

Terms and Conditions of Sale

1. Definitions

1.1 In these conditions of sale the following words and phrases shall have the following meanings, unless the context otherwise requires:

"conditions" means these conditions of sale;

"contract" means the contract by which the seller has agreed to sell and the purchaser has agreed to buy goods, consisting of the seller's quotation and the purchaser's written acceptance or the purchaser's order and the seller's acceptance or written acknowledgement of the same, as the case may be, and any Variation Order Form, duly incorporating these conditions;

"Data Protection Legislation" (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and (ii) the Data Protection Act 2018.

"GDPR" General Data Protection Regulation ((EU) 2016/679)

"goods" means the goods which were to be sold and bought under the contract the quantity and specification of which shall be as stated in the contract;

"purchaser" means the person, firm, partnership, limited liability partnership, corporation or company under the contract;

"seller" means Norsign LLP a limited liability partnership (SO304369) and having its Registered Office at Block 14, First Road, Blantyre Industrial Estate Glasgow G72 0ND or its assignees or successors whomsoever; and

"Variation Order Form" means the form provided by the seller to purchaser (and signed by the purchaser) which varies the contract.

"writing" includes email, facsimile transmission, telex, cable, and comparable means of communication.

1.2.1 References to clauses by number are to clauses of these conditions.

1.2.2 Unless the context otherwise requires, reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended consolidated, modified, replaced or re-enacted, provided that such consolidation, modification, replacement, amendment, extension or re-enactment does not in the case of a defined word or meaning alter the substance of the definition.

1.2.3 Words denoting the singular number only shall include the plural and vice versa.

1.2.4 References to any one gender shall include both other genders.

1.2.5 All warranties, representations, agreements and obligations given or entered into by one or more person are given or entered into jointly and severally.

1.2.6 The headings of these conditions are inserted for convenience only and shall not affect their construction.

2. Purchase and sale

2.1 The contract incorporates these conditions. Accordingly, subject to any variation of these conditions agreed pursuant to clause 2.2. below, the goods shall be sold by the seller and bought by the purchaser on the terms and conditions stated in these conditions and on the terms and conditions stated in the contract, to the exclusion of all other terms and conditions (including any terms and conditions which the purchaser purports to apply under any purchase order, confirmation order, specification or other document). No terms and conditions endorsed on, delivered with or contained in the purchaser's purchase order, confirmation order, specification, or other document shall form part of the contract. Declaring that if anything in the contract is inconsistent with these conditions then these conditions shall prevail unless that which is inconsistent is contained in any document issued by the seller or in any document issued by the purchaser the terms of which have been expressly accepted, in writing, by the seller as varying these conditions.

2.2 Neither the contract nor these conditions may be varied except by express written agreement, signed by persons having authority to do so on behalf of the seller and the purchaser.

2.3 The seller reserves the right to refuse to contract and thereby accept any offer in the event that the Purchaser proposes to use the goods for unlawful purposes or for purposes which are considered to be immoral, offensive, indecent or which conflict with the Partners' conscience, of which the sellers shall be the sole judge.

3. Description

3.1 The quantity and description of the goods shall be as set out in the seller's quotation, the seller's acceptance or acknowledgement of order. Reasonable and unavoidable variations incurred as a result of transposing the image from drawings to final product shall not negate any obligations imposed on the purchaser in terms of the conditions contained herein.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the seller and any descriptions or illustrations contained in the seller's catalogues or brochures are issued or published for the sole purposes of giving an approximate idea of the goods described in them. They shall not form part of the contract and this is not a sale by sample contract.

4. Price

4.1 The price payable by the purchaser to the seller for the goods shall be the price stated in the contract or, where no price is stated in the contract or the contract is unclear or ambiguous, the price for the same goods as stated in the seller's price list current at the date of conclusion of the contract.

4.2 Costs quoted, in writing, by the Seller are valid for 30 working days unless otherwise stated, in writing, by the Seller. On the expiry of 30 working days the aforementioned quoted cost is no longer deemed to form part of any contract between the parties and shall not be relied upon in any subsequent dealings between the parties, unless re-issued by the Seller at the Seller's sole discretion.

