

CONDITIONS OF SUPPLY

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition shall apply in these conditions.
- Company:** The Boro Foundry Limited;
- Conditions:** these Conditions of Supply;
- Confidential Information:** any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential, or the information could reasonably be supposed to be confidential;
- Combined Goods:** any Goods which have, following delivery to the Customer, been joined or connected in any way to other goods in such a way that the Goods are nevertheless readily identifiable and removable;
- Commercial Unit:** a unit of Goods, the division of which would materially impair the value of the Goods or the character of the unit;
- Contract:** any contract between the Company and the Customer for the supply of Goods and/or Services, incorporating these Conditions;
- Customer:** the person, firm or company who wishes to purchase Goods and/or Services from the Company;
- Free Issue Materials:** any physical material provided to the Company by the Customer which is to be used by the Company in the production of the Goods and/or the performance of the Services;
- Goods:** any goods agreed in the Contract to be produced by the Company for the Customer (including any part or parts of them);
- Incorporated Goods:** any Goods which have, following delivery to the Customer, been incorporated into other goods in such a way that the Goods are not readily identifiable and removable;
- Input Material:** any documents, files, plans, drawings, designs, content, text, images, logos, photographs or other materials, and any specification, instructions, data or other information provided by the Customer to the Company relating to the Goods and/or Services;
- Intellectual Property Rights:** any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;
- Output Material:** any documents, files, plans, drawings, designs, content, text, images, logos, photographs or other materials, and any specification, data or other information provided by the Company to the Customer relating to the Goods and/or Services;
- Services:** any services agreed in the Contract to be performed by the Company for the Customer (including any part or parts of them) including any services to be performed in relation to the Goods or any other goods.
- 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 Any reference to "**parties**" means the parties to the Contract and "**party**" shall be construed accordingly.
- 1.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.
- 1.5 Words in the singular include the plural and in the plural include the singular.
- 1.6 A reference to one gender includes a reference to the other gender.
- 1.7 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 Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer 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 Customer'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 the Contract.
- 2.3 These Conditions apply to the supply of all Goods and Services by the Company and any variation to these Conditions and any representations about any Goods and/or Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company. The Customer 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 Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each written purchase order or acceptance of a quotation for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Conditions.
- 2.5 No order placed by the Customer shall bind the Company until the Company has accepted the Customer's order in writing.
- 2.6 No order placed by the Customer may be cancelled, varied, or deferred by the Customer, except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), charges and expenses incurred by the Company as a result of such cancellation, variation or deferment.
- 2.7 The Customer shall ensure that the terms of its order are complete and accurate.
- 2.8 Subject to the provisions of Condition 3.3, the Customer shall ensure that any Input Material and any Free Issue Materials are promptly submitted to the Company. In the event that the delivery of any Input Material and/or Free Issue Materials to the Company is delayed for any reason, the Company may delay fulfilment of the Customer's order and shall be entitled to invoice the Customer for any work already completed.
- 2.9 The Company reserves the right to charge the Customer for any Output Material provided to the Customer.
- 2.10 Any quotation is given on the basis that no Contract shall come into existence until the Company has accepted the Customer's order pursuant to Condition 2.5 above. Any quotation is valid for a period of 30 days only from its date (unless otherwise specified), provided that the Company has not previously withdrawn it.
- ### 3. DESCRIPTION
- 3.1 The quantity and description of any Goods and/or Services shall be as set out in the Company's acceptance of the Customer's order issued pursuant to Condition 2.5.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.3 All Input Material shall be submitted in such formats and shall meet such standards and timescales for submission as may be prescribed by the Company from time to time, in the Company's absolute discretion. The Company reserves the right to refuse to perform any Services and/or produce any Goods if any Input Material is not submitted in the format prescribed, or does not meet the standard or timescale for submission prescribed, in each case by the Company. If the Company is requested to prepare any Input Material for a Customer or to assist any Customer in the preparation of any Input Material, all additional charges therefor

- shall be payable by the Customer. Other than where the Company has produced any chargeable Input Material for the Customer as aforesaid, the Company shall not be obliged to return any Input Material to the Customer.
- 3.4 The Customer shall be responsible for transporting all Free Issue Materials to the Company's premises, unless otherwise agreed in advance with the Company and the Customer shall, unless otherwise so agreed, also pay any and all costs associated therewith.
- 3.5 All Free Issue Materials must, at the time that they are first provided to the Company, be accompanied by a declaration from the Customer stating:
- (a) the value of the Free Issue Materials; and
 - (b) any special characteristics of the Free Issue Materials.
- 3.6 All Free Issue Materials are subject to inspection by the Company upon receipt thereby. Any defect in any Free Issue Materials will be notified to the Customer prior to the commencement of performance of any Services, or the production of any Goods, as applicable, and the Company reserves the right to refuse to perform any Services or produce any Goods in relation to any defective Free Issue Materials where any such defect is not remedied prior to any such commencement of performance, or production, as applicable. If the Company agrees to attempt to remedy the defect or to assist the Customer in so doing, the Customer shall pay any additional charges imposed by the Company therefor.
- 3.7 All Free Issue Materials shall be provided to the Company and released to the Customer at the Customer's sole cost and expense including any additional Free Issue Materials which the Customer may be required to provide to the Company, even if the provision of such additional Free Issue Materials has been occasioned by the fault of the Company.
- 3.8 All Free Issue Materials shall be handled by the Company at the Customer's own risk. The Customer shall be responsible for arranging for a suitable policy of insurance to provide adequate coverage for all Free Issue Materials against all risks which could arise in relation thereto whilst the Free Issue Materials are at the Company's premises (or otherwise under the Company's control), including theft, fire and water damage. For the avoidance of doubt, the Company shall not be responsible for anything which may occur whilst the Free Issue Materials are being handled by the Company, including any loss or damage which may occur to the Free Issue Materials whilst any process is being applied to the Free Issue Materials by the Company. Any surplus or waste materials derived from any Free Issue Materials may be disposed of by the Company at the Customer's cost, (if any) unless otherwise agreed with the Company in advance.
- 3.9 The Company reserves the right to charge for the storage of Free Issue Materials at such rate as shall be agreed with the Customer if any Free Issue Materials are held by the Company for more than 30 days, or for such reasonable period as is agreed with the Customer when the Customer's order is accepted by the Company.
- 3.10 The Customer warrants that any Input Material and Free Issue Materials submitted by the Customer shall not cause the Company to infringe any Intellectual Property Rights of any other person. The Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, 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 Intellectual Property Rights of any other person resulting from the Company's use of any Input Material or Free Issue Materials submitted by the Customer.
- 3.11 The Customer warrants that any Input Material and Free Issue Materials submitted by the Customer shall not contravene any applicable safety or other statutory or regulatory requirement. The Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company as a result of any breach of this warranty.
- 3.12 Without prejudice to Condition 3.1, the Company shall use its reasonable efforts to supply the Goods in accordance with any specification submitted by the Customer and approved by the Company, but may in any event effect minor modifications to the Goods without the Customer's approval in order to comply with any applicable safety or statutory requirements, or to effect enhancements to the Goods. The Company will notify the Customer in writing of any proposed material modifications to the Goods and the Customer shall be deemed to have accepted such modifications unless notice in writing to the contrary shall be received by the Company within 3 days of the date of the Company's notice to the Customer.
- 3.13 All Goods shall be supplied by the Company to any standard commercial tolerances that apply within the appropriate industry, unless the Customer notifies the Company in its order of any special tolerances that the Customer requires.
- 3.14 Subject to the provisions of Condition 9.1 (b), the Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.
- 3.15 All recommendations and advice given by or on behalf of the Company to the Customer as to any method of using or storing the Goods, or the Goods' suitability for use in any manufacturing process or in connection with any other materials, is in either case given without liability on the part of the Company.
- 3.16 The Company reserves the right to substitute other materials or components of equivalent composition, strength and quality for use in producing the Goods in any instance where any materials or components specified by the Customer are not readily available to the Company.
- 3.17 The Customer undertakes that it will comply with and will procure that its employees, customers and every other person working with, on, or near or using the Goods shall comply in full with the instructions and recommendations made in any manual or handbook or instructions provided by the Company and that the Customer will comply with all other instructions given in connection with the use of the Goods.
- 3.18 The Goods are designed to be used without danger to health and safety where correctly used in accordance with the relevant National or International Standard, the rating for which the Goods were designed and accepted good practice. If the Customer intends to use the Goods under unusual conditions (especially if special risks to health and safety are posed), it shall be the sole responsibility of the Customer to ensure the safe use of the Goods in such circumstances.
- 4. DELIVERY AND PERFORMANCE**
- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business. The Customer shall be responsible for arranging for the carriage of the Goods to the destination address. All transportation and carriage costs (including the cost of all related insurance coverage and the cost of loading and unloading the Goods) shall be borne by the Customer.
- 4.2 Unless otherwise agreed in writing by the Company, performance of the Services shall take place at the Company's place of business.
- 4.3 Any dates specified by the Company for delivery of the Goods and/or performance of the Services 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. Should expedited delivery be agreed, the Company reserves the right to levy an extra delivery charge.
- 4.4 The Services supplied under the Contract shall be provided by the Company to the Customer from the date of acceptance by the Company of the Customer's order in accordance with Condition 2.5, unless otherwise specified by the Company. Time for performance of the Services shall not be made of the essence by notice.

