

# NUAIRE CONDITIONS OF SALE

These terms form part of a contract. You should particularly note the provisions on limiting liability (Condition 15).

## INTERPRETATION

In these Conditions the following definitions apply:

<b>"Buyer"</b>	means the person or firm whose details are set out in the Order Acknowledgement;
<b>"Conditions"</b>	means these terms and conditions and "Condition" shall be construed accordingly;
<b>"Contract"</b>	means a contract for the sale and purchase of the Goods or Services (or both) on these Conditions;
<b>"Delivery"</b>	has the meaning ascribed to it in Condition 8.1 in respect of Goods delivered in the UK and Condition 19 (Export Terms) in respect of Goods delivered outside the UK;
<b>"Force Majeure Event"</b>	means circumstances beyond the reasonable control of the affected party, including, without limitation, lock-outs, strikes or labour disputes (whether or not relating to either party's workforce), adverse weather conditions including snow or flood, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, pandemic, epidemic, civil war, insurrection, restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, increase in duties taxes import or export fees;
<b>"Goods"</b>	means the goods (or any part of them) specified in the Order Acknowledgement;
<b>"Incoterms"</b>	means the rules governing the terms of trade published by the International Chamber of Commerce in force at the date when the Contract is made;
<b>"Information"</b>	means any specifications, instructions, drawings, data sheets, calculations, samples or other information supplied by the Buyer;
<b>"Instalment Contract"</b>	a Contract where the Goods are to be manufactured or delivered (or both) in instalments;
<b>"Instalment Order"</b>	means the agreed order under an Instalment Contract for the manufacture and/or delivery (or both) of part of the volume of Goods;
<b>"Intellectual Property Rights"</b>	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and the main names rights and designs, rights in computer software, topography rights, moral rights, rights in confidential information (including knowhow and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
<b>"Normal Working Hours"</b>	means the hours of 09.00 to 17.30 hours Monday to Friday apart from Bank Holidays and other public holidays;
<b>"Order"</b>	means an order from a Buyer for which an Order Acknowledgement has been issued (and is thus the subject of a contract);
<b>"Order Acknowledgement"</b>	means the written acknowledgement issued by the Seller accepting the order of the Buyer subject to these Conditions;
<b>"Price"</b>	means the price for the Goods or Services (or both) as identified in the Order Acknowledgement;
<b>"Quote"</b>	means a written quote issued by the Seller in relation to the Goods or Services (or both);
<b>"Seller"</b>	means Nuair, a trading division of Polypipe Limited and a company registered with number 1099323 whose registered office is at 4 Victoria Place, Holbeck, Leeds, LS11 5AE, United Kingdom;
<b>"Services"</b>	means the design or other services relating to the Goods as specified in the Order Acknowledgement;
<b>"Specification"</b>	the description or specification (or both) for the Goods or Services (or both) agreed in writing by the parties;
<b>"Standard Delivery"</b>	means a single delivery per Order or Instalment Order during Normal Working Hours using a Standard Vehicle;
<b>"Standard Vehicle"</b>	means an articulated curtain-sided vehicle; and
<b>"Working Days"</b>	means any day from Monday to Friday (inclusive) except Bank Holidays or other public holidays.

## 1 BASIS OF SALE

- 1.1 Any order sent to the Seller by the Buyer shall be accepted entirely at the discretion of the Seller, and if so accepted will only be accepted upon these Conditions and by the means of the Seller issuing its Order Acknowledgement. An Order Acknowledgement may be issued subject to the provisions of Condition 5 (Drawing Approval). If the Order Acknowledgement is subject to the approval of any drawing in accordance with Condition 5, the Order Acknowledgement will indicate this.
- 1.2 The Contract (which shall be in writing) constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by (or on behalf of) the Seller which is not set out in the Contract.
- 1.3 These Conditions apply to the Contract to the exclusion of any given terms that the Buyer seeks to impose or incorporate, or which may be implied by trade, custom, practice or course of dealing.
- 1.4 If performance of the Contract requires any government licence or permit, then performance of the Seller's obligations in the Contract shall be conditional upon such licence or permit being available and these shall be at the Buyer's expense.
- 1.5 Any Quote shall not constitute an offer and is valid for a period of 30 days from its date of issue unless withdrawn before then.

