



## Terms & Conditions

Your particular attention is drawn to the provisions of Condition 10

### 1. General

- 1.1 The terms and conditions set out below (as amended from time to time by the Supplier by notice in writing to the Customer or by notice on the Supplier's Website), (the "Conditions") shall form part of every contract between the Supplier and the Customer for the sale and purchase of Goods and/or the supply of Services (a "Contract") and shall apply to any dealings between the Supplier and the Customer to the express exclusion of any other terms and conditions (including any which the Customer purports to apply under any purchase order, confirmation of order, acknowledgement of delivery, Specifications or any other such documents or by endorsement upon the documents issued by the Supplier or otherwise).
- 1.2 No addition to, or modification of, any provision of these Conditions, or any representation, advice or recommendation relating to the Goods and/or Services given by any representative of the Supplier, shall be binding upon the Supplier unless made in writing and signed by an authorised representative of the Supplier with the intention of modifying or supplementing these Conditions being clearly expressed.

### 2. Interpretation

- 2.1 In these Conditions the following words and expressions shall have the following meanings: "Checklist" means the Supplier's checklist (as the same may be amended by the Supplier from time to time) to be completed and submitted by the Customer with any order as provided in Condition 3, such checklist available from the Supplier on request; "Customer" means the person who purchases the Goods and/or Services from the Supplier; "Goods" means any goods which are offered for sale in the Supplier's Catalogue, or which the Supplier otherwise offers and/or agrees to sell; "Group" means any parent company for the time being of the Supplier or any subsidiary for the time being of the Supplier or of any such parent company (for which purpose the expressions "parent company" and "subsidiary" shall have the meanings ascribed to them by section 1162 and schedule 7 of the Companies Act 2006); "Intellectual Property Rights" means patents, trade marks, registered designs, copyright, design rights (including those existing in semiconductor topographies, computer software and spread sheets), know-how, confidential information, and any similar rights anywhere in the world or any applications for any of the above; "Losses" means all losses, claims, liabilities, judgments, orders, awards, costs, fees, charges, expenses, interest, and damages of any kind irrespective of whether they were reasonably foreseeable or avoidable; "Non-Stock Goods" means Goods which are not or which are not ordinarily held in stock by the Supplier, and/or which must be ordered specially by the Supplier in order to meet its obligations under the Contract; "Order Confirmation" means a written confirmation of an order issued by the Supplier in accordance with Condition 3.4; "Product Warranty" means the Supplier's warranty for Goods (as the same may be amended by the Supplier from time to time), as published on the Supplier's Website or available from the Supplier on request; "Sample" means, in relation to a sale by sample, the sample provided by the Supplier, subject to any tolerances or other variations reflected in any specifications or guidance notes supplied by the Supplier in relation to the sample, which the Supplier confirms is applicable to the Contract in the Order Confirmation; "Services" means the services provided by the Supplier including the specification of Goods for the Customer, designing Systems and/or preparing and/or providing layout drawings for Systems and/or the Goods, remote and onsite support, and such other services as the Supplier may offer and/or agree to supply; "Specifications" means the specifications for the relevant Goods as set out in the latest publication of the Supplier's Catalogue at the time such Goods are ordered, or, in the case of custom-made Goods or Non-Stock Goods, the specifications for the same which an authorised signatory of the Supplier has confirmed are the final specifications for the Goods, or, in the absence of any such specification, the specifications that the Supplier may, acting reasonably, determine to be appropriate from time to time; "Supplier" means SUNFIXINGS Limited of 42 Queens Road, Coventry, CV1 3DX United Kingdom and its successors and assigns; "Supplier's Catalogue" means the Supplier's products and/or services catalogues, as published by Supplier from time to time including any catalogue on the Supplier's Website; "Supplier's Website" means www.sunfixings.co.uk or any successor website; "System" means a solar fastening system designed by the Supplier or for which layout drawings have otherwise been prepared or provided by the Supplier; "System Warranty" means the Supplier's warranty for Systems and/or for Contracts for the sale and/or supply of Goods and Services (as the same may be amended by the Supplier from time to time), as published on the Supplier's Website or available from the Supplier on request; "Working Day" means any of Monday to Friday inclusive in any week but excluding statutory public holidays.
- 2.2 In these Conditions: headings are for convenience only and shall not affect their interpretation; references to a "person" include any individual, company, corporation, firm, partnership, association, organisation, institution, trust or agency, whether or not having a separate legal personality; words in the singular shall include the plural and vice versa as the context admits or requires; any reference to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as time to time amended, consolidated, modified, extended, re-enacted or replaced; and the word "including" shall, unless the context otherwise requires, mean "including without limitation".