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 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 and/or performance of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.6 If for any reason the Customer fails to take or accept delivery of all or any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including storage and insurance); or
- (d) sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the price for the Goods.

4.7 If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.8 The Company may deliver the Goods by separate instalments and perform the Services in separate tranches. Each separate instalment or tranche shall be invoiced and paid for in accordance with the provisions of the Contract.

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

4.10 The Customer must examine the Goods upon delivery and within 7 days thereafter notify the Company in writing of any defects. In default the Customer will be deemed to have examined and accepted the Goods. Where the Contract is for the sale of Goods making up one or more Commercial Units, the Customer accepting any Goods included in a Commercial Unit shall be deemed to have accepted all of the Goods making up the Commercial Unit.

4.11 Without prejudice to the provisions of Condition 4.6, the Company reserves the right to charge for the storage of Goods at such rate as shall be agreed with the Customer, if:

- (a) the Customer requests that its order be put on hold; or
- (b) if any Goods are held by the Company (through no fault of the Company) for any period of time beyond any date specified by the Company for the delivery of the Goods.

5. NON-DELIVERY AND RETURNS

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 Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 7 days of the time 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 Contract rate against any invoice raised for such Goods.

5.4 Subject to the provisions of Condition 9.4 (a), the Company will not accept the return of any Goods which have been properly supplied under the Contract.

6. RISK AND TITLE

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

- (a) in the case of Goods to be delivered at the Company's place of business, at the time when the Company notifies the Customer that the Goods are available for collection; or
- (b) in the case of Goods to be delivered other than at the Company's place of business, at the time of delivery of the Goods to the Customer's place of business, or such other location as shall be notified by the Customer to the Company in advance of despatch of the Goods.

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

- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and indemnify the Company against all loss or damage of whatsoever nature affecting the Goods;
- (e) notify the Company immediately if it becomes subject to any of the events listed in Conditions 12.1 (d) to 12.1 (j) inclusive;
- (f) not assign to any other person any rights arising from a sale of the Goods without the Company's written consent; and
- (g) give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may resell the Goods in the ordinary course of its business, provided that it shall hold the entire proceeds of any such resale upon trust for the Company until the Goods have been paid for in full and shall keep all such trust monies in a separate bank account which shall not be overdrawn and in which such trust monies are not mingled with its own or any other monies. Nothing in this Condition 6.3 (g) shall constitute the Customer as the Company's agent and the Customer acknowledges and agrees that a sale by an administrator or liquidator as part of or in connection with the sale of the assets or part of the assets of the Customer is not in the ordinary course of the Customer's business.

6.4 If:

- (a) the Customer is late in paying for the Goods; or
- (b) the Customer is late in paying for any other goods or services supplied by the Company; or if
- (c) before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in Conditions 12.1 (d) to 12.1 (j) inclusive or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then:
- (d) without limiting any other right or remedy the Company may have, the Company may at any time require the

