

Sheppee International Limited Terms and Conditions of Sale

The Customer's attention is in particular drawn to the provisions of condition 12 and condition 13.iv.

1. Cookie Policy

- i. Sheppee International Ltd only use cookies for the client login area to remember your log in details for ease of access next time you visit this page. By using this site functionality you are consenting to the use of these cookies.

We do not have any third party cookies on our site.

2. Interpretation

- i. The definitions and rules of interpretation in this condition apply in these conditions.

Business Day: a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for general business in the City of London.

Company: SHEPPEE INTERNATIONAL LIMITED (company number 02792576), a company incorporated in England with the registered office situated at Halifax Way, Airfield Business Park, Elvington, York YO41 4AU.

Contract: any contract between the Company and the Customer for the sale and purchase of the Goods and/or the provision of the Services, incorporating these conditions and the Order Acknowledgement Form.

Customer: the person, firm or company who purchases the Goods and/or Services from the Company.

Delivery Point: the place where delivery of the Goods is to take place under condition 5.

End User: the person who takes final delivery of the Goods (who may also be a Customer).

Goods: any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them, components, raw materials, finished or semi-finished materials or articles and any goods supplied in substitution for or in replacement of or in addition thereto).

Goods Produced to Customer Designs: any Goods which are to be manufactured to (or incorporating elements of) designs submitted by (or via) the Customer or End User.

Incoterms: the Incoterms 2000 (the ICC Official Rules for the Interpretation of Trade Terms which came into force on 1 January 2000) or such subsequent version of Incoterms as may supersede the Incoterms 2000 and which the Company may notify the Customer as being the Incoterms applicable to a Contract and Incoterm shall mean any of such Incoterms as the context requires

Order Acknowledgement Form: an acknowledgement in writing including by email issued by the Company to the Customer setting out the terms on which an order for Goods and Services is accepted in accordance with condition 3.

Services: any services agreed in the Contract to be supplied to the Customer (including without limitation consultancy, training, design, installation and/or aftercare and maintenance services) under the Contract whether at the Customer's premises or otherwise. The details of the Services including description of the work to be done, timescales for completion of the Services and any input required from the Customer shall be set out in the Order Acknowledgement Form.

Specification: the specification for the Goods including technical information, designs and drawings (unless such Goods are in the Company's current catalogue and require no alteration to meet the End User's requirements).

Warranty Period: the duration of any warranty given under condition 12 in relation to Goods and Services supplied under a particular Contract shall be the lesser of (i) 12 months from the date of commissioning of the Goods either by the Company or by the Customer or (ii) 18 month from the date of the delivery note.

- ii. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- iii. Words in the singular include the plural and in the plural include the singular.
- iv. A reference to one gender includes a reference to the other gender.
- v. Condition headings do not affect the interpretation of these conditions.
- vi. References in these conditions to "in writing" or "written" shall include fax and email.

3. Application of terms

- i. Subject to any variation under condition 3.iii the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- ii. No terms or conditions endorsed on, delivered with or contained in the Customer'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 the Contract.
- iii. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless set out in the Order Acknowledgement Form or expressly agreed in writing and signed by a Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- iv. Each order or acceptance of a quotation for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods and/or Services subject to these conditions.
- v. No order placed by the Customer shall be deemed to be accepted by the Company until an Order Acknowledgement Form is issued by the Company or (if earlier) the Company delivers the Goods or completes the provision of Services to the Customer.
- vi. The Customer shall be responsible for ensuring that the terms of its order and any applicable specification are complete and accurate. To the extent that there are any inconsistencies or errors in any quotation or Order Acknowledgement Form provided by the Company, the Customer shall bring such inconsistency to the attention of the Company as soon as reasonably practicable following receipt of such quotation or Order Acknowledgement Form, and the Company shall use its reasonable endeavours to amend the Contract accordingly but shall not be obliged to do so.

