

1. TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES**2. 1 INTERPRETATION**

2.1 1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Company: Solid Floor Limited or RAWQTR Limited trading as Solid Floor Limited

Conditions: these Terms and Conditions of Supply.

Confidential Information: any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential, or the information could reasonably be supposed to be confidential.

Contract: any contract between the Company and the Customer for the Supply of any Goods and/or Services, incorporating these conditions.

Customer: the person, firm or company who purchases the Goods and/or Services from the Company (including but not limited to any contractor in any instance in which the Company is acting as the contractor's subcontractor);

Delivery Point: the place where delivery of any Goods is to take place under Condition 4, if the Goods are to be delivered other than at the Company's premises.

Goods: any goods or materials agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them), including any goods agreed to be supplied with, or in relation to, any Services.

Input Material: any documents or other materials, and any data or other information provided to the Company by the Customer relating to the Goods and/or Services.

Intellectual Property Rights: any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered.

Materials: any flooring materials (including but not limited to any Goods) in relation to which any maintenance and/or refurbishment services are to be performed.

Services: any services agreed in the Contract to be performed by the Company for the Customer (including any part or parts of them) including, but not limited to, any installation services to be performed in relation to any Goods.

Site: the premises at which the delivery of any Goods and/or the performance of any Services shall take place, including, but not limited to, the Customer's place of business.

Substrate: any surface that the Company's materials are applied to.

Supply: the sale of any Goods and/or the provision of any Services by the Company to the Customer. For the avoidance of doubt, any Goods so sold, and/or Services so provided, are **Supplied**.

- 1.1 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.
- 1.2 Words in the singular include the plural and in the plural include the singular.
- 1.3 A reference to one gender includes a reference to the other gender.
- 1.4 Condition headings do not affect the interpretation of these Conditions.
- 1.5 **These Conditions shall apply both to Customers who are (a) Business Customers and (b) Consumers, save where otherwise stated. A Customer is a Business Customer if the Customer purchases Goods and/or Services from the Company for the purposes of the Customer's business, trade or profession, rather than for private use. All other Customers are Consumers.**

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3, 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).
- 2.2 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.
- 2.3 These Conditions apply to the Supply of any and all Goods and Services by the Company and any variation to these Conditions and any representations about any Goods and/or Services shall have no effect unless expressly agreed in writing and signed by an authorised signatory 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.

- 2.4 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 purchase Goods and/or Services subject to these Conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company until:
- (a) a written acknowledgement of order is issued and executed by the Company;
or
 - (b) (if earlier) the Company starts to Supply the Goods and/or Services.
- 2.6 Without prejudice to the provisions of Condition 2.5, if the Customer wishes to change any order, (which, for the avoidance of doubt shall include, but shall not be limited to, any amendment, addition or substitution with respect to any Input Material and/or any specification), any such change is subject to acceptance by the Company and the Customer must pay any additional charges associated with fulfilling the changed order.
- 2.7 The Customer shall ensure that the terms of its order and any Input Material and/or any applicable specification are complete and accurate and are submitted to the Company within a sufficient time period such as will enable the Company to fulfil the Company's obligations under the Contract.
- 2.8 Any quotation is given on the basis that no Contract shall come into existence until the Company accepts the Customer's order in accordance with the provisions of Condition 2.5. Any quotation is valid for a period of 60 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

- 3.1 The quantity and description of any Goods and/or Services shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 Without prejudice to Condition 3.1, the Company shall use its reasonable efforts to supply the Goods and/or Services in accordance with any specification or instructions submitted by the Customer and approved by the Company, but may effect minor modifications to any such Goods and/or Services without the Customer's approval.
- 3.3 For the avoidance of doubt but without limiting any of the remaining provisions of this Condition 3, in the absence of any contract for the supply of maintenance and/or refurbishment services with the Company, the Customer shall be solely responsible for the care of the Goods following their delivery (and installation, if applicable). Information regarding the care of the Goods may be found on the Company's website at <http://www.solidfloor.co.uk/floorcare.htm>
- 3.4 Any maintenance and/or refurbishment services supplied by the Company shall not include:

- (a) Any work in relation to anything which does not form a part of the Materials; and
- (b) Any maintenance or repair work with respect to any modification of, or addition to, the Materials, if any such modification or addition has been undertaken without the Company's prior consent; and
- (c) The repair of any damage to the Materials caused by fire, lightning, water, or explosion; and
- (d) The remedy of any defect resulting from any misuse of, neglect of, or wilful or accidental damage to the Materials, or from any failure to follow any instructions contained in any operation or maintenance manual published for, or otherwise specified to be appropriate for use in conjunction with, the Materials (including, without limitation, the information appearing on the Company's website at <http://www.solidfloor.co.uk/floorcare.htm>) or from any failure to follow any written or oral instructions of the Company.

- 3.5 The Company agrees to use its reasonable efforts to obtain and utilise any goods or components agreed to be supplied in relation to the performance of any maintenance or refurbishment Services, but the Company shall be under no obligation to do so and the Company may, in its sole discretion, elect to obtain and utilise any reasonable alternative to any goods or components agreed to be so supplied and if the Company makes this election, the Customer shall be responsible for meeting any corresponding cost differential (if any).
- 3.6 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.7 Prior to supplying any Services to the Customer, the Company may undertake a preliminary survey of the Site. The Customer acknowledges and agrees that the Company shall be entitled to rely upon the results of any such preliminary survey in determining the Company's obligations pursuant to Condition 3.1 above and that any conditions (or variations thereto) at the Site which were not reasonably apparent to the Company at the time of the preliminary survey (or which occur or manifest themselves thereafter), shall be treated as a variation to the Customer's order for which the Customer agrees to assume sole liability, including but not limited to any and all liability for any additional costs, charges or expenses.
- 3.8 Without limiting the generality of Condition 3.7 above, the Customer will be liable for any additional costs, charges or expenses which arise from any conditions at the Site being at variance with any conditions notified to the Company.

- 3.9 If any Goods are to be manufactured, ordered, designed, built, configured, altered, adapted, or subjected to any process by or on behalf of the Company for the Customer and/or any Services are to be performed by the Company, in each case in accordance with any Input Material, specification or design submitted by the Customer, the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any patent, copyright, design, trade mark or any other intellectual property right of any other person resulting from the Company's use of any Input Material, specification or design so submitted.
- 3.10 Subject to Condition 9.2 (b), the Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.

4. DELIVERY AND PERFORMANCE

- 4.1 If the Customer requires the delivery of Goods to take place outside the United Kingdom, the Customer must contact the Company's export department, who will advise the Customer regarding the procedures applicable to export orders.
- 4.2 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place. Performance of the Services shall take place at the Customer's place of business. The Company shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Site and that have been communicated to it under Condition 4.13 (h), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 4.3 Any dates specified by the Company for delivery of the Goods and/or performance of the Services 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 and/or performance, as applicable, shall be within a reasonable time. Should expedited delivery of any Goods be agreed, the Company reserves the right to levy an extra delivery charge.
- 4.4 The Services supplied under the Contract shall be provided by the Company to the Customer from the date of acceptance by the Company of the Customer's offer in accordance with Condition 2.5, unless otherwise specified by the Company.
- 4.5 Subject to Condition 14, and unless the Company specifies that the Services shall not be provided on a repetitive basis, the Services shall be provided for such fixed period as the Company shall determine in advance and shall continue to be supplied unless the

Contract is terminated by one of the parties giving to the other such period of notice as the Company shall determine in advance.

- 4.6 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 and/or performance of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.7 If for any reason the Customer fails to take or accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- (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, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance);or
 - (d) sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the price for the Goods.
- 4.8 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 4.9 If delivery involves difficult access to or at the Delivery Point and/or the Delivery Point is located at an unreasonable distance from any feasible vehicular access point, the Company reserves the right to levy an extra delivery charge.
- 4.10 If the Company delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.11 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.
- 4.12 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.