- Customer to deliver up the Goods and, if the Customer fails to do so promptly, the Company may enter the premises of the Customer or the premises of any third party where the Goods are stored or kept in order to recover them and all and any costs, charges and expenses incurred by the Company in so taking possession of the Goods (including legal fees) shall be payable by the Customer upon demand. The Customer shall not keep the Goods at any premises at which the Customer does not have the right to grant access to the Company. Nothing in this Condition 6.4 (d) shall affect the right of the Company at any time to inspect the Goods whilst the Goods are stored or kept at the Customer's premises or the premises of any third party.
- 6.5 With respect to any Combined Goods, the Company shall be entitled to remove and repossess the Combined Goods pursuant to Condition 6.4 (d) regardless of the practical difficulty of so doing or any damage caused to such other goods in the course of taking all reasonable steps to effect such removal (whether such other goods belong to the Customer or to third parties) and the Customer waives any claim it may have against the Company for any damage caused to its goods as a result of taking such reasonable steps and shall indemnify the Company in full against any claim made against the Company by any third party arising out of or in connection with such reasonable steps being taken by the Company.
- 6.6 With respect to any Incorporated Goods, the Customer shall store such Incorporated Goods separately and shall notify the Company of the precise location and position thereof and the ownership of such Incorporated Goods and the property therein shall vest in the Company. Upon any sale of any Incorporated Goods by the Company, then if the proceeds of sale exceed the price or the balance of the price of the Goods due to the Company from the Customer, the Company shall apply the balance of the proceeds of sale as follows:
- (a) firstly, by reimbursing the Company for the cost and expense of the taking of possession of and arranging for the sale of the Incorporated Goods and any damages which the Company has suffered as a result of any repudiation of the Contract by the Customer;
 - (b) secondly, by paying any sums due and owing to other creditors of the Customer in respect of other items and materials used in connection with the manufacture of the Incorporated Goods where the property in such items and materials has remained vested in such other creditors by reason of effective retention of title clauses and the claims of such other creditors pursuant to such retention of title clauses have been notified to the Company by the Customer or its liquidator, administrator or receiver, or by such other creditors.
- 6.7 For the avoidance of doubt, the Customer acknowledges that any patterns, tools, dies or moulds procured by the Company at the Customer's request for use in connection with the Goods and/or Services shall be held by the Company at the Customer's sole risk and shall remain the sole and exclusive property of the Company until such patterns, tools, dies or moulds have been paid for in full by the Customer.
- 7. PRICE**
- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods and/or Services shall be the price confirmed in the Company's acceptance of the Customer's order issued pursuant to Condition 2.5, but the Company reserves the right to vary the price and to invoice the Customer at the price ruling at the date of despatch of the Goods and/or performance of the Services.
- 7.2 If the cost to the Company of performing the Company's obligations under the Contract shall be increased by reason of the making or amendment of any law or of any order, regulation, or by-law having the force of law that shall affect the performance of the Company's obligations under the Contract, the amount of such increase shall be added to the Contract price.
- 7.3 The Company reserves the right, by giving notice to the Customer at any time before delivery of the Goods and/or performance of the Services, to increase the price of the Goods and/or Services to reflect any increase in any cost to the Company which is due to any factor beyond the control of the Company (including any foreign exchange fluctuation, currency regulation, alteration of duties, increase in transportation costs and any increase in the costs of labour, materials or other costs of production), or if there is any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer, or for any delay or failure on the part of the Customer to provide any Input Material or Free Issue Materials, or for any delay caused by any instructions of the Customer, or for any failure of the Customer to give the Company adequate, accurate or complete information or instructions.
- 7.4 Unless otherwise agreed in writing between the Customer and the Company, the Contract price shall be exclusive of Value Added Tax.
- 7.5 Unless otherwise agreed in writing between the Customer and the Company, all prices for the supply of Goods are given by the Company on an ex works basis and the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 7.6 Any waiver or reduction of any price will only be applicable if agreed by the Company in writing.
- 8. PAYMENT**
- 8.1 Subject only to any special terms agreed in writing between the Company and the Customer, the Company shall be entitled to invoice the Customer for the price of the Goods and/or Services on or at any time after acceptance of the Customer's order.
- 8.2 Provided that the Customer has produced credit references which in the Company's opinion are satisfactory, then unless otherwise agreed by the Company in writing, settlement terms will be net 30 days from the last day of the month in which the Company's invoice is dated. In all other cases payments shall be made in advance upon submission by the Company of a pro-forma invoice.
- 8.3 The time of payment of the price shall be of the essence of the Contract.
- 8.4 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and said cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.
- 8.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 8.6 Any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Conditions 12.1 (d) to 12.1 (j) inclusive in relation to the Customer shall entitle the Company, at any time and without notice to the Customer and without limiting any other remedy available to the Company under these Conditions, the Contract, or otherwise:
- (a) at its option, to charge interest at the rate of six percent (6%) per annum above the Bank of England's base lending rate from time to time calculated on a daily basis (whether before or after any judgment) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
 - (b) to charge the Customer with any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer;
 - (c) to suspend any warranty for the Goods and/or Services or any other goods or services supplied by

- (d) to appropriate any payment made by the Customer to such of the Goods and/or Services as the Company may think fit;
- (e) to set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever;
- (f) to terminate the Contract, or suspend or cancel the further delivery of any Goods or the performance of any Services, including, without limitation, stopping the delivery of any Goods in transit;
- (g) to withdraw or reduce any agreed monthly credit limit; and
- (h) to cancel any discount (if any) offered to the Customer.

8.7 The Company reserves the right to claim interest at the rate set under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 and also to claim fixed sum compensation under section 5A of that Act (as amended by section 3 of The Late Payment of Commercial Debts Regulations 2013) to cover the Company's credit control overhead costs.

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

8.9 For the avoidance of doubt, and notwithstanding the exercise of any remedy by the Company in accordance with Condition 8.6, or under any other of these Conditions, the Contract, or otherwise, the Customer shall remain liable to pay and shall pay the Company at the Contract rate, any and all payments subsisting at the relevant time.

8.10 Any sums paid by deposit, retainer or prepayment may not under any circumstances be refunded.

8.11 The Company shall retain a general lien on the full value of all Goods and Services against all or any of the Customer's property in the Company's possession until such Goods and Services have been fully paid for.

9. WARRANTIES

9.1 The Company warrants that (subject to the other provisions of these Conditions):

- (a) on delivery, the Goods shall be free from any defects in materials and workmanship and shall conform to their specification; and
- (b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in the Company's acceptance of the Customer's order issued pursuant to Condition 2.5 that it will supply Goods suitable for that purpose, then the Goods shall be reasonably fit for the purpose so stated; and
- (c) any Services will be performed with reasonable skill and care.

9.2 The Company shall not be liable for a breach of any of the warranties in Condition 9.1 unless:

- (a) the Customer gives written notice of any defect or deficiency to the Company within 6 months from the date of delivery of the Goods or the date of completion of performance of the Services; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining the Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.1 if:

- (a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect; or

- (b) the Customer alters or repairs the Goods without the prior written consent of the Company; or
- (c) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (d) the defect arises from any Input Material, Free Issue Materials and/or any instructions submitted by the Customer, or from fair wear and tear, wilful damage, negligence, abnormal working conditions or from any misuse of the Goods, or otherwise as a result of failure of the Customer to comply in full with any manual or handbook or instruction containing the technical specifications and operating instructions supplied by the Company for the Goods; or
- (e) the Goods have been used for an application other than that specified at the time the Customer's order was accepted, or otherwise not in accordance with the Company's instructions; or
- (f) the full price for the Goods and/or Services has not been paid by the time for payment stipulated in Condition 8.2; or
- (g) the defect is of a type specifically excluded by the Company by notice in writing.

9.4 Subject to Condition 9.2 and Condition 9.3, if the Goods and/or Services do not conform to the warranties in Condition 9.1:

- (a) the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company. The Company shall, if it opts to replace the defective Goods, then deliver replacement Goods to the Customer (at the Company's expense) and ownership of the defective Goods shall, if it has vested in the Customer, re-vest in the Company; and/or
- (b) the Company shall re-perform any Services which are proved to the reasonable satisfaction of the Company not to have been performed with reasonable skill and care, or at the Company's option, shall refund any monies already paid by the Customer for any such Services.