- vii. For the avoidance of doubt, the provision of a quotation by the Company in relation to Goods and/or Services shall not constitute an offer to supply such Goods and/or Services. Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an Order Acknowledgement Form to the Customer. Any quotation is valid for a period of 30 days only from its date or until such other date as is stated on the quotation, provided that the Company has not previously withdrawn it.

4. Description, designs and drawings

- i. The quantity and description and relevant Specification (if appropriate) of the Goods shall be as set out in the Order Acknowledgement Form issued by the Company.
- ii. The Company may from time to time provide samples, drawings, brochures, catalogues and other promotional and descriptive material. All such samples, drawings, brochures, catalogues and other promotional and descriptive material issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract unless specifically stated in the Order Acknowledgement Form. This is not a sale by sample.
- iii. Where the Company prepares the Specification for Goods on behalf of the Customer or End User, the Company reserves the right to enter into a contract for Services with the Customer (on these conditions) for such Services.
- iv. 3.4 Where the Company is required under the Contract to manufacture Goods Produced to Customer Designs:
 - a. the Customer's order under condition 3.iv must be accompanied by sufficient detailed Specification in writing to enable the Company to proceed with the order immediately on the issue of the Order Acknowledgement Form; and
 - b. the Company is entitled to assume that the Specification(s) and other information supplied by the Customer to the Company (whether written or verbal) is in all respects completely accurate and in accordance with the Customer's design standards and specifications and with all relevant legislation, and as such the Company shall not be responsible for the suitability, quality or correct functioning of any such Goods Produced To Customer Designs where information provided to the Company by the Customer has been followed.

5. Delivery of goods

- i. The relevant Incoterms governing delivery of Goods under a Contract (including place of delivery) shall be as set out in the relevant Order Acknowledgement Form. In the absence of anything being set out in the Order Acknowledgement Form, delivery of the Goods shall take place at the Company's place of business.
- ii. Any dates specified by the Company for delivery of the Goods (whether in a quotation, in an Order Acknowledgement Form or elsewhere, whether in writing or verbally) are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. The company will not be liable in any circumstances of any delay in delivery or failure to deliver. Without prejudice to the rest of this condition 5.ii, the estimated delivery dates specified in the Order Acknowledgement Form shall be extended in the following circumstances:
 - a. where the Contract relates to Goods Produced To Customer Designs, in the event of late delivery of technical information, drawings, specifications or models by the Customer to the Company;
 - b. in the event that, subsequent to the date of the Order Acknowledgement Form, the Customer requires any alterations to the Goods as set out in the Order Acknowledgement Form; or

- c. if a deposit is required for Goods or if agreed payment terms for the Goods as set out in the Order Acknowledgement Form requires payment by instalments where such deposit or instalment has fallen due and has not been paid by the Customer.
- iii. Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to refuse delivery or to terminate or rescind the Contract unless such delay exceeds 180 days.
- iv. If for any reason the Customer or End User (as appropriate) fails to accept delivery of any of the Goods when they are delivered to the Customer or End User (as appropriate):
 - a. risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
 - b. the Goods shall be deemed to have been delivered; and
 - c. the Company may store the Goods until delivery or return the Goods to the Company's premises, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).If the Company has delivered direct to the End User at the request of the Customer it is for the Customer to resolve any problems with the End User and if the Customer requests the Company to redeliver the Goods to the End User, the Customer shall be liable for all related costs and expenses.
- v. Unless otherwise agreed, the Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- vi. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- vii. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

6. Non-delivery

- i. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- ii. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice of the non-delivery to each of the Company and the relevant carrier of the Goods within 5 (five) Business Days of the date when the Goods would in the ordinary course of events have been received. The Company shall not be liable to the Customer for any non-delivery if the Customer fails to do all things necessary to protect and further any claim which the Company may have against the carrier, or does anything which adversely affects or invalidates such claim.
- iii. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. Risk/title

- i. Subject to condition 7.ii, risk in the Goods shall pass in accordance with the relevant Incoterms specified in the Order Acknowledgement Form as applicable to the Contract. In

the absence of an Incoterm being specified in the Order Acknowledgment Form, the Goods are at the risk of the Customer from the time of delivery.

