TERMS AND CONDITIONS OF SALE

The customer's attention is drawn in particular to the provisions of clause 10.

1. INTERPRETATION

1.1 Definitions:

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

Business Hours: the period from 8.30am to 5.00pm on any Business Day.

Catalogue Goods: standard 'off the shelf' Goods as detailed in the current Haimer UK Limited catalogue (in whatever format) and which are not modified or amended or designed to the specific or bespoke requirements of the Customer or made to order.

Company: Haimer UK Ltd, registered in England and Wales with company number 09702189.

Company Materials: all documents, information, drawings, designs, specifications or other information or materials in any form, whether owned by the Company or a third party, which are provided by the Company to the Customer in connection with the supply of the Goods (including, without limitation, the Specification and the Order).

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.5.

Contract: the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Company.

Delivery Location: has the meaning given in clause 0.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control, including without limitation:

(a) acts of God, flood, tempest, drought, earthquake or other natural disaster;

(b) epidemic or pandemic;

(c) terrorist attack, sabotage, insurrection, civil disturbance, 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 government requisition, imposing an export or import regulation or restriction, quota or prohibition, or failing to grant a necessary licence or consent;

(f) collapse of buildings, fire, explosion or accident;

(g) any labour or trade dispute, strikes, industrial action or lockouts;

(h) shortages of raw materials, labour, fuel, parts or machinery;

(i) non-performance by suppliers or subcontractors;

(j) travel delays and disruption, including delays and disruption to deliveries and receipts of supplies, goods, materials, fuel, parts, machinery, labour and sub-contractors; and

(k) interruption or failure of any utility or telecommunications service or network.

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

Group: in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a **member of the Group.**

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the Goods, as set out in the Customer's written acceptance of the Company's quotation.

Special Production Goods: Goods which are not Catalogue Goods.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Company.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Warranty Period: has the meaning given in clause 5.1.

1.2 Interpretation:

(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 personal representatives, successors and permitted assigns.

(c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted from time to time. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) Unless expressly provided otherwise in this agreement, a reference to **writing** or **written** includes email but does not include fax.

2. BASIS OF CONTRACT

2.1 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 law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order 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.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures (in whatever form) are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for up to 2pm on the date stated on the quotation as the date on which the quotation expires.

3. GOODS

3.1 The Goods are described in the Company's catalogue (as modified by any applicable Specification, if any) or are described solely in an applicable Specification in the case of entirely bespoke items.,

3.2 To the extent that the Goods are to be manufactured in accordance with;

(a) a Specification supplied by the Customer; or

(b) a Specification supplied by the Company and modified by the Customer;

the Customer shall indemnify the Company 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 Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification referred to at clause 3.2(a) or the modifications to the Specification referred to at clause 3.2(b), as the case may be. This clause 3.2 shall survive termination of the Contract.

3.3 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and (in the case of Special Production Goods only) the Company shall notify the Customer in any such event. For the avoidance of doubt, the Company is under no obligation to amend the Specification to reflect any changes in any statutory or regulatory requirement that come into effect after the Contract has come into existence.

3.4 The Company reserves the right to amend the Specification after the Contract has come into effect upon giving notice to the Customer, provided that:

(a) neither the performance nor the quality of the Goods are materially adversely affected;

(b) the price for the Goods is not altered without Customer consent;

(c) the delivery of the Goods is not unreasonably delayed.

4. DELIVERY

4.1 Each delivery of the Goods will be accompanied by a delivery note that shows the date of the Order, the Customer number, a Customer Order number for reference, the type and quantity of the Goods (including the description code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 EXW Unit 3 Kestrel Court, Network 65 Business Park, Burnley, Lancashire BB11 5NA Incoterms® 2020 apply to and are incorporated into this contract.

4.3 Notwithstanding clause 4.2, the Company may at its sole discretion and, in particular where the cost of the Goods exceeds £300 + VAT, at the cost of the Customer deliver the

Goods to a location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Company notifies the Customer that the Goods are ready.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or to comply with its obligations under the Contract (including, but not limited to, its obligations pursuant to clause 7 and clause 8).

4.5 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or to comply with its obligations under the Contract (including, but not limited to, its obligations pursuant to clause 7 and clause 8).

4.6 Save is provided for at clause 4.7, if the Customer fails to take or accept delivery of the Goods within [three] Business Days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company'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 [third] Business Day after the day on which the Company notified the Customer that the Goods were ready; and

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

4.7 If delivery of the Goods has been agreed to be made to a Delivery Location pursuant to clause 4.3, and the Customer fails to take or accept delivery of the Goods when such delivery is made by the Company, then, except where such failure or delay is caused by a Force Majeure Event or the Company'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 Business Day after the day on which the Company attempt to effect delivery to the Customer;

(b) the Company may, at its sole discretion, make a further attempt to deliver the Goods at its convenience, for which a charge of £[NUMBER] will become immediately due and payable by the Customer;

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

4.8 If [ten] Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs and the costs and expenses set out at clause 4.6(b), 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.

