



Terms and Conditions of Sale

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following terms will have the following meanings:

Acknowledgement: means Company's written acceptance (including via email or via facsimilie) of an Order;

Agreement: means the contract for the supply of the Deliverables by the Company to the Buyer, comprising these Standard Terms and Conditions of Sale, the Special Terms, the Quotation, the Specification, the Acknowledgement and the Order, and any other documents expressly incorporated by reference;

Ancillary costs: Our charges for transport, packaging, insurance, VAT and other ancillary costs including those detailed in clause 7 below;

Background IP: in relation to each party, means any Intellectual Property Rights owned by that Party on the date of the Agreement or created or obtained by that party outside the terms of this Agreement and shall include any Intellectual Property Rights contributed by such party to the Specification;

Buyer: means the person, company, firm or organisation who places the Order;

Confidential Information: means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, knowhow, personnel and suppliers of a Party, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including commercially sensitive information;

Commercially Reasonable Efforts: means the taking of such steps and the performance of obligations in a manner that a Party would do if it were acting in a determined, prudent and reasonable manner in order to achieve the desired end result for its own benefit;

Company: means (as applicable) WH Darby Ltd with registration number 05337453 whose registered office is at 16 Well Street, Birmingham, B19 3BJ. Vaughtons is a division of WH Darby Ltd.

Deliverables: means the Goods and/ or Services to be supplied by the Company to



the Buyer;

Delivery Date: means:

- (a) the date when the Company places the Goods at the Buyer's disposal at the Delivery Point;
- (b) the date the Goods are delivered to the Buyer; or
- (c) the date when the Company has agreed to commence performance of the Services; as specified in the Acknowledgement or otherwise agreed between the Parties;

Delivery Point: means the city or port of load/discharge as specified in the Acknowledgement or otherwise agreed between the Parties;

EIR: means the Environmental Information Regulations 2004 (SI No 2004/3391) together with any guidance and/or codes of practice issued by the 'Information Commissioner' (as referred to therein) or relevant Government Department in relation to such regulations;

Goods: means the goods to be provided by the Company to the Buyer, as described in the Acknowledgement or as otherwise agreed between the Parties in writing;

Incoterms: reference to Incoterms herein shall be deemed to be a reference to the most recent version of the Incoterms published by the International Chamber of Commerce (ICC);

Order: means the Buyer's offer to purchase Goods and/or Services, as described in a Quotation, in the form which is expressly accepted by the Company;

Party: means either Company or Buyer and "**Parties**" means both Company and Buyer;

Price: the price for the Goods excluding Ancillary Costs.

Services: means the services to be provided by Company to the Buyer, as described in the Acknowledgement or otherwise agreed in writing between the Parties;

Standard Terms and Conditions of Sale: means clauses 1 to 20 (inclusive);

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.



2 APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Agreement shall be on these conditions to the exclusion of 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).

2.2 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 Agreement simply as a result of such document being referred to in the Agreement.

2.3 These conditions apply to all Deliverables and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Agreement. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written Acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer. The Acknowledgement shall be deemed to have been received by the Buyer if sent during normal working hours at the time of sending, or if sent outside of normal working hours at 9am on the first working day following the date of the email or facsimile.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any Quotation is given on the basis that no Agreement shall come into existence until the Company despatch an acknowledgement of order to the Buyer. Unless otherwise stated in the Quotation any Quotation is valid for a period of 14 days only from its date, provided that the Company has not previously withdrawn it. A Quotation or similar communication by the Company is not an offer to sell or supply goods or services unless it is in writing, described as an offer and signed on behalf of the Company.

