

BNL (UK) LIMITED TERMS AND CONDITIONS OF SALE

UNLESS EXPRESSLY AGREED AND CONFIRMED BY THE COMPANY IN WRITING, THESE TERMS OF BUSINESS WILL APPLY TO ALL CONTRACTS ENTERED INTO BETWEEN BNL (UK) LIMITED AND IT'S CUSTOMER

1. INTERPRETATION

1.1 In these Terms and Conditions the words and expressions set out below have the following meanings.

Credit has the meaning given in condition 5.9;

Customer means the party with whom which the Supplier enters into a contract for the supply of Products by issuing an Order Confirmation;

Delivery Note means a document produced by the Supplier or the appointed carrier of the relevant Products to the Customer at the Delivery Point;

Delivery Point means the Supplier's Premises, or such other delivery point (if any) as stated in the Order Confirmation;

Delivery Terms means ex works Supplier's Premises, or such other Incoterm (if any) as stated in the Order Confirmation;

Expenses means any out-of-pocket costs incurred by the Supplier in fulfilling a Purchase Order, including (without limitation);

- a) postage, packaging, carriage, freight, and handling charges;
- b) insurance;
- c) currency conversion and banking charges applicable to the payment method used;
- d) value added tax or any other applicable sales tax in the country in which the Supplier is resident; and
- e) any customs, import or other duties charged in respect of the sale and importation of Products into the country in which the Customer is resident or the Delivery Point is located.

Intellectual Property Rights means all copyright, database rights, topography rights, design rights, trademarks, trade names, utility models, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Products;

Invoice means an invoice raised by the Supplier in accordance with condition 7.5;

Net Selling Price means the Prices of Products ordered by the Customer less any discounts granted to the Customer by the Supplier in writing from time to time;

Order Confirmation means an order confirmation document sent by the Supplier to the Customer, agreeing to fulfil the Purchase Order and identifying the relevant PO by its Sales Order Number;

Prices means the prices for the Products confirmed to the Customer in the relevant Order Confirmation, as varied from time to time by the Supplier in accordance with condition 7.2, but excluding any Expenses;

Products means the such products as the Supplier may agree to sell to the Customer under the terms of an Order Confirmation, as amended from time to time in accordance with condition 9;

Purchase Order or **PO** means an order for Products submitted by the Customer to the Supplier, and accepted by the Supplier in accordance with condition 3;

Purchase Order Form means a form of Purchase Order sent by the Customer to the Supplier, requesting the supply of Products, and setting out the name of the Customer, the date of the PO, the quantity of each model or type of the Products required, the required delivery date, the proposed Delivery Point and any special delivery instructions;

Sales Order Number means the reference applied to a Purchase Order Form by the Supplier on receipt of that Purchase Order Form;

Shipped means in relation to any Purchase Order the fact that the Products comprised in any such Purchase Order have been taken out of the Supplier's stock for supply to the Customer;

Specification means the specification of the Products issued by the Supplier from time to time, or any other specification agreed in writing between the parties;

Supplier means BNL (UK) Limited, registration number 2668025, whose registered office is at St. Mary's House, 42 Vicarage Crescent, London SW11 3LD, United Kingdom;

Supplier's Premises means Manse Lane, Knaresborough, North Yorkshire HG5 8LF, United Kingdom or such other place as the Supplier trades from and which the Supplier shall notify to the Customer from time to time; and

Warranty has the meaning given in condition 4.1.

- 1.2 Reference to a condition means a condition set out in these Terms and Conditions, unless the context requires otherwise.
- 1.3 A reference to one gender includes a reference to the other gender.
- 1.4 Words in the singular include the plural and in the plural include the singular.

- 1.5 A reference to a **person** includes an incorporated or unincorporated body.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 Unless the context otherwise requires, the words **including** and **include** and words of similar effect shall not be deemed to limit the general effect of the words which precede them.
- 1.8 The headings in these Terms and Conditions are for ease of reference only and shall not affect their construction or interpretation.

