

Effective from 1 July 2018

STANDARD TERMS & CONDITIONS FOR SALE OF GOODS ROOFING AND CLADDING MATERIALS LIMITED

IMPORTANT NOTICE: your attention is drawn in particular to Condition 16

1. General

- 1.1. In this document:
 - 1.1.1. "Account" an account in the name of the Buyer with the Company
 - 1.1.2. "Buyer" means the person who buys or agrees to buy Goods from the Company
 - 1.1.3. "Company" means Roofing and Cladding Materials Ltd (company number 05155573)
 - 1.1.4. "Conditions" means the terms set out in this document which are the Company's standard conditions of sale as may be varied, amended or restated from time to time in accordance with Condition 29
 - 1.1.5. "Contract" any contract between the Buyer and the Company for the sale or supply of Goods from time to time
 - 1.1.6. "Defective" means not in compliance with Condition 13.1 or otherwise not in accordance with the Contract.
 - 1.1.7. "Force Majeure Event" means an event or circumstance beyond the Company's reasonable control
 - 1.1.8. "Goods" means the goods which the Buyer buys or agrees to buy from the Company from time to time
 - 1.1.9. "Net Price" means the price paid for the Goods by the Buyer less VAT and any other charges or sums paid by the Buyer when purchasing the Goods including, without limitation, the costs and expenses of delivery.
 - 1.1.10. "Specification" means any specification for the Goods (including any related plans and drawings) that is agreed in writing by the Company and the Buyer.
- 1.2. The opening of an Account by the Buyer with the Company does not constitute a commitment on the part of the Company to supply Goods to the Buyer but does signify the Buyer's acceptance of these Conditions. The Company will only agree to enter into a Contract with a Buyer who has an Account with the Company.
- 1.3. These Conditions shall be deemed to be incorporated into all or any Contracts from time to time entered into between the Company and the Buyer which provide in whole or in part for the sale of any Goods by the Company to the Buyer and any services provided by the Company to the Buyer and shall govern the supply of Goods by the Company to the Buyer and the Company to the exclusion all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document (whether or not the Buyer's standard terms or conditions purport to prevail over these Conditions).
- 1.4. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in any Contract.
- 1.5. These Conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by the Company.
- 1.6. No drawings, descriptive matter, weights, dimensions or shipping specifications issued by the Company nor the descriptions and illustrations contained in the Company's or any manufacturer's or supplier's catalogues, price lists or other promotional material will form part of the Contract nor be regarded as a warranty or representation relating to the Goods.

2. Variations

No variation of the Conditions shall be effective unless agreed in writing by a Director or the Company Secretary of the Company and (for the avoidance of doubt) no representative of the Company other than a Director or the Company Secretary shall have authority to agree any such variation on behalf of the Company.

3. Quotations

- 3.1. Quotations by the Company are not offers capable of immediate acceptance by the Buyer but are invitations to treat only. All drawings, technical details and particulars of weights and dimensions submitted with the quotations are approximate only. No property shall pass to the Buyer in the documents forming or accompanying a quotation or in any of the material contained therein. If no order based on the quotation is accepted by the Company, the Buyer shall return to the Company all documents and other materials concerned free of charge to the Company on request.
- 3.2. Each order or acceptance of a quotation by the Buyer shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 3.3. All information in and relating to the quotation shall be confidential and shall not be passed without the written permission of the Company to any third party and shall be disclosed only to those employees of the Buyer to whom such disclosure is reasonably necessary. Unless and until an order based on the quotation

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is accepted by the Company the Buyer shall make no use in its business of the information contained therein except for purposes of determining whether to place an order. The Company shall be free to accept or refuse an order for any reason whatsoever.

4. Orders

Orders only become binding on the Company by its submitting to the Buyer confirmation of order in writing by the Company's authorised representative or submitting an invoice. Expressions used by the Buyer such as "previously supplied" or expressions to the similar effect shall be understood to refer only to the quality and not the previous price.

5. Price

5.1. The prices or charges specified in any quotation are related to the Company's cost of manufacturing, obtaining and paying for Goods, parts of materials prevailing at the date thereof. In the event of there being an increase in such costs caused by any reason, including increases attributable to alterations in tax or duty or in the exchange rates of any currency, the Company shall be entitled to vary its prices or charges from those quoted whether or not such increase was or should have been foreseen by the Company at the date of the quotation.