2.8 Unless previously withdrawn or expressly stated otherwise in writing by the Company, all Quotations are subject to change at any time and the Company cannot confirm the Price until a purchase order has been placed by the Buyer. If the Price of the Goods and/or Service at the date of receipt of a purchase order is higher than the Price stated in the Quotation, the Company will, at its discretion, contact the Buyer for its instructions on whether the Buyer will agree to amend the purchase order to reflect the revised Price or not accept the Buyer's purchase order. If no adjustment to the Price set out in the Quotation is required, the purchase order shall be deemed capable of acceptance by the Company and, at its discretion, the Company may issue an Acknowledgement in respect of such purchase order.

2.9 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.10 Any typographical, clerical or other error or omission in any sales literature, quotation,



acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3 DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Quotation or Acknowledgement of order.

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

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company, or if the Goods are to be provided in accordance with a specification or any other document, data information or materials submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's information.

3.4 We reserve the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to our specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement of the Company in writing and on terms that the Buyer shall indemnify the Company in full against all loss (including without prejudice to the generality of the foregoing loss of profit), costs (including without prejudice to the generality of the foregoing the cost of all labour and materials ordered, whether used or un-used), damages, charges and expenses incurred by the Company as a result of the cancellation.

4 DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall be Incoterms EXW.

4.2 The Buyer shall take delivery of the Goods within seven (7) days of the Company giving it notice that the Goods are ready for delivery.

4.3 If, in accordance with clause 4.2, delivery of the Goods is Incoterm EXW or if, in accordance with the relevant Acknowledgement, delivery of the Goods is Incoterm FCA, and the Buyer does not collect the Goods within seven (7) days of the Delivery Date, Company shall be entitled to store the Goods at the Buyer's risk and expense.

4.4 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.5 Subject to the other provisions of these conditions the Company shall not be liable for



any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by negligence of the Company), nor shall any delay entitle the Buyer to terminate or rescind the Agreement.

4.6 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 on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.6.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

4.6.2 the Goods shall be deemed to have been delivered; and

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

4.7 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Agreement.

4.9 Each instalment shall be a separate Agreement and no cancellation or termination of any one Agreement relating to an instalment shall entitle the Buyer to repudiate or cancel any other Agreement or instalment.

5 NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the negligence of the Company) unless the Buyer gives written notice to the Company of the non-delivery within seven (7) days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata rate against any invoice raised for such Goods. In relation to a failure by the Company to perform the Services, the Company's liability shall be limited to the price incurred by the Buyer in obtaining replacement services of an equivalent or similar description and quality to the Services at the lowest price such replacement services are available in the market, less an amount equal to the Price for the Services, and in each case this shall constitute Company's sole liability and the Buyer's exclusive remedy for the Company's failure to deliver the Goods or perform the Services (as the case may be).

6 RISK/TITLE



6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

6.1.1 In accordance with the Incoterms, on the Delivery Date.

6.1.2 In the case of Goods to be delivered at the Company premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or

6.1.3 In the case of Goods to be delivered otherwise than at the Company premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company tendered delivery of the Goods.

6.1.4 In respect of deliveries made in accordance with clause 6.16.1.3 above and notwithstanding any other provision contained in these conditions, a transportation insurance policy shall be taken only at the Buyer's written request and at the Buyer's expense.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to the Company in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

6.2.3 Where the Buyer takes delivery of or pays for Goods in instalments, title to such Goods shall pass to the Buyer on the payment of the final instalment.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

6.3.1 hold the Goods on a fiduciary bailee for the Company;

6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Company property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

6.3.4 maintain the Goods in satisfactory condition and keep them insured on behalf of the Company for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce and provide evidence of the policy of insurance to Company.

6.4 If the Buyer sells or otherwise disposes of the Goods or makes any insurance claim in respect thereof, the proceeds of any such sale or any such insurance proceeds shall belong to Company and shall be held by the Buyer in trust for the Company.

6.5 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

6.5.1 any sale shall be effected in the ordinary course of the Buyer's business and pass goods title to its customers; and incorporate the Goods into, mix the Goods with, or attach the Goods to, other goods.

