

## TERMS & CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1 In these Conditions:-

|                                |   |
|--------------------------------|---|
| “Business Day”                 | a day other than Saturday or Sunday or any public holiday in England;   |
| “Buyer”                        | means the customer named overleaf;  |
| “Contract”                     | means the contract for the purchase and sale of the Goods and Services subject to these Conditions;   |
| “Conditions”                   | means the terms and conditions set out in this document ;   |
| “Goods”                        | means the goods (including any instalments or spare parts where applicable) which the Seller is to supply set out in the Order;   |
| “Intellectual Property Rights” | means any rights in inventions, patents, registered designs, design rights, know-how, trade marks and service marks, copyright and all other intellectual or industrial property rights whether or not capable of registration;   |
| “Minimum Purchase Amount”      | means the minimum volumes of particular Goods which the Buyer is to purchase from the Seller over a specified period, as stated in any Request for Quotation or equivalent document (RFQ) in relation to which an Order is submitted and agreed between the Buyer and the Seller in respect of the Goods; |
| “New Seller”                   | means any person, firm, company or other organisation or entity appointed or to be appointed by the Buyer to provide services which are the same as or similar to the Services (or any part of them);   |
| “Order”                        | the order submitted by the Buyer for Goods and/or Services as accepted by the Seller in accordance with these Conditions;   |
| “Seller”                       | means Nifco UK Limited a company registered in England and Wales (company number 01392769);   |
| “Services”                     | means the services (including any repair work or instalments) which the Seller is to perform set out in the Order;  |

- “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time); and
- “Tooling” means any tooling acquired by the Seller on behalf of the Buyer to manufacture the Goods as more particularly set out in the Order.

1.2 In these Conditions:-

- 1.2.1 any gender includes any other gender;
- 1.2.2 any reference to a statutory provision includes a reference to any modification or re-enactment of the provision from time to time in force;
- 1.2.3 references to “the Goods”, “the Contract”, “the Services” or any payment includes any part of any of them; and
- 1.2.4 indemnify means on demand to indemnify and keep indemnified, and hold harmless, the party to be indemnified on an after-tax basis.

2. **CONTRACTS**

- 2.1 The Seller shall sell and the Buyer shall buy the Goods and the Services subject to these Conditions, which supersede any other terms and govern the Contract to the exclusion of any terms and conditions which the Buyer purports to apply or which are implied by trade, custom or course of dealing.
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s order or other document will form part of the Contract simply as a result of such document being delivered to the Seller or referred to in the Contract. For the avoidance of doubt, if there is any conflict or inconsistency between the Buyer’s RFQ or equivalent terms and the Conditions, the Conditions shall take precedence ( but without prejudice to the provisions of these Conditions relating to Minimum Purchase Amount).
- 2.3 Any variation to these Conditions is of no effect unless agreed in writing by an authorised representative of the Seller.
- 2.4 These Conditions constitute the entire agreement between Buyer and Seller for the supply of the Goods and the Services. Nothing in this Condition 2.4 shall operate to limit or exclude the liability of either party for fraudulent misrepresentation.
- 2.5 The Seller’s employees or agents are not authorised to make any representation concerning the Goods or Services unless confirmed by the Seller in writing, and the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently).
- 2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer’s own risk.

- 2.7 Any typographical, clerical or other error or omission in any document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. **ORDERS AND SPECIFICATIONS**

- 3.1 Each order for Goods and/or Services by the Buyer is an offer by the Buyer to purchase the Goods and/or Services subject to these Conditions.
- 3.2 No order submitted by the Buyer by whatever means is accepted by the Seller until the Seller confirms its written acceptance on the Seller's acknowledgement of order form or (if earlier) the Seller delivers the Goods or supplies the Services to the Buyer.
- 3.3 The Buyer must ensure that the terms of any Order (including any specification) are complete and accurate and that it gives to the Seller any necessary information relating to the Goods and Services within a sufficient time to enable the Seller duly to perform the Contract. The Seller is discharged from its obligations in relation to the Services to the extent and for so long as the Buyer's failure to comply with this Condition 3.3 affects the Seller's performance of the Services.
- 3.4 Where the Goods are manufactured or where standard goods of the Seller are altered in order to become the Goods in either case in accordance with information, drawings or instructions supplied by the Buyer:-
- 3.4.1 no guarantee or warranty is given by the Seller as to the practicability, efficiency, safety or otherwise of the Goods;
- 3.4.2 the Buyer shall indemnify the Seller against all liability incurred by the Seller as a result of:-
- (a) the Goods infringing any Intellectual Property Rights or any statutory provision;
- (b) any impracticability, inefficiency, lack of safety or defect in the Goods where any of these is due wholly or partly to faults or omissions in any such information, drawings or instructions;
- 3.4.3 all work (including design drawings) and any idea, invention or improvement made by or on behalf of the Seller pursuant to the Buyer's commission and all Intellectual Property Rights therein belong to the Seller; and
- 3.4.4 the Seller shall not be liable to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer if any Goods infringe any Intellectual Property Rights.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods or Services which are required for the Goods or Services to conform with any applicable safety or other statutory or EU requirements or, where the Goods or Services are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.

