

## TERMS & CONDITIONS

These Terms and Conditions set out the basis on which Contech Conservatory Roof Manufacturers Ltd, supplies its goods and the Buyer (as defined below) acknowledges and agrees to purchase those goods based on these Terms and Conditions and to the exclusion of any other terms and conditions.

**IMPORTANT NOTICE:** Your attention is drawn in particular to Condition 10 which limits our liability to you in certain circumstances.

### 1. Interpretation

1.1 The following definitions and rules of interpretation in this clause apply to these Terms and Conditions.

**Business Day:**

a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

**Buyer:** the person or firm who buys or agrees to buy the Goods from the Company;

**Collection Site:**

should it be required, any site notified by the Company to the Buyer where the Goods are to be collected by the Buyer in accordance with these Conditions;

**Company:** Contech Conservatory Roof Manufacturers Ltd, a private company incorporated and registered in England and Wales with company number 08287297 whose registered office is at Unit 38, Parkhall Business Village, Parkhall Road, Longton, Stoke-on-Trent, Staffordshire, ST3 5XA;

**Conditions:** the terms and conditions set out in this document which are the Company's standard conditions of sale as may be varied, amended or restated from time to time.

**Contract:** any contract between the Buyer and the Company for the supply of Goods from time to time in accordance with these Conditions.

**Defective:** means not in compliance with Condition 7.1 or otherwise not in accordance with the Contract;

**Delivery Location:**

the location set out in the order or such other location as the parties may agree for the delivery of the Goods;

**Force Majeure Event:**

any circumstance not within the Company's reasonable control including, without limitation:

- (a) acts of God, flood, storm, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, breakdown of plant or machinery, fire, explosion or accident; and
- (g) interruption or failure of utility service;

- (a) acts of God, flood, storm, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, breakdown of plant or machinery, fire, explosion or accident; and
- (g) interruption or failure of utility service;

**Goods:** the goods which the Buyer buys or agrees to buy from the Company from time to time;

**Goods Specification:**

any specification of the Goods, including the Company's order form, any related plans and drawings, that is agreed in writing by the Company and the Buyer;

**Net Price:** the price paid for the Goods by the Buyer less VAT and any other charges or sums paid by the Buyer when purchasing the Goods including, without limitation, the costs and expenses of delivery;

**Order:** the Buyer's order for the supply of Goods as set out in the Buyer's written acceptance of the Company's quotation;

- 1.2 These Conditions shall be deemed to be incorporated into all or any Contracts from time to time entered into between the Company and the Buyer which provide in whole or in part for the sale of any Goods by the Company to the Buyer and shall govern the supply of Goods by the Company to the Buyer and the Company to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document (whether or not the Buyer's standard terms or conditions purport to prevail over these Conditions)).
- 1.3 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in any Contract.
- 1.4 These Conditions apply to all Contracts and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by the Company.
- 1.5 Any samples, drawings, descriptive matter, advertising, weights, dimensions or shipping specifications issued by the Company and any descriptions of the Goods or illustrations contained in the Company's or any manufacturer's or supplier's catalogues, brochures or other promotional material are published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any contractual force nor shall be binding upon the Company nor be regarded as a warranty or representation relating to the Goods.
- 1.6 All Conditions shall apply to the supply of Goods except where application to one or the other is specified.
- 1.7 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.
- 1.8 All statements from the Company concerning quantities, quality, performance and/or other properties with regard to its Goods are issued with the greatest possible care. However, the Company cannot guarantee that no deviations will occur in that respect. These statements shall therefore be considered approximations and are non-binding. Upon taking receipt of the Goods, the Buyer is required to check compliance with the quantities, quality, performance and/or other properties specified by or agreed with the Company.
- 1.9 Minor deviations in colour, purity and quality shall under no circumstances give grounds for any complaint, refusal to accept the delivery or dissolution of the agreement, or delay in payment of the price.