- ii. If:
 - a. the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, or
 - b. at the request of the Customer delivery has been postponed and the Goods are being kept pending delivery at the Company's premises,the Company shall have no responsibility in respect of the safety or security of the Goods thereafter and the Customer shall be responsible for insuring the Goods against such risks as it thinks appropriate.
- iii. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - a. the Goods; and
 - b. all other sums which are or which become due to the Company from the Customer on any account.
- iv. Until ownership of the Goods has passed to the Customer, the Customer shall:
 - a. hold the Goods on a fiduciary basis as the Company's bailee;
 - b. store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
 - c. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - d. maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
 - e. not affix or annex the Goods to land without the written consent of the Company.
- v. The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
 - a. any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - b. any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- vi. The Customer's right to possession of the Goods shall terminate immediately if:
 - a. the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with a court in any jurisdiction for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any equivalent proceedings are commenced in any jurisdiction relating to the insolvency or possible insolvency of the Customer; or
 - b. the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it (in which case the Customer

- shall immediately notify the Company by registered or recorded delivery letter if a third party shall attempt to seize or exercise any lien over the Goods); or
- c. the Customer fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer in the reasonable opinion of the Company otherwise has its solvency materially impaired or the Customer ceases to trade; or
 - d. the Customer encumbers or in any way charges any of the Goods.
- vii. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
 - viii. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated under condition 6.vi above, to recover them.
 - ix. Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Company shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
 - x. Nothing in this condition 6 shall in any way limit or modify the Customer's obligation to pay for the Goods.
 - xi. On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 7 shall remain in effect.

8. Price

- i. Subject to condition 8.ii, the price for the Goods and/or Services ordered by the Customer shall be the price set out in the Order Acknowledgement Form relating to the Contract.
- ii. Unless otherwise stated all prices set out on an Order Acknowledgement Form are based on current material costs and operating costs (including wages) at the date of the Order Acknowledgement Form, but the Company reserves the right at any time prior to the delivery of the Goods or completion of the provision of the Services to adjust the price to take into account any increase in the cost of raw materials, labour services or any currency fluctuations affecting the cost of imported materials. Any such price adjustment shall be notified to the Customer in writing (including via email)
- iii. The price for the Goods and Services shall be exclusive of value added tax, which is payable by the Customer at the point at which it is due under the Contract to pay for the Goods and/or Services to which the value added tax relates. The Company shall add such value added tax to its invoices for the Goods and Services at the appropriate rate.
- iv. The price for the Goods shall be exclusive of:
 - a. any other tax or duty or licence relating to the manufacture, transport, export, import, sale, provision or delivery of the Goods and Services;
 - b. all costs or charges in relation to packaging, delivery, loading, unloading, carriage and insurance,and the allocation of such costs as between the Company and the Customer shall be determined by the Incoterm applicable to the Contract as set out in the Order Acknowledgement Form. Any such amounts payable by the Customer shall be paid in addition when it is due to pay for the Goods and/or Services.
- v. In the event that the Specification or any information given by the Customer to the Company in relation to its requirements for the Goods and/or Services is inaccurate or otherwise

differs from that on which a Contract is based and involves the alteration of the Contract, the Company may increase the price set out in the Order Acknowledgement Form to cover any increase in costs that the alteration may incur as well as amending the estimated delivery date in line with condition 5.ii.

- vi. If following the issue of an Order Acknowledgement Form in relation to an order for Goods or Services the Customer requires any alteration to the Goods and/or Services as set out in the Order Acknowledgement Form, the costs of such alteration shall be paid by the Customer to the Company on demand.
- vii. Unless otherwise specified in the Order Acknowledgement Form, any price for the Services excludes the cost of hotel, subsistence, travelling, mileage and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the performance of the Services, and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Services. The Company shall invoice the Customer for such expenses and third party services. If agreed in writing between the parties the Customer may book and pay for agreed hotels, flights, car hire and other services for the Company's personnel engaged in performing the Services. The Company reserves the right to use and to require the Customer to use business class for the Company's personnel for any flights of over 7 hours in duration.