4.3 The price is stated exclusive of value added tax ("VAT") which will be payable by the purchaser in addition; the seller will supply the purchaser with an appropriate VAT invoice.

4.4 The seller may increase the price at any time prior to the date of delivery, if the seller's costs have in the seller's opinion (of which the seller shall be the sole judge) been materially increased for any of the following reasons:

- 4.4.1 an alteration or fluctuation in the costs of materials required to produce the goods;
- 4.4.2 an alteration or fluctuation in commodity exchange prices in respect of the goods;
- 4.4.3 alterations in statutory or legal requirements;
- 4.4.4 an alteration in customs or other duties;
- 4.4.5 an increase in labour costs;
- 4.4.6 currency fluctuations;
- 4.4.7 fluctuations in inflation;
- 4.4.8 changes in currency regulations;
- 4.4.9 alterations or fluctuations in transport costs or charges; or
- 4.4.10 any delay on the purchaser's part in complying with any of its obligations under the contract.

5. Delivery

- 5.1 The seller shall notify the purchaser when the goods are ready for collection; unless clause 5.2 hereof applies, the purchaser shall forthwith make arrangements for collection of the goods at the purchaser's own expense.
- 5.2 The time for delivery or installation will be calculated from the later of the receipt by the Seller of the Purchaser's order or receipt of all the necessary information, including signed off drawings, to enable the Seller to procure or manufacture the goods. The Seller shall be the sole judge of what is required as "necessary information".
- 5.3 If the purchaser so requests and the seller expressly agrees or the contract so provides, the seller shall arrange for delivery or posting of the goods to an address specified by the purchaser; any such delivery or posting shall be on the basis that the purchaser shall reimburse the seller on demand (or in advance if the seller so requires) for all the costs of transportation and insurance of the goods.
- 5.4 In making delivery of the goods, time shall not be of the essence of the contract and the seller shall not be liable for any loss, costs or expense suffered by the purchaser by reason of any delay in delivery. The seller shall however use its reasonable endeavours to meet any quoted date of delivery.
- 5.5 If clause 5.1 applies and the goods are not collected by the purchaser within seven days of the seller's notice, the seller may charge the purchaser for storage at the seller's usual storage rates and the resulting charges shall be payable by the purchaser on demand together with any costs and expenses incurred by the seller or third parties in connection with the storage and/or insurance of the goods.
- 5.6 Subject to the other provisions of these conditions, the seller shall not be liable for any direct, indirect or consequential loss (including, without limitation, pure economic loss, loss of profits, loss of business, loss of opportunity, loss of turnover, depletion of goodwill and similar losses), costs, damages, charges or expenses caused by the seller's negligence, nor shall any delay entitle the purchaser to terminate or rescind the contract unless such delay exceeds 28 days.
- 5.7 Only if the Seller so requires and adequate prior notification is given the purchaser shall provide at the point of delivery and at its expense adequate and appropriate equipment and manual labour for loading the goods.

- 5.8. If the seller delivers to the purchaser a quantity of goods of up to 50% more or less than the quantity accepted by the seller, the purchaser 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.
- 5.9 The seller may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the contract.
- 5.10 Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the purchaser to repudiate or cancel any other contract or instalment.
- 5.11 The Seller shall be entitled to carry out such works as is required in the installation of the goods using his own employees and sub-contractors, unless 5.7 applies.
- 5.12 The Purchaser shall be obliged to provide such aforementioned installation personnel with full, free and uninterrupted access to the installation site and shall make available, without any charges whatsoever, an adequate supply of water and electricity whilst such works are being undertaken. Any failure or unreasonable delay, as judged by the Seller or their agents, in providing these amenities shall render the Seller entitled to a full reimbursement of any costs incurred by the Seller, either directly or indirectly, as a result of the delay or failure.