## **2. Quotations**

- 2.1 Quotations by the Company are not offers capable of immediate acceptance by the Buyer but are invitations to treat only. A Company's quotation shall be available for acceptance for 30 days from the date of issue, save that, subject to not less than 15 days' notice in writing to the Buyer, the Company may increase the quotation to take into account any increase in costs not known at the date of the quotation.
- 2.2 All drawings and technical details submitted with the quotations are approximate only. Particulars of specification and dimensions used by the Company are provided by the Buyer. No property shall pass to the Buyer in the documents forming or accompanying a quotation or in any of the material contained therein. If no order based on the quotation is accepted by the Company, the Buyer shall return to the Company all documents and other materials concerned free of charge to the Company on request.
- 2.3 Each Order or acceptance of a quotation by the Buyer shall be deemed to be an offer by the Buyer to buy Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.4 All information in and relating to the quotation shall be confidential and shall not be passed without the written permission of the Company to any third party and shall be disclosed only to those employees of the Buyer to whom such disclosure is reasonably necessary. Unless and until an Order based on the quotation is accepted by the Company the Buyer shall make no use in its business of the information contained therein except for purposes of determining whether to place an Order. The Company shall be free to accept or refuse an order for any reason whatsoever.
- 2.5 Quotations are based upon the following assumptions:
  - (i) the Buyer shall ensure that the Delivery Location and access to it are suitable for delivery of the Goods by articulated heavy goods vehicles; and
  - (ii) the Buyer shall ensure the structure of the building can accommodate the requirements of the Goods,For the avoidance of any doubt, the Company reserves the right to amend or alter any quotation if any of the assumptions set out in this Condition 2.5 are not met or change.

## **3. Orders**

- 3.1 The Order constitutes an offer by the Buyer to purchase Goods in accordance with these Conditions.
- 3.2 Orders shall only be deemed to be accepted when the Company issues a written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 3.3 The Buyer must confirm that the Goods ordered are generally suitable for the use intended by the Buyer. The use of the Goods and compliance with government regulations shall be the risk of the Buyer.

## **4. Price**

- 4.1 The prices or charges for the Goods are specified in the quotation provided by the Company. Any additional Goods provided which are not included in the quotation shall be in addition to the quotation provided.
- 4.2 The Company may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - (i) any factor beyond the Company's control (including foreign exchange fluctuations, increase in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (iii) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.

- 4.3 All prices of the Goods include the costs and charges of packing and transport of the Goods, but exclude:
- (i) VAT which the Buyer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice, and the costs and charges of insuring the Goods;
  - (ii) installation of the Goods;
  - (iii) any survey costs including site visits.

4.4 All prices quoted include packing material of Goods that are delivered direct to the Delivery Location, unless otherwise specified.

4.5 The price quoted includes delivery of Goods to one UK site address to be confirmed by the Buyer.

## **5. Delivery of Goods**

5.1 The Company shall deliver the Goods to the Delivery Location at any time after the Company notifies the Buyer that the Goods are ready. The method of transport of the Goods shall be at the sole discretion of the Company. Delivery is completed once the Company delivers the Goods to the Delivery Location.

5.2 The Buyer is responsible for unloading the Goods at its own risk and expense, using its labour and all necessary unloading facilities and equipment at the Delivery Location. The Buyer shall ensure that the Goods are unloaded as promptly as possible, as soon as the Goods arrive at the Delivery Location.

5.3 If the Buyer or the Buyer's agent or customer refuses delivery or is not present to take delivery, the Company may at its discretion:

- (i) unload the Goods itself at the Buyer's cost and leave them on or outside the requested Delivery Location (in which case the Company will be deemed to have fulfilled its obligation to transport and deliver the Goods to the requested Delivery Location); or
- (ii) redeliver the Goods at a mutually agreed date. The Company shall be entitled to charge for any attempted re-delivery and if the Company has to provide storage for the Goods then they should be entitled to charge the Buyer for storing and insuring the Goods until they are successfully delivered by the Company and unloaded by the Buyer at the Delivery Location,

for the avoidance of any doubt, risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence) notwithstanding the provisions of Condition 5.3.

