

## CONDITIONS OF SALE

### 1. DEFINITIONS

In these Terms and Conditions (**the “Conditions”**), the following words shall have the following meanings:-

|                             |                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Buyer"</b>              | shall mean the corporate entity firm or person to which the Goods and/or Services are supplied                                                                                                                                                                                                                                      |
| <b>"Company"</b>            | shall mean Marshalls Mono Limited or any member of the Marshalls Group that contracts on these Conditions from time to time                                                                                                                                                                                                         |
| <b>"Group"</b>              | shall mean Marshalls plc and its subsidiary companies whether directly or indirectly owned                                                                                                                                                                                                                                          |
| <b>"Goods"</b>              | shall mean the products or materials supplied by the Company                                                                                                                                                                                                                                                                        |
| <b>"Mandatory Policies"</b> | shall include the Company's business policies and codes relating to Health and Safety, Anti-Bribery, Modern Slavery, Code of Conduct, Serious Concerns and Data Protection as the Company may update them from time to time, together with any other policy adopted by the Company and communicated to the Buyer from time to time. |
| <b>"Services"</b>           | shall mean the whole or any part of the services which the Company is to supply or carry out under the contract                                                                                                                                                                                                                     |

### 2. MAKING THE CONTRACT

- 2.1 The Company's quotation constitutes an invitation to treat (i.e. a proposal to enter into a contract) and will, unless otherwise stated in the quotation, be open for a period of 45 days beginning with the date of the quotation unless the Company has previously withdrawn it. Any order issued by the Buyer is subject to acceptance by the Company at the Company's discretion. A contract will only be formed when the Company has accepted the Buyer's order. The quotation, order and acceptance shall together form the contract governed by these Conditions.
- 2.2 All orders are placed and accepted under these Conditions alone except where varied in accordance with Condition 2.4.
- 2.3 These Conditions exclude any other terms and conditions which a Buyer might seek to impose even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any of these Conditions or are inconsistent with them. These Conditions and the documents referred to in these Conditions represent the entire agreement between the parties and will replace any previous agreement, discussions or understandings between them relating to the subject matter of the contract. No implied or express term not reflected within a contract shall form part of any contract between the parties. No collateral warranties have been agreed in relation to or connected with the subject matter of any contract and any discussions documentation or correspondence which might be taken to represent such matters are overtaken and replaced by the applicable contract. However, foregoing shall not act so as to limit or exclude any liability for fraud or fraudulent misrepresentation or for any other matter which the Company is not lawfully permitted to limit or exclude liability for.
- 2.4 No employee, agent or officer of the Company is authorised to agree to any variation of these Conditions or to agree to the supply of Goods and/or Services by the Company otherwise than on the basis of these Conditions. Variations made in writing and signed by a director or secretary of the Company are permitted.

### 3. CANCELLATION/SUSPENSION OF DELIVERIES

- 3.1 Once the contract is formed, no cancellation or return of Goods by the Buyer is permitted except where expressly agreed by the Company in writing at the Company's discretion.
- 3.2 The Buyer will in the event of agreed cancellation or return by the Buyer pay the Company's standard cancellation/return charges in consideration for the Company's agreement to cancel the order in question or accept the return of Goods (as applicable). In addition, the Buyer shall indemnify the Company fully against all charges costs and losses (including loss of profit) sustained by it as a result of the cancellation. The Company's certificate as to the amount of such loss shall be final.
- 3.3 The Company may without prejudice to its other rights, suspend or cancel further deliveries and/or work under this and any other contract between the parties hereto if the Buyer shall fail to make payment of any sum on its due date for payment or if the Buyer shall become insolvent or have any form of insolvency proceedings or action (whether or not involving the intervention of a court) taken against it, including (but without limitation any receivership, petition or order for administration, winding up or

bankruptcy, any proposal for or voluntary arrangement with creditors or proposal to compound with creditors, or any procedures similar to any of them under the laws of England or any other jurisdiction whatsoever).

In such circumstances the Company shall be entitled to immediate payment from the Buyer of a proportionate part of the price in respect of Goods and/or Services already delivered and/or manufactured to the order of and/or purchased for and/or carried out for, the Buyer together with an amount representing anticipated further loss sustained or to be sustained due to such suspension or cancellation in each case as certified by the Company.