6. Non-delivery

- 6.1 The quantity of any consignment of goods as recorded by the seller upon dispatch from the seller's place of business shall be conclusive evidence of the quantity received by the purchaser on delivery unless the purchaser can provide conclusive evidence proving the contrary.
- 6.2 Without prejudice to the generality of clause 5.5, the seller shall not be liable for any non-delivery of goods (even if caused by the seller's negligence) unless the purchaser gives written notice to the seller of the non-delivery within 5 working days of the date when the goods would in the ordinary course of events have been received.
- 6.3 Any liability of the seller 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.
- 6.4 Any non delivery as a result of the site not being ready for installation on the previously agreed date of delivery shall entitle the Seller to recover any costs reasonably incurred, either directly or indirectly as a result of this failure.
- 6.5 The Seller shall be entitled to delay or cancel delivery, or to reduce the amount of goods falling to be delivered, if it is prevented from or hindered in, or delayed in manufacturing, obtaining or delivering the goods by normal route, or means of delivery through any circumstances beyond its control including, but not limited to, strikes, lock-outs, accidents, war, fire, reduction or unavailability of power at the Seller's or necessary third party's manufacturing plant or machinery or shortage or unavailability of raw materials from normal sources of supply. The Purchaser shall not be entitled to recover any monies howsoever occurring from the foregoing provided the Seller is obliged, within a reasonable time, to deliver the goods.

7. Payment

- 7.1 The purchaser shall pay the price and any applicable VAT and any costs or charges for which the purchaser is liable under the contract within 28 days of the date of the seller's invoice, unless otherwise agreed in writing.

- 7.2 Purchasers without a credit account shall be required to make payment directly upon entering into the contract with the Seller, unless otherwise agreed in writing.
- 7.3 The price for the goods shall be exclusive of any VAT and all costs or charges in relation to packaging, loading, unloading, freight, carriage and insurance, all of which amounts the purchaser shall pay in addition when it is due to pay for the goods.
- 7.4 Payment of the price shall be made in Pounds Sterling. All payments due to the seller under the contract shall become due immediately on its termination despite any other provision. No payment shall be deemed to have been received until the seller has received clear funds.
- 7.5 The seller may render its invoice to the purchaser on or at any time after it has notified the purchaser that the goods are ready for collection or, where clause 5.2 applies, it has made arrangements (whether or not these have yet been fulfilled) for delivery of the goods.
- 7.6 Provided clause 7.5 has been complied with payment will be due by the purchaser on invoices rendered by the seller even though there has been no delivery of the goods and title in any goods has not yet passed to the purchaser.
- 7.7 In making payment of the price and other sums due under the contract, time shall be of the essence of the contract.
- 7.8 The purchaser shall make all payments due under the contract in full without any deduction, whether by way of set-off, counterclaim, discount, compensation, retention, abatement or otherwise unless the purchaser has a valid court decree, interlocutor or order requiring an amount equal to such deduction to be paid by the seller to the purchaser.
- 7.9 If any invoice rendered by the seller is not paid within the time limit set in clause 7.1, or the purchaser fails for any reason to accept delivery of the goods or any part thereof (save in the case of a breach of the seller of the terms of these conditions or the contract) then (without prejudice to clause 16.1):
- 7.9.1 interest will accrue on the sum invoiced day by day from the due date until the date of payment at 4 per cent above the Royal Bank of Scotland lending base rate, from time to time, compounded monthly, whether before or after any judgment and without prejudice to the foregoing generality, the seller reserves its right to claim interest under the Late Payment of Commercial Debts (interest) Act 1998; and
- 7.9.2 the seller may suspend performance on the contract and under any other contract between the seller and the purchaser (but without affecting the purchaser's obligations under the contract and such other contract); and
- 7.9.3 the seller may appropriate any payment made by the purchaser to any sum due under this contract or under any other such contract as the seller thinks fit and may for this purpose disregard any purported appropriation by the purchaser; and
- 7.9.4 the seller may resell or otherwise deal with or dispose of the goods or any part thereof for its own account in such manner as the seller may think fit.
- 7.9.5 the seller shall, without prejudice to the foregoing, be reimbursed for any bank charges incurred as a result of dishonoured cheques remitted by the Purchaser, together with interest thereon at the aforementioned rate.