4.9 If the Company delivers:

(a) up to and including 5% (rounded up to the nearest whole number of items) more or less than the quantity of Catalogue Goods ordered; or

(b) up to and including the greater of:

(i) 10% (rounded up to the nearest whole number of items) more or less than the quantity of Special Production Goods ordered;

(ii) one piece more or less than the quantity of Special Production Goods ordered;

then the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Company shall make a pro rata adjustment to the invoice for the Goods.

4.10 The Company 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.

4.11 Special Production Goods supplied in accordance with the Contract cannot be returned. Catalogue Goods supplied in accordance with the Contract cannot be returned without the Company's express prior written agreement. Provided such agreement has been given, all Goods to be returned must be returned by the Customer to the address notified to the Customer by the Company;

(a) at a time and date specified by the Company;

(b) at the cost and expense and risk of the Customer;

(c) in the same condition in which they were delivered to the Customer (and the packaging does need to be the original packaging);

and the Company will be entitled to charge the Customer a handling charge of 20% of the purchase price (including VAT) of the Goods so returned (for the avoidance of doubt, excluding any delivery charges made by the Company pursuant to a delivery made to a Delivery Location pursuant to clause 4.3).

5. QUALITY

5.1 The Company warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**),] the Goods shall:

(a) conform in all material respects with their description and the Specification (if any);

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

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing to the Company during the Warranty Period as soon as reasonably practical following discovery that some or all of the Goods do not comply with the warranty set out in clause 0;

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

(c) the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost,

the Company shall, at its option, repair or replace the defective Goods, or provide a credit note or credit on the Customer's account, or refund the price of the defective Goods in full.

5.3 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 0 if:

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

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

(c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of the Company;

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

(f) the Goods differ from their description or Specification (if any) as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;

and the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with the Company

establishing that the provisions of clause 5.3 apply to any claim for breach of warranty by the Customer.

5.4 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 0.

5.5 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.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

6. TITLE AND RISK

6.1 EXW Unit 3 Kestrel Court, Network 65 Business Park, Burnley, Lancashire BB11 5NA Incoterms® 2020 apply to and are incorporated into this contract. In the case of good delivered to a Delivery Location pursuant to clause 4.3, risk in the Goods shall pass to the Customer on [TBC].

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

(a) the Company receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due;

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

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

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

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

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Company immediately if it becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(d);

(e) give the Company such information as the Company may reasonably require from time to time relating to:

(i) the Goods; and

(ii) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Company's agent; and

(b) title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, the Company may:

(a) by notice in writing (which for the purposes of this clause 6.5(a) may be by email) terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

(b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product 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.

7. CUSTOMER OBLIGATIONS

7.1 The Customer shall:

(a) ensure that the information in the Order and the Specification, and any information it provides to the Company, is complete and accurate;

(b) co-operate with the Company in all matters relating to the delivery of the Goods and ensure that the Delivery Location is fully accessible, suitable and sufficient for delivery to safely and legally take place;

(c) comply with any additional obligations as set out in the Order and the Specification;

(d) provide suitable persons and/or equipment to unload the Goods from the delivery vehicle.

7.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any of its obligations under the Contract (**Customer Default**):

(a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;

(b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations pursuant to the Contract.

8. INDEMNITY

8.1 In this clause, a reference to the Company shall include member of the Company's Group and the provisions of this clause shall be for the benefit of the Company and each such member of the Company's Group, and shall be enforceable by each such member of the Company's Group, in addition to the Company.

8.2 The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with:

(a) the Customer's breach or negligent performance or non-performance of the Contract, or failure or delay in performing any of its obligations under the Contract;

(b) the enforcement of the Contract;

(c) any claim made against the Company by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Customer, its employees, agents or subcontractors;

(d) any claim made against the Company by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors.

8.3 This indemnity shall not cover the Company to the extent that a claim under it results from the Company's negligence or wilful misconduct.

8.4 If any third party makes a claim, or notifies an intention to make a claim, against the Company which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Company shall:

(a) as soon as reasonably practicable, give written notice of the Claim to the Customer, specifying the nature of the Claim in reasonable detail;

(b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Company may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Customer but without obtaining the Customer's consent) if the Company believes that failure to settle the Claim would be prejudicial to it in any material respect;

(c) give the Customer access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Company so as to enable the Customer and its

professional advisers to examine them and to take copies (at the Customer's expense) for the purpose of assessing the Claim; and

(d) subject to the Customer providing security to the Company to the Company's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Customer may reasonably request to avoid, dispute, compromise or defend the Claim.

8.5 If a payment due from the Customer under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Company shall be entitled to receive from the Customer such amounts as shall ensure that the net receipt, after tax, to the Company in respect of the payment is the same as it would have been were the payment not subject to tax.

9. PRICE AND PAYMENT

9.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery.

9.2 The Company may, by giving notice to the Customer 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:

(a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs and delivery costs and Force Majeure Events);

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

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions, or to comply with its obligations under the Contract.