5.2. All prices quoted exclude VAT and any costs of freight and insurance for deliveries outside UK mainland unless otherwise specified, and all such sums shall be payable in addition to the prices quoted. The VAT rate applicable shall be the rate prevailing on the date of invoicing.

6. Packing

Delivery is made only in the product containers held in stock at the time the order is processed. All prices quoted include packing material unless otherwise specified. Where packing is expressly stated to be in returnable containers or the cost of packaging materials is separately invoiced, the Buyer shall be credited with the full value of those materials as invoiced to it, provided that they are returned carriage free or without any charges to the Company and, in the opinion of the Company, in a satisfactory condition to the despatch points from which they were supplied unless otherwise specified in the Company's price list, quotation, delivery note or invoice. For packaging materials on loan, the conditions as mentioned in the Company's prevailing price list and or quotation shall apply.

7. Time and Place of Delivery

7.1. Delivery shall take place at the Company's place of business unless otherwise agreed in writing. Where the Company has agreed to deliver Goods pursuant to any order to the Buyer the Company shall be entitled to deliver such Goods on any weekday during normal working hours after the period for delivery has commenced.

7.2. Delivery is completed on the completion of unloading of the Goods at the place of delivery as determined in accordance with Condition 7.1 above.

8. Period of Delivery

8.1. Where a quotation indicates a specific delivery period for any Goods, the period shall be understood to run from the date of confirmation of the relevant Order. Any such periods as may be contained in a quotation are nevertheless estimates only which shall not be of the essence of the Contract. In the event of the Company, for any reason whatsoever, not being ready to make delivery within the period specified it shall not be liable for any loss or damage whatsoever sustained by the Buyer as a result of such delay.

8.2. Without prejudice to the foregoing, in the event of the Company not being ready to make delivery at the time specified (or if none be specified within a reasonable time) the Buyer shall thereupon be entitled to give one month's notice in writing calling for delivery and in the event of the Company remaining unable to make delivery within such a period, the Buyer may, at the expiry thereof, by a further notice in writing cancel the Contract in relation to all undelivered Goods. The Buyer shall have no other rights whatsoever in relation to any failure by the Company as aforesaid and it will be a condition precedent to the Buyer's right to cancel that he shall first have paid all sums due in respect of Goods already delivered under the Contract.

8.3. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery or the Company is unable to deliver the Goods because the Buyer has not provided sufficient instructions, documents, licences or authorisations:

8.3.1. risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence) notwithstanding the provisions in Condition 12;

8.3.2. the Goods shall be deemed to have been delivered; and

8.3.3. the Company may store the Goods until the Buyer accepts delivery and the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

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9. Storage

If the Buyer gives the Company not less than seven days notice, the Company is prepared to store Goods. The Company reserves the right to make storage charges for such Goods. If the Buyer has not arranged for removal of the Goods after 28 days storage the Company shall be entitled to give one month's notice to the Buyer that it intends to dispose of the Goods and unless, within that one month, the Buyer removes the Goods from storage the Company shall be entitled to sell all or any portion of such Goods and without prejudice to the provisions of Condition 19 to set off against the proceeds of sale, the costs of sale, storage charges incurred by the Buyer and any other monies due from the Buyer to the Company. The provisions of this Condition shall apply irrespective of whether the property in the Goods shall have passed to the Buyer. Removal of Goods to storage on behalf of the Buyer under this Condition shall be deemed to be a delivery to the Buyer. The Buyer shall be liable to pay the full price pursuant to Condition 14 for any Goods so stored by the Company.

10. Despatch

The method of transport of the Goods shall be at the sole discretion of the Company. Any necessary unloading facilities or equipment shall be provided at the Buyers expense at the time the Company is ready to make delivery.

11. Quantities

The Company shall be entitled to deliver the Goods in a single delivery or by instalments as it sees fit. The Buyer shall not be entitled to reject any consignment of Goods delivered by the Company on the grounds that the quantity of Goods delivered is too small or too large. In the event of short delivery then, subject to the Buyer giving written notification of short delivery, any liability of the Company shall be limited to delivering the balance of undelivered goods or give the Buyer credit for the shortfall. Where the Goods are delivered in instalments and the Buyer shall for any reason have the right to reject any instalment which has been delivered, he shall not by reason thereof have the right to treat the whole agreement of sale as repudiated. All weights or volumes are ascertained at the time of the filling of the containers used and all invoices are calculated thereon. Notwithstanding the foregoing, the quantity of consignment of Goods delivered shall be as recorded by the Company upon delivery from the Company's place of business and such quantity shall be conclusive evidence of the quantity received by the Buyer unless the Buyer can provide conclusive evidence to the contrary.