7.10 The seller reserves the right to charge to the purchaser all costs, charges or expenses (including, without limitation, any legal and other professional costs, charges or expenses) which may be incurred or involved in the collection of any account should the account become overdue for payment.

7.11 The Purchaser shall indemnify the Seller for any loss or extra costs occasioned as a result of the Purchaser's instructions or lack thereof of which the Seller shall be the sole judge.

8. Risk and Lien

8.1 The risk of any loss or destruction of or of any damage to the goods shall pass to the purchaser:

8.1.1 when the goods are collected by the purchaser from the seller's premises, unless clause 8.1.3 applies;

8.1.2 where clause 5.1 applies, when the seller despatches the goods by post or hands them over to the carrier;

8.1.3 where clause 5.5 applies, on the expiry of the period of seven days from the seller's notice referred to in that clause.

8.2 In the event of all or any of the goods being lost or destroyed in transit or rightfully rejected by the purchaser, the seller shall have the option of treating its contractual obligation in respect of such goods as discharged or if such event is notified to them within a reasonable period, as continuing and deliver a similar quantity of goods on the terms hereof.

8.3 Without prejudice to the terms of these conditions, the seller shall have a lien or a right to withhold delivery of the goods to the purchaser or such part of the goods as are in the possession of the seller or in transit until payment in full of the price in respect of the goods. During the existence of such lien or right to withhold the goods, the goods shall be at the risk of the purchaser.

8.4 All claims for faulty goods or shortfalls must be made in writing to the Seller within 7 working days of delivery or installation. Failing which, no remedy will be available to the Purchaser and the Seller will be entitled to treat his contractual obligations as fully discharged.

9. Title

9.1 Although the goods may have been delivered and risk in the goods may have passed to the purchaser, title and ownership in the goods shall remain with the seller and shall pass to the purchaser only when the seller has received in cash or cleared funds the (i) full price for the goods, (ii) any payment due under clause 5.3, (iii) any applicable VAT and (iv) payment of any other sums then due by the purchaser to the seller under the contract or under any other contract, agreement or arrangement between them whereby the seller will supply goods or services to the purchaser.

9.2 Until title and ownership in the goods does pass to the purchaser then (without prejudice to the purchaser's right to re-sell the goods or to carry out any industrial process using the goods, in either case in the ordinary course of business), the purchaser shall:

9.2.1 hold the goods in trust and on a fiduciary basis for the seller;

9.2.2 store or keep the goods separate from its own goods and the goods of third parties; and/or

9.2.3 clearly mark or identify the goods as being the property of the seller; and/or