- 3.4 The Company may suspend or cancel any contract for the supply of Services and/or Goods if at any time the price under the contract taken together with all other sums owing to members of the Group exceeds the credit limit set for the Buyer by the Company and/or the Group, whether or not such credit limit has been communicated to the Buyer.
- 3.5 The Company may without prejudice to its other rights, where the Buyer refuses, is unable or fails to take delivery of Goods by the dates specified in the contract, or the timescale set out in the Company's quotation, or where no date or timescale is specified within a reasonable period either:-
  - 3.5.1 put the Goods into its stock at the Buyer's risk and expense and submit an invoice for payment as though the Goods had been delivered on the date when they were transferred to stock; or
  - 3.5.2 sell or offer to sell the Goods or any part of them to other interested parties in which case the Company shall be entitled to recover from the Buyer as liquidated damages the amount of gross profit foregone by the Company on the sale to the Buyer as certified by the Company on the basis of the price that would have applied at the date for delivery.
- 3.6 If any of the Goods referred to in Condition 3.5 are not sold within a period of 90 days or realise less than their full cost to the Company (including a pro-rata proportion of fixed and variable overheads) within that time, the Company may recover from the Buyer in addition to gross profit as liquidated damages the amount of the cost not recovered by sale as certified by the Company. Upon payment of all sums certified as due to the Company the Buyer shall be entitled to any Goods which have not been disposed of by sale within the period of 90 days.

#### **4. PRICE**

- 4.1 Unless otherwise stated the price payable for the Goods and Services will be that set out in the Company's quotation and confirmed by its acceptance of the Buyer's order, or, if higher or if no such quotation was given, the price currently charged by the Company at the date of delivery of the Goods and/or Services. The price and any fees costs and disbursements expressed to be payable to the Company shall be deemed to be exclusive of Value Added Tax unless expressly stated otherwise.
- 4.2 The Company reserves the right at its sole discretion at any time before delivery of the Goods to adjust the price to take account of any increase in the price to the Company of goods, or services, or raw materials, labour or other inputs used in the production of the Goods or goods of that kind or of the Services, or to take account of any increase in taxation or duty payable, or to take account of any currency fluctuation increasing the cost of producing or purchasing the Goods or goods of that kind or the supply of Services in each case measured in Sterling.
- 4.3 The prices quoted assume that delivery will be made on normal working days during normal working hours. For deliveries agreed to be made on Saturdays, Sundays, public holidays or outside normal working hours the Company reserves the right to make an extra charge.

#### **5. TERMS OF PAYMENT**

- 5.1 The Company shall be entitled to payment of the price payable in respect of the Goods upon despatch of the Goods and in respect of Services when the Services are in the opinion of the Company substantially complete. Issue of an invoice by the Company shall be taken as confirmation of delivery and/or that the Company is of the opinion that the Services are substantially complete. Payment is due by the end of the month following the date of the invoice, although the Company may require the Buyer to pay within a shorter time period at any time by written notice. Time of payment shall be of the essence of the contract.
- 5.2 If the Buyer fails to make payment when due for any Goods and/or Services in accordance with these Conditions, the Company may, without prejudice to any other right or remedy available to it, serve notice on the Buyer to make immediate payment for all goods and/or services supplied by the Company, whether or not such payment would otherwise be due.

- 5.3 The Company reserves the right to charge interest of 5% per annum above National Westminster Bank PLC base rate for the time being on all overdue accounts, such interest being deemed to accrue and be compounded on a daily basis from the due date for payment. The Company also reserves the right to raise additional charges in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.
- 5.4 The Buyer shall not be entitled to withhold, deduct or set off against any sum payable to the Company any amount or claim whatsoever, including but without limitation in respect of any loss or damage which the Buyer alleges that it has sustained due to any act or default of the Company or its agents or employees. In particular but without limitation, the Buyer may not set off any amount of loss or damage arising from alleged defects in Goods received or Services supplied by the Company.