12. Insurance and Risk

12.1. Unless otherwise agreed in writing between the parties but subject as hereinafter provided, the risk of loss or damage to the Goods shall pass to the Buyer upon delivery or deemed delivery to the Buyer and the Buyer will insure accordingly.

12.2. For the avoidance of doubt, in the case of Goods to be collected by the Buyer or by a carrier engaged by the Buyer, all risk of loss or damage howsoever caused shall pass to the Buyer upon the Company notifying the Buyer in writing that the Goods are ready or available for delivery and the Company shall not be liable for any loss or damage to the Goods in transit or otherwise pursuant to this Condition 12.

13. Quality

13.1. The Company warrants that on delivery, the Goods shall:

13.1.1. conform in all material respects with their description and any applicable Specification;

13.1.2. be free from material defects in design, material and workmanship

13.2. Except as provided in this Condition 13, the Company shall have no liability to the Buyer in respect of the Good's failure to comply with Condition 13.1.

13.3. In the event that the Company is not the manufacturer of the Goods, the Company shall provide to the Buyer upon request a copy of the warranties provided to the Company by the manufacturer of the Goods (**Warranties**) and shall use its reasonable endeavours to transfer to the Buyer the benefit of the Warranties. Where the Company is able to transfer the Warranties to the Buyer then the Company shall have no further liability to the Buyer in respect of the Goods (other than as to title).

13.4. The Buyer relies on his own skill and judgement as to the sufficiency, capacity and performance of the Goods and as to the suitability of the Goods for any purposes for which the same are required by the Buyer.

13.5. The Buyer shall, before using the Goods or any part thereof and before parting with possession of the same, take all reasonable steps to test and examine the same to satisfy itself that the Goods are of the contractual quality and description and are suitable for the purpose for which they are intended to be used.

13.6. Any claim by the Buyer that the Goods are Defective must be notified to the Company in writing

13.6.1. in the case of any defect other than a defect within the scope of Condition 13.7.2 below within seven days of delivery;

13.6.2. in the case of any defect which could not have been reasonably detected by the Buyer by inspection upon delivery, within seven days of the day on which the defect comes to the Buyer's attention but not later than 24 months from delivery of the Goods

and the Company shall be under no liability whatever in respect of any such defect unless such written notice has been duly given by the Buyer to the Company and in the time specified.

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- 13.7. The Buyer shall provide the Company with a reasonable opportunity of examining the Goods. The Buyer shall, if asked to do so by the Company, return such Goods to the Company's place of business at the Buyer's cost.
- 13.8. The Company shall not be liable for the failure of any Goods to comply with the warranty set out in Condition 13.1 in any of the following events:
- 13.8.1. the Buyer makes any further use of such Goods after giving notice in accordance with Condition 13.7;
 - 13.8.2. the defect arises because the Buyer failed to follow the Company's oral or written instructions or recommendations as to the storage, transportation, commissioning, installation, use and maintenance of the Goods (including instructions and recommendations in any installation guide or maintenance guide provided in any form, including on the Company's web site) or (if there are none) good trade practice regarding the same;
 - 13.8.3. the defect arises as a result of the Company following any drawing, design or Specification supplied by the Buyer;
 - 13.8.4. the Buyer alters or repairs such Goods without the written consent of the Company;
 - 13.8.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 13.8.6. the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 13.9. Subject to this Condition 13, and the Buyer's compliance with Conditions 13.4 to 13.9 (inclusive), if the Buyer establishes that the Goods are Defective, the Company shall in respect of such non-accordance or defects at the Company's option:-
- 13.9.1. repair the Defective Goods;
 - 13.9.2. replace the Defective Goods on an exchange basis;
 - 13.9.3. accept the return of the Defective Goods and allow the Buyer credit for the price thereof; or
 - 13.9.4. make the Buyer an allowance against the price of the Defective Goods in their condition as delivered and the Contract price
- and such repair, replacement, credit or allowance shall be in full and final settlement of any claims that the Goods are Defective.
- 13.10. Subject to Condition 16.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded. For the avoidance of doubt, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.11. The Company shall not be liable for any losses which arise as a result of an act, omission, breach or otherwise of a party not being the Company.
- 13.12. These Conditions shall apply to any repaired or replacement Good supplied by the Company.