### 3. Quotes and Orders

- 3.1 Any quotes issued by the Supplier are valid for 30 days from the date of the quote, unless otherwise specified by the Supplier, but are not binding until an order is accepted by the Supplier in accordance with Condition 3.4.
- 3.2 Each order and/or request for Goods and/or Services made by the Customer shall be deemed to be an offer by the Customer to purchase the Goods and/or Services specified in the order on the terms and conditions set out in these Conditions.
- 3.3 Each order and/or request for Goods and/or Services shall be accompanied by a Checklist fully and accurately completed by the Customer. To the extent not contained in the completed Checklist, the Customer shall also provide: i) full and accurate information as to the location and intended use of the Goods and/or the System which it proposes to purchase, ii) full and accurate information as to all such additional matters as would reasonably be considered relevant to the design, supply, installation, use and/or maintenance of the said Goods and/or System, iii) full and accurate information as to any unusual delivery and/or access requirements, and material constraints that may be imposed upon delivery of any Goods supplied under the Contract, and contact details for the site manager (or equivalent) at the Customer's premises or other applicable delivery location, and iv) any purchase order number (further provided that the issue of a purchase order shall be a matter entirely for the Customer, and failure to issue a purchase order and/or to supply a purchase order number shall not affect or otherwise reduce or exclude to any extent whatever the Customer's obligations and/or liability under any Contract).
- 3.4 An order is not binding on the Supplier until it is accepted by the Supplier issuing the Order Confirmation or (if earlier) by the Supplier commencing manufacture of the Goods or samples, and/or apportioning the Goods to the Customer's order, and/or ordering custom-made Goods or Non-Stock Goods, and/or commencing the performance and/or supply of Services, and/or dispatching the Goods to the Customer.
- 3.5 Once accepted, an order may only be cancelled, varied or suspended by the Customer with the express prior written agreement of the Supplier (such agreement in the absolute discretion of the Supplier). Without prejudice to the foregoing, a charge of 15% of the total order value will ordinarily be made in the event that the Supplier agrees to cancellation more than 24 hours after issue of the Order Confirmation (further provided, however, that it is very unlikely the Supplier will agree to the cancellation, variation or suspension of any order for custom-made or Non-Stock Goods). For the avoidance of doubt, in the event that the Supplier does not agree to the cancellation, variation or suspension of any order for Goods and/or Services, the Customer will be required to perform its obligations including payment of the price stated in the Order Confirmation.
- 3.6 The quantity and type of Goods and/or the Services ordered shall be as set out in the order form or, if different, on the Order Confirmation. The Customer shall be responsible for the accuracy of any order made by it, and for checking the accuracy of any Order Confirmation. In the event that the Customer does not notify a discrepancy or other inaccuracy in the Order Confirmation within 48 hours, the Customer shall be deemed to have waived all rights to raise (and shall not raise) any claim, objection or complaint in relation thereto.