9.2.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; and/or

- 9.2.5 ensure that the goods are kept safe, secure and maintained in satisfactory condition; and/or
- 9.2.6 keep the goods insured against loss or damage on the seller's behalf and against all normal and usual commercial risks in the full replacement value thereof all to the reasonable satisfaction of the seller and the purchaser hereby undertakes to hold any proceeds of such insurance and all rights to obtain payments under such insurance in trust for the seller. On request, the purchaser shall produce the policy of insurance to the seller.
- 9.2.7 Any loss incurred between delivery and title passing to the Purchaser shall be the sole responsibility of the Purchaser and the Seller shall be indemnified accordingly until such time as title does pass to the Purchaser or the contractual obligation is discharged or expressly waived.
- 9.3 For as long as the goods have not been re-sold by the purchaser in the ordinary course of business and title in the goods has not passed to the purchaser, the seller, its employees or agents may at any time re-take possession of the goods in such way as it thinks fit, including entering any premises of the purchaser where the goods are to remove them.
- 9.4 Any costs incurred as a result of the foregoing shall be reimbursed to the Seller by the Purchaser.
- 9.5 The Seller shall not be liable to the Purchaser for any damage howsoever occurring by the Seller exercising his right under 9.3.
- 9.6 The purchaser may resell the goods before ownership has passed to it solely on the following conditions:
- 9.6.1 any sale shall be effected in the ordinary course of the purchaser's business at full market value with the prior written consent of the seller; and
- 9.6.2 any such sale shall be a sale of the seller's property on the purchaser's own behalf and the purchaser shall deal as principal when making such a sale.
- 9.7 Subject to the generality of clause 9.6, in the event of a sale or disposal of the goods or any part thereof by the purchaser prior to the payment in full of the price, the purchaser shall be and is hereby appointed trustee in respect of the proceeds of such sale or otherwise thereof, including insurance proceeds and shall keep such proceeds separate from any monies or property of the purchaser and third parties holding the same in a fiduciary capacity for the seller and accounting to the seller therefor.
- 9.8 In the event of the sale of the goods or the incorporation or admixture therein into other products of the purchaser or its customers the purchaser shall hold in trust for the seller the proceeds of sale of such goods or (in the case of incorporation or admixture) a fair proportion of the price received by the purchaser for the sale of its products.
- 9.9 No goods will be supplied by the seller to the purchaser on a sale or return basis and nothing herein contained shall entitle the purchaser to return the goods or to postpone payment for the goods.
- 9.10 The purchaser's right to possession of the goods shall terminate immediately if:
- 9.10.1 the purchaser (being an individual, or in the case of the purchaser being a partnership or a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, then any individual partner, individual member or individual designated member) has entered into sequestration, has signed a trust deed for behoof of his creditors or has agreed an arrangement or composition with his creditors or becomes apparently insolvent, 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 purchaser or notice of intention to appoint an administrator is given by the purchaser 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 in respect of the purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the purchaser; or

9.10.2 the purchaser suffers or allows any diligence, execution or distress to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/her obligations under the contract or any other contract between the seller and the purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the purchaser ceases to trade; or

9.10.3 the purchaser encumbers or in any way charges any of the goods.

9.11 In the event that the goods are irrecoverable, the purchaser shall be bound to sell the goods to a third party, in so far as it is possible, and the provisions of clauses 9.2, 9.6 and 9.7 above shall apply.

9.12 The purchaser grants the seller, 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 purchaser's right to possession has terminated, to recover them.

9.13 Where the seller is unable to determine whether any goods are the goods in respect of which the purchaser's right to possession has terminated, the purchaser shall be deemed to have sold all goods of the kind sold by the seller to the purchaser in the order in which they were invoiced to the purchaser.

9.14 On termination of the contract, howsoever caused, the seller's (but not the purchaser's) rights contained in this condition 9 shall remain in effect.

10. Warranties and liability – the purchaser's attention is particularly drawn to this clause.

10.1 On the terms set out in this clause, the seller warrants to the purchaser that the goods shall, at the time when the purchaser is notified they are ready for collection under clause 5.1 or when the goods are posted or consigned to a carrier under clause 5.3:

(a) be of satisfactory quality within the meaning of section 14 of the Sale of Goods Act 1979;

(b) be reasonably fit for display and signage purpose;

(c) be reasonably fit for any particular purpose for which the goods are being bought if the purchaser had made known that purpose to the seller in writing and the seller has confirmed in writing that it is reasonable for the purchaser to rely on the skill and judgment of the seller; and

(d) conform to specification where the specification is expressly stated in the contract or to sample where any sample has been exhibited to the purchaser before the contract is entered into.

10.2 The purchaser's rights under clause 10 shall not be assignable to any other person.

10.3 Any claim to be made by the purchaser against the seller under clause 10.1 must be made by notice in writing given to the seller within 12 months of the time when delivery of the goods was effected. Failing which, the terms of clause 10.1 will lapse.