9.5 If the Company complies with Condition 9.4 it shall have no further liability for a breach of any of the warranties in Condition 9.1.

10. LIMITATION OF LIABILITY

10.1 Subject to Condition 4, Condition 5, Condition 9 and Condition 12, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of these Conditions;
- (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods and any use made by the Customer of any of the Services; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 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 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in this Condition 10 excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or

- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.
- 10.4 Subject to Condition 10.2 and Condition 10.3:
- (a) 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 Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Customer for loss of profit, loss of use, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. INDEMNITY

The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including financing costs and legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from any act or omission of the Customer, or from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

12. TERMINATION

12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (d) 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 (being a Company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (e) 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

- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on 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;
- (g) 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
- (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (i) 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
- (j) 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
- (k) 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 Conditions 12.1(d) 12.1(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

12.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of any Goods and/or Services for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

12.3 On termination of the Contract (however arising), Conditions 6-11 and 18 shall survive and continue in full force and effect.

13. ADDITIONAL EXPORT TERMS

13.1 In these Conditions "Incoterms 2010" means the international rules for the interpretation of credit terms at the International Chamber of Commerce as in force at the date when the Contract arises. Unless the context otherwise requires, any term or expression which is defined here or given a particular meaning by the provisions of Incoterms 2010 shall have the same meaning in these Conditions.

13.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 13 shall (subject to any special terms agreed in writing between the Customer and the Company) apply, notwithstanding any other provisions of these Conditions.

13.3 The Customer 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 on them. The Contract shall be subject to the procurement by the Customer at the Customer's own expense of any import licence and any other authorisations necessarily required for the import of the Goods into the country to which the Goods are to be exported,

- but failure to obtain any such documents shall not entitle the Customer to cancel the Contract.
- 13.4 The import licence number and expiry date shall be furnished at the time the order for the Goods is placed with the Company, otherwise production of the Goods will not be proceeded with. In the event of the import licence expiring before the Goods have been made available it shall be the responsibility of the Customer to obtain the renewal of such licence. The Company shall not be liable for any expense or loss caused by delay in obtaining such licence or the renewal thereof.
- 13.5 Unless otherwise agreed in writing between the Customer and the Company, the Goods shall be delivered Ex Works the Company's place of business and the Company shall be under no obligation to give the Customer the notice relating to insurance mentioned under Section 32(3) of the Sale of Goods Act 1979.
- 13.6 The Customer shall be responsible for arranging for the testing and inspection of the Goods at the Company's place of business before shipment. The Company shall have no liability for any defect in the Goods which would be apparent on inspection and in respect of which notification is made after shipment, or in respect of any damage to the Goods whilst in transit during shipment.
- 13.7 The Company shall have no liability for death or personal injury arising from the use of the Goods where the Goods are to be delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).
- 13.8 Payment of all amounts due to the Company shall be made against presentation of shipping documents and in accordance with the provisions of Condition 8.2.
- 14. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**
- 14.1 The Customer and the Company agree that in the course of the Company supplying Goods and/or Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party. The Customer shall not use any Confidential Information for any purpose other than to carry out the Customer's obligations to the Company.
- 14.2 The Customer acknowledges the Company's ownership of any Intellectual Property Rights in any Output Material and in any Goods and/or Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. Without limitation, the Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. No Output Material may be copied or reproduced in whole or in part without the prior written consent of the Company. The Customer further acknowledges that any and all Intellectual Property Rights developed by the Company in performing any Services and in producing and supplying any Goods shall become vested and shall vest in the Company absolutely.
- 15. ASSIGNMENT/SUBCONTRACTING**
- 15.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 15.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 15.3 The Company, but not the Customer, shall be entitled to subcontract any or all of its obligations under all or any part of the Contract.
- 16. FORCE MAJEURE**
- The Company reserves the right to defer the date of delivery and/or performance, or to cancel the Contract or reduce the volume of the Goods and/or Services ordered by the Customer (without liability to the Customer) if it is prevented from or delayed

in the carrying on of its business due to circumstances beyond the reasonable control of the Company including 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 Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

17. GENERAL

- 17.1 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.
- 17.2 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 17.3 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.
- 17.4 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 its rights under the Contract.
- 17.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 17.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 17.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

18. COMMUNICATIONS

- 18.1 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 email:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
 - (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 18.2 Communications shall be deemed to have been received:
- (a) 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
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by fax or email, on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

CONDITIONS OF PURCHASE

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this condition shall apply in these conditions.

- (a) **"Buyer"** means The Boro Foundry Limited;
- (b) **"Conditions"** means these terms and conditions;
- (c) **"Contract"** means the Contract between the Buyer and the Seller for the sale and purchase of the Goods consisting of the Order, these Conditions, and other documents (or parts thereof) specified in the Order (as if fully set out in the Order) and the Seller's written acceptance of the Order;
- (d) **"Goods"** means the Goods or Services (and any parts thereof) to be supplied to the Buyer pursuant to the Contract and any reference in these Conditions to Goods shall also include Services, except where Services are separately identified;
- (e) **"Intellectual Property Rights"** means any patent, registered design, copyright, database right, design right, topography right, trade or service mark, trade or business name, domain name, trade secret, know-how and right of confidence and any other intellectual property right of any nature, in all cases whether or not registered or registrable in any country, for the full term of such rights, including any extension or renewal of the terms of such rights and including registrations and applications for registration of any of such rights anywhere in the world;
- (f) **"Order"** means the Order placed by the Buyer whether in writing, verbally, electronically or otherwise for the supply of Goods;
- (g) **"Services"** means the services (if any) described in the Order to be undertaken by the Seller;
- (h) **"Seller"** means the person, firm or company to whom the Order is addressed.

1.2 The headings in these Conditions are intended for reference only and do not affect their construction.

1.3 A reference to a clause is a reference to a clause of these Conditions.

1.4 Any reference to a **"party"** means a party to the Contract and **"parties"** shall be construed accordingly.

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

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

1.7 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.

1.8 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2. Application of Conditions and Contract Formation

2.1 All Goods purchased by the Buyer are purchased subject to these Conditions, which shall be the sole terms and Conditions governing any purchase of Goods by the Buyer from the Seller.

2.2 These Conditions will prevail over any other terms and conditions contained or referred to in any acknowledgment of Order, form of contract, letter or other communication sent by the Seller to the Buyer and acceptance of the Order by the Seller shall indicate unqualified acceptance of these Conditions.

2.3 No Goods shall be deemed to have been purchased by the Buyer and no Contract shall come into existence until the Seller accepts the Order in writing.

2.4 Without prejudice to any of the Seller's obligations under these Conditions, the Seller acknowledges that any forecasts, forward projections or schedules of volume provided to the Seller by the Buyer are given only as an indication of the Buyer's requirements, are not binding and are subject to change without notice.