## 2 CANCELLATION OF ORDERS AND INSTALMENT ORDERS

- 2.1 If the Buyer cancels an Order or Instalment Order or fails to take delivery of the Goods that comprise an Order or Instalment Order, it shall indemnify the Seller in full against all costs (including labour and materials) and expenses incurred by the Seller in the execution or anticipated execution of an Order or Instalment Order.
- 2.2 Except in the case of a Force Majeure Event (where Condition 20 will apply), if the Seller suspends or delays the manufacture or delivery of any Goods relating to an Order or an Instalment Order for longer than 60 days, the Buyer may (without prejudice to its other rights) terminate the Contract in accordance with Condition 16.1.2 as being a material breach of the Contract.

## 3 DESCRIPTION AND SPECIFICATION OF GOODS

- 3.1 All samples, drawings, descriptions, specifications, and advertising in respect of Goods are issued to give an approximate idea of the Goods only. They shall not form part of the Contract, and this is not a sale by sample.
- 3.2 The Seller reserves the right to change all samples, drawings, descriptions, specifications, and advertising of the Goods from time to time.
- 3.3 The Goods shall be in accordance with the Specification in all material respects.

## 4 DESIGN AND SUITABILITY OF GOODS

- 4.1 The Goods chosen have been selected by the Seller on the basis of the information supplied by the Buyer. The use of and reference to, drawings, data sheets, specifications, calculations, samples, or other information provided to the Seller by the Buyer or any nominated third party, shall not relieve the Buyer of its liabilities with regard to ensuring the accuracy, integrity, suitability and general fitness for purpose of this information and its subsequent use.
- 4.2 It is the responsibility of the Buyer to seek approval from the appropriate authorities, regulatory bodies, client or authorised client representative for the proposed design concept and ventilation strategy prior to placing their order. The Buyer shall ensure the selected Goods and design are fit for purpose and meet all regulatory, legislative, and specified requirements for the proposed application.
- 4.3 The Buyer shall be deemed to have satisfied itself as to the suitability of the design, performance characteristics and materials to meet local conditions, building requirements or any other factors which may in any way affect the operation of the Goods supplied.
- 4.4 The Buyer warrants and undertakes that all design information provided by the Buyer is accurate at the time of the parties agreeing the Specification. Any alterations or deviations in the Buyer's requirements shall be notified in writing to, and approved by, the Seller prior to purchase or installation (whichever occurs first) and a revised specification shall be issued by the Seller.
- 4.5 Unless expressly set out in the Contract any condition, warranty, statement or undertaking as to the quality of the Goods or their fitness or suitability for any purpose however or whenever expressed or which may be implied by statute, custom of the trade or otherwise is hereby excluded, except to the extent such exclusion is prevented by law.
- 4.6 Without prejudice to Condition 4.5, no statement or undertaking contained in any national standard, national addition of a European standard, ISO standard, or other standard or technical specification as to the suitability of the Goods for any purpose shall give rise to any legal liability of the Seller, except to the extent such exclusion is prevented by law.
- 4.7 The Seller accepts no responsibility for the accuracy of Information.
- 4.8 The Buyer shall indemnify and keep indemnified the Seller (and its employees and agents) fully from and against any and all actions, claims, costs, losses, damages, demands, expenses, proceedings, charges and other liabilities arising, suffered or incurred in respect of:
  - 4.8.1 Any error in or omission from Information;
  - 4.8.2 Any threats, claims or allegations that any Information or the use thereof infringes any Intellectual Property or other rights of any third party;
  - 4.8.3 Any threats, claims or allegations that any Information or the use thereof breaches the provisions of any statute, statutory instrument or regulation or other law of any applicable country or territory; and
  - 4.8.4 The use of reliance upon any Information by the Seller including, without limit, any claim made against the Seller by any third party as a result thereof.