- 3.6 The Seller shall have no liability to the Buyer for any delay or failure in performing the Services to the extent that such delay or failure arises out of or in connection with:
- 3.6.1 the provision to the Seller of inaccurate, incomplete or misleading information; or
  - 3.6.2 any breach of the Contract by the Seller.
- 3.7 For the avoidance of doubt, the Seller does not provide any guarantee of availability of spare parts to the Buyer under this Contract and will only supply spare part under the Contract if and to the extent that the provision of spare parts expressly forms part of the Contract pursuant to the Order as agreed by the Seller.

#### 4. **OBLIGATIONS OF THE BUYER**

The Buyer shall:

- 4.1 co-operate with the Seller and provide all reasonable assistance required to enable the Seller to perform the Services, including providing all necessary information, descriptions and access to premises to enable the Seller to satisfy its obligations under the Contract;
- 4.2 provide, in a timely manner, such materials and other information the Seller may require and ensure that it is accurate in all material respects;
- 4.3 obtain and maintain all necessary licences, consents and other rights necessary to comply with all relevant legislation in relation to the Services; and
- 4.4 inform the Seller of all health and safety rules and regulations that apply at the Buyer's premises and are relevant to the Seller's performance of the Services.

#### 5. **QUOTATIONS/PRICES**

- 5.1 The price of the Goods and Services is the Seller's quoted price (based on the Minimum Purchase Amount if applicable) or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of delivery or supply.
- 5.2 Unless expressly stated otherwise in any quotation issued by the Seller to the Buyer, all prices quoted are ex works (Incoterms 2010) unless otherwise agreed by the Seller in writing and exclude the cost of packing. Any applicable value added tax or any other sales tax or excise duties paid or payable by the Seller shall be added to the price and shall be payable by the Buyer.
- 5.3 Firm price quotations are valid for a period of one month only from the date of quotation and subject to withdrawal or revision at any time before acceptance of the Buyer's order. The Seller may, at its absolute discretion, accept or reject any order placed by the Buyer.

- 5.4 In the event of the Buyer cancelling a part of the Order in accordance with the provisions of Condition 8, the Seller reserves the right to revise the price or prices quoted for Goods already delivered.
- 5.5 If as a result of the Buyer cancelling an Order the amount of the Goods purchased by the Buyer is or will be less than any applicable Minimum Purchase Amount, the Seller shall be entitled to revise the price payable by the Buyer for all relevant Goods (including those already supplied) and charge the Buyer, in addition, the difference between the price quoted for the Goods based on the Minimum Purchase Amount and the price which the Seller would have charged for the Goods in the absence of any applicable Minimum Purchase Amount.
- 5.6 In addition to Condition 5.4, and Condition 5.5 the Seller reserves the right to review the Contract price(s) to take into account increases in cost to the Seller including without limitation:-
- 5.6.1 in the event of devaluation of the pound sterling or fluctuation in the rates of foreign exchange; or
- 5.6.2 in the event of any increase in the price of raw materials or bought out components used by the Seller in the manufacture of the Goods.