### 4. Descriptions, Samples and Literature

- 4.1 All drawings, specifications and advertising issued by the Supplier and any descriptions, details or illustrations contained in any Supplier's Catalogue are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them and will not be relied on by the Customer or form part of the Contract except as may otherwise be expressly provided herein.
- 4.2 Any typographical, clerical or other error or omission in any Supplier's Catalogue, quote, price list, acceptance of offer, Order Confirmation, label, packaging, invoice or other document or information issued by the Supplier may be corrected by the Supplier, without liability to the Customer, at any time either by correcting any such matter in public or by publishing the correction on the Supplier's Website or by notifying the Customer in writing and such correction shall be binding upon Customer forthwith.
- 4.3 Except as otherwise required by law, the Contract shall not be: (a) a sale by sample (even if samples have been provided) unless the Supplier expressly states on the Order Confirmation that the Contract is to be a sale by sample; or (b) a sale by description even if a description has been provided.

### 5. Specifications

- 5.1 The Supplier shall be entitled to make any changes to any Specifications from time to time as it may determine in its absolute discretion.



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- 5.2 In respect of any specifications supplied to the Supplier by or on behalf of the Customer or variations to Specifications made at the request of the Customer (the "Relevant Specifications"), the Customer warrants, represents and undertakes that the Relevant Specifications (i) fully and accurately reflect the Customer's requirements for the Goods to be made and/or supplied pursuant to and/or for Services to be supplied in connection with the Relevant Specifications, (ii) are complete and fit for the purpose of the Supplier producing and/or supplying Goods complying with the Relevant Specifications and will result in Goods which are fit for the Customer's purpose, (iii) will not infringe the Intellectual Property Rights of any third parties and the Supplier, its Group and agents are entitled to use any Intellectual Property Rights comprised in the Relevant Specifications (or in tooling used in connection with the manufacture of the same) or in any product or process described in the Relevant Specifications for the purposes of manufacturing the Goods and/or performing and/or supplying the Services, (iv) will comply with all applicable laws and regulations. Further, the Supplier shall not be responsible for ensuring that any Goods and/or Services comply with any applicable statutory or European Community safety or other requirements if the Relevant Specifications for or in relation to such Goods and/or Services have been provided by, or developed or varied pursuant to a request of, Customer.
- 5.3 Except as otherwise expressly provided in the Contract or agreed in writing between the Supplier and the Customer, the Supplier shall own all of the Intellectual Property Rights created by the Supplier, its Group or agents in the course of the performance of the Contract or otherwise in connection with the manufacture of Goods or the tooling used in connection with the same and/or the supply of Services.
- 6. Price**
- 6.1 The price of the Goods and/or Services shall be the price specified in the applicable quote or, in the absence of an applicable quote, the price set out in the Supplier's price list in force as at the time the order is accepted, or such price as may otherwise be notified by the Supplier (the "Price"). Save where otherwise notified by the Supplier (whether in the quote or otherwise) or agreed by the parties, packaging materials are included in the Price and non-returnable (with the exception, however, that Euro-pallets are to be returned at the Customer's cost or exchanged on the next delivery and, in default thereof, the cost of a replacement will be charged to and due from the Customer). The Price reflects the limitations on liability set out in these Conditions but, if requested by the Customer, the Supplier will advise the Customer of the additional costs which would apply if the Supplier agrees to any variations to such limitations on liability.
- 6.2 Delivery charges and/or costs for the supply of the Goods will be invoiced to and payable by and the Customer. For the avoidance of doubt, this will include additional charges to meet any particular requirements of the Customer (if such requirements are agreed by the Supplier) including, for example, timed or weekend deliveries, or the provision of offloading facilities. Details of all such charges and/or costs are available from the Supplier on request.
- 6.3 Notwithstanding Condition 6.2 and unless otherwise notified by the Supplier, no delivery charge will apply to a delivery of Goods with a value equal to or exceeding £5000 (exclusive of VAT) where such delivery is to be made to a single location in the United Kingdom on such day and/or at such time as the Supplier may in its reasonable discretion agree or otherwise determine. This is conditional on there being no special or unusual delivery and/or access requirements (for example, timed delivery), or any material constraints on delivery; in the event that additional delivery costs arise by reason of the foregoing, these will be invoiced to and payable by the Customer.
- 6.4 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the Price to reflect any increase in the cost to the Supplier of supplying any Goods and/or Services which is due to (i) any factor beyond the reasonable control of the Supplier, (ii) any increase in the cost of labour or materials including any storage costs if the Goods are not collected or delivered in accordance with the Contract, (iii) any transport surcharges or additional costs which may be imposed by the transport company and/or carrier in respect of delivery (including, but not limited to, any fuel surcharge) of the Goods, (iv) any variation requested by the Customer to delivery dates, quantities, Specifications or the scope of the Supplier's instructions, (v) any delay or additional work or materials caused by any instructions, neglect or default of the Customer, or unexpected or unanticipated additional costs arising with regard to the manufacture and/or supply of custom-made Goods and/or Non-Stock Goods and/or (vi) any failure of the Customer to procure the supply to the Supplier of adequate and timely information, instructions, specifications or, if applicable, tooling.