9.3 Notwithstanding the provisions of clause 9.2, the following applies specifically to price adjustments due to material costs: If, after the Contract has come into existence, the procurement costs incurred by the Company for materials required for production (including, without limitation, carbide, steel, and alloys) change by more than 5% compared to the costs at the time of the Order, the Company shall be entitled and obliged to adjust the agreed price. Such adjustment shall be made at the Company's reasonable discretion based on the weighted proportions of these cost factors in the total price. This adjustment shall apply to both cost increases and cost reductions. The Company shall inform the Customer of such price adjustment no later than upon invoicing.

9.4 The price of the Goods:

(a) excludes amounts in respect of VAT, which the Customer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and

(b) unless otherwise stated, excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

9.5 The Company may invoice the Customer for the Goods on or at any time after the Goods are despatched from the relevant manufacturer or supplier (including but not limited to Haimer GmBH) to Haimer UK Limited's premises at Unit 3 Kestrel Court, Network 65 Business Park, Burnley, Lancashire BB11 5NA.

9.6 The Customer shall pay each invoice submitted by the Company:

(a) within 30 days of the date of the invoice, or in accordance with any credit terms agreed by the Company and confirmed in writing to the Customer; and

(b) 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 of the Contract.

9.7 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment, and an administration fee in respect of each invoice in respect of which the Customer fails to make the payment due to the Company of £40. Interest under this clause 9.6 will accrue each day at 9% a year above the Bank of England's base rate from time to time, but at 9% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. LIMITATION OF LIABILITY

10.1 References to liability in this clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 Nothing in the Contract limits any liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

(d) defective products under the Consumer Protection Act 1987; or

(e) any liability that legally cannot be limited.

10.3 Subject to clause 10.2, the Company's total liability to the Customer shall not exceed [£[AMOUNT **OR** the purchase price of the Goods under the Contract **OR** % of the purchase price of the Goods under the Contract **OR** [OTHER CALCULATION E.G. including delivery and packaging costs paid by the Customer]]

10.4 Subject to clause 10.2, the following types of loss are wholly excluded:

(a) loss of profits;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of use or corruption of software, data or information;

(f) loss of or damage to goodwill; and

(g) indirect or consequential loss.

10.5 This clause 10 shall survive termination of the Contract.

11. TERMINATION

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

(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;

(b) the Customer 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), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a 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;

(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

11.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Customer and the Company, if:

(a) the Customer becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(d), or the Company reasonably believes that the Customer is about to become subject to any of them; or

(b) if the Customer fails to pay any amount due under this Contract on the due date for payment; or

(c) if Customer fails to pay any amount due under any other contract the Company has with the Customer on the due date for payment; or

(d) the Customer fails to pay any amount due under any contract another member of the Company’s Group has with the Customer on the due date for payment.

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

(a) the Customer fails to pay any amount due under the Contract on the due date for payment; or

(b) if the Customer fails to pay any amount due under any other contract the Company has with the Customer on the due date for payment; or

(c) if the Customer fails to pay any amount due under any contract another member of the Company's Group has with the Customer on the due date for payment.

11.4 On termination of the Contract for any reason the Customer 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 Customer immediately on receipt.

11.5 Termination of the Contract, however 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 the Contract which existed at or before the date of termination.

11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

12. FORCE MAJEURE

The Company shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results (directly or indirectly) from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

13. GENERAL

13.1 Assignment and other dealings.

(a) The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, 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 Company.

13.2 Confidentiality.

(a) The Customer undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the Company, or the Company Materials, except as permitted by clause 13.2(b).

(b) The Customer may disclose the Company's confidential information or the Company Materials:

(i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) The Customer shall not use the Company's confidential information or the Company Materials for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13.3 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties.

(b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

13.4 Intellectual Property Rights

In relation to the Goods and Company Materials;

(a) the Company and its licensors shall retain ownership of all Intellectual Property Rights in the Goods and the Company Materials;

(b) the Company grants the Customer a fully paid-up, non-exclusive, royalty-free, non-transferable licence to utilise the Company Materials for the purpose of receiving and using the Goods in its business; and

(c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 13.4(b).

For the avoidance of doubt, neither the licence referred to at clause 13.4(b) nor any other term of the Contract grants any right to the Customer to use any trademark, service mark or patent owned or used by the Company or any member of the Company's Group.

13.5 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.6 Waiver.

(a) Except as set out in clause 2.4, 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.

13.7 Severance. If any provision or part-provision of the Contract 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 the Contract. If any provision of the Contract is deemed deleted under this clause 13.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.8 Notices.

(a) Any notice given to a party under or in connection with the Contract shall be in writing (which for the purposes of this clause 13.8 does not include email, save as provided for at clause 13.8(e)) and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

(b) Any notice shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) 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.

(c) This clause 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.

(d) Save as expressly provided otherwise in this agreement, a notice given under or in connection with this agreement is not valid if sent by email.

(e) A notice given by the Company pursuant to clause 6.5(a) may be given by email to the contact email address provided by the Customer to the Company, and will be deemed to have been received by the Customer at the time of transmission or, if this time falls outside Business Hours, when Business Hours resume.

13.9 Third party rights.

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

13.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

13.11 Jurisdiction. 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 Contract or its subject matter or formation.