5.4 The Company may deliver the Goods by instalments. In the event of failure to accept any delivery, the balance remaining undelivered may at the option of the Company then be invoiced and storage costs charged to the Buyer. The quantity of consignment of Goods delivered shall be as recorded by the Company upon delivery from the Company and such quantity shall be conclusive evidence of the quantity received by the Buyer unless the Buyer can provide conclusive evidence to the contrary.

5.6 The Company has no obligation to deliver the Goods if:

- (i) it would, in the Company's or Company's agents opinion be unsafe, unlawful or unreasonably difficult to do so;
- (ii) the Buyer or the Buyer's agent or customer is not present to take delivery; or

- (iii) the premises (or the access to them) are unsuitable for the delivery vehicle,

Should any of the above apply, then the Company shall be entitled to charge a reasonable sum for any attempted re-delivery and for storing the goods until they are successfully unloaded at the requested Delivery Location by the Buyer.

- 5.7 If the Buyer fails to provide a signature on a receipt note, delivery having been duly made, notification in writing to the Buyer by the Company following delivery shall be deemed to be conclusive evidence that the delivery was made in accordance with the Contract.
- 5.8 Should it be required, if the Company has to inform the Buyer that the Goods are available for collection the Buyer may collect the Goods at any time during the usual business hours of the Collection Site (as may be amended from time to time) so long as it gives at least 24 hours' prior notice to the Company. The Buyer must collect the Goods within 14 days of being advised that the Goods are available for collection, failing which the Company may recover all storage costs that are charged to it. For the avoidance of any doubt, collection may be made by instalments.
- 5.9 Where a quotation indicates a specific delivery period for any Goods, the period shall be understood to run from the date of confirmation of the relevant Order. Any such periods as may be contained in a quotation are nevertheless estimates only which shall not be of the essence of the Contract. In the event of the Company, for any reason whatsoever, not being ready to make delivery within the period specified it shall not be liable for any loss or damage whatsoever sustained by the Buyer as a result of such delay.

## **6. Risk**

- 6.1 Unless otherwise agreed in writing between the parties but subject as hereinafter provided, the risk of loss or damage to the Goods shall pass to the Buyer on completion of delivery or deemed delivery to the Buyer and the Buyer will insure accordingly.
- 6.2 Where the Buyer is collecting the Goods from the requested Collection Site, the Goods are at the Buyer's risk from the earlier of:
  - (i) the Buyer collecting the Goods; and
  - (ii) the expiry of the 14-day period referred to in Condition 5.8.

## **7. Quality of Goods**

- 7.1 Subject to the remaining provisions of Condition 7, the Company warrants that from the date of delivery and for the following periods;
  - (i) 10 years – Goods the Company fabricates – Wendland Conservatory Roof, Wendland Lantern Roof and Stratus Lantern Roof;
  - (ii) 5 years – all painted, foiled and powder coated items;
  - (iii) 1 year – all electrical products, hardware products,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.
- 7.2 In the event that the Company is not the manufacturer of the Goods, the Company shall provide to the Buyer upon request a copy of the warranties provided to the Company by the manufacturer of the Goods (Warranties) and shall use its reasonable endeavours to transfer to the Buyer the benefit of the Warranties. Where the Company can transfer the Warranties to the Buyer then the Company shall have no further liability to the Buyer in respect of the Goods (other than as to title).