2.5 In the event that the Goods are not likely to be available at the time required for fulfilment of the Order and will prevent the Order from being fulfilled on time, the Seller shall notify the Buyer as soon as reasonably practicable of such unavailability. No substitutes shall be used without the consent of the Buyer.

2.6 No variation to the Order or these Conditions shall be binding unless expressly agreed in writing by a Director of the Buyer.

2.7

Without prejudice to any of its rights under clause 18, the Buyer shall be entitled to cancel an Order at any time prior to delivery or performance and pay the price of the Goods or Services so cancelled, less the savings in cost to the Seller arising from such cancellation.

3. Buyer's Property

3.1 All specifications, drawings, designs, patterns, tools, dies, moulds and other items furnished by the Buyer to the Seller:

- (a) are confidential and shall not be disclosed by the Seller to any other person without the prior consent of the Buyer;
- (b) shall not be copied or used for any other purpose other than for the carrying out of the Seller's obligations under the Contract;
- (c) shall at all times remain the sole and exclusive property of the Buyer;
- (d) shall be returned at the Seller's risk and expense in good order and condition to the Buyer immediately upon request or upon completion or termination of the Contract; and
- (e) shall be insured against all risks by the Seller whilst they are in its possession.

3.2 Where the Goods are designed, created or otherwise developed by or for the Seller pursuant to the Contract, then all Intellectual Property Rights therein or relating thereto throughout the world shall belong to the Buyer absolutely. The Seller hereby assigns all such Intellectual Property Rights to the Buyer with the intent that upon the making or creation thereof the Intellectual Property Rights shall automatically vest in the Buyer.

3.3 The Seller shall at the Buyer's request (and notwithstanding the termination of the Contract) sign and execute and procure the signature and execution of all such documents and do all such acts as the Buyer may reasonably require:

- (a) to vest the legal title in, apply for, obtain and maintain in force in the Buyer's sole name (unless it otherwise directs) the Intellectual Property Rights;
- (b) to resist any objection or opposition to obtaining, and any petitions or applications for revocation of, any of the Intellectual Property Rights;
- (c) to bring any proceedings for infringement of any of the Intellectual Property Rights.

3.4 The Seller irrevocably undertakes that it shall not assert against the Buyer any moral rights in or relating to the Intellectual Property Rights and warrants that all such moral rights are irrevocably waived and extinguished. For the purpose of this clause 3.4, moral rights shall have the meaning ascribed thereto by the Copyright, Designs and Patents 1988 Act and shall include all rights similar or corresponding thereto subsisting in any other country of the world from time to time.

4. Seller's Obligations

4.1 Without prejudice to any other rights the Buyer may have, the Seller warrants to the Buyer that:

- (a) the Goods shall be fit for all purposes of the Buyer made known to the Seller, or which should otherwise be reasonably apparent to the Seller. The Seller shall satisfy itself that it fully understands the Buyer's requirements so as to be in a position to comply with its obligations under this clause 4.1 (a) and also to prevent delay on account of any modifications to the Goods which may be necessary to meet the Buyer's requirements. The cost of any such modifications shall be deemed to be included in the price of the Goods;
- (b) the Goods comply in all respects with all relevant British, European and international statutory requirements, regulations, orders and standards relating to the Goods and the Seller expressly warrants that the Goods supplied under the Order have been or will be manufactured and sold free from all liens, charges, claims and encumbrances and in compliance with all relevant laws and regulations in force in the United Kingdom.

4.2 Without prejudice to clause 4.1, the Seller warrants that all Goods supplied under the Order shall:

- (a) be of the quality, quantity, size, description, specification and dimensions specified in the Order or otherwise indicated by the Buyer;
- (b) be of sound materials and of proper workmanship and design;
- (c) be free from all defects, including latent defects;

- (d) conform to any drawings or designs contained in or referred to in the Order;
- (e) conform to any material relating to the Goods and Services contained in any advertisements, catalogues, literature or correspondence published or issued by the Seller, or appearing on the Seller's website;
- (f) be equal in all respects to any samples provided by the Seller which have been approved by the Buyer;
- (g) be capable of any standard of performance specified in the Order and/or the Seller's quotation;
- (h) be supplied at no additional cost with all instructions, handbooks, training materials and safety data sheets required for the safe and proper use and operation of the Goods; and
- (i) be supplied at no additional cost with adequate spares and an after-sales service for the period specified in the Order, or if no such period has been specified in the Order, for such period as is reasonable, having regard to the type, value and proposed use and maintenance requirements of the Goods.
- 4.3 Without prejudice to clauses 4.1 or 4.2, the Seller warrants that:
- (a) it shall for the duration of the Contract maintain sufficient manufacturing capacity and stocks of Goods to enable it to meet any Order and shall at all times maintain full quality and traceability records;
- (b) it shall obtain and maintain in force at its sole expense for the duration of the Contract all licences, permissions, authorisations, consents and permits needed to produce, supply and deliver the Goods in accordance with the Contract;
- (c) it shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the production, packing, packaging, marking, labelling, storage, handling, supply and delivery of the Goods;
- (d) the Services will be performed by appropriately qualified and trained personnel in a timely and good and workmanlike manner and to the highest standard of quality prevailing in the industry at the time of performance and that the Seller shall observe any instructions given to it by the Buyer in connection with the performance of the Services, including any instructions regarding the health and safety and security policies that apply at the Buyer's premises (and the Buyer may exclude any of the Seller's personnel from the Buyer's premises for any actual or threatened breach of any such policies);
- (e) it has disclosed to the Buyer any information or requirements affecting the Buyer under the Health and Safety at Work Act 1974 and that any written information required to be supplied pursuant to that Act has been delivered to the Buyer.
- 4.4 The Seller hereby agrees to indemnify and keep indemnified and hold the Buyer harmless from all loss, damage, expenses, costs, charges, claims, demands or actions, whatsoever incurred or suffered by the Buyer and/or for which it may be liable to any third party due to, arising from or in connection with:
- (a) all claims of whatsoever kind and from whomsoever arising for damage or injury to property or persons arising out of the act or omissions or the negligence of the Seller, its employees, servants, agents, subcontractors or others in connection with the performance of its obligations under the Contract save insofar as the same is attributable solely to the negligence of the Buyer or its employees, servants, agents or subcontractors;
- (b) the breach of any provision of the Contract by the Seller (including any negligent performance or failure or delay in performing any obligation under the Contract);
- (c) any breach of any warranty given by the Seller in clause 4.1, 4.2 or 4.3;
- (d) any breach of the warranty given by the Seller in clause 8.1;
- (e) any defect in the workmanship, materials or design of the Goods or their packaging;
- (f) any claim made by or against the Buyer and arising out of, or in connection with, the supply of the Goods or the Services;
- (g) any failure of the Goods or Services to comply with any law or regulation applicable to them;
- (h) any infringement or alleged infringement of any Intellectual Property Rights for or relating to the Goods or to the importation, use or resale of the Goods (save where said infringement arises directly from the Buyer's instructions to the Seller);
- (i) any liability under the Consumer Protection Act 1987 in respect of the Goods.
- 4.5 The Seller shall insure adequately against all loss, damage or injury or other claims which may be incurred by the Seller or the Buyer which may arise in any way whatsoever out of the Contract and without prejudice to the generality of the foregoing, shall be adequately insured for third party and employer's liability. At the request of the Buyer, the Seller shall provide evidence of such insurance and payment of the current premiums.
- 4.6 The Seller shall:
- (a) do nothing to invalidate any insurance policy or to prejudice the Buyer's entitlement under it; and
- (b) notify the Buyer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 4.7 The Seller's liabilities under the Contract shall not be deemed to be released or limited by the Seller taking out the insurance referred to in clause 4.5.
- 4.8 If the Seller fails or is unable to maintain insurance in accordance with clause 4.5, or fails upon request by the Buyer to provide evidence that it has paid the current premiums in accordance with clause 4.5, the Buyer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Seller.
- 5. Samples, Testing and Inspection**
- 5.1 The Seller shall submit samples of the Goods for the Buyer's approval before the Goods are delivered if requested by the Buyer. Such samples of Goods should be marked by the Seller clearly and appropriately for identification and will be retained by the Buyer until after the Goods have been delivered.
- 5.2 The Buyer or its authorised agent shall be entitled to make such tests or carry out such inspections of Goods during manufacture, processing and storage and inspect any equipment used to manufacture such Goods. The Seller shall at its own cost provide or shall procure the provision of all facilities as may be reasonably required and give all assistance and make available all pertinent drawings and plans to the Buyer or its authorised agent for such tests or inspections. Before despatching the Goods, the Seller shall carefully inspect them for compliance with the Order approved samples and/or the specification and shall give the Buyer reasonable notice of any tests to be carried out so that the Buyer may be represented at such tests. The Seller shall at the request of the Buyer supply to the Buyer a copy of the Seller's test and/or inspection reports certified by the Seller to be a true copy and the Seller shall retain the original documents for a period of three years.
- 5.3 If as a result of any test or inspection report under clause 5.2 above, the Buyer considers that the Goods do not comply with the Order or Order samples approved by the Buyer and/or specification (if any), or are unlikely on completion of manufacture or processing so to comply, the Buyer shall notify the Seller in writing and the Seller shall promptly take such steps as may be necessary to ensure such compliance at its sole cost.
- 5.4 The Buyer shall have the right to inspect any Services performed by the Seller pursuant to the Contract and the Seller shall allow all reasonable access and assistance to the representatives of the Buyer to enable such representatives to carry out the inspection promptly, including providing the Buyer with any information that may be reasonably required.
- 5.5 No testing or inspection undertaken pursuant to this clause 5 (nor any results thereof) shall diminish any other obligation of the Seller under the Contract, nor shall any such inspection or testing or any results thereof be deemed to amount to, or to be tantamount to, acceptance of the Goods.
- 6. Price**