- 6.5 The Price is exclusive of any applicable value added tax or other taxes or duties and of all costs and charges in relation to loading, unloading, carriage and insurance or similar costs, which (if any) shall be paid in addition by the Customer at the time it is due to pay for the Goods and/or Services. Where carriage or other costs to be borne by the Customer are initially paid by the Supplier, the Supplier shall be entitled to render an invoice forthwith in respect of such costs.
- 7. Payment**
- 7.1 The Supplier shall at its discretion be entitled to invoice the Customer for payment of the Price and/or any other amounts payable by the Customer in advance.
- 7.2 The Supplier shall be entitled to (i) offer and withdraw credit accounts at any time, and/or (ii) request references and make credit reference searches in relation to the Customer.
- 7.3 Save as otherwise expressly provided herein or required by the Supplier, payment of any Supplier's invoice is due (without deduction, discount, abatement or set-off) within 30 days of the date of the invoice, notwithstanding that delivery may not have taken place or that property in the Goods has not passed to Customer or that Services have not been supplied whether in whole or part. Unless otherwise expressly agreed by the Supplier, payment shall be made in the same currency as the Price. The time of payment of sums due from the Customer shall be of the essence of these Conditions. No payment will be deemed received until received by the Supplier in cash or cleared funds. Interest will be payable on overdue amounts at the rate of 6% percent per annum above the HSBC Bank Plc base rate from time to time (compounded monthly).
- 7.4 If any sums are not paid on or before the due date for payment, interest will accrue on the amount unpaid until payment in full is made (both before and after any judgment).
- 7.5 If the Customer fails to make any payment when due pursuant to these Conditions and/or pursuant to any other contract between the Customer and the Supplier in accordance with its terms then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to (i) terminate the Contract or any other contract between the Customer and the Supplier, (ii) deduct outstanding sums from any sums owed by the Supplier to the Customer under the Contract or otherwise, (iii) require the Customer to pay any costs of storage of the Goods and any tooling, (iv) suspend any further deliveries to the Customer under the Contract or any other contract until paid, (v) treat the Contract as repudiated and terminated, (vi) resell any Goods not yet delivered to the Customer, and/or (vii) retain any sums paid as deposit for the Goods and/or Services.
- 8. Delivery**
- 8.1 Unless otherwise agreed in writing, Goods will be sent to the Customer by a carrier service chosen by the Supplier, acting reasonably. Delivery of the Goods to the Customer shall be effected by the Supplier delivering them to the carrier or by collection by the carrier. Thereafter, transport of such Goods shall be subject to the carrier's conditions which shall be notified to the Customer, if requested. The Supplier may deliver early. The Supplier shall be under no obligation under section 32(2) of the Sale of Goods Act 1979 nor be required to give notice under section 32(3) of the Sale of Goods Act 1979.
- 8.2 Where it is agreed in writing that the Goods shall be delivered by a method other than that referred to in Condition 8.1 then delivery shall be effected (i) where the Goods are to be collected by the Customer from Supplier's premises, by the Supplier notifying the Customer that the Goods are ready for collection, (ii) where the Goods are delivered by the Supplier, by the Supplier delivering the Goods to the address nominated by the Customer for delivery, or (iii) where the Goods are to be transported by a third party, by collection by or delivery to that third party of the Goods.
- 8.3 The Supplier will endeavour to meet any reasonable requirements concerning the location, or time or date, of delivery provided these are notified by the Customer when making its order and agreed by the Supplier.
- 8.4 Orders must be received by the Supplier before 1 pm for next Working Day delivery (further provided that such delivery is subject to confirmation by the Supplier and, otherwise, to the provisions of this Condition 8).
- 8.5 Notwithstanding the provisions of Conditions 8.3 and 8.4, any periods of time or dates quoted or otherwise notified to the Customer for delivery of the Goods are approximate only. Time for delivery shall not be of the essence. The Supplier shall not be liable for any delay in delivery of the Goods.
- 8.6 The Supplier shall not be responsible for any Losses incurred or suffered by the Customer as a result of a failure to deliver the Goods or for short delivery unless the Customer has informed Supplier in writing within four Working Days from the estimated date of delivery in relation to a failure to deliver or within two Working Days from the actual date of delivery in relation to a short delivery, and the Supplier then fails to remedy the same within 10 Working Days thereafter. Where the Supplier is responsible as aforesaid, it may (in its absolute discretion) replace the Goods or refund the Customer. The Supplier's liability shall not exceed in any event exceed an amount equal to the Price applicable to the relevant Goods. For the avoidance of doubt, if the Customer fails to inform the Supplier within the period provided above, the Supplier shall be under no obligation to supply Goods save against a further Order.
- 8.7 Any damage to the Goods shall be notified to the Supplier within two Working Days of delivery. Upon notification, the Supplier shall be entitled to inspect the Goods (and, as may be necessary, arrange inspection by an expert), and shall notify the Customer of its determination within 14 days. If the Supplier determines (acting reasonably) that the