9. Payment

- i. Subject to condition 9.vii, unless otherwise set out in the Order Acknowledgement Form, payment of the price for the Goods and/or Services is due in the currency stated in the Order Acknowledgement Form within 30 days of the date of invoice.
- ii. When deliveries of the Goods or provision of the Services are agreed in the Order Acknowledgement Form to be spread over a period of time in instalments, each consignment of Goods or provision of Services will be invoiced as dispatched or completed and each invoice will be treated as a separate account and payable accordingly.
- iii. The Company reserves the right to negotiate specific payment terms and/or to require the payment of a deposit. Any such specific payment terms or terms relating to the payment of a deposit and related balance shall be set out in the Order Acknowledgement Form. Any variation of the payment terms set out in the Order Acknowledgement Form shall only be permitted with the Company's prior consent in writing. In the event that specific payment terms are not agreed and set out in the Order Acknowledgement Form then payment terms will be as set out in condition 9.i
- iv. Time for payment shall be of the essence.
- v. Irrevocable letters of credit may be accepted in payment of Goods and/or Services at the Company's discretion and if so specified in the Order Acknowledgement Form relating to a Contract. If so permitted, the Customer shall within 14 days of the date of the Order Acknowledgement Form open an irrevocable letter of credit with a bank to be confirmed in favour of the Company's specified bank payable at sight unless otherwise specified in the Order Acknowledgement Form against a production of a commercial invoice for the Goods and/or Services and a clean on board bill of lading for the Goods.
- vi. No payment shall be deemed to have been received until the Company has received cleared funds.
- vii. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- viii. The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the

Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer. This clause shall operate so far as is permitted by law.

- ix. If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Santander UK, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- x. The Customer reserves the right to suspend the provision of any Services due and outstanding under a Contract in the event that the Customer has failed to pay the Company any monies under that or any other Contract when it fell due until such outstanding sums have been paid by the Customer.
- xi. Without prejudice to conditions 9.iii and 9.x above, the Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.

10. Cancellation

- i. Orders accepted by the Company by the issue of an Order Acknowledgement Form cannot be cancelled or suspended by the Customer except upon terms which indemnify the Company against any actual or anticipated loss including resultant loss from underutilised capacity at the Company, and the Company reserves the right to retain any deposit that may have been paid.

11. Services

- i. The Company shall provide the Services to the Customer on these terms and conditions and in accordance with the individually agreed terms applicable to the Services as set out in the Order Acknowledgement Form.
- ii. The Company shall use its reasonable endeavours to meet any dates for the performance of the Services specified by the Company (whether in a quotation, in an Order Acknowledgement Form or elsewhere, whether in writing or verbally), but any such dates shall be estimates only and time for performance by the Company shall not be of the essence of the Contract.
- iii. The Customer shall:
 - a. co-operate with the Company in all matters relating to the Services;
 - b. provide for the Company, its employees, agents, subcontractors and consultants, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as may reasonably be required by the Company;
 - c. provide, in a timely manner, any such input material and other information as the Company may reasonably require, and ensure that such information is accurate in all material respects;
 - d. be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, before and during the supply of the Services at those premises; and
 - e. inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply to any of the Customer's premises.
- iv. If the Company's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its employees, agents, subcontractors or consultants, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

- v. Without prejudice to conditions 8.v or 8.vi, if the Customer wishes to postpone the commencement of the Services from the date agreed in the Order Acknowledgement Form, a new date for commencement must be agreed in writing with the Company which is mutually acceptable to both sides. Any delay in reaching such agreement shall not preclude the Company from seeking payment for Goods which are ready for installation and have not been installed because the Customer has postponed the commencement of the Services.
- vi. 10.6 The price for the Services shall be in accordance with condition 8.