## **6. TOOLING**

- 6.1 The Buyer acknowledges that title in the Tooling passes to the Buyer on payment in full for the Tooling by the Buyer in accordance with the payment terms set out in the Order (without prejudice to the Seller's right of set off under Condition 11.7; (where applicable))
- 6.2 The Buyer hereby authorises the Seller to deliver up the Tooling to a third party (if required) in order to enable the Seller to comply with its obligations under any Contract.
- 6.3 The Seller shall, or shall ensure that, the Tooling is maintained in good working order (fair wear and tear excepted) and insured as the Seller sees fit, acting reasonably, until such time as the Tooling is delivered, by the Seller or a third party on its behalf, to the Buyer.
- 6.4 [If this Contract terminates for any reason and the Buyer indicates that it does not intend to purchase further Goods from the Seller, the Seller shall deliver the Tooling to the Buyer's principal place of business in the United Kingdom, at the cost of the Buyer.]
- 6.5 If Condition 6.4 applies and ownership in the Tooling has not passed to the Buyer in accordance with Condition 6.1, the Buyer shall, within ten (10) days after receipt of an invoice from the Seller, pay over any amounts still owed by the Buyer to the Seller under Condition 6.1.
- 6.6 The provisions of this Condition 6 shall survive termination of any Contract.

## **7 DESCRIPTION**

- 7.1 Where samples of Goods or colour charts are provided, these are submitted only as indicative of the class, size or colour of Goods quoted

for and sales of Goods shall not be by reference to any such samples or colour charts.

- 7.2 Whilst all descriptions and illustrations of the Goods in (*inter alia*) catalogues, brochures and price lists provided by the Seller have been carefully prepared, they are intended nevertheless for general guidance only and do not form part of any Contract and no responsibility is accepted for any errors or omissions therein or for any loss or damage resulting from reliance on such descriptions and illustrations.
- 7.3 Where the Seller agrees to provide a specially designed drawing, the Buyer agrees that it is obliged to check the accuracy and suitability of the drawing and that the Seller shall not be liable for any omissions or inaccuracies in the measurements given. Any drawing provided by the Seller is, and remains, its property and may not be reproduced in whole or in part without written consent of the Seller.

## **8 CANCELLATION/DELAY**

- 8.1 No order may be cancelled by the Buyer except with the Seller's written agreement and on terms that the Buyer shall indemnify the Seller against all loss (including loss of profit), costs, (including the cost of all labour costs, capital investment, materials, bought out components and raw materials used or ordered, damages, charges and expenses incurred by the Seller as a result of cancellation. In any case where the Seller was required to place a deposit with a manufacturer or supplier in respect of an order, the Seller may require the Buyer to reimburse such sum in the event of cancellation.
- 8.2 If the Buyer extends or delays the Contract or fails to take delivery of any Goods at the agreed time or (if no time is agreed) within a reasonable time then the Buyer shall indemnify the Seller against all loss (including loss of profit), costs (including the cost of storage, all labour costs, capital investment, materials, bought out components and raw materials used or ordered), damages, charges or expense incurred by the Seller as a result of such extension, delay or failure.

## **9 DELIVERY/PERFORMANCE**

- 9.1 Any dates quoted for delivery of the Goods or performance of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused. Time for delivery or performance shall not be of the essence unless previously and expressly agreed by the Seller in writing.
- 9.2 The Seller reserves the right to deliver Goods by instalments and in such event each instalment shall be treated as a separate Contract save that the delivery of further instalments may be withheld until such Goods contained in earlier instalments have been paid for in full.
- 9.3 Where Goods are held by the Seller awaiting delivery instructions, they may be subject to a storage charge.
- 9.4 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer

that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

- 9.5 On being given notice of delivery to some place other than the Seller's premises as provided in Condition 9.4 above, the Buyer is responsible for arranging prompt unloading of the transport at the final destination. Any additional costs incurred due to delays in discharging transport are the Buyer's responsibility.
- 9.6 If the Buyer fails to take delivery of the Goods, then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 9.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 9.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **10 DAMAGE, LOSS, SHORT DELIVERY**

- 10.1 On delivery, the Buyer shall examine the Goods for defects and completeness. Thereafter no claim for damage in transit, for shortage in delivery or for loss of Goods will be entertained unless, in the case of damage, a separate notice in writing is given to the carriers or to the Seller within three (3) days of the receipt of the Goods, followed within fourteen (14) days of the date of the advice of the despatch by a complete claim in writing; or, in the case of loss of Goods, a separate notice in writing and a claim is given to the Seller's and carriers within fourteen (14) days of the date of the Seller's advice of despatch to the Buyer. In all cases a signature 'unexamined' shall be deemed to be an unconditional acceptance of the Goods.
- 10.2 The Seller's liability for damage or non-delivery of Goods duly notified in accordance with the above shall in any event be limited to replacement of the Goods within a reasonable time (or, at the Seller's option, refunding the price thereof) whether the damage or non-delivery is due to the Seller's negligence or otherwise.

