier and the Customer acknowledges that such credit facility may be withdrawn at any time during the term of the Contract whereupon the Customer shall be obliged, upon receiving notice from the Supplier, to pay in cleared funds any and all sums then due to the Supplier howsoever arising and until such payment has been made the Supplier may withhold despatch of any part of the Goods remaining to be despatched, suspend manufacture of Goods remaining to be manufactured, suspend the Supplier's performance of any other contract between the Supplier and the Customer or require the Customer to pay for Goods prior to their despatch.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 The Customer acknowledges that all Intellectual Property Rights in or arising out of or in connection with the Tools shall be owned by the Supplier until the Customer has paid all sums due in respect thereof to the Supplier.

## **11. CONFIDENTIALITY**

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they



were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

## **12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO THIS CLAUSE**

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

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

12.2 Subject to clause 12.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, 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
- (b) the Supplier's total liability to the Customer 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 unless otherwise agreed between the parties exceed the value of the Contract.

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

## **13. TERMINATION**

13.1 Without limiting its other rights or remedies the Customer may terminate the Contract with:

- (a) the written consent of the Supplier on terms whereby the Customer shall, to the fullest extent permitted by law, fully indemnify the Supplier for all costs and expenses incurred by the Supplier howsoever arising in connection with the performance of its obligations under the Contract; and
- (b) On not less than three months' written notice.

In the event that the Customer gives valid notice to terminate the Contract pursuant to the provisions of this clause 13.1, the Supplier shall require the Customer to pay in full for Goods remaining to be manufactured and or delivered to the Customer prior to their despatch together with any other sums due to the Supplier. The provisions of clause 9.8 shall apply accordingly.

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the Customer 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;
- (c) the Customer 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 a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) 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 Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of the Customer;
- (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Customer 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;
- (g) 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 Customer (being a company);
- (h) the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- (j) any event occurs, or proceeding is taken, with respect to the Customer 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(b) to clause 13.2(i) (inclusive);
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;  
or
- (m) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with

immediate effect by giving written notice to the Customer if the Supplier is, or becomes, of the opinion (having regard to all the relevant circumstances known to it at the relevant time) that the Contract will not be profitable (or will be loss making) upon its conclusion (or during the performance by the Supplier of its obligations under the Contract) and in such circumstances the Supplier shall be under no liability to the Customer for any reason whatsoever.

13.5 Without limiting its other rights or remedies, the Supplier may suspend all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **14. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(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;

(c) clauses which expressly or by implication have effect after termination shall continue in full force and effect; and

(d) without prejudice to any other rights and remedies available to the Supplier, under the Contract or otherwise, the Supplier shall in respect of all debts due and payable to the Supplier by the Customer have a general lien on all goods and property (including but not limited to Goods and Tools, if applicable) belonging to the Customer and in the possession of the Supplier whereupon the Supplier shall be at liberty, upon the expiration of 14 days' notice to the Customer, to dispose of the same in its absolute discretion as it thinks fit and to apply any proceeds of sale thereof towards the payment of any such debts.

## **15. FORCE MAJEURE**

15.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

15.3 If the Force Majeure Event prevents the Supplier from providing any of the Goods for more than one week, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## **16. GENERAL**

16.1 Assignment and other dealings.

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any

or all of its obligations under the Contract to any third party.

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

#### 16.2 Notices.

(a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); 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 by fax or e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

#### 16.3 Severance.

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

(b) 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.

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

16.5 No partnership or agency. Subject to the provisions of clause 6.3, nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

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

16.7 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

16.8 Governing law. This agreement 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 law of England and Wales.

16.9 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).