- 6.1 The price of the Goods shall be the price stated in the Order and shall not be subject to change without the prior written consent of the Buyer and shall include all charges for packing, packaging, carriage, insurance and delivery of the Goods to the Buyer and any clearance charges, import taxes or duties or other duties whatsoever. Without prejudice to the foregoing provisions of this clause 6.1, all Goods imported into the United Kingdom by or on behalf of the Seller shall be Delivered Duty Paid (DDP) as that term is defined in the Incoterms 2010 Rules.
- 6.2 No additional charges shall be accepted by the Buyer without the prior consent of the Buyer in writing.
- 6.3 Unless otherwise agreed by the Buyer in writing, any costs incurred by the Seller in respect of secondary packaging (including the cost of pallets) are the Seller's responsibility and shall be included in the price of the Goods.
- 6.4 The Buyer shall be entitled to:
- (a) any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller; and
 - (b) the benefit of any other cost saving incurred by the Seller, whether or not shown on its own terms and conditions of sale.
- 7. Payment**
- 7.1 Unless otherwise agreed in writing by the Buyer, payment shall be made 60 days from the end of the month of receipt by the Buyer of the Seller's invoice, or delivery of the Goods or performance of the Services specified in the Contract, whichever is later.
- 7.2 The Buyer shall be free to make payment to the Seller by whichever method and in whatever currency the Buyer chooses.
- 7.3 If any sum under the Contract is not paid when due, the Seller shall not be entitled to suspend delivery of the Goods as a result of any sums being outstanding.
- 7.4 The Buyer shall be entitled to set off against the sum shown to be due, all sums due from the Seller to the Buyer or the amount of any claim against the Seller from the Buyer in respect of the Order, or any other contract or transaction between the Buyer and the Seller.
- 7.5 Payment of the invoice by the Buyer shall not constitute acceptance of the Goods and is without prejudice to any claims the Buyer might have against the Seller.
- 7.6 All invoices shall:
- (a) be rendered with the Order and the Order number;
 - (b) be supported by an appropriate statement of accounts;
 - (c) be in respect of one Order only; and
 - (d) be sent to the address notified to the Seller.
- 7.7 Any failure to submit invoices in accordance with the requirements of clause 7.6 will result in the invoice being returned to the Seller.
- 8. Product Recalls**
- 8.1 The Seller warrants that it shall immediately notify the Buyer in writing providing all relevant details if it discovers:
- (a) that there is or may be a defect in the Goods which have been delivered to the Buyer at any time;
 - (b) any error or omission in the instructions for the use and/or assembly of the Goods;
 - (c) a risk that the Seller suffers or will suffer any incident that may damage the Buyer's reputation;
 - (d) that any such defect, error or omission represents a breach of any warranty which causes or may cause any risk of death, injury or damage to property; or
 - (e) that it receives any complaints relating to the Goods from its customers.
- 8.2 Where any of the circumstances in clause 8.1 apply, the Buyer may in its absolute discretion, or by order of any authority, at the Seller's expense:
- (a) recall any Goods or any other Goods into which the Goods have been incorporated and sold by the Buyer to its customers (whether for a refund, credit or replacement, which shall in each case be undertaken by the Seller at the Buyer's discretion); and/or
 - (b) issue any notification whether in writing or otherwise to its customers about the manner of use or operation of any Goods or any other Goods into which the Goods have been incorporated and sold by the Buyer to its customers; in each case on the basis of the identification whether by the Buyer, its customers or any third party of any defect in the relevant Goods or any error or omission in the instructions for their use or assembly (whether or not that defect, error or omission represents a breach of any warranty) which the Buyer reasonably concludes affects or may affect any of the Goods supplied which causes or may cause any risk of death, injury or damage to property.
- 8.3 The Buyer will wherever practicable notify the Seller prior to taking such decision as detailed in clause 8.2 and afford the Seller the opportunity to make representations.
- 8.4 If the Buyer conducts a recall of Goods, the Seller shall cooperate with the Buyer and provide all assistance that is reasonably required to ensure that the Goods are recalled promptly and effectively. The parties shall have the following responsibilities:
- (a) the Seller shall follow local procedures covering recall of Goods subject to any directions received from the Buyer;
 - (b) the Seller must ensure that it retains all batch records and product information relating to the recalled Goods and that these records are made available to the Buyer within four hours of notification of a Product recall;
 - (c) upon the Buyer's request, the Seller shall cease delivering the recalled Goods to the Buyer;
 - (d) the Seller shall only supply Goods replacing the recalled Goods upon the Buyer's request in writing.
- 8.5 The Seller shall reimburse the Buyer for losses as a result of or in connection with such recall of Goods and/or for arising out of the Seller's performance, or purported performance of, or failure to perform its obligations under the Contract.
- 9. Delivery and Performance**
- 9.1 Each delivery must be accompanied by a copy of the Order.
- 9.2 Time of delivery of the Goods and time of performance of the Services shall be of the essence.
- 9.3 Delivery in instalments shall be permitted only with the consent of the Buyer in writing. Where the Buyer agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment, but failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.
- 9.4 In the event that the Buyer is not able to accept delivery of the Goods when due, the Seller shall be responsible for arranging suitable storage at suitable premises for the Goods, advising the Buyer beforehand of the particulars of such proposed storage, and the Seller shall also ensure that the Goods and the premises in which they are stored are properly insured against all the usual risks and shall notify the Buyer of such insurance cover. The Buyer shall be liable for the reasonable cost, including insurance, of so doing.
- 9.5 If the Goods are delivered to the Buyer in excess of the quantities ordered, the Buyer shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.
- 9.6 The Goods shall be delivered at the time or within the period specified in the Order to the address indicated in the Order.
- 9.7 Delivery of the Goods shall be complete on the completion of unloading and stacking of the Goods at the address indicated in the Order. The Seller shall immediately notify the Buyer when delivery has been completed pursuant to this clause 9.7. Delivery shall take place during the Buyer's normal business hours.
- 9.8 The Services shall be performed at the address indicated in the Order or as otherwise directed by the Buyer.
- 9.9 If the Goods or any part thereof are not delivered within the time or times specified in the Contract or any extension of such time or times, the Buyer may recover from the Seller as liquidated damages and not by way of penalty a percentage of that part of the Contract which is properly apportionable to the Goods undelivered and to any other Goods already delivered under the Contract which cannot be effectively and commercially used by the Seller's failure entirely to perform the Contract. In addition to the Buyer's rights under this clause 9.9 as aforesaid, the Buyer may:
- (a) refuse to take any subsequent attempted delivery of the Goods;
 - (b) terminate the Contract with immediate effect;
 - (c) obtain substitute Goods from another seller and recover from the Seller any costs and expenses reasonably incurred by the Buyer in obtaining such substitute Goods; and