## **11 TERMS OF PAYMENT**

- 11.1 Where the Seller has granted the Buyer a credit facility, the price for the Goods and/or Services shall be paid by the Buyer on or before the last day of the month immediately following the month in which the Goods are invoiced ('the due date') or, if the Seller shall so require under Condition 11.2, to be paid on demand without any period of notice.
- 11.2 The Seller reserves the right to withdraw or vary credit facilities at any time by summary written notice to the Buyer without giving any reason for doing so, or thereby incurring any liability to the Buyer.
- 11.3 Where no credit facility has been granted by the Seller to the Buyer, the Buyer shall pay the price for the Goods and/or Services in full cleared

funds without any set-off, deduction or withholding on or before the date of delivery or performance specified in the Order.

- 11.4 If the Buyer takes Goods from the Seller in excess of the Buyer's credit limit, the Seller may require payment in advance of delivery for such excess of Goods.
- 11.5 The discounts allowable to the Buyer are those shown on the Seller's quotation only, and, unless otherwise expressly agreed in writing, no other discounts or commissions are to become due or allowable to the Buyer (any previous course of dealing notwithstanding).
- 11.6 The Buyer shall pay any amount due to the Seller pursuant to Condition 5.5 in full and cleared funds within [xx] days from the date of the Seller's invoice.
- 11.7 The Seller is entitled to set off sums from time to time owned by the Seller to the Buyer against sums from time to time owned by the Buyer to the Seller. Any exercise by the Seller of its right of set off pursuant to this Condition 11.7 shall not limit or affect any other rights or remedies available to it under this Contract.

## **12 LATE PAYMENT**

- 12.1 When payment of any of the Seller's invoices is overdue, the Seller may suspend its performance of the Contract to which the invoice relates and/or of any other Contract then subsisting between the Seller and the Buyer.
- 12.2 In the event of legal action being taken by the Seller against the Buyer for breach of payment obligations hereunder, the Buyer shall be responsible for all costs and disbursements incurred by the Seller on a full indemnity basis.
- 12.3 The Seller shall be entitled to charge and recover interest from the Buyer on the price of the Goods and/or Services calculated at the rate of four per cent per annum above the Barclays Bank plc base rate from time to time from the due date until the date of payment.
- 12.4 Time of payment is of the essence.
- 12.5 For the purposes of these Conditions, payment is received when the Seller receives it in cleared funds.
- 12.6 Payment by the Buyer shall be made without any deduction or set off.
- 12.7 Despite any provision allowing credit, payment is due and payable to the Seller immediately upon cancellation or termination of the Contract.

## **13 RISK**

- 13.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods. For the purpose of this Condition, 'delivery' shall mean the arrival of the Goods at the place of delivery of the Buyer where delivery is by the Seller, or the safe loading of the Goods into the Buyer's vehicles, or those of the



Buyers appointed carriers, at the Seller's premises where delivery is through collection by the Buyer.

**14 TITLE**

- 14.1 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash (or cleared funds) payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 14.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 14.3 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 14.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

**15 INTELLECTUAL PROPERTY RIGHTS**

- 15.1 The Buyer acknowledges that unless otherwise agreed in writing with the Buyer, any and all Intellectual Property Rights in the Goods and any Tooling shall at all times remain the sole property of the Seller and the Buyer shall not acquire any rights in relation thereto. All work (including design drawings and any idea, invention or improvement) made by or on behalf of the Sellers pursuant to the Buyer's commission and all Intellectual Property Rights therein (including any design right in a design created by the Seller) belong to the Seller.

**16 WARRANTY AND DEFECTS**

- 16.1 The Seller warrants to the Buyer that the Goods correspond with their specification at the time of delivery in all material respects.
- 16.2 The Seller warrants that the Services will conform to the specification or scope of work set out in the Order and will be performed using reasonable skill and care.