2. **SALE OF THE PRODUCTS**

- 2.1 Subject to these Terms and Conditions, including condition 3.6, the Supplier shall sell and the Customer shall buy such quantities of the Products as may be ordered by the Customer from time to time.
- 2.2 These Terms and Conditions shall prevail over any terms and conditions put forward by the Customer in connection with a Purchase Order or otherwise.

3. **PURCHASE ORDER PROCESS**

- 3.1 When the Customer wishes to place an order for Products, it shall send a Purchase Order Form to the Supplier.
- 3.2 A PO shall be for not less than the minimum quantity (if any) notified by the Supplier in relation to any Product.
- 3.3 A PO shall allow a period of lead time of not less than the period (if any) notified by the Supplier as the minimum lead time required between the date of the PO and the requested date of delivery of the Products included in the PO.
- 3.4 A PO shall be treated as an offer by the Customer to contract with the Supplier, but shall not be binding on the Customer unless and until accepted by the Supplier in accordance with condition 3.6. In the event of an increase in the Prices pursuant to condition 7.2 after the date of a PO, the Supplier may request the Customer to reconfirm the PO at the relevant new price. The Supplier may, at its sole discretion, accept amendments to a PO after acceptance.
- 3.5 The Supplier shall apply a Sales Order Number to each PO received from the Customer and inform the Customer of the Sales Order Number as soon as reasonably practicable. Each party shall use the Sales Order Number to identify each PO from the time at which the Sales Order Number is known to it.
- 3.6 The Supplier may, at its discretion, accept the PO using a Sales Order Number and the issuance of such Sales Order Number shall be treated as acceptance of the Customer's PO,

subject always to the principle stated in condition 2.2. The Supplier shall not be required to maintain stocks of the Products, and shall exercise its discretion in the light of the stocks which it may actually have available, or which can reasonably be manufactured for delivery within the relevant time period, having regard also to the requirements of other customers, if any. A PO in respect of which a Sales Order Number has been issued shall not be cancellable by the Customer without the written consent of the Supplier, which may be withheld or granted by the Supplier on such terms as it may think fit.

- 3.7 The Supplier shall arrange delivery of the Products for which an Order Confirmation has been issued, in accordance with the Customer's instructions on the PO Form and these Terms and Conditions, provided that the Customer shall be liable to pay for all Expenses incurred by the Supplier in complying with the PO. Such Expenses shall be included on the Invoice for the relevant Products.

4. **SPECIFICATION OF THE PRODUCTS**

- 4.1 The Supplier warrants that all Products sold by the Supplier to the Customer will conform in all material respects to the Specification (the **Warranty**). All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these Terms and Conditions are excluded to the fullest extent permitted by law.
- 4.2 Subject to the other provisions of this condition 4, and to those of condition 17 (Limitation of Liability), the Customer shall be entitled to reject any quantity of the Products which do not comply with the Warranty, provided that any purported rejection is made no later than seven days from the date of delivery in accordance with condition 5.5.
- 4.3 The Supplier is not obliged to agree to any change requested by the Customer to the Specification or to the Products. An agreement to change the specification is only valid if it is in writing from the Supplier.

5. **DELIVERY OF THE PRODUCTS**

- 5.1 The Supplier will have fulfilled its contractual obligations in respect of each delivery provided that the quantity actually delivered is no greater than 10% more or less than the quantity specified on the Order Confirmation. The Customer shall pay for the actual quantity delivered.
- 5.2 Delivery of the Products shall take place at the Delivery Point. Acceptance of any change to the Delivery Point requested by the Customer shall be at the Supplier's sole discretion and the Customer shall be liable for any additional Expenses incurred by the Supplier as a result of such change. Depending on the applicable Delivery Terms, the Supplier shall arrange for suitable transport (where applicable) to the Delivery Point, and on delivery, the Supplier (or its

appointed carrier) shall (where applicable) provide the Customer with such export documents as are necessary and which the Customer is unable to prepare, together with a Delivery Note.