14. Payment

- 14.1. All prices and charges are strictly net and payment shall be made without any discount or other reduction unless otherwise agreed in writing by the Company. Save as is provided by Section 53 of the Sale of Goods Act 1979, the Buyer shall not be entitled to set off against the price of the Goods any debt or cross claim or alleged debt or cross claim of whatever nature claimed or made by the Buyer against the Company.
- 14.2. Payments, unless otherwise agreed, shall be made thirty days following the date of the Company's invoice. In the case of delivery by instalments, payment, unless otherwise agreed, shall be made thirty days following the day of the Company's invoice for the relevant instalments. Time for payment shall be of the essence in these Conditions. Where payment for Goods is made by instalments, VAT shall be payable within seven days of issue to the Buyer of the relevant tax invoice. This Condition is subject to and governed by the terms of Condition 14.5 below.
- 14.3. Cheques, money and postal orders should be crossed and made payable to Roofing and Cladding Materials Limited.
- 14.4. The Company may at its discretion require at any time that all or part of the purchase price and other charges be paid in advance or on account and the sums so demanded shall be immediately payable by the Buyer, the balance remaining payable as otherwise provided hereunder and the Company may decline to make delivery of the Goods except upon such payment or upon receipt of other security satisfactory to the Company.
- 14.5. Should the Buyer default in payment for whatever reason on the due date of any sum, without prejudice to any other right which the Company may have:
- 14.5.1. the Company shall be entitled to interest under and all other charges payable pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (as amended); and
 - 14.5.2. the Company shall be entitled to suspend delivery of any further Goods under any contract with the Buyer.
- 14.6. The Buyer must pay to the Company on demand and on an indemnity basis all such legal costs or expenses which the Company may reasonably incur from time to time in connection with:
- 14.6.1. enforcing the payment of any sum due to it under the Contract; or
 - 14.6.2. successfully defending a claim brought by the Buyer relating to the Contract.

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- 14.7. All payments made by the Buyer shall be credited towards the oldest invoice due and its ancillary charges. Prepayments by cheque or Giro shall be deemed to have been made when the amount is at the Company's disposal unconditionally, payment by bill of exchange when the bill has been cashed. Any bank charges incurred are to be paid by the Buyer. The Company reserves the right to refuse bills of exchange.

15. Reservation of Title

- 15.1. Notwithstanding that risk in the Goods has already passed (in accordance with Condition 12) the ownership of the Goods shall not pass to the Buyer until the earlier of:
- 15.1.1. the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 15.1.2. the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in Condition 15.5.
- 15.2. The Buyer shall hold the Goods as bailee for the Company until title has passed to the Buyer and:-
- 15.2.1. Shall refrain from encumbering them in any way
 - 15.2.2. Shall store them separately from any other goods on the Buyer's premises
 - 15.2.3. Shall clearly mark the Goods as the Company's property
 - 15.2.4. Shall insure the Goods.
- 15.3. The Company may at any time after a default has been made by the Buyer of any payment by the due date and without prejudice to any other rights or remedies available to it, require the Buyer by written notice to place at the Company's disposal any Goods to which title has been reserved. For the purpose of the Company taking re-possession, the Company may enter upon any premises where the Buyer has stored the Company's Goods or the Company reasonably believes the Goods to be stored in order to repossess the Goods. The Buyer shall pay to the Company the cost of removal and transport of the Goods or any part thereof.
- 15.4. The Buyer will be at liberty to incorporate the Goods or part thereof into another product or chattel but if, immediately prior to such incorporation, property in the Goods has not passed to the Buyer, then subject to the rights of any third party, the product or chattel into which the Goods or part thereof is incorporated shall be and remain the absolute property of the Company unless and until full payment for the Goods and for all other Goods supplied by the Company to the Buyer has been received by the Company whereupon property in the said product or chattel shall pass from the Company to the Buyer. The rights and obligations of the Company and the Buyer in relation to the Goods under Condition 15 of these Conditions shall apply to the said product or chattel, mutatis mutandis.
- 15.5. Subject to Conditions 15.7 and 15.8 below, the Buyer may, notwithstanding that property in the Goods has not passed to the Buyer under Condition 15.1, sell the goods in the ordinary course of its business to a sub-buyer, and upon such sale property in the Goods shall pass from the Company to the sub-buyer.
- 15.6. The Buyer shall not attempt or purport to pledge or transfer the Goods in any way as security to any third party until property therein has passed to the Buyer in accordance with the conditions hereof.
- 15.7. If the Buyer has a receiver or administrator appointed over all or any of its assets or if any of a petition is presented, order made or a resolution is passed in the case of a corporation, to wind it up or, in the case of an individual, for such individual's bankruptcy or in any case for any composition or arrangement with the Buyer's creditors then and in any such event the Buyer shall be deemed to have repudiated the agreement of sale and the Company shall be deemed to have accepted such repudiation and the Company's permission to the Buyer to sell the Goods shall thereupon terminate automatically.
- 15.8. Any sale by the Buyer permitted by Condition 15.5 shall as between the Buyer and the sub-buyer be made by the Buyer as principal and not as agent but as between the Company and the Buyer the Buyer shall be deemed to sell as the fiduciary agent of the Company and shall account to the Company for the proceeds of sale up to the amount owing to the Company for the Goods and any other Goods supplied by the Company to the Buyer, and pending such accounting, shall hold the proceeds of sale in a separate account unmingled with other monies.