- 16.3 The Seller shall not be liable under this warranty (or any other warranty, condition or guarantee):-
- 16.3.1 until the total price for the Goods and Services has been paid by the Buyer; or
  - 16.3.2 if any defect in the Goods arises from any information, drawing or specification supplied by the Buyer; or
  - 16.3.3 if any defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or written) or maintenance requirements, misuse or alteration or repair of the goods without the Seller's prior approval; or
  - 16.3.4 if the Goods have been improperly installed or connected (unless the Seller carried out the installation and connection); or
  - 16.3.5 if the Goods conform with information, drawings or specifications supplied by or on behalf of the Buyer; or
  - 16.3.6 if any defect arises for which the Seller's liability is excluded as specified in any warranty specific to the Goods and notified to the Buyer
- 16.4 The warranty in Condition 16.1 does not extend to spare parts, parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller and which the Seller is entitled to and able to assign to the Buyer.
- 16.5 The Seller may provide specific written warranties for particular Goods, to which the exclusions in Conditions 16.3 and 16.4 shall apply unless expressly stated otherwise.[The provisions of any specific written warranties incorporated into the Contract shall to the extent of any conflict or inconsistency take precedence over the provisions of these Conditions.]
- 16.6 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification must (whether or not delivery is refused by the Buyer) be notified to the Seller within fourteen (14) days from the date of delivery or, where the defect or failure was not apparent on reasonable inspection, within fourteen (14) days after the Buyer discovers or ought reasonably to have discovered the defect or failure.
- 16.7 In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.
- 16.8 If the Buyer does not notify claims in accordance with Condition 16.6 then:-
- 16.8.1 the Buyer shall not be entitled to reject the Goods;
  - 16.8.2 the Seller shall have no liability for such defect or failure; and

- 16.8.3 the Buyer shall be bound to pay the full price for the Goods.
- 16.9 In the event the Buyer has a valid claim which has been notified to the Seller pursuant to Condition 16.6, the Seller shall be entitled to repair or replace the Goods at the Seller's option refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 16.10 Any claim by the Buyer which is based on any failure of the Services to conform with Condition 16.2 must be notified to the Seller within fourteen (14) days from the date of completion of performance of the Services, or where the defect or failure was not apparent on reasonable inspection, within fourteen (14) days after the Buyer discovers or ought reasonably to have discovered the defect.
- 16.11 If the Buyer notifies the Seller that the Services do not conform with Condition 14.2 the Buyer's sole remedy and the Seller's sole obligation shall be to re-perform the Services within a reasonable period of time.

## **17 LIMITATION OF LIABILITY**

### **THE BUYERS ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION.**

- 17.1 Subject to Condition 16, this Condition 17 sets out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Buyer in respect of the following (each being an "Event of Default"):
- 17.1.1 any breach of these Conditions by the Seller;
- 17.1.2 any misrepresentation, misstatement, tortious act or omission (including negligence) or breach of statutory duty of the Seller arising under or in connection with the Contract,
- and subject to Condition 17.3, all other liability is excluded.
- 17.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law but this exclusion does not apply to:-
- 17.2.1 any implied condition that the Seller has or will have the right to sell the Goods when the property is to pass; or
- 17.2.2 where the Goods are not sold to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1997, any implied term relating to the conformity of the Goods with their description or sample or as to their quality or fitness for a particular purpose.
- 17.3 Nothing in these Conditions excludes or limits the Seller's liability for death or personal injury caused by the Sellers' negligence or for fraudulent misrepresentation.
- 17.4 Subject to Conditions 17.2 and 17.3 the Seller shall not be liable to the Buyer for any loss of profit, loss of production, loss of reputation, loss of business or revenue, and loss of anticipated saving depletion of goodwill and any indirect or consequential loss, damage, costs or expenses

whatsoever in each case which arises out of or in connection with the Contract.

- 17.5 The Seller's total financial liability to the buyer for all Events of Default during the term of the Contract shall not exceed an amount equal to the Contract price.

## **18 FORCE MAJEURE**

- 18.1 The Seller shall not be liable to the Buyer or deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's control:

- 18.1.1 act of God, explosion, flood, tempest, fire or accident;
- 18.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 18.1.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 18.1.4 import or export regulations or embargoes;
- 18.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Sellers or of a third party);
- 18.1.6 difficulties in obtaining raw materials, labour, fuel, spare parts, parts or machinery; and
- 18.1.7 power failure or breakdown in machinery.