## 5 DRAWING APPROVAL

- 5.1 The Seller shall endeavour to issue design drawings to the Buyer to enable the Buyer to approve them as soon as possible. The parties acknowledge that on occasion it may not be reasonably possible for the Seller to issue the design drawings prior to the issue of the Order Acknowledgement.
- 5.2 If an Order Acknowledgement is issued before any design drawings are approved by the Buyer, its issue will constitute an acceptance of the order from the Buyer once the Buyer approves the Seller's design drawings in writing. In these circumstances the Buyer agrees there is a separate collateral contract with the Seller that imposes an obligation on the Buyer to use its reasonable efforts to approve the relevant design drawings as soon as reasonably possible (the consideration for which is the issue of the design drawings by the Seller).

## 6 PRICE

- 6.1 The Price excludes value added tax ("VAT") unless the Order Acknowledgement explicitly provides otherwise.
- 6.2 The Seller may, by giving written notice to the Buyer at any time after a period of 90 Calendar Days after the Order Acknowledgement increase the Price of the relevant Good(s) and/or Service(s) to reflect any increase in the cost to the Seller of supplying the relevant Goods and/or performing the relevant Services. The Price increase will only apply to Deliveries and/or Services provided 30 days from written notices. If the Seller provides written notice to the Buyer of a Price increase, then the Buyer has the right to cancel the Purchase Order by giving written notice within 5 Working Days of receipt of the Seller's notice.
- 6.3 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services (or both) at the same time as payment is due for the supply of the Goods or Services (or both).
- 6.4 Save in respect of Goods being exported outside the UK where Condition 19 (Export Terms) applies and unless the parties agree otherwise in writing, the Price includes the cost of Standard Delivery only and any delivery requirements in addition to this shall incur an additional charge.

## 7 TERMS OF PAYMENT

- 7.1 The Seller shall invoice the Buyer on or after Delivery.
- 7.2 Save in respect of Goods being exported outside the UK where Condition 19 (Export Terms) applies and subject to Condition 7.6, the Buyer shall pay each invoice within 30 days of the date of invoice.
- 7.3 The Buyer shall pay each invoice in full and in cleared funds to the bank account nominated in writing by the Seller.
- 7.4 If the Buyer fails to pay any invoice in accordance with the terms of Condition 7.2 the Seller may without prejudice to its other rights or remedies:
  - 7.4.1 Terminate the Contract or suspend further deliveries to the Buyer of Goods; and/or
  - 7.4.2 Charge interest on the unpaid amount at the rate specified under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.5 If the Buyer fails to take delivery, or fails to give the Seller adequate delivery instructions, the Seller may invoice for the Goods and any redelivery or storage costs incurred.
- 7.6 The Seller reserves the right at any time to request payment in advance in cleared funds to be made to the Seller prior to delivery of the Goods (or part thereof).