- 7.3 The Company accepts no liability for:
- (i) any variations in the colours, finishes or texture from any samples or other information provided by the Company. Colour references may vary depending on the texture, elevation, profile of the structure and exposure to sunlight and other external causes and the Buyer should allow for such variations;
  - (ii) the Goods not fitting the structure due to the structure not having been built in accordance with the requirements of the Goods;
  - (iii) any effect on the visual appearance caused by the location of any joins or decoration;
  - (iv) any delays due to the Company's suppliers not fulfilling lead times on products including, but not being limited to, glass; or
  - (v) any delays to the provision of the Goods due to the delay in the transportation of the Goods to the site, and for the avoidance of doubt, the variations in this Condition shall not be regarded as material defects.
- 7.4 Except as provided in this Condition 7, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with Condition 7.1.
- 7.4
- 7.5 The Buyer relies on his own skill and judgement as to the sufficiency, capacity and performance of the Goods and as to the suitability of the Goods for any purposes for which the same are required by the Buyer.
- 7.6 The Buyer shall, before using the Goods or any part thereof and before parting with possession of the same, take all reasonable steps to inspect, test and examine the same to satisfy itself that the Goods are of the contractual quality and description and are suitable for the purpose for which they are intended to be used.
- 7.7 Any claim by the Buyer that the Goods are Defective must be notified to the Company in writing), setting out the reasons, in reasonable detail and with photographic evidence and proof of purchase:
- (i) in the case of a defect that is reasonably apparent on a visual inspection at the date the Goods were delivered (or collected as the case may be), within 4 Business Days of the date the Goods were delivered (or collected as the case may be);
  - (ii) in the case of any other defect, within 25 Business Days of the defect becoming reasonably apparent on normal visual inspection, and the Company shall be under no liability whatever in respect of any such defect unless such written notice has been duly given by the Buyer to the Company and in the time specified.
- 7.8 Following notification under Condition 7.7, the Buyer shall ensure that the Company's representatives have a reasonable opportunity to examine the Goods and delivery documentation at the location where the Goods are stored, and to identify the Defective Goods.
- 7.9 The Company shall not be liable for the failure of any Goods complying with the warranty set out in Condition 7.1 in any of the following events:
- (i) the Buyer makes any further use of such Goods after giving notice in accordance with Condition 7.7;
  - (ii) the defect arises because the Buyer failed to follow the Company's oral or written instructions or recommendations as to the storage, transportation, commissioning, installation, use and maintenance of the Goods (including instructions and recommendations in any installation guide or maintenance guide provided in any form, including on the Company's website) or (if there are none) good trade practice regarding the same;
  - (iii) the defect arises as a result of the Company following any drawing, design, weights, dimensions or information supplied by the Buyer;
  - (iv) the Buyer alters or repairs such Goods without the written consent of the Company;

- (v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
  - (vi) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
  - (vii) the defective parts, materials or equipment was not manufactured by the Company.
- 7.10 Subject to this Condition 7, and the Buyer's compliance with Condition 7.7 to 7.9 (inclusive), where the Company agrees that any of the Goods are Defective in a material way, the Company shall (at its discretion) repair or replace the Defective Goods within a reasonable period of time. Such repair or replacement shall be in full and final settlement of any claims that the Goods are Defective. The Company shall act reasonably when deciding whether or not the Goods are Defective in a material way.
- 7.11 The Company's liability is limited to the supply of a replacement or repairing the Goods and the Company does not accept any claim for consequential expenditure or loss such as (but not limited to) scaffolding, removal or installation fees, or any consequential damage caused by the removal of the Goods.
- 7.12 Subject to Condition 1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded. For the avoidance of doubt, 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.
- 7.13 The Company shall not be liable for any losses which arise as a result of an act, omission, breach or otherwise of a party not being the Company.
- 7.14 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- 7.15 Any defects relating to part of the delivered Goods shall not give the Buyer any right to reject or refuse the entire batch of delivered Goods.
- 7.16 Minor deviations may not be qualified as defects and must be accepted by the Buyer. Deviations which, taking account of all circumstances, can reasonably have no or only a minor influence on the user value of the Goods shall at all times be considered as being deviations of limited importance.
- 7.17 The Buyer acknowledges that continuity of colour cannot be guaranteed (including batches of glass) and there may be variances in colour and/or tint between panes of glass. Where glass is described by reference to a particular colour or tint, the description shall not be deemed to refer to a colour or produced by a particular manufacturer and the Company shall be entitled to supply glass sourced from any manufacturer.
- 7.18 The Company does not guarantee that any replacement product will technically match the original product supplied. Where an exact match is not possible due to product development and supply, the Company will endeavour to supply a replacement product with comparable properties based on the range of products available at that time. This does not extend to replacing other products or an entire Order in the event of one product failing.