- 5.3 Delivery or performance dates in relation to the supply by the Supplier of Products are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery of the Products.
- 5.4 The Supplier may effect delivery in one or more instalments.
- 5.5 In the event that the Customer alleges that the Products delivered do not comply with the Warranty by reason of a defect which was apparent on reasonable inspection, The Customer shall, within seven days of the arrival of each delivery of the Products at the Delivery Point, give written notice of rejection to the Supplier.
- 5.6 If the Customer fails to give notice as specified in condition 5.5 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Products shall conclusively be presumed to comply with the Warranty and, accordingly, the Customer shall be deemed to have accepted the delivery of the Products in question and the Supplier shall have no liability to the Customer with respect to that delivery (except in relation to liability for any latent defects, to which the provisions of condition 17.4 shall apply).
- 5.7 A notice given under condition 5.5 shall include a detailed description of the alleged defect in the Products, the number of the relevant Order and the part number of the relevant Product. Upon receiving those details, the Supplier shall issue a return material authorisation number ("RMA number"), which shall be valid for 30 days.
- 5.8 Upon receiving an RMA number, the Customer shall, if so requested by the Supplier, return the relevant Products (unaltered and unrepaired) to the Supplier, carriage and other Expenses paid, for inspection by the Supplier as soon as possible and at the Customer's own risk and expense, accompanied by the relevant RMA number. The issuance of an RMA number and the receipt by the Supplier of any returned Products shall be without prejudice to the Supplier's determination of whether or not the relevant Products comply with the Warranty.
- 5.9 If the Customer, by giving notice within the applicable period under the terms of condition 17.4, rejects any delivery of the Products on the grounds that they do not comply with the Warranty, and the Supplier accepts such non-compliance, the Supplier shall, within twenty one days at its option either:
- 5.9.1 supply replacement Products which comply with the Warranty; or
 - 5.9.2 repair the Products to bring them into compliance with the Warranty and redeliver them to the Customer; or

- 5.9.3 notify the Customer that it is unable to supply replacement Products, in which case the Supplier shall grant to the Customer a credit equal to the price of the Products which the Supplier agrees do not comply with the Warranty (**Credit**).
- 5.10 The liability of the Supplier in respect of any rejected Products shall be limited to complying with condition 5.9, and if the Supplier shall perform any of the options stated in that condition, the Supplier shall be deemed not to be in breach of the contract and to have no further liability to the Customer.
- 5.11 The Supplier's reasonable decision as to whether the Products comply with the Warranty shall be final.

6. **IMPORT AND EXPORT LICENCES**

The Customer is responsible for obtaining, at its own cost, such import and export licences and other consents in relation to the Products as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to the relevant shipment.

7. **PRICES AND PAYMENT**

- 7.1 The Customer shall pay the Supplier for the Products in accordance with the provisions of this condition 7.
- 7.2 The prices for the Products shall be the Prices as stated in the relevant Order Confirmation. Subject to conditions 7.3 and 7.4, the price applicable to each Purchase Order shall be the latest version of the Prices for the Products that has been notified to the Customer at the time of or prior to the date of a relevant Order Confirmation.
- 7.3 All price quotations given by the Supplier are based on the assumptions that the full quantity of Products referred to in the quotation will be purchased by the Customer, and that purchases of Products by the Customer will continue for the full period (if any) referred to in the quotation. If either of these assumptions is not met, the Supplier reserves the right to vary the Prices accordingly by notice to the Customer.
- 7.4 In the event that, no earlier than one month after the issue of an Order Confirmation by the Supplier, the Supplier shall notify the Customer that its costs of manufacturing the Products comprised in the relevant Purchase Order have increased since the date of the Order Confirmation by reason of an increase of not less than ten per cent in the cost at which the Supplier can reasonably obtain any one or more raw materials or components required for the manufacture of those Products, and shall provide reasonable documentary evidence for that increase, then the price stated in the relevant Order Confirmation shall be increased by such amount as is reasonable to take account of the relevant increase in the price of raw materials or components.