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- damage was present when the Goods were delivered to or upon collection by the carrier, the Supplier may (in its absolute discretion) replace the Goods or refund the Customer. The Supplier's liability shall not exceed in any event exceed an amount equal to the Price applicable to the relevant Goods. Save in the event of notification by the Customer within the time allowed above and of the Supplier's determination as aforesaid, the Customer shall be responsible for any damage to the Goods, and the Supplier shall not be responsible for any Losses incurred or suffered by the Customer as a result thereof.
- 8.8 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate obligation and neither any failure by the Supplier to deliver nor any claim in respect of any one or more instalments by the Customer shall entitle the Customer to treat the Contract as a whole as repudiated.
- 8.9 Where the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions in advance of the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's neglect or default) then the Goods shall be deemed to have been delivered at the time stated for delivery and, without prejudice to any other right or remedy available to the Supplier, the Supplier may (i) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage, if applicable but without any obligation on Supplier to procure insurance, and/or (ii) where the Customer has failed to take delivery of the Goods within five Working Days from the intended day for delivery, sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) invoice the Customer for any shortfall below the Price.
- 8.10 With the exception of custom-made Goods or Non-Stock Goods (or as may otherwise be notified by the Supplier in its quote), the Customer may inform the Supplier within 7 days of the delivery of Goods that the same are no longer required. In this event, and provided that they are returned in the same condition as that in which they were supplied, the Customer may return the relevant Goods to the Supplier. The Supplier shall be responsible for all packaging and delivery costs, and for ensuring that the Goods are delivered to the Supplier on a date (being a Working Day) and at a time reasonably convenient to the Supplier. A restocking charge amounting to 25% of total value shall be due to the Supplier in respect of all Goods so returned. As to the remaining 75% of the total value of such Goods, a credit shall be applied by the Supplier against other and/or future orders from the Customer (as the Supplier may reasonably determine) and no payment shall be due in respect thereof from the Supplier. Custom-made Goods or Non-Stock Goods may not in any circumstances be returned other than with the prior agreement of the Supplier.
- 9. Risk and Property in the Goods**
- 9.1 The Goods supplied by the Supplier shall be at the Customer's risk immediately on and after delivery and so the Customer should arrange appropriate insurance from that point.
- 9.2 Title (legal and beneficial) in all Goods supplied or sold by the Supplier shall be retained by the Supplier until the Supplier has received in either cash or cleared funds all sums due in respect of the Goods and on any account whatsoever from the Customer to the Supplier.
- 9.3 Until such time as the property in the Goods passes to the Customer, the Customer must (i) hold such Goods (on a fiduciary basis for and on behalf of the Supplier) as the Supplier's bailee and act in good faith to protect the Supplier's interests in the Goods, (ii) store such Goods (at no cost to the Supplier) separately from all other goods of the Customer in such a way that such Goods remain identifiable as property of the Supplier and shall not mix them with any other goods, (iii) not pledge or allow any lien, charge, or other interest to arise over the Goods or their documents of title, (iv) not destroy or deface any identifying marks on such Goods or relevant packaging and maintain such Goods in satisfactory condition, and (v) keep such Goods insured on the Supplier's behalf and in the event of any claim hold the proceeds of such insurance on trust for the Supplier.
- 9.4 The Supplier shall be entitled at any time to require the Customer to deliver up any Goods to the Supplier prior to property in the Goods passing to the Customer. The Customer grants the Supplier and its agents an irrevocable licence at any time to enter any premises where such Goods are stored to inspect or, if the Customer has failed to deliver up possession when requested by the Supplier, to repossess such Goods.
- 10. Quality**
- 10.1 In respect of a Contract only for the sale and/or supply of Goods, the Customer shall receive the Product Warranty from the Supplier for the Goods sold and/or supplied thereunder. In respect of a Contract for the sale and/or supply of Goods and Services or otherwise of the sale and/or supply of a System, the Customer shall receive the System Warranty from the Supplier for the Goods and Services sold and/or supplied thereunder. By entering into the Contract, the Customer agrees to the terms and conditions of the Product Warranty or, as applicable, System Warranty, and otherwise to comply fully with the same.
- 10.2 In respect of a Contract only for the supply of Services, the Supplier warrants to the Customer that such Services shall be provided with reasonable care and skill.