4.13 With respect to any Services which the Company is to perform for the Customer, the Customer shall:

- (a) co-operate with the Company in all matters relating to the provision of the Services;
- (b) provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with such access to the Site together with anything therein or thereon and such other facilities as may be required by the Company, together with any utilities as may be specified by the Company;
- (c) provide to the Company, in a timely manner, such relevant information as the Company may require, in such a format or formats as the Company may require, and ensure that it is accurate and fully comprehensible in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining any relevant part of the Site for the performance of the Services and for reinstating any such part of the Site once performance of the Services has been completed;
- (e) be solely responsible (at its own cost) for ensuring that conditions at the Site are suitable for the performance of the Services and that any relevant thing therein or thereon is in good working order (for the avoidance of doubt, the Company shall not be required to undertake any survey of the Site);
- (f) if requested to do so by the Company and without charge, provide facilities at the Site for the off-loading and storage of the Goods and the Company's tools and equipment in a readily accessible and secure storage area protected from theft and damage and shall be solely responsible for the safekeeping of the Goods and the Company's tools and equipment whilst the same are stored at the Site;
- (g) be solely responsible for ensuring the safety of any and all persons who are or may be present at the Site during the performance of the Services, including but not limited to restricting access to those areas of the Site where the Services are or are to be performed to those individuals engaged in performing the Services, or providing assistance to those so engaged;
- (h) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;
- (i) obtain and maintain (at its own cost) all necessary and appropriate licences, consents permits and approvals (including, without limitation, planning permission, building permits, work permits and health authority approvals) and comply with all relevant legislation, standards or requirements in relation to the provision of the Services at the Site, in all cases before the date on which the provision of the Services is to commence; and

- (j) effect and maintain appropriate insurance in an adequate amount with respect to all possible risks which may arise (i) in connection with the deployment of any person engaged by the Company to perform the Services at the Site and (ii) in connection with the storage of the Goods and the Company's tools and equipment at the Site and shall, at the Company's request, provide such evidence of such insurance as the Company may reasonably require.

4.14 Unless otherwise agreed and without limitation, the Company shall not be responsible for:-

- (a) loss or damage to items left at the Site by the Customer which the Customer could have removed or secured; and
- (b) any damage to wood, pipes, wires, glass, carpet or other materials at the Site (the Customer being responsible for informing the Company of any unusual layout or construction of the Site or its parts).

4.15 Without prejudice to Condition 4.13, prior to performance of the Services, the Customer shall remove from the Site any item that could pose an obstacle to the performance of the Services. The Customer shall incur additional charges if the Company has to remove, dismantle and/or dispose of any item at the Site. Without limitation, the Customer acknowledges that no cleanup work will be carried out by the Company and that any waste material arising from the performance of the Services shall be removed by the Customer at the Customer's cost. If the Company discovers or is notified of, before or during the performance of the Services, any problem at the Site which materially affects the Company's ability to perform the Services in accordance with the Company's standards at the price quoted, it shall be free to vary the price, notwithstanding that the problem may have existed prior to acceptance of the Customer's order or may have arisen subsequently. Without limitation, any additional costs caused by any delay in the performance of the Services, or any suspension of performance, at the Site (for reasons beyond the control of the Company) e.g industrial action, shall be treated as a variation to the Customer's original order and the Customer shall be liable for any such additional costs.

4.16 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

4.17 The Customer shall not, without the prior written consent of the Company, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf) , at any time from the date of the Contract to the expiry of 6 months after the last date of Supply of the Services, solicit

or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.

4.18 Any consent given by the Company in accordance with Condition 4.17 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.