## 8 DELIVERY AND INSPECTION

- 8.1 Delivery shall be made by the Seller delivering the Goods to the UK mainland address specified in the Order Acknowledgement (or as the parties agree in writing) and shall be deemed to be effected when the Goods are removed from the delivery vehicle ("Delivery"). The Buyer shall be responsible for offloading the Goods from the delivery vehicle.
- 8.2 The Seller shall allow one standard delivery per Order or Instalment Order; phased or multiple deliveries will incur additional delivery charges unless otherwise agreed in writing by the Seller.
- 8.3 The Seller shall allow one hour standing/unloading time for each delivery vehicle after which standing/unloading time will be charged at the hourly rate applicable per vehicle for each whole hour or part hour thereafter.
- 8.4 The Buyer may postpone a delivery by giving 5 Working Days written notice to the Seller.
- 8.5 If the Buyer postpones a pre-arranged delivery other than in accordance with Clause 8.4, the Seller shall be entitled to charge the Buyer for the full costs of the cancelled vehicle and charge an additional fee for the re-delivery of the Goods.
- 8.6 All deliveries exclude the hire of hoists, cranes, site placement, commissioning and setting to work.
- 8.7 The Buyer shall at its own cost and in a timely manner, obtain all statutory or regulatory consents, approvals, permits or licences required to facilitate delivery and offloading, including unrestricted site access or street closures and shall arrange relevant safety equipment, banksmen or other personnel as necessary to enable the seller to comply with its obligations of delivering the Goods.
- 8.8 The Seller shall use reasonable efforts to deliver the Goods by the specified time. Time for delivery is not of the essence. If the Supplier is late for reasons other than due to reasons of a Force Majeure Event, the Buyer is entitled to liquidated damages at the rate of 2% of the price of those Goods which are in delay for each full week of delay or part thereof, subject to a maximum of 20% of the Price of those Goods in delay.
- 8.9 The signing of a delivery note is deemed to be acceptance of the Goods with regard to the arrival and number of items delivered.
- 8.10 The Buyer shall be deemed to have accepted the Goods and that the Goods comply with the Contract unless in the case of a defect in the quality or state of the Goods or the Goods otherwise not complying with the Specification, which defect or non-compliance was apparent upon a careful inspection or reasonable testing of the Goods (or would have been had a careful inspection or reasonable test been carried out, the Buyer gives the Seller a notice specifying such defect or non-compliance within 2 Working Days after Delivery and in any event prior to their use, and after doing so, gives the Seller a reasonable opportunity to inspect or test the Goods before they are used. Such notification shall not discharge the Buyer's liability for storing and maintaining the Goods until such time as they can be inspected by the Seller.
- 8.11 If the Buyer fails to take delivery of any Goods (except where such failure is caused by a Force Majeure Event or by the failure of the Seller to comply with its obligations under the Contract in respect of the Goods) or to give the Seller adequate delivery instructions which results in the Goods being returned to the Seller, the Seller may, without prejudice to its other rights or remedies, issue an invoice for any redelivery charge or issue an invoice for that part of the Price relating to those Goods and store those Goods until the actual delivery date, charge the Buyer reasonable costs for storage, (including insurance and re-delivery) or any of these as appropriate.
- 8.12 If the Seller is storing any Goods in accordance with Condition 8.11 it may request in writing that the Buyer take delivery of those Goods within 30 days of the date of that request. If after that time the Buyer has not accepted or taken delivery of them the Seller may re-sell or otherwise dispose of all or part of those Goods, and after deducting reasonable storage and selling costs, account to the Buyer for any excess over the Price of the Goods.
- 8.13 The Buyer may only return Goods to the Seller after Delivery with the prior written agreement of the Seller and any return is at the Seller's sole discretion. All Goods shall be returned at the Buyer's risk and expense and will be subject to inspection and testing. A re-stocking charge based on a percentage of the Price (or part thereof) that relates to the Goods to be returned will be invoiced to the Buyer for any returned Goods accepted by the Seller.
- 8.14 All packaging is non-fire retardant and recyclable but not returnable unless by prior agreement within mainland UK and returned packaging will be subject to collection charges.

## 9 OBLIGATIONS OF THE BUYER

- 9.1 The Buyer shall:
  - 9.1.1 Ensure that the terms of any order or specification submitted by it are complete and accurate;
  - 9.1.2 Co-operate with the Seller in all matters relating to the Goods or Services (or both); and
  - 9.1.3 Provide the Seller, its employees, agents, consultants, and sub-contractors with access to any premises of the Buyer, office accommodation and other facilities as are reasonably required by the Seller to undertake the Seller's obligations under the Contract.

## 10 NON-DELIVERY & DAMAGE

- 10.1 The quantity of any consignment as recorded by the Seller upon despatch shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide reasonable conclusive evidence to the contrary.
- 10.2 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the failure of the Buyer to provide the Seller with adequate delivery instructions for the Goods or any relevant instructions related to the supply of the Goods.