- 7.5 The Supplier shall invoice the Customer for the Net Selling Price of all POs Shipped, and all related Expenses.
- 7.6 Unless otherwise agreed, the Customer shall pay to the Supplier the total amount of each Invoice in pounds sterling by telegraphic transfer to the Supplier's nominated bank account within 30 days after the date of the relevant Invoice, notwithstanding that delivery may not have taken place and that property in the Products has not passed to the Customer.
- 7.7 All amounts of money referred to in these Terms and Conditions shall be interpreted as being amounts exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the Customer shall increase the sum it pays to the Supplier by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 7.8 All amounts payable to the Supplier shall become due immediately if the relevant contract is terminated in accordance with these Terms and Conditions despite any other provision.
- 7.9 The time for payment shall be of the essence and no payment shall be deemed to have been made until the Supplier has received payment in cleared funds.
- 7.10 If the Customer does not make payment on or before the date on which it is due, interest shall be payable on the overdue amount at the rate which is two per cent above the Bank of England base rate from time to time. Interest shall be payable at this rate both before and after any judgment is made against the Customer until the date on which payment in cleared funds is received in full, including all accrued interest.
- 7.11 The Customer shall make all payments due without any deduction by way of set-off, counterclaim, discount or otherwise unless expressly agreed by the Supplier.

8. **TITLE AND RISK**

- 8.1 Risk in and responsibility for the Products shall pass to the Customer once they have been delivered to the Delivery Point.
- 8.2 Subject to condition 8.4, ownership of the Products shall not pass to the Customer until the Supplier has received payment in full of all monies owed by the Customer to the Supplier.
- 8.3 Until ownership of the Products passes to the Customer, the Customer shall hold the Products on the following terms:
- 8.3.1 the Products shall be stored separately from other goods held by the Customer and shall be clearly identifiable as the property of the Supplier;
- 8.3.2 the Products shall not be mixed with other goods or altered in any way;

- 8.3.3 the Products shall be adequately stored and maintained in a satisfactory condition; and
- 8.3.4 each Product shall be insured for an amount at least equal to its Price and any proceeds of the insurance policy shall be held on trust for the Supplier in a separate account in the joint names of the Supplier and the Customer. The Customer shall not mix the insurance proceeds with any other money or pay the proceeds into an overdrawn bank account. The Customer shall account to the Supplier for the proceeds accordingly and make good any shortfall in the amount due to the Supplier.
- 8.4 The Customer may resell (but may not deal in any other way with) the Products to a third party and pass good title to that third party on the following terms:
- 8.4.1 the sale is in the ordinary course of the Customer's business; and
- 8.4.2 the Customer holds the proceeds of any resale on trust for the Supplier in a separate account in the joint names of the Supplier and the Customer and does not mix them with any other money or pay the proceeds into an overdrawn bank account.
- The Customer shall account to the Supplier for the proceeds accordingly and shall make good any shortfall in the amount due to the Supplier.
- 8.5 The Customer shall lose its rights to possession if:
- 8.5.1 the Customer becomes subject to any of the events in condition 13.1.2 to condition 13.1.5; or
- 8.5.2 the relevant contract is terminated and the Customer does not pay all outstanding amounts within 30 days; or
- 8.5.3 the Customer suffers any legal or equitable execution to be levied on its property.
- 8.6 The Customer grants to the Supplier an irrevocable licence for the Supplier, its agents and employees to enter any premises where the goods of the Customer are stored to ascertain whether any Products are stored there and to inspect, count and recover them.
- 8.7 The Customer shall register any necessary charge over money or goods and take such other steps as are necessary to give effect to this condition 8 at the request of the Supplier.

9. **CHANGES**

- 9.1 The Supplier may, immediately on giving written notice to the Customer elect to alter the Specification of any of the Products, provided that the alteration does not materially adversely affect the performance, quality or value of the Products; or to include any modified version of the Products, additional goods or replacements for the Products.

- 9.2 Where the Customer has placed a Purchase Order and the Supplier has accepted that Purchase Order using an Order Confirmation, and the Specification of any of the Products contained in that Purchase Order is varied in accordance with condition 9.1, the Customer may cancel the part of the Purchase Order that relates to the varied Products only.
- 9.3 Where the Customer has placed a Purchase Order and the Supplier has accepted that Purchase Order using an Order Confirmation, and any of the Products contained in that Purchase Order are modified or replaced in accordance with condition 9.1, the Purchase Order shall automatically be varied to reflect such modification or replacement.