## **8. Payment**

- 8.1 All prices and charges are strictly net and payment shall be made in full without set off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.2 The Buyer shall pay each invoice submitted by the Company:
- (i) within 30 days of the date of the Company's invoice. In the case of delivery by instalments, payment, unless otherwise agreed, shall be made within 30 days of the date of the Company's invoice for the relevant instalments; and
  - (ii) in full and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of the essence in these Conditions.
- 8.3 All amounts payable by the Buyer 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 Company to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Company, pay to the Company 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.

- 8.4 The Company may at its discretion require at any time that all or part of the purchase price and other charges be paid in advance or on account and the sums so demanded shall be immediately payable by the Buyer, the balance remaining payable as otherwise provided hereunder and the Company may decline to make delivery of the Goods except upon such payment or upon receipt of other security satisfactory to the Company.
- 8.5 If the Buyer fails to make a payment due to the Company under the Contract by the due date, then without limiting the Company's remedies:
- (i) the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this Condition will accrue each day at 4% a year above the Bank of England's base rate from time to time; and
  - (ii) the Company shall be entitled to suspend delivery of any further Goods under any contract with the Buyer.
- 8.6 The Buyer must pay to the Company on demand and on an indemnity basis all such legal costs or expenses which the Company may reasonably incur from time to time in connection with:
- (i) enforcing the payment of any sum due to it under the Contract; or
  - (ii) successfully defending a claim brought by the Buyer relating to the Contract.
- 8.7 All payments made by the Buyer shall be credited towards the oldest invoice due and its ancillary charges. Any bank charges incurred are to be paid by the Buyer.

## **9. Retention of Title**

- 9.1 Notwithstanding that risk in the Goods has already passed (in accordance with Condition 6) the title to the Goods shall not pass to the Buyer until the earlier of:
- (i) all the Buyer's claims in respect of the Goods delivered or to be delivered have been settled in full by the Buyer, and the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
  - (ii) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in Condition 9.5.
- 9.2 The Buyer shall hold the Goods on a fiduciary basis as bailee for the Company until title has passed to the Buyer and shall:
- (i) refrain from encumbering them in any way;
  - (ii) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;
  - (iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (iv) clearly mark the Goods as the Company's property;
  - (v) notify the Company immediately if it becomes subject to any of the events listed at Condition 11.13;
  - (vi) maintain the Goods in satisfactory condition and keep them insured against all risks for their full purchase price from the date of delivery; and