6.5.2 any such sale shall be a sale of Company property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.6 The Buyer's right to possession of the Goods shall terminate immediately if:

6.6.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or



enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

6.6.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

6.6.3 the Buyer encumbers or in any way charges any of the Goods.

6.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company

6.8 At any time prior to title passing to the Buyer, the Company shall be permitted, and the Buyer shall procure the right for the Company, its employees and representatives, to enter the Buyer's premises (or such other premises where the Goods are stored) and to remove such Goods.

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

6.10 On termination of the Agreement, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7 PRICE

7.1 The Price and the Ancillary Costs shall be that contained in the Quotation from the Company or in any current sales literature at the date of acceptance of the order. All Prices and Ancillary Costs quoted are valid for 14 days only or unless otherwise stated in the Quotation or until earlier acceptance by the Buyer, after which time they may be altered by the Company without giving notice to the Buyer.

7.2 We reserve the right, by giving notice to the Buyer at any time before delivery to increase the Price and/or the Ancillary Costs to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of taxes, levies or duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

7.3 Except as otherwise stated under the terms of any Quotation provided by the



Company, and unless otherwise agreed in writing between the Buyer and the Company, all Prices are given by the Company on an ex works basis, and where the Company agrees to deliver Goods otherwise than at the Companies premises, the Buyer shall be liable to pay the Ancillary Costs of the Company.

7.4 Unless expressed otherwise in the Agreement, all prices set out in the Agreement (“**Price**”): shall remain fixed; are payable in the currency specified in the Quotation; and are exclusive of Value Added Tax or other applicable sales taxes.

8 PAYMENT

8.1 Subject to condition 8.6, all payments due shall be paid by the Buyer within 30 days from the date of invoice. The Buyer shall pay Company interest on any overdue amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a daily basis until payment is made, after as well as before judgement.

8.2 The Company shall be entitled to require payment of part or all of the Price and Ancillary Costs prior to delivery.

8.3 Subject to clause 5.2 and any special terms agreed in writing between the Buyer and the Company the Company shall be entitled to invoice the Buyer for the Price and the Ancillary Costs on or at any time after delivery unless in the case of Goods which are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the Price and the Ancillary Costs at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

8.4 Time for payment shall be of the essence.

8.5 No payment shall be deemed to have been received until the Company has cleared funds.

8.6 All payments payable to the Company under the Agreement shall become due immediately on its termination despite any other provision.

8.7 The Buyer shall make all payments due under the Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.8 If the Quotation states that payment is to be paid by letter of credit, such letter of credit must be an irrevocable letter of credit satisfactory to the Company and confirmed by a United Kingdom bank acceptable to the Company. The letter of credit shall be for the price payable for the Deliverables and shall be valid from the date of the Buyer’s purchase order and shall not expire until six months after the date of completion of delivery or performance of the Deliverables. The letter of credit shall entitle the Company to immediate cash payment on presentation to the relevant United Kingdom bank of the appropriate documentation.

8.9 If the Buyer disputes any invoices, the Buyer shall immediately notify the Company in writing and the Parties shall use Commercially Reasonable Efforts to resolve the dispute promptly. If the Parties have not resolved the dispute within 30 days of the



Buyer giving notice to Company, the dispute shall be resolved in accordance with clause 20. Where only part of an invoice is disputed, the undisputed amount shall be paid by the due date.

8.10 If the Buyer fails to pay for any Deliverables in accordance with this clause 8 or if Company has reasonable concerns about the financial viability of the Buyer (whether in connection with an Insolvency Event or otherwise), Company may suspend further performance of the Services or supply of the Goods without liability until payment or satisfactory security for payment has been provided.

9 QUALITY

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

9.2 Subject to Clauses 9.3 and 9.4 the Company warrants to the Buyer that the Goods shall, in all material respects, be in accordance with the Specification and free from defects in design, workmanship or materials.