10. **INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Customer acknowledges that:
- 10.1.1 the Intellectual Property Rights, so far as they relate to any design elements of the Products which are provided by the Customer to the Supplier, and which were not previously known to the Supplier from its own or third party sources, are the Customer's (or its licensor's) property, and all other Intellectual Property Rights are the Supplier's (or its licensor's) property;
 - 10.1.2 nothing in these Terms and Conditions shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights;
 - 10.1.3 the Supplier asserts its full rights to control the use of its trade marks within the EEA and the Customer shall assist the Supplier as required in preventing parallel importers from diluting the Supplier's rights; and
 - 10.1.4 any reputation in any trade marks affixed or applied to the Products shall accrue to the sole benefit of the Supplier or any other owner of the trade marks from time to time.
- 10.2 The Customer shall not repackage the Products and/or remove any copyright notices, confidential or proprietary legends or identification from the Products save for any removal which is a necessary result of a manufacturing process of which the Supplier has been previously notified in writing by the Customer.
- 10.3 The Customer shall not use or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Supplier or any associated company of the Supplier owns or claims rights in anywhere in the world.
- 10.4 The Supplier shall not be liable for any infringement or alleged infringement of the intellectual property rights of any third party wholly or partly by reason of the Supplier producing and/or supplying the Products in accordance with a design, or elements of design, provided by the

Customer to the Supplier, and the Customer shall indemnify the Supplier against any such liability, and all claims, demands, costs and expenses relating to any such infringement or alleged infringement.

- 10.5 The Customer shall promptly and fully notify the Supplier of:
- 10.5.1 any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Customer's notice; and
 - 10.5.2 any claim by any third party that comes to the Customer's notice that the, manufacture, sale or advertisement of the Products infringes the rights of any person.
- 10.6 Subject to condition 10.7, each party agrees (at the other party's request and expense) to do all such things as may be reasonably required to assist the other party in taking or resisting any proceedings in relation to any infringement or claim referred to in condition 10.5 so far as such infringement or claim relates to the Intellectual Property Rights of that other party.
- 10.7 In the event of any claim, proceeding or suit by a third party against the Supplier alleging an infringement of any Intellectual Property Right connected with the Products, the Customer shall defend the Supplier at the Customer's expense, subject to:
- 10.7.1 the Supplier promptly notifying the Customer in writing of any such claim, proceeding or suit; and
 - 10.7.2 the Customer being given sole control of the defence of the claim, proceeding or suit.
- 10.8 The Customer shall reimburse the Supplier with an amount equal to any cost, expense or legal fees incurred at the Customer's written request or authorisation and, without prejudice to the generality of condition 10.4, shall indemnify the Supplier against any liability assessed against the Supplier by final judgement on account of an infringement described in condition 10.7.

11. **CONFIDENTIALITY**

- 11.1 Without prejudice to the continuation in force of any obligations of confidentiality previously entered into between the parties, each party undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other which it has obtained or received, except any information that is:
- 11.1.1 subject to an obligation to disclose under law, or that is required to be disclosed by any competent regulatory authority, by notice or otherwise; or
 - 11.1.2 already in its possession other than as a result of a breach of this condition 11; or
 - 11.1.3 in the public domain other than as a result of a breach of this condition 11.

- 11.2 Each party undertakes to the other to take all steps that are necessary from time to time to ensure compliance with the provisions of this condition 11 by its employees, agents and subcontractors.

12. **ANTI-BRIBERY COMPLIANCE**

- 12.1 In all cases where the Customer may be considered as performing services for the Supplier within the meaning of the United Kingdom Bribery Act 2010, the Customer shall:

12.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (the "Relevant Requirements");

12.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

12.1.3 comply with the Supplier's Anti-Corruption and Bribery Policy, as the Supplier may notify to the Customer from time to time;

12.1.4 have and maintain in place throughout the term of the relationship between the Supplier and the Customer its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

12.1.5 immediately notify the Supplier if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the entry into force of this condition 12); and

12.1.6 ensure that all persons associated with the Customer or other persons who are performing services in connection with the relationship between the Supplier and the Customer comply with this condition 12.