- 10.3 In addition, the Supplier shall, upon request, transfer to the Customer the benefit of any manufacturer's and/or supplier's express warranties of fitness and performance of the Goods. This obligation shall only apply to the extent that the benefit thereof can be transferred to the Customer (and the Customer shall indemnify the Supplier in respect of any and all costs, liabilities and/or expenses arising in connection with such transfer and/or the enforcement of such warranties).
- 10.4 Subject to the provisions of Condition 10.9, the warranties and/or obligations contained in Conditions 10.1 to 10.3 inclusive shall be the sole and complete extent of the Supplier's liability, obligation and/or responsibility arising out of and/or in connection with the sale and/or supply of Goods and/or Services.
- 10.5 The Customer shall comply with all reasonable instructions of Supplier in relation to any product hold or product recall campaign organised in respect of the Goods or any other corrective action reasonably taken by or on behalf of Supplier in respect of the Goods after delivery.
- 10.6 Unless otherwise expressly provided in these Conditions all implied warranties, terms and conditions (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract to the fullest extent permitted by law and the Supplier will not be liable to the Customer for any loss of any kind whatsoever which arises out of the breach of implied warranties, terms or conditions, or breach of any duty of any kind imposed on the Supplier by operation of law.
- 10.7 Subject to Condition 10.9, under no circumstances whatsoever, howsoever arising (and whether as a result of any breach of its contractual obligations, breach of statutory duty, or as a result of any representation (unless fraudulent), or as a result of any statement or tortious act or omission, including negligence arising under or in respect of the Contract), shall the aggregate liability of the Supplier to the Customer under or in relation to the Contract in respect of any claim or claims exceed the total price invoiced by the Supplier to the Customer for the Goods and/or Services.
- 10.8 The Supplier shall not be liable to the Customer or any other party for any (a) indirect losses, (b) economic loss, (c) loss of profits or anticipated profits, (d) loss of expected future business, (e) damage to reputation or goodwill, nor (f) any claim for consequential compensation whatsoever (however caused), which arises in connection with the supply of Goods, tooling and/or Services by the Supplier, in each case whether direct or indirect or consequential and, whether such losses are suffered by the Customer or by any other party.
- 10.9 Nothing in these Conditions shall exclude or limit the Supplier's liability in respect of any claim (other than by the Customer for re-imbursment of sums paid to a third party) for death or personal injury caused by its negligence, or in respect of liability for defective Goods under the Consumer Protection Act 1987 or in respect of any liability which arises under any safety regulation made under the Consumer Protection Act 1987 or for fraudulent misrepresentation or for any other liability to the extent that it may not be so excluded or limited by law.
- 10.10 Without prejudice to any other provision of these Conditions, the Supplier will not be in breach of the terms of the Contract for any delay in performing, or failure to perform, its obligations under the Contract if that failure or delay was due to any cause or circumstance beyond the Supplier's reasonable control, which shall, without limiting the generality of the term, be deemed to include war or other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, break down or damage to machinery or equipment, fire, flood, acts of God, strike, lock-out or other industrial disputes (whether or not involving employees of the Supplier) or shortage of materials at the market rates existing when the Contract is made, legislative or administrative interference or was due to any failure, neglect or delay on the part of the Customer or its agents or representatives.
- 10.11 The Supplier reserves the right to defer the date of delivery and/or performance or to terminate the Contract or reduce the volume of the Goods ordered by the Customer and/or vary the Services to be supplied (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to the occurrence of an event referred to in Condition 10.10, provided that where the event in question continues for a continuous period in excess of 30 days either party shall be entitled to give notice in writing to the other to terminate the Contract with no liability due to or by either party (save in respect of Goods delivered and/or Services performed and/or supplied prior thereto or as otherwise provided herein).
- 10.12 The Customer acknowledges that the limitations of liability set out in these Conditions are reasonable and reflect the commercial intentions of the parties in the context of the anticipated earnings of the Supplier under the Contract and any other contracts and the ability of the Customer to protect itself through insurance. If the Customer wishes the Supplier to accept any liability or give any warranty other than as provided herein, it must notify the Supplier accordingly, requesting a separate written quotation and providing such information as the Supplier may require before any order is placed and/or Contract is made. The Supplier may in such circumstances be willing to vary