9.3 The Company shall not be liable under clause 9.2 where a defect or non-conformance with the Specification arises from any or all of the following:

9.3.1 fair wear and tear;

9.3.2 alteration or repair of the Goods (other than by or on behalf of Company);

9.3.3 abnormal working conditions;

9.3.4 failure to follow or to follow fully the oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

9.3.5 the Goods have been improperly installed or connected (unless Company carried out the installation and connection);

9.3.6 wilful damage, accidental damage, misuse or negligence.

9.3.7 the Buyer makes any further use of such Goods after giving such notice of a defect to the Company;

9.3.8 any defect in the Goods arose from any drawing, design or specification supplied by the Buyer;

9.3.9 the Price and all Ancillary Costs have not been paid by the due date for payment.

9.4 Unless expressly set out under the Agreement, clause 9.2 does not extend to parts or equipment not manufactured by the Company.

9.5 Subject to condition, if any of the Goods do not conform with any of the warranties in condition 9.1 the Company shall at its own option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Agreement rate provided that, if the Company so request, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

9.6 If the Company complies with condition 9.5 the Company shall have no further liability for a breach of any of the warranties in condition 9.1 in respect of such Goods.

9.7 The Company warrants to the Buyer that the Services shall, in all material respects, be in accordance with the Specification.

9.8 Except as expressly set out in this Agreement, all other conditions, warranties or other



terms which might have effect between the Parties or be implied or incorporated into this Agreement, whether by statute, common law or otherwise, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care, are hereby excluded.

10 DEFECTIVE DELIVERABLES

10.1 The Company shall only carry out tests on the Deliverables which are specified in the Quotation (if any). Such tests and inspections shall take place under the Company's standard testing arrangements, or under such other testing arrangements agreed in writing between the Parties.

10.2 The Buyer shall:

10.2.1 at their own cost inspect and test the Goods within a reasonable period, not exceeding five (5) days after delivery of the Goods against the requirements of clause 9.2 and notify Company of any shortfall in delivery and any defects revealed;

10.2.2 at their own cost inspect and test the work undertaken pursuant to the Services within a reasonable period, not exceeding five (5) days after completion of the Services, against the requirements of clause 9.7 and notify the Company of any defects revealed; and

10.2.3 notify Company of any non-compliance of the Goods or non-compliance of the Services with the terms of this Agreement within a reasonable period, not exceeding five (5) days after the date of delivery of the Goods or performance of the relevant Services (as applicable).

10.3 In the absence of a notice from the Buyer in accordance with clause 10.2, the Company is deemed to have complied with clauses 4.2, 9.2 and 9.5 on delivery of the Goods or performance of the Services (as applicable) and the Buyer shall be deemed to have accepted the Deliverables. The provisions of this clause 10.3 will not affect any remedies available to the Buyer under clause 10.4.

10.4 If the Buyer identifies a defect in the Deliverables as a result of any breach of clause 9.2 in respect of Goods or clause 9.7 in respect of Services, within a period of six months from the date of delivery or performance of the Deliverables (the "Warranty Period"), Company shall, at its sole discretion and subject to clause 10.5, rectify the defect by, either, repairing or replacing the defective Goods or re-performing defective Services as soon as reasonably practicable after notification of the defect by the Buyer. Where Company supplies any replacement Deliverables in accordance with this clause, the provisions of the Agreement shall apply to such replacement Deliverables.

10.5 If the Company, having used Commercially Reasonable Efforts, is unable to carry out the steps set forth in clause 10.4, then Company may:

10.5.1 cease performing any related Services, to the extent such Services cannot be performed pursuant to this Agreement as a result of the defective Goods or Services; and

10.5.2 reimburse the Buyer the Price paid for the affected Goods or Services.

10.6 The Parties acknowledge and agree that the remedies set forth in clauses 10.2 and 10.5 shall be the Buyer's sole and exclusive remedy for any defective Deliverables



supplied by Company under this Agreement and Company shall have no further liability to the Buyer in respect of the failure of the Deliverables to comply with clause 9.2 or clause 9.7 (as applicable).