- 12.2 A breach of this condition 12 shall entitle the Supplier to terminate all or any of its contracts with the Customer forthwith.

13. **TERMINATION**

- 13.1 The Supplier may at its option terminate all or any of its contracts with the Customer by giving written notice to the Customer if any of the following events occurs:

13.1.1 the other party commits a breach of any contract which (in the case of a breach capable of remedy) has not been remedied within 30 days of the receipt by the other of a notice specifying the breach and requiring its remedy; or

- 13.1.2 the other party commits the same or substantially similar breaches of its obligations under any contract or contracts more than three times within any period of twelve consecutive months; or
 - 13.1.3 a winding-up order or bankruptcy order is made against the other party; or
 - 13.1.4 the other party passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or
 - 13.1.5 the other party has appointed to it an administrator or an administrative receiver; or
 - 13.1.6 being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or
 - 13.1.7 an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the other party's assets;
 - 13.1.8 the other party ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 13.1.9 any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into; or
 - 13.1.10 the other party ceases, or threatens to cease, to carry on business; or
 - 13.1.11 any event analogous to those described in condition 13.1.3 to condition 13.1.8 occurs in relation to the other party in any jurisdiction in which that other party is incorporated, resident or carries on business.
- 13.2 Following the termination of any contracts, the Supplier shall be entitled (at its option) to cancel any Purchase Orders which have not yet been delivered, but to the extent that the Supplier does not cancel any such undelivered Purchase Orders they shall continue to be binding on the Customer.
- 13.3 On termination of any contract or contracts for any reason and subject to any rights or obligations that have accrued before termination, neither party shall have any further obligation to the other under the relevant contract or contracts.
14. **FORCE MAJEURE**
- 14.1 Neither party shall be liable to the other, or be deemed to be in breach of any contract, by reason of any delay in performing, or failure to perform, any of its obligations thereunder if the delay or failure was beyond that party's reasonable control (including without limitation fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war, warlike hostilities or threat of war, terrorist activities, accidental or malicious

damage and any prohibition or restriction by any government or other legal authority which affects performance of the contract and which is not in force on the date of the contract).

- 14.2 A party claiming to be unable to perform its obligations (either on time or at all) in any of the circumstances set out in condition 14.1 shall notify the other party of the nature and extent of the circumstances in question as soon as practicable.
- 14.3 This condition 14 shall cease to apply when such circumstances have ceased to have effect on the performance of the relevant contract and the party affected shall give notice to the other party that the circumstances have ceased.
- 14.4 If any circumstance relied on by either party for the purposes of this condition 14 continues for more than six months, the other party shall be entitled to terminate the relevant contract by giving one month's notice.

15. **ENTIRE AGREEMENT**

- 15.1 These Terms and Conditions together with any relevant Order Confirmation constitute the entire agreement between the parties in connection with their subject matter and supersede any previous agreement, warranty, statement, representation, understanding or undertaking (in each case whether written or oral) given or made by or on behalf of the parties and relating to their subject matter.
- 15.2 Neither party has relied on any statement, representation, agreement, understanding or promise made by the other except as expressly set out in these Terms and Conditions.

16. **WAIVER OF RIGHTS BASED ON MISREPRESENTATION**

- 16.1 Each party unconditionally waives any rights it may have to claim damages against the other on the basis of any oral or written statement made by the other or by its legal advisers (whether made carelessly or not) that is not set out or referred to in these Terms and Conditions (or for breach of any warranty given by the other not so set out or referred to), unless such statement or warranty was made or given fraudulently.
- 16.2 Each party unconditionally waives any rights it may have to seek to rescind any contract on the basis of any statement made by the other (whether made carelessly or not), unless such statement was made fraudulently.