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the limitations on liability or to give a specific warranty in relation to specific Goods and/or Services subject to the Customer bearing the additional costs and agreeing to such terms as are notified to it by the Supplier.

to be the act or omission of the Supplier and shall be subject to the exclusions or limitations on liability set out in these Conditions. The Customer shall not transfer, assign or sub-contract any of its rights or obligations under the Contract without the Supplier's prior written consent and in any event shall remain responsible for the performance of the Contract by any transferee, assign or sub-contractor.

### 11. Termination

- 11.1 Without affecting any other rights and remedies it may have, the Supplier may withhold performance of its obligations and/or terminate the Contract forthwith if (i) the Customer breaches any terms of any contract with the Supplier, (ii) the Customer makes any composition or voluntary arrangement with its creditors or any step, application, order, proceeding or appointment is made or taken by or in respect of the Customer (including, without limitation, the making of an application or the giving of any notice) by the Customer or any other person for a distress, execution, winding up, dissolution, or to appoint an administrator of the Customer or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), (iii) there is a material deterioration in the financial and/or credit standing of the Customer, (iv) a person holding an interest in, or otherwise benefitting from an encumbrance, takes possession, or a receiver (administrative or otherwise) is appointed, of any of the property or assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business, (v) expense and/or difficulty unforeseen by the Supplier arises in connection with the manufacture and/or supply of custom-made Goods and/or Non-Stock Goods which cannot be resolved by agreement between the Customer and the Supplier, and/or (vi) the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.12 Where the Supplier terminates the Contract in accordance with Conditions 7.5 or 11.1, or as otherwise allowed hereunder, then, without prejudice to any other right or remedy available to the Supplier: (i) the Supplier shall be entitled to terminate any other contract or suspend any further deliveries under the Contract or any other contract, (ii) where the Goods have been delivered, but not paid for, the Customer's right to possession shall terminate and the Supplier may dispose or use any of the Goods as it wishes, and (iii) the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 11.3 Termination of the Contract, for whatever reason, shall not affect any of its provisions which are intended to continue to have effect after it has come to an end, including conditions 9, 10, 11, 12 and 14.