10.7 A claim in respect of a defect in accordance with this clause 10 shall not entitle Buyer to cancel or refuse delivery of or payment for any other order, delivery or instalment.

11 LIMITATION OF LIABILITY

11.1 Subject to Clause 4, 5, 8.8 and 10, the following provisions set out the entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) of the Company to the Buyer in respect of:

11.1.1 any breach of these conditions;

11.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Agreement.

11.3 Nothing in these conditions excludes or limits the liability of the Company:

11.3.1 for death or personal injury caused by negligence of the Company; or

11.3.2 under section 2(3), Consumer Protection Act 1987; or

11.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude the Company's liability; or

11.3.4 for fraud or fraudulent misrepresentation.

11.4 Subject to condition 11.2 and condition 11.3:

11.4.1 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the Price payable under this Agreement;

11.4.2 The Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused and even if foreseeable or even if such entity has been advised of the possibility of such losses being suffered) which arise out of or in connection with the Agreement.

12 ASSIGNMENT

12.1 The Company may assign or novate all or any part of its rights and obligations pursuant to this Agreement, subcontract or deal in a manner with all or any of its rights or obligations under this Agreement.

12.2 The Buyer shall not, without prior written consent of the Company, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under this Agreement.

13 FORCE MAJEURE



The Company reserves the right to defer the date of delivery or to cancel the Agreement or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if the Company is prevented from or delayed in the carrying on of Our business due to circumstances beyond our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of [180] days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14 COMMUNICATIONS

14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or e-mail:

14.1.1 (in case of communications to the Company) to the registered office of the Company or such changed address as shall be notified to the Buyer by the Company; or

14.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

14.2 Communications shall be deemed to have been received:

14.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

14.2.2 if delivered by hand, on the day of delivery;

14.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or

14.2.4 if sent by e-mail 48 hours after the e-mail is sent.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 The Background IP of a Party will remain the property of that Party.

15.2 Each Party hereby grants to the other a royalty-free, non-exclusive, non-transferable licence to use the other Party's Background IP strictly to the extent reasonably required for the delivery of and/ or performance of the Deliverables or the use of such Deliverables in accordance with the terms of this Agreement.

15.3 Any Intellectual Property Rights created or developed by Company in the course of this Agreement will be owned by Company.

15.4 This Clause 15 shall survive termination of this Agreement.

16 DATA PROTECTION

16.1 To the extent either Party processes Personal Data of the other Party (as defined in the Data Protection Act 1998 – the "DPA") under the Agreement, the processing Party will:

16.1.1 process the Personal Data in accordance with the instructions of the disclosing Party



and in accordance with the terms of the DPA;

16.1.2 implement appropriate technical and organisational measures which comply with provisions equivalent to those imposed on a data controller under the DPA in order to avoid accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access of the Personal Data; and

16.1.3 not store or transfer such Personal Data outside the European Economic Area without the other Party's prior consent.

16.2 Where the Company is provided with Personal Data from the Buyer, the Buyer hereby confirms that it has obtained all necessary consents to allow the Company to process such Personal Data as required for the purposes of this Agreement.

17 CONFIDENTIALITY

17.1 Each Party shall treat each other's Confidential Information (that a Party received as a result of the discussions leading up to or entering into this Agreement or obtains or receives in performance of this Agreement), as confidential and safeguard it accordingly.

17.2 Clause 17.1 shall not apply to the extent that:

17.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, 'Code of Practice on Access to Government Information' or the EIR;

17.2.2 such Confidential Information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the Confidential Information owner;

17.2.3 such Confidential Information was obtained from a third party without obligation of confidentiality;

17.2.4 such Confidential Information was already in the public domain at the time of disclosure otherwise than by a breach of this; or

17.2.5 it is independently developed without access to any other Party Confidential Information.