17. **LIMITATION OF LIABILITY**

- 17.1 The Supplier's total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to any contract to which these Terms and Conditions apply shall be limited to the Price of the Products to which the claim relates.
- 17.2 The Supplier shall not be liable to the Customer for:

- 17.2.1 any indirect, special or consequential loss or damage; or
 - 17.2.2 loss of data or other equipment or property; or
 - 17.2.3 economic loss or damage; or
 - 17.2.4 incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
 - 17.2.5 any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill; or
 - 17.2.6 any costs of a product recall decided upon by the Customer,
even if the Supplier is advised in advance of the possibility of any such losses or damages.
- 17.3 The Supplier shall not be liable for any losses arising from the Customer's subsequent use or misuse of the Products including (without limitation):
- 17.3.1 fair wear and tear;
 - 17.3.2 wilful damage;
 - 17.3.3 the Customer's negligence, or that of its agents or employees, or any failure to follow the Supplier's instructions as to use of the Products;
 - 17.3.4 any inappropriate storage, treatment or handling of the Products by any person other than the Supplier and its agents;
 - 17.3.5 abnormal working conditions beyond those referred to in the Specification; and
 - 17.3.6 any alteration or repair of the Products by any manufacturing process or otherwise, save for any latent defect which means that the Product did not comply with the Specification.
- 17.4 The Supplier is not liable for a defect in the Products unless it is notified to the Supplier within seven days of the date of delivery or, if the defect would not be apparent on reasonable inspection, within three months of the date of delivery.
- 17.5 The Supplier is not liable for:
- 17.5.1 non-delivery, unless the Customer notifies the Supplier of the claim within seven working days of the date of the Supplier's invoice; or
 - 17.5.2 shortages in the quantity of Products delivered in excess of those permitted by condition 5.1, unless the Customer notifies the Supplier of a claim within 15 working days of receipt of the Products; or
 - 17.5.3 damage to or loss of all or part of the Products in transit (where the Products are carried by the Supplier's own transport or by a carrier on behalf of the Supplier),

unless the Customer notifies the Supplier within 15 working days of receipt of the Products or the scheduled date of delivery, whichever is the earlier.

- 17.6 The Customer acknowledges and agrees that the Prices reflect the limitations of liability contained in these Terms and Conditions.

18. **ASSIGNMENT**

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge or deal in any other similar manner with any contract or its rights or any part of them under any contract, subcontract any or all of its obligations under any contract, or purport to do any of the same.

19. **DISPUTES**

- 19.1 Subject as may be provided elsewhere in these Terms and Conditions, all disputes, differences or questions arising in relation to any contract which is subject to these Terms and Conditions shall be referred in the first instance to the sales director of the Supplier and the person responsible for purchasing on behalf of the Customer, who shall meet together and attempt to settle the dispute between themselves (acting in good faith) within one calendar month.

- 19.2 If the persons mentioned in condition 19.1 fail to resolve the dispute, it shall be referred to the managing director or equivalent officer of each of the Supplier and the Customer, who shall meet together and attempt to settle the dispute between themselves (acting in good faith) within one calendar month.

- 19.3 If the persons mentioned in condition 19.2 fail to resolve the matter within one calendar month, then either party may refer the dispute for decision in accordance with condition 27 (Governing Law and Jurisdiction).

20. **CUMULATIVE REMEDIES**

Each right or remedy of the parties is without prejudice to any other right or remedy of the parties, whether or not such rights or remedies are set out in these Terms and Conditions.

21. **NO PARTNERSHIP OR AGENCY**

Nothing in these Terms and Conditions or in any contract which is subject to them shall create, or be deemed to create, a partnership, joint venture or legal relationship of any kind between the parties that would impose liability upon one party for the acts or failure to act of the other party, or authorise either party to act as agent for the other. Save where expressly stated in any contract, neither party shall have the authority to make representations, act in the name or on behalf of or otherwise bind the other.