4.19 Without limiting the generality of these Conditions, where the Company undertakes to supply wood flooring to the Customer, the following special conditions shall apply:

- (a) The Company will use reasonable endeavours to supply the Goods to the specified size and colour but shall not be responsible for minor variations in size, colour, texture or general wood quality; since timber is a natural product, variations in colour, texture, size and grain are to be expected.
- (b) All dimensions, weights and measurements quoted are estimated only and standard sizes may be changed by the Company without notice. Timber Goods are provided subject to the grading rules applicable in the country of manufacture and supply.
- (c) The Company will use reasonable endeavours to supply the Goods with the correct moisture content but the amount of such moisture content may vary and the Company shall be under no liability for any such variations.
- (d) The Customer must ensure that any wet trades (including plastering, plumbing and any trades that will increase the humidity level at the Site) are completed prior to delivery of the Goods.
- (e) The Customer shall be solely responsible for ensuring, prior to delivery, that the Site subfloor has an acceptable moisture content.
- (f) The Customer shall ensure that the moisture content of the Goods is checked immediately upon delivery with an accurately calibrated moisture meter.
- (g) Upon delivery of the Goods, the Customer shall ensure that the Goods are stored in conditions which are suitable for preserving the moisture content subsisting in the Goods at the time of delivery and the Customer shall be solely responsible for any change in the moisture content of the Goods due to their storage in unsuitable conditions and for any problems resulting directly or indirectly therefrom. The Company reserves the right to have a designated Company representative inspect the flooring and remove samples for technical analysis.
- (h) The Customer should only use engineered floor boards with underfloor heating and the surface temperature must not exceed 27 degrees centigrade at any time. The underfloor heating system must not be activated for at least 72

hours following installation of the wood flooring and the heating system must be gradually turned up by no more than 2 degrees centigrade per day.

- (i) Any complaint concerning the Goods must be made by telephone and confirmed in writing within 24 hours of the date of delivery. In the event of a complaint being made, the Goods should immediately thereafter be securely rewrapped and stored by the Customer in conditions suitable for preserving the moisture content subsisting in the Goods at the time of delivery. Failure to comply with this Condition shall absolve the Company from all further liability with respect to any corresponding claim.
- (j) In the absence of a Contract for the supply of Services, the installation or fitting of the Goods shall be the sole responsibility of the Customer. The Company shall not be liable to the Customer for any advice given to the Customer directly or indirectly related to installation or fitting, nor for any arrangement made by the Customer for installation or fitting, whether any contractor or system was recommended by the Company or not.

4.20 Without limiting the generality of these Conditions, where the Company undertakes to supply seamless flooring to the Customer, the following special conditions shall apply:

- (a) All work undertaken will be subject to measurement by the Company and the final surface area will be calculated by the Company upon completion of the works. Any increase in the surface area greater than the area stated on the quotation will be added to the final invoice and paid by the Customer as additional work undertaken at a square metre rate. The rate per square metre will be calculated by dividing the price stated on the quotation by the number of square metres stated on that quotation.
- (b) The price stated in the Company's quotation is based upon there being a smooth ready to treat surface, unless any surface preparation works are expressly included in the quotation. This means that the Substrate must be free of all extraneous matter and must be in a clean, dry condition, prior to the performance of the Services. The Customer acknowledges that the seamless flooring material used by the Company will not rebuild the existing surface, but will act as a surface dressing or coating system, and that the Substrate must accordingly be of an adequate strength and consistency to accommodate the Customer's expected traffic usage and load bearing capacity.
- (c) The Customer must fulfill the following obligations, at the Customer's sole cost:
 - (i) The area to be treated must be maintained at a temperature of between 15 and 20 degrees centigrade, and must be kept in a clean and dry condition;

- (ii) All equipment and machinery is to be removed from the treatment area;
 - (iii) Unless otherwise agreed in advance with the company all waste generated during the performance of the Services (including but not limited to spoil removed from the surfaces being treated, spent materials, left over materials and empty resin containers) must be disposed of;
 - (iv) An electrical supply must be provided for the use of the Company's equipment (mixers, grinders, heaters and ventilators); and
 - (v) Proper heating and/or ventilation must be provided, as required, to ensure the maintenance of the correct conditions at the Site, both during the performance of the Services (material application) and after the Services have been performed (to facilitate timely post-application curing or hardening, in order to avoid any tainting of the finished surface).
- (d) The material that the Company uses for resin based flooring systems will follow the general contours of the existing surface, or of the surface following the removal of any detectable substandard Substrate. The application of the material will generally smooth out and lessen any existing deformities and inconsistencies, but cannot be guaranteed to produce a completely flat surface.
- (e) The nature of the materials and processes used make it unavoidable that some variation in texture and colour of the surface material may occur. The Company cannot guarantee colour and texture matching to closer tolerances than those inherent in the materials and processes used, since it is not always possible to make a 100% identical colour match; additionally, once the material has been applied to the Substrate, the Substrate base colour may affect the final appearance of the new coating. Unless otherwise agreed in writing by the Company, colours are not guaranteed as being UV resistant or light stable and may fade or yellow over a period of time.