17.3 Each Party may only disclose another Parties Confidential Information to their personnel who need to know the information disclosed to them, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality.

17.4 Each Party undertakes to return all copies of any Confidential Information promptly at the request of the disclosing or owning Party or to destroy the same as instructed by the disclosing or owning Party and furnish satisfactory proof of destruction on request.

17.5 Nothing in this Clause 17 shall affect the ownership of any Confidential Information or any Intellectual Property Rights therein which a Party makes available to the other Party under this Agreement, and nor shall anything herein constitute a licence, express or implied, from one Party to another to use any of the said Confidential Information or any Intellectual Property Rights therein for any purpose other than expressly provided for in this Agreement.

17.6 This Clause 17 shall survive termination of this Agreement.



18 INSOLVENCY OF BUYER

18.1 This clause applies if:

18.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);

18.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;

18.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

18.1.4 The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notify the Buyer accordingly.

18.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price and the Ancillary Costs shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

19 DISPUTE RESOLUTION

19.1 The Parties shall use good faith efforts to promptly resolve any dispute, claim or proceeding arising out of or relating to this Agreement via their senior representatives who have the authority to settle such matters. If the dispute, claim or proceeding cannot be resolved through such negotiation, it shall be settled as determined by:

19.1.1 mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure. The mediation shall be before a single, jointly agreed upon, mediator. If the Parties are unable to select a mutually agreeable mediator within thirty (30) days of a dispute then the Parties shall determine whether to invoke the provisions of Clause 15.1.2 or Clause 15.1.3; or

19.1.2 arbitration by a single arbitrator appointed by agreement or (in default) nominated upon the application of any Party by the President for the time being of the Law Society in accordance with the Arbitration Acts 1950 – 1979 or any replacement thereof. The arbitrator's decision shall be final and binding on all Parties. Costs shall be in the award of the arbitrator.

20 GENERAL

20.1 Each of the Company's rights or remedies under the Contract is without prejudice to any of the Company's other rights or remedies whether under the Contract or not.

20.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

20.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the



Contract shall not be construed as a waiver of any of the Company's rights under the Contract.

20.4 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.

20.5 The parties to the contract agree that nothing in this Agreement shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Agreement for the purposes of Contracts (Rights of Third Parties) Act 1999.

20.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

20.7 Nothing in this Agreement creates a joint venture or partnership between the Parties. Except as expressly authorised in this Agreement, this Agreement will not create an agency relationship between the Parties and neither Party has any authority to, and will not, act, make representations or contract on behalf of the other Party.

20.8 No variation or addition to this Agreement shall be valid unless it is in writing and signed by authorised representatives of each Party.

20.9 This Agreement sets out the entire agreement between the Company and the Buyer and supersedes all prior representations, agreements, negotiations or understandings between them relating to the subject matter of the Agreement.

20.10 Each Party acknowledges that, in entering this Agreement, it has not relied on any statement, representation, assurance or warranty other than those expressly set out in this Agreement.

20.11 Any notice to be given by either Party to the other under this Agreement must be in writing in the English language addressed to that other Party at its registered office or principal place of business or such other address as may have been notified for these purposes.

20.11.1 Notices shall be delivered by hand or sent by prepaid recorded, special delivery or first class post (or air mail post if to an address outside the United Kingdom). Delivery by courier shall be regarded as delivery by hand.

20.11.2 A notice shall be deemed to have been received:-

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by prepaid recorded, special delivery or first class post, on the second business day after the date of posting;
- (c) if sent by prepaid air mail post, on the fifth business day from the date of posting.

20.11.3 In proving service by delivery by hand, it shall be necessary only to show that delivery was made, and by post, it shall be necessary only to prove that the notice was contained in an envelope which was properly addressed and posted in accordance with this clause 20.

20.11.4 A notice given under or in connection with this Agreement is not valid if it is sent by electronic mail.