22. SEVERANCE

The invalidity, illegality or unenforceability of any provision of these Terms and Conditions shall not affect the other provisions and the contract shall be given effect as if the invalid, illegal or unenforceable provision had been deleted, unless the provision so affected is so fundamental that one or more of the essential elements of the contract is removed.

23. AMENDMENT AND WAIVER

23.1 No variation of these Terms and Conditions shall be effective unless it is made in writing and is signed by both of the parties.

23.2 No waiver of any term, provision or condition of these Terms and Conditions shall be effective, except where it is clearly made in writing and signed by the waiving party. No waiver of any particular breach shall be held to be a waiver of any other or subsequent breach.

23.3 No omission or delay on the part of any party in exercising any right, power or privilege shall operate as a waiver by it or of any right to exercise it in future or of any other of its rights.

23.4 The rights and remedies arising under, or in connection with, these Terms and Conditions are cumulative and, except where otherwise expressly provided in these Terms and Conditions, do not exclude rights and remedies provided by law or otherwise.

24. THIRD PARTY RIGHTS

No person who is not party shall have any right to enforce any term of any contract which is subject to these Terms and Conditions.

25. NOTICES

25.1 Any notice or other communication to be given by a party shall be in writing and in the English language and may be delivered by hand or sent by pre-paid post (by airmail post if to an address outside the country of posting) or fax to the relevant party at the respective address or fax number set out below:

25.1.1 for notices to the Supplier, to the Supplier at the Supplier's Premises, fax number +44 1423 862259;

25.1.2 for notices to the Customer, to the Customer's address or fax number (if any) specified in the relevant Purchase Order or Order Confirmation;

or such other address or fax number as the party to be served with the notice shall have notified to the other party for this purpose.

25.2 Any notice or document shall be deemed served:

- 25.2.1 if delivered by hand, at the time of delivery unless delivered after 5.00 pm in which case they shall be given on the next day (other than Saturday or Sunday) on which the banks are ordinarily open for business in England (**Working Day**);
 - 25.2.2 if posted, two Working Days after posting (five Working Days if sent by airmail post); and
 - 25.2.3 if sent by fax, at the time of transmission printed on the transmission confirmation sheet provided that an error free transmission report has been received by the sender and if the time of transmission is after 5.00 pm on a Working Day or at any time on a day that is not a Working Day the notice shall be deemed to have been received at 9.00 am on the next Working Day.
- 25.3 Notices shall not be validly served by e-mail.

26. **SURVIVAL OF OBLIGATIONS**

Any of the provisions of these Terms and Conditions or of any contract which is subject to them that are expressed to take effect in whole or in part on or after termination of the relevant contract, or are capable of having effect after termination, shall remain in full force and effect despite termination.

27. **GOVERNING LAW AND JURISDICTION**

- 27.1 These Terms and Conditions and any contract which is subject to them shall be governed by and construed in all respects in accordance with English law. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply, save where they conflict with the provisions of these Terms and Conditions or of any terms expressly agreed between the parties.
- 27.2 Subject to condition 19 (Disputes) and condition 27.3, any dispute arising out of or in connection with any relevant contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this condition. The number of arbitrators shall be three, the seat of the arbitration shall be London and the language to be used in the arbitral proceedings shall be English.
- 27.3 Nothing in this condition 27 shall limit the right of the Supplier, in the event of a claim by the Supplier for the Price of Products which is not disputed by the Customer, to take proceedings against the Customer in the courts of England and Wales (to whose jurisdiction the Customer hereby submits) or of any other competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the Supplier from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other

jurisdiction. Process in any such jurisdiction may be served on the Customer in the manner specified for notices in condition 25.

- 27.4 It is the Customer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Products. It is the Customer's obligation to ensure that no Products are exported or imported in violation of the laws of any jurisdiction into or through which the Products are transported during the course of reaching the Delivery Point. Where necessary, the Customer shall inform the Supplier at a reasonable time before delivery of any documents which it is necessary for the Supplier to provide in order to allow export of the Products in compliance with the laws of any relevant jurisdiction.
- 27.5 The rights set out in this condition 27 are in addition to any other manner of service permitted by law at the time when service is made.