- 10.4 Subject to the overriding terms of clauses 10.5, 10.6, 10.7 and 10.9, if any of the goods do not conform with the warranty in clause 10.1, the seller shall:
- 10.4.1 repair or replace the goods at a place of delivery as specified by the Purchaser. The decision to repair or replace shall be at the sole discretion of the Seller; or
- 10.4.2 refund the price of such goods (or such part thereof as may be appropriate), provided that if the seller so requests, the purchaser shall, at the purchaser's expense, return the goods or part of such goods which is defective, to the seller.
- 10.5 Subject to clauses 10.6 and 10.7: –
- 10.5.1 the seller's total liability in contract, delict (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 full contract price payable by the purchaser to the seller under the contract; and
- 10.5.2 the seller shall not be liable to the purchaser for any pure economic loss, loss of profit, loss of business, loss of revenue, loss of opportunity, loss of turnover, loss of expenditure, depletion of goodwill or otherwise, 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.
- 10.6 The warranty given in clause 10.1 is subject to the following exclusions:
- 10.6.1 the seller shall have no liability under clauses 10.1 and 10.4 if the purchaser does not afford the seller a reasonable opportunity of examining such goods after receiving the notice referred to clause 10.3 and the purchaser (if asked to do so by the seller) does not return such goods to the seller's place of business at the seller's expense for the examination to take place there;
- 10.6.2 the seller shall have no liability under clauses 10.1 and 10.4 to the extent that any loss, cost or damage is attributable to any specification or anything else supplied by the purchaser;
- 10.6.3 the seller's liability under clauses 10.1 and 10.4 shall be excused if at the time of any claim there is any payment under the contract outstanding by the purchaser;
- 10.6.4 the seller's liability under clauses 10.1 and 10.4 shall be excused where the defect causing the purchaser's loss, damage or expense is attributable to any defect in any part or materials supplied by a third party (but the seller shall grant the purchaser such rights as it has against that third party).
- 10.6.5 The foregoing will be subject to the Purchaser informing the Seller within 7 working days of such defect becoming apparent or such date as the defect ought to have been reasonably discovered;
- 10.6.6 the seller shall have no liability to the purchaser in terms of this contract for fair wear and tear, for loss, destruction or damage of the goods due to repairs or alterations not carried out by the seller or its authorised agents or where such repairs or alterations are carried out without the seller's written consent, for any misuse or abuse of the goods nor for any failure to follow (i) any operating instructions, training or manual supplied by the seller or by the manufacturer or manufacturer's representative in respect of the goods or (ii) any of the seller's or manufacturer's oral or written instructions or other technical advice, including, without limitation, any instructions or advice as to the storage, installation, commissioning, testing, operation, repair or maintenance of the goods or good trade practice;

- 10.6.7 the seller shall have no liability to the purchaser under this contract if the purchaser makes any further use of such goods after giving notice to the seller in terms of clause 10.3; and/or
- 10.6.8 the seller shall have no liability to the purchaser under this contract in respect of any inadequate, faulty or incompetent testing of the goods by any independent third party.
- 10.6.9 None of the foregoing shall impose any liability upon the Seller in respect of any defect in the goods arising out of the acts, omissions, negligence or default of the Purchaser or their agents.
- 10.7 The rights conferred on the purchaser by this clause 10 shall be exhaustive of the purchaser's rights in relation to defects in the goods or their failure to comply with any specification or sample. Except in relation to the seller's liability (a) for any death or personal injury caused by the seller's negligence or the negligence of those for whom the seller is legally responsible, (b) under section 2(3) of the Consumer Protection Act 1987, (c) for any matter which it would be illegal for the seller to exclude or attempt to exclude its liability and/or (d) for fraud or fraudulent misrepresentation, the seller shall have no liability to the purchaser for any representation or any implied term as to the fitness of the goods for any purpose, their compliance with the sample, their satisfactory quality or otherwise and all warranties, conditions or representations implied by law are hereby expressly excluded from the contract to the fullest extent permitted by law.
- 10.8 Nothing in this clause 10 shall affect the purchaser's statutory rights if the purchaser is a consumer.
- 10.9 The seller shall in any event have no liability to the purchaser if any breach of contract by the seller is due to force majeure or any circumstances beyond its reasonable control including, without limitation, any act of God, fire, explosion, flood, abnormal weather conditions, perils of sea, epidemic, riot, civil disorder, theft, industrial dispute, strike, walk out, act of war or terrorism, supervening illegality, legislative or executive action, breakdown of machinery, total or partial failure of water, electrical or other power supplies, delays by suppliers, carriers or other sub-contractors or agents, currency or licence regulations, inability to obtain import or export licences or anything else which commonly comes within the definition of "force majeure".
- 10.10 The Seller's liability to the Purchaser for any loss or damage of whatsoever nature and howsoever occurring shall be limited to and shall under no circumstances exceed the total sale price of the goods.