12. Warranty

- i. The Company warrants that (subject to the other provisions of these conditions) on delivery of the Goods and for a period equal to the Warranty Period from the date of delivery, the Goods shall:
 - a. be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - b. conform in all material respects to the Specification as set out in the Order Acknowledgement Form.
- ii. The Company shall not be liable for a breach of any of the warranties in condition 12.i unless:
 - a. the Customer gives written notice of the defect to the Company within 5 Business Days of the time when the Customer discovers or ought to have discovered the defect; and
 - b. the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there; and
 - c. upon such examination as referred to in condition 12.ii.b above the Company determines in its sole discretion that the failure or defect has arisen due to defect in material or workmanship.
- iii. The Company shall not be liable for a breach of any of the warranties in condition 12.i if:
 - a. the defect or damage arises from or as a result of:
 - i. normally accepted wear and tear; or
 - ii. failure to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - iii. failure to adhere to service and maintenance schedules approved by the Company; or
 - iv. use of the Goods in a manner not in accordance with any user manuals supplied by the Company in relation to the Goods; or
 - v. failure to provide suitable installation, operation or environmental requirements; or
 - vi. usage for purposes other than those for which the relevant Goods were designed; or
 - vii. operation of the Goods outside normal system parameters; or
 - viii. general abuse or misuse; or
 - ix. any modification, disassembly or repair not previously authorised by the Company in writing; or
 - x. mishandling the Goods during offloading at the point of delivery; or
 - xi. non-compliance with the Company's storage instructions; or
 - xii. use of non-authorised software or spare or replacement parts; or
 - xiii. the Customer alters or repairs such Goods without the written consent of the Company; or
 - xiv. the inadequacy or inaccuracy of Specification or materials supplied by the Customer to the Company in connection with the Contract for the production of the Goods (with reference in particular, but not limited, to Goods Produced To Customer Designs); or

- b. the Customer makes any further use of such Goods after giving such notice as referred to in conditions 12.ii.a without the Company's prior written consent
- iv. Where the Company determines that the defect or damage has arisen as a result of the circumstances set out in 12.iii.a.xiv above, the Customer shall be responsible for the Company's reasonable costs incurred in investigating such defects. In such circumstances the Company may at its sole discretion attempt to correct such defects but any such work will be at the Customer's expense and risk and this clause 12 will not apply to such work.
- v. Subject to condition 12.ii and condition 12.iii, if any of the Goods do not conform to any of the warranties in condition 12.i the Company shall at its option:
 - a. repair such defective part of the Goods; or
 - b. provide a replacement part fit for the intended purpose (subject to condition 11.vi below); or
 - c. refund the price of such defective part at the current purchase price for the defective part,and such repair or replacement under (a) or (b) above shall be provided by the Company free of charge provided that in the case of the provision of a replacement part under (b) above the Customer shall, at the Company's expense, return the part of such Goods which is defective to the Company within 30 days from the Company sending the repaired or replacement part (as appropriate) to the Customer. If the Customer fails to return the replaced item within this time period then the Company reserves the right to invoice the Customer for the current sale value of any such part.
- vi. Any replacement Goods or parts supplied by the Company in accordance with condition 11.v.b above do not necessarily have to be new.
- vii. If the Company complies with condition 12.iv it shall have no further liability for a breach of any of the warranties in condition 11.i in respect of such defective part of the Goods.
- viii. Any Goods or part of Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the Warranty Period.
- ix. For the avoidance of doubt, the warranties in condition 12.i shall apply only to the replacement of parts in the Goods. If the Customer shall require technical assistance on site in connection with the Goods, then a separate charge may be levied by the Company and the provisions relating to expenses in condition 8.vii shall apply.
- x. This condition 12 allocates the risk of product failure in relation to the Goods between the Company and the Customer. This allocation is recognised by both parties and is reflected in the price for the Goods under the Contract.