### 12. Indemnity

- 12.1 Without prejudice to the Supplier's other rights and remedies, the Customer shall indemnify and keep indemnified the Supplier, its Group and their employees and agents on demand in full against any Losses incurred or suffered as a result of (i) cancellation, variation or suspension of an order by the Customer, (ii) any claim brought by any third party in respect of Losses, injury or damage caused by the Goods and/or by reason of or otherwise in consequence of the Services and/or by any Goods which, following delivery, have been subjected to any use other than the authorised use for such Goods (being the use for which such Goods are commonly supplied or a use otherwise stated in the Supplier's Catalogue) or modified or repaired by a person other than the Supplier, (iii) the use of Relevant Specifications or of tooling supplied by or on behalf of the Customer, (iv) any breach of Condition 5.2 and any claims by any third party in relation to any infringement or alleged infringement of any of its Intellectual Property Rights as a result of the use, possession or supply of any custom-made Product or any specifications and/or tooling supplied by or on behalf of or Specifications modified at the request of Customer, and (v) any termination pursuant to Conditions 7.5 or 11.1.

### 13. Export Terms

- 13.1 Where the Goods and/or Services are supplied for export from the United Kingdom, the provisions of Condition 13 shall (subject to any special terms agreed in writing between the Customer and the Supplier) apply and shall prevail to the extent of any conflict with any other terms and conditions set out in these Conditions.
- 13.2 The Customer shall be responsible for complying with any legislation, sanctions, export controls, embargoes or regulations applying to the Goods and/or Services in the country of destination, and/or governing the export from the United Kingdom of the Goods or any product incorporating the Goods and/or Services (including, if necessary, satisfying Customs and Excise that value added tax is not payable on the Price) and/or the importation of the Goods and/or Services into the country of destination and for the payment of any applicable import or export duties or taxes thereon. The Customer shall be responsible for notifying the Supplier of any obligations which the Supplier is obliged to comply with pursuant to any such legislation or regulations and for bearing or reimbursing to Supplier any associated costs.

### 14. Miscellaneous

- 14.1 The Supplier may perform any of its obligations or exercise any of its rights hereunder by itself or through its subcontractors or agents or any member of its Group. Any act or omission of any such subcontractor or agent or member of its Group shall be deemed

- 14.2 Any notice shall be in writing including by fax (provided a copy is also sent by post), addressed to the other party at, in the case of the Supplier, its address given above and, in the case of the Customer, its registered address or such other address as may at the relevant time have been notified to the Supplier. Hand delivered notices shall take effect immediately, postal notices, two working days after posting by first class post and, if transmitted by fax, at the date and time sent.
- 14.3 No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. Failure by the Supplier to enforce any term of the Contract shall not be waiver of the Supplier's rights.
- 14.4 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.
- 14.5 The Contract contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) in respect of the Goods sold and/or Services supplied thereunder (save that neither party seeks to exclude liability for fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied).
- 14.6 The Contract shall be governed by the laws of England and Wales. Any dispute shall be referred to the exclusive jurisdiction of the English Courts save that the Supplier shall retain the right to bring proceedings against the Customer in any other court.
- 14.7 Save in respect of the rights, indemnities or warranties expressly stated to be given in favour of the Group, or the Supplier's agents, all of which shall accrue directly for their benefit, the parties to the Contract do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it. No such person shall have any rights relating to any extension, waiver and/or amendment to the Contract including but not limited to, any rights to approve any extension, waiver and/or amendment to the Contract.