## 11 RISK AND PROPERTY

- 11.1 Risk in the Goods shall pass to the Buyer on Delivery.
- 11.2 Notwithstanding delivery and the passing of risk, property in and title to the Goods shall remain with the Seller until the Seller has received payment of the full Price of (a) all Goods and/or Services that are the subject of the Contract and (b) all other Goods and/or services supplied by the Seller to the Buyer under any other contract. Payment of the full Price shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between the Seller and the Buyer.
- 11.3 Subject to Condition 11.4 until title to the Goods has passed to the Buyer, the Buyer shall:
  - 11.3.1 Hold the Goods on a fiduciary basis as a bailee on behalf of the Seller;
  - 11.3.2 Not remove, deface or obscure any identifying mark on or relating to the Goods;
  - 11.3.3 Maintain the Goods in good condition and keep them insured against all risks for their full Price on behalf of the Seller from the date of Delivery;
  - 11.3.4 Store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the property of the Seller;
  - 11.3.5 Notify the Seller immediately if it becomes subject to any of the events listed in Conditions 16.1.4 to 16.1.11 (Termination); and
  - 11.3.6 Give the Seller such information relating to the Goods as the Seller may require from time to time.
- 11.4 The Buyer may resell the Goods in the ordinary course of its business and the Buyer shall hold any such part of the proceeds of sale as represents the amount owed by the Buyer to the Seller in trust on behalf of the Seller and the Buyer shall account to the Seller accordingly;
- 11.5 If before title of the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in Condition 16.1.4 to 16.1.11 (Termination) or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into a structure and become annexed to the land, and without limiting any right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them. The rights of the Seller under this Condition are without prejudice to any other rights it may have against the Buyer.
- 11.6 The Buyer acknowledges and agrees that the Seller shall be entitled to recover from the Buyer payment for any Goods notwithstanding that title to them has not passed from the Seller.

## 12 SUPPLY OF SERVICES

- 12.1 The Seller shall provide the Services to the Buyer in accordance with the Specification in all material respects.
- 12.2 The Seller shall provide the Services using reasonable care and skill.
- 12.3 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services and the Seller shall notify the Buyer in any such event.

## 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Seller.
- 13.2 The Buyer acknowledges that, in respect of any third-party Intellectual Property Rights in the Services, the use of any such Intellectual Property Rights by the Buyer is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to licence such rights to the Buyer.
- 13.3 The Seller retains all Intellectual Property Rights in the Goods whether pre-existing or developed specifically for the purposes of the Contract. The Buyer shall be granted a royalty free, non-assignable, non-transferable licence to use the Intellectual Property Rights of the Seller for the purposes of operation or maintenance of the Goods.

## 14 QUALITY, TESTING AND WARRANTY

- 14.1 The Seller shall carry out testing on all Goods in accordance with its manufacturing and quality management processes. If the Buyer requires supplementary tests or witness testing, then the Seller shall be granted an extension of time to any timescales in the Contract to facilitate such tests and shall be entitled to recover any additional costs reasonably incurred.
- 14.2 Subject always to Condition and Condition 14.7, the Seller warrants that, upon Delivery and for a period of 12 months or, as otherwise specified in the Order Acknowledgement or other information available from the Seller's web site from time to time, ("the Warranty Period") the Goods shall:
  - 14.2.1 Conform to the Specification;
  - 14.2.2 Be within the tolerances allowed by relevant BSI and/or ISO standards; and
  - 14.2.3 Be free from material defects arising from faulty materials and workmanship.
- 14.3 The Seller shall not be liable for defects:
  - 14.3.1 Arising from fair wear and tear, wilful damage, negligence, abnormal conditions, failure to follow instructions, lack of maintenance, misuse or unauthorised alteration or repair.
  - 14.3.2 Arising from the Buyer's interpretation and application of the Seller's indicative technical data. For further clarification the Buyer should refer to the Seller's document known as "Nuairé Testing Standards and Application Guidance Notes document NA-QSW040-3" (or other product or technical information available from the Seller's web site) from time to time.
  - 14.3.3 Drawn to the attention of the Buyer before acceptance or which were (or ought to have been) discovered on inspection of the Goods by the Buyer before acceptance of the Goods.
- 14.4 Subject to Condition 15.2 the Seller's liability for breach of the warranty in Condition 14.2 shall be limited to repairing or (at its option) replacing the Goods so that they comply with the terms of the warranty set out in Condition 14.1.
- 14.5 The Seller shall not be liable for a breach of the warranty in Condition 14.2:
  - 14.5.1 Unless the Buyer gives the Seller written notice of the defect within 2 days of the time when the Buyer discovers, or ought to have discovered it;
  - 14.5.2 If the Buyer has breached any of its obligations in the Contract or as set out in the Seller's operating manual, the Seller's document known as the "Warranty Guidance Notes document NA-QS-W040-0" (or other product or technical information available from the Seller's web site) from time to time.
- 14.6 The Seller shall be given the opportunity of examining the Goods and the Buyer shall arrange for unencumbered access to the Goods at his expense to facilitate such inspection.
- 14.7 The liability of the Seller for defective Goods under the warranty contained in this Condition 14 is limited to, at the sole option of the Seller, repairing or replacing such Goods (or parts thereof) or crediting the account of the Buyer to the invoice value of such Goods (or part thereof) and the Buyer shall accept such of these remedies as the Seller shall offer as being in complete satisfaction of the obligations of the Seller under the warranty.
- 14.8 Any Goods which are repaired, or any replacement Goods issued by the Seller pursuant to its obligations under this Condition 14 shall be warranted on the terms of this Condition 14 for the unexpired period of the Warranty Period.