4.21 Without limiting the generality of these Conditions, where the Company undertakes to supply carpets and/or rugs to the Customer, the following special conditions shall apply:

- (a) Exact colour and design matching cannot be guaranteed between different widths of carpet or rug due to manufacturing tolerances over which the Company has no control, nor can an exact match be guaranteed between the carpet or rug supplied and the sample displayed on the Company's website or in the Company's brochure or catalogue.
- (b) Shading due to pile pressure and reversal is a characteristic of all carpets and rugs and is particularly noticeable in plain styles. This in no way reflects a defect in the carpet or rug or in the materials used in manufacture and does not affect the durability of the carpet or rug.

- (c) Unless otherwise agreed in advance with the company, to facilitate the efficient fitting of the Customer's new floor covering, the relevant part of the Site must be cleared of all existing furniture and floor coverings prior to the arrival of the Company's fitters at the Site. The cost of moving furniture or of uplifting floor coverings is not included in the Company's quotation, which also does not include the cost of easing or trimming any doors.

5. NON-DELIVERY

- 5.1 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.
- 5.2 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 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.

6. RISK/TITLE

- 6.1 Risk of damage to or loss of the Goods shall pass to the Customer:
 - (a) in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or
 - (b) in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 6.2 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.

Conditions 6.3 to 6.8 shall only apply to Customers who are Business Customers

- 6.3 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; and
- (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.

6.4 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; and
- (c) the proceeds of any such sale shall be held by the Customer as the Company's bailee and in a fiduciary capacity, and the Customer shall pay the proceeds into a separate bank account opened for that purpose and approved by the Company and shall ensure that in no circumstances are the proceeds mingled with other money or paid into an overdrawn bank account but are at all times identifiable as the Company's money; and
- (d) if the Customer has not received the proceeds of any such sale as referred to in and pursuant to Condition 6.4 (c) it will, if called upon to do so by the Company, assign to the Company within seven days after being required in writing so to do by the Company, all rights against the person or persons by whom the proceeds are owed.

6.5 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 the court 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 proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

(b) the Customer suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on his/its property or obtained against him/it, or 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 a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security or the Customer ceases to trade; or

(c) the Customer encumbers or in any way charges any of the Goods.

6.6 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.

6.7 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 or otherwise located, but in any event, and without limitation, hereby undertakes to secure full rights of access at any time to any such premises for the Company, its agents and employees in order to inspect the Goods, or, where the Customer's right to possession has terminated, (for any reason including, without limitation, the failure of the Customer to make full payment when due) to recover and to undertake any work required to remove them, notwithstanding that the Goods may be affixed or attached to any other goods or property.

6.8 The provisions of this Condition 6 shall apply to all Goods notwithstanding the conversion of any Goods by virtue of the admixture of the Goods with any other goods or materials.

6.9 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 Customer 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.

6.10 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Condition 6 shall remain in effect.

7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for any Goods and/or Services shall be the price specified in the Company's written acknowledgment of order.