16. Liability

- 16.1. Nothing in these Conditions shall exclude or restrict the Company's liability:
- 16.1.1. for death or personal injury caused by negligence on the part of the Company, its servants or agents; or
 - 16.1.2. any breach of the obligations implied by section 12 of the Sale of Goods Act 1979; or
 - 16.1.3. under Section 2 of the Supply of Goods and Services Act 1982; or
 - 16.1.4. for any matters which pursuant to Section 7 of the Consumer Protection Act 1987 cannot be limited.
- 16.2. The Company shall not be liable to the Buyer whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the contract for any:
- 16.2.1. loss of profit;
 - 16.2.2. loss of business;
 - 16.2.3. loss of sales or business;
 - 16.2.4. loss of agreements or contracts;
 - 16.2.5. loss of anticipated savings;

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- 16.2.6. loss of use or corruption of software, data or information;
 - 16.2.7. loss of damage to goodwill;
 - 16.2.8. indirect or consequential losses, or any claims for consequential compensation whatsoever (howsoever caused).
- 16.3. Without prejudice to any other limit, the Company's total liability to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the contract shall be limited as follows:
- 16.3.1. in respect of a claim for Defective Goods where the Defective Goods have not been fitted to a building, the Net Price for the Defective Goods;
 - 16.3.2. in respect of a claim for Defective Goods where the Defective Goods have been fitted to a building:
 - (a) the Net Price paid to the Company for the Defective Goods; and
 - (b) the reasonable direct cost incurred by the Buyer of removing any fitted Defective Goods and fitting replacement goods (but excluding the cost of those replacement goods) subject to a limit equal to 50 per cent of the Net Price paid for the Defective Goods by the Buyer
 - 16.3.3. in respect of any other claim, the Net Price paid to the Company for the Goods.
- If the Buyer believes that the limits set out in this Condition may be too low then the Buyer must arrange its own insurance cover. The Company may agree to accept a greater level of liability only if it expressly does so in writing and if such increased liability is covered by an additional insurance policy taken out by the Company at the Buyer's expense.
- 16.4. The Buyer shall indemnify the Company against any third-party claim of whatever nature (including a claim for negligence) made against the Company which arises directly or indirectly out of the use made or resale of the Goods or of any product or property incorporating any of the Goods.

17. Sub-Contracting

The Company shall be entitled to sub-contract or assign all or any of its obligations under any agreement with the Buyer, including without limitation, these Conditions. The Buyer shall not be entitled to sub-contract or assign its obligations under any agreement with the Company, including, without limitation, these conditions, without the prior written consent of the Company.

18. Force Majeure

The Company shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 4 weeks, the Buyer may terminate the Contract by giving 2 weeks written notice to the Company.

19. Lien

Without prejudice to any other right which the Company may have, the Company shall be entitled to exercise a general lien or right of retention of all goods in the Company's possession, which are, or are intended to become, the Buyer's property in regard to all debts, damages or other sums due to the Company under any contract whatsoever between the Company and the Buyer and in the event of the insolvency of the Buyer, and pursuant to such lien or right, the Company shall be entitled without notice to the Buyer to sell all or any portion of such goods and to set off against the proceeds of sale the costs of sale and all debts, damages and other monies due from the Buyer to the Company.