## 15 LIABILITY

- 15.1 These Conditions set out the entire liability of the Seller in respect of any negligence or breach of the Contract, any use made (or resale) by the Buyer of the Goods, or the provisions of the Services.
- 15.2 Nothing in these Conditions shall exclude or restrict the liability of the Seller for any matter in respect of which it would be illegal or unlawful for the Seller so to do including:
- 15.2.1 Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 15.2.2 Fraud or fraudulent misrepresentation;
- 15.2.3 Breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (Title and quiet possession);
- 15.2.4 Breach of the terms implied by Section 12 of the Sales of Goods Act 1979 (Title and quiet possession); or
- 15.2.5 Defective products under Section 2(3) of the Consumer Protection Act 1987
- 15.3 Subject to condition 15.2 the Seller shall not be liable in respect of any misrepresentation, breach of any implied or express warranty or condition, breach of any term or be otherwise liable in a contract, tort or otherwise for indirect or consequential loss, loss of revenue, loss of profits, loss of business, contracts or goodwill, loss of, damage to or loss of the use of any equipment or process or loss of operational time howsoever caused and of whatsoever nature suffered or incurred by the Buyer or any third party which arises out of or in connection with the provision of any Goods or Services or otherwise under the Contract.
- 15.4 Subject to condition 15.2 and condition 15.3 the Buyer accepts that the total liability of the Seller arising out of or in connection with the Contract shall in any event be limited to damages of an amount not exceeding the Price.
- 15.5 The Buyer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with the Contract and that the terms therefore have been calculated on the basis of the limitations and exclusions in this Condition 15 and the Buyer will effect such insurance as is suitable having regard to its particular circumstances in the terms of the Contract.
- 15.6 Subject to Condition 15.2 all warranties, conditions and other terms implied by statute or common law (including without limitation, as to the quality or fitness for any particular purpose of the Goods) are, to the fullest extent permitted by law, excluded from the Contract.

## 16 TERMINATION

- 16.1 A party shall be entitled to terminate the Contract with immediate effect by giving written notice to the other party if:
- 16.1.1 The other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- 16.1.2 The other party commits a material breach of its obligations under this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or
- 16.1.3 The other party commits a series of persistent minor breaches which when taken together amount to a material breach; or
- 16.1.4 The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 16.1.5 The other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 16.1.6 A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party); or
- 16.1.7 A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 16.1.8 An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- 16.1.9 A floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- 16.1.10 A person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- 16.1.11 Any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 16.1.4 to Condition 16.1.10 (inclusive); or
- 16.1.12 The other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- 16.1.13 There is a change of control of the other party (within the meaning of section 840 of the Income and Corporation Taxes Act 1988); or
- 16.1.14 Any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of three months.
- 16.2 Termination of the contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

## 17 OBLIGATIONS ON TERMINATION

- 17.1 On termination of the Contract each party shall promptly:
- 17.1.1 Return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the supply and purchase of the Goods or Services;
- 17.1.2 Return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- 17.1.3 Erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- 17.1.4 On request, certify in writing to the other party that it has complied with the requirements of this clause.