13. Limitation of liability

- i. Subject to condition 5, condition 6 and condition 12, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - a. any breach of these conditions;
 - b. any use made or resale by the Customer of any of the Goods, or of any product or system incorporating any of the Goods; and
 - c. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- ii. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

- iii. Nothing in these conditions excludes or limits the liability of the Company:
 - a. for death or personal injury caused by the Company's negligence; or
 - b. under section 2(3), Consumer Protection Act 1987; or
 - c. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - d. for fraud or fraudulent misrepresentation.
- iv. Subject to condition 13.ii and condition 13.iii:
 - a. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - b. the Company shall not be liable to the Customer for any of the following which arise out of or in connection with the Contract:
 - i. loss of profit;
 - ii. loss of business; or
 - iii. depletion of goodwill, in each case whether direct, indirect or consequential; or
 - iv. any claims for consequential compensation whatsoever (howsoever caused).

14. Confidentiality

- i. The Customer shall keep in strict confidence the content of any Contract or any particulars of any Goods supplied to the Customer by the Company, and all technical or commercial know-how, specifications, contents of user manuals, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products that the Customer may obtain (**Confidential Information**).
- ii. The Customer shall not use any such Confidential Information for any purpose other than to perform its obligations under a Contract.
- iii. The Customer may disclose such Confidential Information:
 - a. to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this agreement (provided that the Customer shall ensure that such employees, officers, representatives, advisers, agents or subcontractors shall comply with this condition 13); and
 - b. as may be required by law, court order or any governmental or regulatory authority.

15. Intellectual property

- i. Unless otherwise agreed in writing, all materials, drawings, specifications, data or other technical information supplied by the Company to the Customer shall at all times be and shall remain the exclusive property of the Company and shall not form part of the Goods supplied under the Contract. Although where appropriate the Company will supply the Customer with copies (either in hard copy or electronic copy) of any relevant user manuals
- ii. In the event of it coming to the notice of the Company that any Goods produced pursuant to a Contract to supply Goods Produced To Customer Designs infringe, are alleged to infringe or may infringe the intellectual property rights of any third party as a result of the Customer's input into such Goods Produced To Customer Designs, the Company shall have the right at its absolute discretion to cease the manufacture of the Goods and shall retain the title to such Goods as have been manufactured, and the Customer shall indemnify the Company against all claims that might be made by any person against the Company for such infringement or alleged infringement (including any royalties, costs, expenses or other payments arising

therefrom) and shall pay the Company the value of the work done on and used in the manufacture of the Goods prior to the cessation of manufacture.

16. Assignment

- i. The Company may assign the Contract or any part of it to any person, firm or company.
- ii. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

17. Force majeure

The Company reserves the right to defer the date of delivery of Goods or Services or to cancel the Contract or reduce the volume of the Goods or the extent of the Services ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or labour required for the performance of the Contract, provided that, if the event in question continues for a continuous period in excess of 180 days, either party shall be entitled to give notice in writing to the Company to terminate the Contract. If the Contract is terminated under this clause the Customer shall pay the costs of labour and materials expended at the date of termination and upon payment the property in the Goods in their uncompleted state will pass to the Customer and neither party will have a claim against the other for any further costs.

18. General

- i. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- ii. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, void ability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- iii. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- iv. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- v. The Customer and the Company do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19. Notices

- i. Any notice to be given under the Contract shall be in writing and either be delivered personally, sent by facsimile or sent by first class recorded delivery post (airmail if overseas) or email. The address for service for the Company shall be its registered office and for the Customer shall be the address set out in the Order Acknowledgement Form. A notice shall be deemed to have been served:
 - a. if personally delivered, at the time of delivery;
 - b. if sent by facsimile at the time of transmission;
 - c. if posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and

- d. if sent by email, a telephone call is made warning the recipient that an email has been sent to him and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the email is sent.
- ii. In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or airmail letter (as appropriate) or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice as the case may be.

20. Governing Law and Jurisdiction

- i. These conditions and the formation, existence, construction, performance, validity, subject matter and all aspects of the Contract and any disputes arising in connection thereto shall be governed by and construed in accordance with the law of England and Wales.
- ii. The Company and the Customer irrevocably agree, for the sole benefit of the Company, that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising out of or in connection with the Contract or the legal relationships established by the Contract. Nothing in this clause shall limit the right of the Company to take proceedings against the Customer in any other court of competent jurisdiction, not shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.