- (vi) give the Company such information as the Company may require from time to time relating to:
  - (a) the Goods; and
  - (b) the ongoing financial position of the Buyer.
- 9.3 The Company may at any time after a default has been made by the Buyer of any payment by the due date and without prejudice to any other rights or remedies available to it, require the Buyer by written notice to place at the Company's disposal any Goods to which title has been reserved. For the purpose of the Company taking repossession, the Company may enter upon any premises where the Buyer has stored the Company's Goods or the Company reasonably believes the Goods to be stored in order to repossess the Goods. The Buyer shall pay to the Company the cost of removal and transport of the Goods or any part thereof.
- 9.4 The Buyer will be at liberty to incorporate the Goods or part thereof into another product or chattel but if, immediately prior to such incorporation, property in the Goods has not passed to the Buyer, then subject to the rights of any third party, the product or chattel into which the Goods or part thereof is incorporated shall be and remain the absolute property of the Company unless and until full payment for the Goods and for all other Goods supplied by the Company to the Buyer has been received by the Company whereupon property in the said product or chattel shall pass from the Company to the Buyer. The rights and obligations of the Company and the Buyer in relation to the Goods under this Condition shall apply to the said product or chattel, mutatis mutandis.
- 9.5 Subject to Conditions 9.7 and 9.8 below, the Buyer may, notwithstanding that property in the Goods has not passed to the Buyer under Condition 9.1, sell the goods in the ordinary course of its business to a sub-buyer, and upon such sale property in the Goods shall pass from the Company to the sub-buyer.
- 9.6 The Buyer shall not attempt or purport to pledge or transfer the Goods in any way as security to any third party until property therein has passed to the Buyer in accordance with the conditions hereof.
- 9.7 If the Buyer has a receiver or administrator appointed over all or any of its assets or if any of a petition is presented, order made or a resolution is passed in the case of a corporation, to wind it up or, in the case of an individual, for such individual's bankruptcy or in any case for any composition or arrangement with the Buyer's creditors then and in any such event the Buyer shall be deemed to have repudiated the agreement of sale and the Company shall be deemed to have accepted such repudiation and the Company's permission to the Buyer to sell the Goods shall thereupon terminate automatically.
- 9.8 Any sale by the Buyer permitted by Condition 9.5 shall as between the Buyer and the sub-buyer be made by the Buyer as principal and not as agent but as between the Company and the Buyer the Buyer shall be deemed to sell as the fiduciary agent of the Company and shall account to the Company for the proceeds of sale up to the amount owing to the Company for the Goods and any other Goods supplied by the Company to the Buyer, and pending such accounting, shall hold the proceeds of sale in a separate account unmingled with other monies.

## **10. Liability**

- 10.1 The restrictions on liability in this Condition 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2 Nothing in these Conditions shall exclude or limit the Company's liability for:
  - (i) death or personal injury caused by the Company's employees, agents or sub-contractors' negligence;
  - (ii) any breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
  - (iii) fraud or fraudulent misrepresentation, or restrict or exclude any other remedy in respect thereof;
  - (iv) any claim that the Goods infringe any third party's intellectual property rights; or
  - (v) defective products under the Consumer Protection Act 1987.

- 10.3 Subject to Condition 10.2, the Company shall not be liable to the Buyer whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the contract for any:
- (i) loss of profit;
  - (ii) loss of sales or business;
  - (iii) loss of agreements or contracts;
  - (iv) loss of anticipated savings;
  - (v) loss of use or corruption of software, data or information;
  - (vi) loss of or damage to goodwill; or
  - (vii) indirect or consequential losses, or any claims for consequential compensation whatsoever (howsoever caused).
- 10.4 Subject to Condition 10.2, the Company's **total liability** to the Buyer, arising under, out of or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the Net Price of the Goods supplied to the Buyer.
- 10.6 The Buyer shall indemnify the Company against any third-party claim of whatever nature (including a claim for negligence) made against the Company which arises directly or indirectly out of the use made or resale of the Goods or of any product or property incorporating any of the Goods.
- 10.7 The Company has given commitments as to compliance of the Goods with relevant specification in Condition 7. In view of these commitments, the terms implied by sections 13-15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.8 Any claim against the Company, unless recognised by the Company, shall lapse through the simple passage of 6 months following the occurrence of the claim.
- 10.9 The Company shall not be liable for the (consequences of) non conformities, errors or defects that remain unnoticed in the samples, models or examples approved or corrected by the Buyer.

## 11. General

### 11.1 Sub-Contracting

- (a) The Company shall be entitled to sub-contract or assign all or any of its obligations under any agreement with the Buyer, including without limitation, these Conditions.
- (b) The Buyer shall not be entitled to sub-contract or assign its obligations under any agreement with the Company, including, without limitation, these Conditions, without the prior written consent of the Company.