- 7.2 The price for the Goods and/or Services shall be exclusive of any value added tax. The price of any Goods shall additionally be exclusive of all costs and charges in relation to packaging, loading, unloading, carriage and insurance. The price of any Services shall additionally be exclusive of any and all travel, accommodation and meal costs, charges and expenses for those individuals engaged by the Company to perform the Services.
- 7.3 Without prejudice to the provisions of Condition 7.1, the price of the Services shall be based on the time spent performing the Services.
- 7.4 The Company may review and pass on any increase in the price of the Goods due to any foreign exchange fluctuation, currency regulation, alteration of duties, any significant increase in the cost of labour, materials or other costs of manufacture, surcharges or freight charges.
- 7.5 The Customer shall pay to the Company any additional sums which, in the Company's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material and/or specification or any other cause attributable to the Customer directly or indirectly, including, without limitation, any failure by the Customer to fulfil any obligation set forth in Condition 4.13. The Company reserves the right to increase the price of any Goods or Services due to any change in delivery dates, quantities or specifications for the Goods or the Services requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 7.6 Without prejudice to Condition 7.4 or 7.5, the Company reserves the right to review and increase the price of any Goods and/or Services at any time before delivery and/or performance.
- 7.7 The costs of pallets and returnable containers may be charged to the Customer in addition to the price of Goods, but full credit will be given to the Customer provided they are returned undamaged to the Company before the due payment date.

8. PAYMENT

- 8.1 Unless otherwise agreed in writing in advance by the company, the price for the Goods and/or Services shall be paid by the Customer to the Company, as follows:
- (a) 75% of the Contract price shall be payable when the Customer receives the Company's written acknowledgment of order; and
 - (b) The 25% balance of the Contract price shall be payable upon completion.
- 8.2 Subject to any special terms agreed in writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods and/or Services on or at any time after acceptance of the order from the Customer. Receipt for payment will be issued only upon request.

- 8.3 Time for payment shall be of the essence.
- 8.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.6 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.
- 8.7 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 5 % above the base lending rate from time to time of Barclays Bank plc, 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. The Customer shall reimburse the Company for any and all costs incurred by the Company in recovering payment pursuant to this Condition 8.
- 8.8 Without prejudice to Condition 8.8, any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Condition 6.5 shall entitle the Company, at any time and without notice to the Customer and without limitation to any other remedy available to the Company under these Conditions, the Contract, or otherwise:
- (a) To suspend or cancel the further delivery of any Goods and/or the performance of any Services, including, without limitation, stopping the delivery of any Goods in transit; and
 - (b) To treat the Contract as having been repudiated by the Customer.
- 8.9 The Customer may not cancel any order for Goods and/or Services which has been accepted by the Company pursuant to Condition 2.5 and if the Customer cancels, or purports to cancel any such order (or the Contract or any part thereof), then the Company may, by notice in writing to the Customer, elect to treat the Contract as repudiated.
- 8.10 Notwithstanding the exercise of any remedy by the Company in accordance with Condition 8.8 or 8.9, or under any other of these Conditions, the Contract, or otherwise, the Customer shall remain liable to pay and shall pay the Company at the Contract rate, any and all payments subsisting at the relevant time.
- 8.11 Where credit account facilities are granted to the Customer by the Company, the Company reserves the right to withdraw them at any time without having to give any

reason for doing so; in such a case, any outstanding invoice becomes due and payable immediately. Without limitation, the Company reserves the right at any time to refuse to do business with any Customer based upon any information received from credit insurers.

- 8.12 At the Company's discretion in respect of any order and without prejudice to the provisions of Condition 8.12 or to any other provision in this Condition 8, the Company may request the Customer to pay all or part of the price thereof prior to the Company supplying the Goods and/or Services. If the Customer does not make such prepayment as requested, the Company shall be under no liability to supply any Goods and/or Services to the Customer.

9. WARRANTIES

- 9.1 The Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company. Subject to and without limiting the generality of any of the provisions of this Condition 9, any claim on any manufacturer's warranty must be made within the period specified in the warranty and any and all such claims shall be expressly subject to any and all maintenance requirements in relation to the Goods which have been specified by the manufacturer.

- 9.2 The Company warrants that (subject to the other provisions of these Conditions):

- (a) on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- (b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in a written acknowledgment of order issued pursuant to Condition 2.5 that it will supply Goods suitable for that purpose, then the Goods shall, on delivery, be reasonably fit for the purpose so stated;
- (c) any Goods which are the subject of a warranty or guarantee between the Company and the Customer shall conform to and be subject to the terms of the warranty or guarantee issued by the Company; and
- (d) any Services will be performed with reasonable skill and care.