## 18 SURVIVAL OF OBLIGATIONS

- 18.1 On termination of the Contract this Condition and the following Conditions shall survive and continue in full force and effect:
- 18.1.1 Condition 7
- 18.1.2 Condition 8.7
- 18.1.3 Condition 9
- 18.1.4 Condition 11
- 18.1.5 Condition 13
- 18.1.6 Condition 14
- 18.1.7 Condition 15
- 18.1.8 Condition 17
- 18.1.9 Condition 20
- 18.1.10 Condition 21; and
- 18.1.11 Condition 22.

## 19 EXPORT TERMS

- 19.1 If Goods are to be delivered by the Seller outside the United Kingdom the provisions of this Condition 19 shall apply and the transport of Goods outside the United Kingdom will (subject to condition 19.4) be governed by the relevant Incoterms agreed by the parties.
- 19.2 Unless otherwise agreed between the parties, the Price shall be secured by an irrevocable letter of credit satisfactory to the Seller, established by the Buyer in favour of the Seller immediately upon receipt of the Order Acknowledgement by the Buyer or within the number of days agreed in writing by the parties from the date of the Order Acknowledgement, and confirmed by a bank acceptable to the Seller. The letter of credit shall be for the Price or value of the relevant Order or Instalment Order (together with any tax or duty payable) payable to the Seller and shall be valid for three months. The Seller shall be entitled to payment within the time-scale agreed between the parties in writing on presentation of the relevant Contract documentation to the Seller's nominated bank.
- 19.3 Unless otherwise agreed between the parties, the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon or licences in connection therewith.
- 19.4 Notwithstanding the terms of condition 19.1 the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

## 20 FORCE MAJEURE

- 20.1 Neither party shall be liable to the other for any delay or failure to perform its obligations under the Contract where the failure is due to a Force Majeure Event.
- 20.2 In such circumstances, the time for performance shall be extended by a period equivalent to the period during which the performance of the obligation has been delayed or failed to be performed due to the Force Majeure Event.
- 20.3 If the Force Majeure Event continues uninterrupted for 90 days, either party may give notice in writing to terminate the Contract. In the event of termination in accordance with this Condition 20, the Supplier shall be entitled to be paid all costs incurred prior to the date of termination.

## 21 GENERAL

- 21.1 The Contract may only be varied in writing with the prior written agreement of a Director of the Seller.
- 21.2 The Contract shall be governed by and interpreted in accordance with English law and the Seller and the Buyer both submit to the jurisdiction of courts of England and Wales.
- 21.3 The Buyer shall not assign any of its rights without the Seller's prior written consent.
- 21.4 Nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999.
- 21.5 Notices shall be in writing and addressed to a party at its registered office or principal place of business or such other notified address.
- 21.6 A failure by the Seller to act on a breach of the Contract by the Buyer shall not constitute a waiver of that breach or any other breach.
- 21.7 If a Condition is held by a competent authority to be invalid or unenforceable in whole or in part but would be valid and enforceable if part of it were deleted, that Condition shall be deemed to apply with such modifications as may be necessary to make it valid and enforceable, and any such modification shall not affect the validity of any other Condition and/or the Contract.

## 22 CONFIDENTIALITY

- 22.1 The parties shall treat as strictly confidential and not disclose to any third party (except as expressly agreed between them or as required by law or on a strictly confidential basis to their respective legal and insurance advisors and auditors) any information exchanged between them, if and to the extent that it is stated or known by them to be confidential, and shall use such information only for the purposes of the provision of Goods and services and each party shall ensure that its employees understand and abide by the confidentiality obligations under this agreement.