11. Intellectual Property

- 11.1 Where the contract includes any specification for the goods, the information for which is given by the purchaser, then the purchaser will indemnify the seller on demand against any damage, loss or expense suffered or incurred by the seller as a result of or arising out of any claim by any other person that anything included in that specification breached or infringed any patent, copyright, design right, moral right, trade mark or any other intellectual property right.
- 11.2 Any drawings, artwork or layouts of any kind, requested by the Purchaser before a specific order has been given shall remain the intellectual property of the Seller and shall be charged for accordingly. This charge can be offset against the final cost of the order at the sole discretion of the Seller.
- 11.3 Except in relation to any specification for the goods given by the purchaser, the seller shall indemnify the purchaser on demand against any damage, loss or expense suffered or incurred by the purchaser as a result of or arising out of any claim by any other person that the goods or any aspect of the goods breaches or infringes any patent, copyright, design right, moral right, trade mark or any other intellectual property right of any other person. This indemnity may be claimed by the purchaser only if it complies with the following conditions:

- 11.3.1 it gives notice to the seller within seven days of any claim of breach or infringement by any person including full details of the claim and the circumstances surrounding it;
- 11.3.2 it allows the seller to conduct negotiations and defend any proceedings on the purchaser's behalf and it assists and provides all relevant information to the seller as required in connection with such negotiations and proceedings;
- 11.3.3 it does nothing to prejudice the negotiations or the defence of said proceedings.
- 11.4 Any plans, drawings, specifications or samples submitted by the Seller, at any time prior to, during or after the making of the contract and all copyright and any other proprietary rights subsisting therein are the property of the Seller and may not be used, reproduced or communicated to a third party or exploited in any other way without the Seller's prior written permission. The seller shall be the sole judge of when his permission shall be withheld and no reasons or explanations need be forthcoming. The lack of reasons or explanations shall not be relied upon in any subsequent proceedings between the parties.
- 11.5 Artwork, cutters and tooling used to produce the goods shall remain the intellectual property of the Seller.

12 Assignment

- 12.1 The seller may assign, transfer or sub-contract the contract or any rights under it (or any part of it) to any person, firm or company.
- 12.2 The purchaser shall not be entitled to assign the contract or any part of it without the prior written consent of the seller.

13. Credit

Any credit given by the seller to the purchaser may be withdrawn or limited at any time by the seller on such notice as the seller may think fit and consequent thereon the seller may refuse to deliver all or part of the goods other than against due tender of the price in accordance with any contract to which these conditions apply. The seller will not give any credit for returned goods (irrespective of the reason for their return) unless the return has previously been agreed by an authorised officer of the seller. Failure to observe this procedure may result in all charges and administrative costs associated with the return of the goods being debited to the purchaser concerned.

14. Indemnity

The purchaser shall keep the seller indemnified on a full indemnity basis against all losses, costs, claims, demands, expenses and liabilities of whatsoever nature made by third parties, or sustained, suffered or incurred by the seller and caused in whole or in part or arising out of any act, omission or negligence of the purchaser in connection with the use or shortage of the goods (including, without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and all other professional fees and expenses).

15. Set-off

The purchaser shall not be entitled to withhold payment of any sum due to the seller under this or any other contract in respect of a claim made against the seller whether under this contract or otherwise unless that claim has been agreed in writing by the seller or established by decision of a competent court or arbiter. Except in such circumstances, the purchaser has no right of set-off or compensation whatsoever.