- 9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:

- (a) the Customer gives written notice of the defect to the Company within 3 days of the time when the Customer discovers or ought to have discovered the defect (within 24 hours, if the defect is a result of damage in transit); and
- (b) the Company is given a reasonable opportunity after receiving the notice, of examining any Goods which the Customer has alleged to be defective 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 but at the Customer's risk), for the examination to take place there. In either case, the Company reserves the right to appoint an expert to inspect the Goods and to subsequently advise and report to the Company.

9.4 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 if:

- (a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect; or
- (b) the Customer alters or repairs the Goods without the prior written consent of the Company; or
- (c) the defect arises because the Customer failed to follow any 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
- (d) the defect arises from any Input Material and/or any specification supplied by the Customer, or from fair wear and tear, wilful damage, negligence, abnormal working conditions or from any misuse of the Goods; or
- (e) the full price for the Goods and/or Services has not been paid by the time for payment stipulated in Condition 8.1 or 8.2; or
- (f) the defect is of a type specifically excluded by the Company by notice in writing.

9.5 Subject to Condition 9.3 and Condition 9.4, if any of the Goods and/or Services do not conform with any of the warranties in Condition 9.2:

- (a) the Company shall at its option replace, make up or repair (but, unless otherwise agreed by the Company in writing, shall not, without limitation, install or re-install) any such Goods (or the defective part), or shall refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which are defective to the Company. The Company shall, if it opts to replace the defective Goods, then deliver replacement Goods to the Customer at the Customer's premises (at the Company's expense), and ownership of the defective Goods shall, if it has vested in the Customer, re-vest in the Company; and
- (b) the Company shall re-perform any Services which are proved to the reasonable satisfaction of the Company not to have been performed with reasonable skill and care, or at the Company's option, shall refund any monies already paid by the Customer for any such Services.

9.6 If the Company complies with Condition 9.5 it shall have no further liability for a breach of any of the warranties in Condition 9.2.

9.7 The Customer warrants that:

- (a) If the Customer is a limited company or business, the individual who signs any contract with the Company has the authority of the Customer to commit the Customer to the terms of the contract;
- (b) The Customer is solvent and able to pay the Contract price; and
- (c) The Customer has the right to install any Goods for which the Company is also providing Services, at the Site.

10. LIMITATION OF LIABILITY

10.1 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 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.

10.2 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 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 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.

10.4 Subject to Condition 10.2 and Condition 10.3:

- (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 loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. INDEMNITY

The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

12. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

12.1 The Customer and the Company agree that in the course of the Company providing Goods and/or Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.

12.2 The Customer acknowledges the Company's ownership of any Intellectual Property Rights in any Goods and/or Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. Without limitation, the Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that, without limitation, any and all Intellectual Property Rights developed by the Company in performing any Services or providing any Goods shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this Condition 12.2.

13. DATA PROTECTION

The Customer acknowledges and agrees that any personal data contained in any information provided to the Company may be processed by and on behalf of the Company in connection with the Supply of any Goods and/or Services.

14. TERMINATION

14.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 14.1(d) to condition 14.1(j)condition 14.1(h) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

- (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

14.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of any Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

14.3 On termination of the Contract (however arising), conditions 9-14 and 19 shall survive and continue in full force and effect.

15. ASSIGNMENT/SUBCONTRACTING

15.1 The Company may assign the Contract or any part of it to any person, firm or company.

15.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

15.3 The Company, but not the Customer, shall be entitled to subcontract any or all of its obligations under all or any part of the Contract.

16. FORCE MAJEURE

The Company reserves the right to defer the date of delivery and/or performance, or to cancel the Contract or reduce the volume of the Goods and/or 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, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

17. GENERAL

17.1 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.

- 17.2 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, voidability, 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.
- 17.3 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.
- 17.4 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.
- 17.5 The parties to the Contract 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.
- 17.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

18. COMMUNICATIONS

- 18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent electronically via email.
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
 - (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 18.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or
 - (d) if sent by email, within twenty four hours of sending.
- 18.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.