## **19 TERMINATION**

- 19.1 The Seller shall have the right to terminate the Contract immediately if any of the following occur in relation to the Buyer:

- 19.1.1 any action, legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to:
  - (a) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Buyer (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction);
  - (b) a debt relief order being made in respect of the Buyer;
  - (c) the appointment of a liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Buyer or any of its assets;
  - (d) the enforcement of any security over any assets of the Buyer; or

- (e) the attachment, sequestration, distraining upon or execution over or affecting any material asset of the Buyer,

in each case which is not withdrawn or dismissed as soon as reasonably practicable;

- 19.1.2 the Buyer is unable to pay its debts as they fall due taking into account contingent and prospective liabilities, as interpreted in accordance with the relevant legal authority from time to time;
  - 19.1.3 the Buyer enters into a composition or arrangement with its creditors or any class of them;
  - 19.1.4 the Buyer ceases to carry on its business or substantially all of its business, or is struck off and/or dissolved; or
  - 19.1.5 the commencement of any analogous procedure or step in relation to the Buyer in any jurisdiction other than England and Wales.
- 19.2 The Seller shall have the right to terminate the Contract at any time upon giving thirty (30) days written notice to the Buyer provided that the Seller shall meet all orders for the Goods outstanding at the date of termination.
- 19.3 Either party (the “Non-Defaulting Party”) may by giving notice to the other (the “Defaulting Party”) terminate this Contract as from the date of expiry of the notice if the Defaulting Party commits a breach of this Contract which, in the case of a material breach capable of remedy, is not remedied within thirty (30) days after the Non-Defaulting Party has given notice containing details of the breach, requiring the breach to be remedied, and stating that, if it is not, this Contract may be terminated without further notice.

## **20 TUPE**

If, on the termination of this Contract (in whole or in part), or in the event that the Seller shall cease to provide the Services (or any part of them), TUPE applies so as to transfer the employment of any employee of the Seller to the Buyer or New Seller or it is alleged that TUPE so applies, the Buyer shall indemnify the Seller in full against any and all liabilities, losses (whether direct or indirect), damages (including special and consequential damages), costs and expenses (including legal expenses) incurred by the Seller arising out of or in connection with any claim, allegation or demand by, on behalf of or in relation to any person employed or engaged or formerly employed or engaged by the Seller arising from any act, fault or omission of the Buyer, any third party or any New Seller and/or any other matter, event or circumstance whenever such act, fault, omission, matter, event or circumstance occurs.

## **21 LIEN**

- 21.1 The Seller shall have a general lien (together with a power of sale) on all property owned by the Buyer in the Seller’s possession in satisfaction of any payment due or owing from the Buyer on any account.

**22 GENERAL**

- 22.1 The Seller is a member of the group of companies and accordingly the Seller may perform any of its obligations or exercise any of its rights by itself or through any other member of its group.
- 22.2 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller, whether or not under the Contract.
- 22.3 If any provision of the Contract is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall continue in full force and effect.
- 22.4 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.
- 22.5 Any waiver by the Seller of any breach by the Buyer is not a waiver of any subsequent breach.
- 22.6 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.
- 22.7 Notices addressed to the Seller shall be marked for the attention of General Manager - Sales].
- 22.8 Notices shall be delivered personally or sent by first class post or sent by facsimile transmission.
- 22.9 A notice is deemed to have been received:-
- 22.9.1 if delivered personally, at the time of delivery;
- 22.9.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting);
- 22.9.3 if sent by facsimile transmission, on a working day prior to 4.00pm at the time of completed transmission and otherwise on the next working day.
- 22.10 Any communication which is not a notice to be made between the Buyer and the Seller may be made by electronic mail if the Buyer and the Seller:
- 22.10.1 agree that, unless and until notified to the contrary, this is to be accepted form of communication for such purposes;
- 22.10.2 notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means, and
- 22.10.3 notify each other of any change to their address or any other such information supplied by them.
- 22.11 Any communication sent by electronic mail under Condition 22.10 will be effective only when actually received in readable form. Where a communication is sent by electronic mail to an address specified for the

purpose by the intended recipient, service or delivery shall be deemed to be effected on the same day on which it is sent and in proving such service it will be sufficient to prove that it was properly addressed.

- 22.12 A communication made under Condition 22.10 which is received or deemed to be received in accordance with Condition 22.11 on a day which is not a Business Day or after 5.00 pm on any Business Day shall be deemed to be received at 9.00 am on the next Business Day.
- 22.13 Subject to Condition 22.1, the Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

### **23 ASSIGNMENT**

- 23.1 The Seller may assign or subcontract the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.
- 23.2 The Buyer may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

### **24 ENGLISH LAW**

- 24.1 The Contract shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.
- 24.2 Condition 24.1 is for the benefit of the Seller only and as a result the Seller shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.