20. Waiver and rights of the Company

- 20.1. No time or other indulgence granted by the Company to the Buyer shall operate or be deemed to operate as a waiver or suspension of the Company's rights under these Conditions.
- 20.2. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 20.3. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract or any other Contract.
- 20.4. Without prejudice to any other right or remedy, the Company may at any time and from time to time:
 - 20.4.1. suspend the delivery or provision of Goods and performance of any of its other obligations under any Contract until payment has been made in full of all sums due to it whether under this Contract or any other agreement with the Company (without thereby incurring any liability for any non-performance of this agreement or for any loss, claim, demand, expense, charge, fine or penalty incurred or suffered by the Buyer directly or indirectly arising out of or in connection with any suspension in accordance with this Condition); and/or
 - 20.4.2. set off any liability of the Company to the Buyer against any liability of the Buyer to the Company.

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21. Customs, Duties etc.

Without prejudice to Condition 5, all customs or other duties or taxes whatsoever which may be levied on the Goods in any territory shall be borne by the Buyer, provided always that the Company shall be entitled (but shall be under no obligation) to pass to the Buyer the benefit of any arrangements made with Authorities for the release of the Goods under bond in which event the Buyer shall indemnify the Company in respect of its costs and expenses thereof and in regard to all other payments which may fall due including any penalties, fines or forfeiture incurred in connection therewith.

22. Trade Marks

The Buyer undertakes to respect all trade marks of the Company and in particular where there is such a trademark or trade marks on the Goods it undertakes:

- 22.1. not to alter remove or obliterate such trade marks either partly or wholly;
- 22.2. not to apply any other trade mark to the Goods
- 22.3. not to apply to the Goods any other matter in writing that is likely to injure the reputation of the trade mark.

23. Notices

Any communications or notices under the Contract between the Company and the Buyer may be made or given by sending the same by ordinary prepaid first class post, in the case of the Buyer to his last known address, and in the case of the Company, to its registered office and if so sent shall be deemed to have been made or given on the second working day after the date on which it was posted.

24. Third Party Rights

The Company and the Buyer do not intend that these Conditions or any part of them shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to them.

25. Proper Law and Jurisdiction

These Conditions and all agreements between the Company and the Buyer shall be governed by English Law and subject to the exclusive jurisdiction of the English Courts.

26. Assignment

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

27. Severability

- 27.1. If any provision of these Conditions is held by any court or competent authority to be invalid, unenforceable or illegal in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 27.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Buyer and the Company.

28. Entire agreement

- 28.1. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 28.2. The Buyer agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. The Buyer agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

29. Changes to these Conditions

The Company may from time to time vary or amend these Conditions and will following such change notify all Buyers who hold an Account with the Company by providing a copy of such varied or amended Conditions. Any Contract entered into prior to the date of such variation or amendment shall be governed by the Conditions in force at the date on which such Contract was entered into. Notwithstanding that, the parties agree that any Contract entered into following notification by the Company of such changed Conditions shall be governed by the Conditions

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Effective from 1 July 2018

as varied or amended. For the avoidance of doubt such notification shall be deemed given under and in accordance with Condition 23.

30. Termination

- 30.1. Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- 30.1.1. the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days;
 - 30.1.2. the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 30.1.3. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 30.1.4. the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 30.2. Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in clause 30.1.1 to clause 30.1.4, or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 30.3. Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 30.4. On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 30.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 30.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

31. Data Protection

The Company will only use personal information in accordance with its privacy policy from time to time, a copy of which is available from the Company on request.

32. Dispute Resolution Procedure

- 32.1. If a dispute arises out of or in connection with the Contract or these Conditions or the performance, validity or enforceability of the Contract or these Conditions (**Dispute**), then, except as expressly provided in these Conditions, the parties shall follow the procedure set out in this clause:
- 32.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Finance Director of the Company and the Finance Director of the Buyer shall attempt in good faith to resolve the Dispute;
 - 32.1.2. if the Finance Director of the Company and the Finance Director of the Buyer are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the CEO of the Company and the CEO of the Buyer who shall attempt in good faith to resolve it; and
 - 32.1.3. if the CEO of the Company and the CEO of the Buyer are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 28 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 28 days after the date of the ADR notice.
- 32.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 25, which clause shall apply at all times.
- 32.3. If the Dispute is not resolved within 56 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 56 day period, or the mediation terminates before the expiry of that 56 day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 25.

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