- (d) claim damages for any other costs, expenses or losses directly or indirectly resulting from the Seller's failure to deliver the Goods as aforesaid.
- 9.10 Each delivery shall be accompanied by a delivery note from the Seller showing:
- (a) the Order number;
 - (b) the date of the Order;
 - (c) the type and quantity of Goods included in the Order; and
 - (d) where the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 9.11 The Seller shall be obliged to obtain the signature of the Buyer's representative on the delivery note required pursuant to clause 9.10, but such signature shall not indicate acceptance of the Goods.
- 9.12 If the Seller requires the Buyer to return any packaging materials to the Seller, that fact must be clearly stated on the delivery note accompanying the Order, and any such returns shall be at the Seller's expense.
- 9.13 If the Seller is in the position of being able to supply some but not all of its customers the Buyer shall be given priority over all other of the Seller's customers.
- 9.14 If delivery is made before the delivery date specified in the Order, the Buyer may return the Goods to the Seller at the Seller's risk and expense. In any event, payment will be withheld and the payment period will begin to run from the delivery date specified in the Order or the date of receipt by the Buyer of a correct invoice, whichever is the later.
- 10. Risk and Property**
- 10.1 Until delivered by the Seller in accordance with clause 9, the Goods shall remain at the risk of the Seller who shall insure the same against all risks which can be reasonably contemplated as affecting the Goods. Subject to the Buyer's right of rejection of the Goods, the property in the Goods shall pass to the Buyer upon delivery, or payment of the price of the Goods, whichever is the earlier.
- 10.2 The provisions of clause 10.1 shall apply without limitation to any patterns, tools, dies or moulds procured by the Seller for use in connection with the Goods and which are to remain at the Seller's premises to facilitate the ongoing supply of the Goods. Upon receipt of the Buyer's written request, the Seller shall immediately release such patterns, tools, dies or moulds to the Buyer.
- 11. Labelling and Packaging**
- 11.1 Prior to despatch, the Goods shall be properly labelled, packed and secured in the manner specified in the Order and in any event in a manner so as to reach their destination in good condition under normal conditions of transport, having regard to the nature and composition of the Goods.
- 11.2 Subject to clause 11.1, all export shipments must meet all export shipping requirements and must be adequately boxed or crated with any special handling clearly marked and contents waterproofed and otherwise protected to prevent damage in transit.
- 12. Acceptance and Rejection**
- 12.1 Without prejudice to any other of its rights, the Buyer may by notice in writing to the Seller reject any or all of the Goods or Services if the Seller fails to comply with any of its obligations under the Contract. Section 15A of the Sale of Goods Act 1979 shall not apply.
- 12.2 The Buyer shall not be deemed to have accepted any Goods or Services until the Buyer has had a reasonable time to inspect them following delivery or performance, or if later, within a reasonable time after any latent defect has become apparent.
- 12.3 If any Goods are rejected by the Buyer in accordance with clause 12.1, then the Buyer may:
- (a) require the Seller to replace the rejected Goods at the Seller's risk and expense within 5 business days of being requested to do so;
 - (b) terminate the Contract with immediate effect;
 - (c) refuse to pay the Contract Price for the rejected Goods, without liability to the Seller;
 - (d) where the Goods have already been paid for in part or in full, require the Seller to repay the Contract Price for the rejected Goods in part or in full, as applicable (whether or not the Buyer has previously required the Seller to replace the rejected Goods); and
- (e) claim damages for any other costs, expenses or losses resulting directly or indirectly from the Seller's delivery of the rejected Goods.
- 12.4 The Buyer's rights and remedies under clause 12.3 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the Contract by the Sale of Goods Act 1979.
- 12.5 Clause 12.3 shall apply, without limitation, to any replacement Goods supplied by the Seller.
- 12.6 If the Seller fails to promptly replace rejected Goods in accordance with clause 12.3 (a), the Buyer may, without affecting its rights under clause 12.3 (e), obtain substitute Goods from a third party Seller and the Seller shall reimburse the Buyer for the costs it incurs in doing so.
- 12.7 The Seller shall promptly re-perform any Services found to have been performed defectively within 12 months of the date of their performance.
- 13. Buyer's Identification**
- 13.1 The Seller agrees that any identification used by the Buyer such as trademarks, trade names, logos or any markings or decorative styling shall be used only on articles supplied to the Buyer.
- 14. Advertising**
- 14.1 The Seller shall not without the prior written consent of the Buyer advertise or make it known to third parties that the Seller supplies Goods to the Buyer.
- 15. Shipping Documents**
- 15.1 Shipping documents must be sent by first class mail to the Buyer's office indicated on the Order on the day on which shipment is made. When Goods are invoiced by the Seller but shipped by a third party the invoice shall bear the name of the shipper and the point from which shipment originated.
- 16. Assignment**
- 16.1 The Seller may not assign or transfer the Order or any rights or obligations thereunder to any other person, firm, Buyer or third party without the prior written consent of the Buyer.
- 17. Subcontracts**
- 17.1 The Seller shall not subcontract any of the work contemplated to be performed by the Seller under the Order without the prior written consent of the Buyer. If such written consent is granted, the Seller shall if requested furnish unpriced copies of all subcontracts to the Buyer.
- 18. Termination**
- 18.1 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith without liability to the Seller if:
- (a) the Seller commits a material breach of any of these Conditions and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach; or
 - (b) the Seller repeatedly breaches any of these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these Conditions; or
 - (c) any distress, execution or other process is levied upon any of the assets of the Seller, or the Seller has a bankruptcy order made against it or makes an arrangement or composition with its 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 or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator over the Seller or notice of intention to appoint an administrator is given by the Seller 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 Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or