16. Termination

- 16.1 Without prejudice to any rights it may have under any law to terminate the contract and without prejudice to rights it may have for damages or compensation in respect of any antecedent breach of this contract, the seller may terminate the contract by notice to the purchaser if:
- 16.1.1 the purchaser fails to make any payment due under the contract on the due date or otherwise breaches or fails to perform any obligation of the contract to be performed on its part;
 - 16.1.2 the purchaser suffers any diligence to be levied on its assets which is not discharged within 14 days thereafter;
 - 16.1.3 the purchaser (being an individual, or in the case of the purchaser being a partnership or a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, then any individual partner, individual member or individual designated member) commits any act of bankruptcy or compounds or makes any arrangements with his creditors or a trustee in sequestration is appointed or the purchaser signs a trust deed for behoof of his creditors or the purchaser becomes apparently insolvent, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;
 - 16.1.4 the purchaser (being a company) becomes apparently insolvent, 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 or manager, administrator or administrative receiver appointed in respect of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the purchaser or notice of intention to appoint an administrator is given by the purchaser 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 purchaser or for the granting of an administration order in respect of the purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the purchaser;
 - 16.1.5 the purchaser ceases to trade; and/or
 - 16.1.6 the purchaser fails to take delivery of any of the goods within the period stipulated for in the contract.
- 16.2 The purchaser may not cancel the contract, unless the seller agrees upon the purchaser first indemnifying the seller against any loss, damage or expense (including loss of profit) which the seller may suffer or incur as a result of the cancellation.

17. Notices or Communications

All communications between the seller and the purchaser about the contract or these conditions of sale must be in writing and delivered by hand or sent by pre-paid first class post, facsimile transmission or email.

- 17.1 (in case of communications to the seller) to the address above or its registered office (if a limited liability company) or such changed address as shall be notified to the purchaser by the seller; or (in the case of the communications to the purchaser) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the purchaser set out in any document which forms part of this contract or such other address as shall be notified to the seller by the purchaser.
- 17.2 Communications shall be deemed to have been received:

- 17.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting)
- 17.2.2 if delivered by hand, on the day of delivery;
- 17.2.3 if sent by email on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.

18. Data Protection

- 18.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 18.2 All personal information that the seller may use will be collected, processed, and held in accordance with the provisions of GDPR and the purchaser's rights under GDPR.
- 18.3 For complete details of the seller's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the purchaser's rights and how to exercise them, and personal data sharing (where applicable), please refer to the seller's privacy notice.

19. Miscellaneous

- 19.1 Any waiver by the seller of any breach of, or any default under, any provision of the contract by the purchaser shall be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the contract.
- 19.2 The Seller shall not be liable for imperfect work caused by inaccuracies in any drawings, artwork or specifications supplied by the Purchaser.
- 19.3 Any alterations to the goods after the order has been placed will be charged for in accordance with the terms of the contractual documentation between the parties or in terms of any prior written agreement between the parties.
- 19.4 Any works produced at the Purchaser's request, whether experimental or as a sample shall be charged for in accordance with the terms of the contractual documentation between the parties or in terms of any prior written agreement between the parties.
- 19.5 Each right or remedy of the seller under the contract is without prejudice to any other right or remedy of the seller whether under the contract or not.
- 19.6 If any provision of the contract or these conditions of sale is found by any court, tribunal or administrative body, 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. If any provision of the contract or these conditions of sale is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 19.7 The contract and these conditions of sale, and any documents referred to within the contract and the conditions of sale, constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of the contract and these

conditions of sale. Each of the parties acknowledges and agrees that in entering into the contract and these conditions of sale and the documents referred to within them, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the contract or these conditions of sale or not) other than as expressly set out in the contract or these conditions of sale as a warranty. The only remedy available to the purchaser for breach of any of the warranties contained in the contract or these conditions of sale shall be for breach of contract under the terms of the contract or these conditions of sale. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

19.8 Failure or delay by the seller in enforcing or partially enforcing any provision of the contract will not be construed as a waiver of any of its rights under the contract.

20. Governing Law and Jurisdiction

The contract shall be governed by Scots law and the purchaser and seller submit to the non-exclusive jurisdiction of the Scottish Courts.