### 11.2 Force Majeure

- (a) Provided it has complied with Condition 11.2(c), if the Company is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, the Company shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- (b) The corresponding obligations of the Buyer will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Company.
- (c) The Company shall:
  - (i) as soon as reasonably practicable after the start of the Force Majeure Event but no later than ten (10) days from its start, notify the Buyer in writing of the Force Majeure Event, the date on which it started,

its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and

- (ii) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

### **11.3 Lien**

- (a) Without prejudice to any other right which the Company may have, the Company shall be entitled to exercise a general lien or right of retention of all goods in the Company's possession, which are, or are intended to become, the Buyer's property in regard to all debts, damages or other sums due to the Company under any contract whatsoever between the Company and the Buyer and in the event of the insolvency of the Buyer, and pursuant to such lien or right, the Company shall be entitled without notice to the Buyer to sell all or any portion of such goods and to set off against the proceeds of sale the costs of sale and all debts, damages and other monies due from the Buyer to the Company.

### **11.4 Waiver and rights of the Company**

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- (c) Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- (d) Without prejudice to any other right or remedy, the Company may at any time and from time to time:
  - (i) suspend the delivery or provision of Goods and performance of any of its other obligations under any Contract until payment has been made in full of all sums due to it whether under this Contract or any other agreement with the Company (without incurring any liability for any non-performance of this agreement or for any loss, claim, demand, expense, charge, fine or penalty incurred or suffered by the Buyer directly or indirectly arising out of or in connection with any suspension in accordance with this Condition); and/or
  - (ii) set off any liability of the Company to the Buyer against any liability of the Buyer to the Company.

### **11.5 Intellectual Property**

- (a) All copyrights, moral rights, brand rights, patent rights, database rights, domain name rights, trade secrets, and other intellectual property rights (**Intellectual Property**) relating to the delivered Goods and its names, and relating to anything developed, designed, manufactured or supplied by the Company shall accrue to and remain exclusively with the Company or its supplier. More specifically, the Company is sole owner and right holder to the copyright that may arise due to compliance by the Company with the work produced in fulfilling the Contract, also if the work in question appears as a separate item in the quotation or on the invoice.
- (b) With respect to the Intellectual Property, the Buyer shall receive only a non-exclusive, non-transferable, non-licensable, licence restricted to what is necessary for the use of the Goods and exclusively for its own use. Unless otherwise agreed in writing, the Buyer shall not be permitted to reproduce, to convert or to otherwise process content, materials or parts of the Goods.

### **11.6 Notices**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery services at its registered office (if a company) or its principal place of business (in any other case).

- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address; or
  - (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting.
- (c) This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **11.7 Third Party Rights**

The Company and the Buyer do not intend that these Conditions or any part of them shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to them.

### **11.8 Assignment and other dealings**

- (a) The Company may at any time assign the Contract or any part of it to any person, firm or company.
- (b) The Buyer may not assign the Contract or any part of it without the prior written consent of the Company.

### **11.9 Severability**

- (a) If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Conditions. If any provision or part provision of the conditions is deemed deleted under this Condition the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- (b) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Buyer and the Company.

### **11.10 Entire agreement**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) The Buyer agrees that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. The Buyer agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

### **11.11 Changes to these Conditions**

The Company may from time to time vary or amend these Conditions. Any Contract entered into prior to the date of such variation or amendment shall be governed by the Conditions in force at the date on which such Contract was entered into. Notwithstanding that, the parties agree that any Contract entered into following notification by the Company of such changed Conditions shall be governed by the Conditions as varied or amended.

### **11.12 Variation**

No variation of the Conditions shall be effective unless it is agreed in writing and signed by a Director.

### **11.13 Termination**

- (a) Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if:

- (i) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified in writing to do so;
  - (ii) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (iii) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (iv) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- (b) Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in Condition (a), or the Company 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.
  - (c) Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
  - (d) On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest, and in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
  - (e) Termination of the Contract, howsoever arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
  - (d) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

#### **11.14 Data Protection**

The Company will only use personal information in accordance with its privacy policy from time to time, a copy of which is available from the Company on request.

#### **11.15 Governing Law and Jurisdiction**

- (a) These Conditions and all agreements between the Company and the Buyer, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation, shall be governed by English Law.
- (b) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the agreements between the Company and the Buyer, or their subject matter or formation.