- (d) any event occurs, or proceeding is taken, with respect to the Seller under the laws of any jurisdiction to which the Seller is subject, that has an effect equivalent or similar to any of the events or proceedings mentioned in clause 18.1 (c); or
- (e) the Seller ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- (f) the financial position of the Seller deteriorates to such an extent that in the reasonable opinion of the Buyer, the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 18.2 The termination of the Contract, however arising, shall be without prejudice to the rights of the Buyer accrued prior to termination. Any Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 18.3 Without prejudice to the generality of clause 18.2, upon termination of the Contract the Buyer shall be entitled (at its entire discretion):
- (a) to return to the Seller at the Seller's risk and expense any of the Goods already delivered but which cannot be effectively and commercially used by reason of the Seller's failure entirely to perform the Contract and to recover any monies paid by the Buyer in respect of such Goods;
- (b) to demand by notice in writing, where applicable, that the Seller shall within a reasonable time replace the Goods in respect of which the Contract has been determined with Goods which are in all respects in accordance with the Contract;
- (c) to recover from the Seller, where applicable, any additional expenditure reasonably incurred by the Buyer in obtaining other Goods in replacement of those in respect of which the Contract has been determined.
- 19. Warranty**
- 19.1 Without prejudice to any other remedy which the Buyer may have, the Seller shall as soon as reasonably practicable upon a request by the Buyer to do so, replace or (at the Buyer's option) repair all Goods which are or which become defective during the period of 12 months from the date of delivery to the Buyer, where such defect occurs under proper usage and is due to faulty design, or inadequate or faulty materials or workmanship, the Seller's erroneous instructions as to use, or breach by the Seller of a provision of the Contract. Repairs and replacements shall be subject to the foregoing warranty for a period of 12 months from the date of delivery after replacement or repair.
- 19.2 If the Seller fails to repair or replace any defective Goods in accordance with the requirements of clause 19.1, the Buyer may have the Goods repaired or replaced by a third party and recover the costs of so doing from the Seller.
- 20. Force Majeure**
- 20.1 The Buyer shall not be liable to the Seller or deemed to be in breach of Contract by reason of any delay due to, or any loss or damage occasioned by, any cause arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the Buyer, including Acts of God, strikes, lock-outs, labour shortages, shortage of power, materials, malicious damage or obligatory voluntary compliance with any request having or appearing to have authority in that regard whether for defence or other national or local governmental purposes or otherwise. In any such case, the Order shall be suspended during such delay and shall again become operative upon the termination of such cause, provided that to meet any altered circumstances occasioned by such delay the Buyer may make such variations to the terms of the Order as are in its opinion, reasonable and if the Seller does not agree thereto the Buyer may cancel the Order insofar as it remains unperformed but shall pay a proportionate part of the quoted price for work done and Goods supplied prior to the event of force majeure. In the event of any dispute as to the proper proportion payable as aforesaid, the matter shall be settled by the Buyer's auditors who shall act as experts and not arbitrators and whose decisions shall be final and binding.
- 21. Miscellaneous**
- 21.1 No right or remedy conferred upon or reserved to the Buyer is exclusive of any other right or remedy herein or by law or equity provided or permitted but each shall be cumulative of every other right or remedy given hereunder or now hereafter existing and may be enforced concurrently therewith or from time to time.
- 21.2 If any provision (or part of a provision) of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. 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 parties.
- 21.3 No failure or delay by either party in exercising any right, power or privilege under the Contract will impair or operate as a waiver of the same, nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- 21.4 The Contract will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Contract. Neither party will have, nor represent that it has, any authority to make any commitments on the other party's behalf.
- 21.5 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified by the relevant party by notice in writing to the other party. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 21.6 Subject to the Buyer's liability to pay the Seller for the price of the Goods in accordance with and subject to these Conditions, the Buyer accepts no liability to indemnify the Seller for any loss, damage, expenses, costs, charges claims, demands or actions incurred by the Seller whether under the Contract or otherwise, including any liability to any third party. The aggregate liability of the Buyer under the Contract or otherwise (if any) shall not in any event exceed the price of the Goods. Nothing in this clause 21.6 shall operate so as to exclude or limit the Buyer's liability for personal injury or death attributable to its own negligence, or for fraud or fraudulent misrepresentation, or so as to exclude or limit any other liability of the Buyer that cannot be excluded or limited by law.
- 21.7 In addition to any other confidentiality obligation imposed on the Seller by these Conditions, the Seller undertakes not to disclose any information disclosed to it which has been expressed by the Buyer to be confidential or which should reasonably be supposed by the Seller to be confidential (including any information relating to the Buyer's business, production processes or any trade secrets of the Buyer) and the Seller shall not use any such information other than for the purpose of discharging its obligations under the Contract. Notwithstanding the provisions of this clause 21.7, the Buyer reserves the right to require the Seller to sign a Non-Disclosure Agreement.
- 21.8 No third party shall be entitled to enforce any of the terms of the Contract under the Contracts (Rights of Third Parties) Act 1999.
- 21.9 The Order and these Conditions contain the whole agreement between the parties and supersede and replace any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Order or these Conditions.
- 21.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties irrevocably agree to submit to the exclusive jurisdiction of the English Courts.