## **6. DELIVERY**

- 6.1 Where Goods are delivered to the Buyer, the Buyer shall be responsible for unloading unless the Company has expressly agreed to unload the Goods. Where Goods are collected by the Buyer at the Company's premises, the Company will load the Buyer's vehicle.
- 6.2 Where the Company delivers to the Buyer's premises the Company reserves the right to make an extra charge where unloading of the Goods is delayed. Where the Company delivers to the Buyer's Premises the Buyer shall provide reasonable assistance in unloading the Goods.
- 6.3 The Company may refuse to deliver the Goods to any location where access is considered by it to be unsuitable for the safe passage of its vehicles. Where delivery is made to the Buyer's premises the Buyer will indemnify the Company against any loss suffered during unloading or as a result of the access way being unsuitable. If the Buyer does not advise the Company of any access restrictions and it transpires that the vehicle delivering the Goods is unsuitable and/or the access is restricted causing the delivery to be delayed due to the Buyer failing to disclose the restricted access the Company may levy a charge.
- 6.4 Should the Buyer fail to collect any Goods on the date notified to it by the Company or allow the Company to make delivery to the Buyer at the first attempt (as applicable) then the Buyer shall pay the Company's standard storage and redelivery charges. In addition, the Buyer shall indemnify the Company fully against all charges costs and losses sustained by it as a result of continuing to store and attempting to redeliver such Goods. The Company's certificate as to the amount of such loss shall be final.
- 6.5 The Company shall not be liable for any overloading of vehicles of the Buyer or its hauliers.
- 6.6 Whilst the Company will seek to deliver in accordance with the date agreed for despatch or delivery the Company shall not be liable for any loss whatsoever or howsoever arising caused by its late or non-delivery or by the failure to make Goods ready for collection on the due date. Time of despatch or delivery is not of the essence and a delay in delivery will not entitle the Buyer to treat the contract as repudiated or to any damages.
- 6.7 The Company reserves the right to despatch and/or make delivery by instalments and to tender a separate invoice in respect of each instalment.
- 6.8 When despatch and/or delivery is to be by instalments or the Company exercises its right to deliver by instalments or if there be delay in the despatch and/or delivery of any one or more instalments for whatever reason, this will not entitle the Buyer to treat the contract as repudiated or to any damages.
- 6.9 Carriage is chargeable on all despatches where the Company undertakes delivery. When the Buyer requests delivery by a specific carrier any difference in cost between the Company's normal method of carriage and that requested will be payable by the Buyer.

## **7. RISK AND THE PASSING OF PROPERTY**

- 7.1 Risk in the Goods shall pass to the Buyer when the Goods leave the despatching premises of the Company (or of the Company's supplier if delivery is to be made directly to the Buyer) regardless of whether they remain on a vehicle of the Company or not.
- 7.2 Notwithstanding risk in the Goods passing to the Buyer, title in Goods shall not pass to the Buyer until payment is received by the Company for the Goods and there are no other amounts then outstanding from the Buyer to the Company in respect of other goods or services supplied by the Company.
- 7.3 Until title to any Goods has passed to the Buyer, the Buyer shall: (a) hold those Goods on a fiduciary basis as the Company's bailee; (b) store those Goods separately from any other items held by the Buyer so that they remain readily identifiable as the Company's property; (c) not remove, deface or obscure any markings on the Goods or their packaging which identifies the Goods as the Company's property; (d)

make clear in any of its asset registers or records that the Goods are not the property of the Buyer but belong to a third party; and (e) maintain those Goods in a safe and satisfactory condition and keep them insured against all usual risks for their full price but provided the Buyer has not lost its power of sale under Condition 7.4, the Buyer may resell on an arm's length basis (in its own capacity as principal and not as agent for the Company and for such purposes title to the relevant Goods shall pass from the Company to the Buyer immediately prior to completion of such onwards sale) or use any Goods in the ordinary course of its business.

- 7.4 The Buyer's power of sale and use under this Condition 7 shall automatically cease if the Buyer becomes insolvent or suffers any form of insolvency proceedings or action (whether or not involving the intervention of the court) against it (including but without limitation any receivership, petition or order for administration, winding up or bankruptcy, any proposal for or voluntary arrangement with creditors or proposal to compound with creditors, or any similar procedures under the laws of England or any other jurisdiction) and in such circumstances the Buyer shall notify any manager, receiver or insolvency practitioner that the Goods do not belong to the Buyer but are the property of the Company. The power of sale and use shall also be determinable at any time by notice of the Company to the Buyer.
- 7.5 The Buyer shall allow the Company or its authorised representatives on request access any premises where any Goods in respect of which title has not passed to the Buyer may be stored (or in the case of any premises not under the control of the Buyer, shall procure that such access is granted for the Company or its authorised representatives) for the purposes of inspecting those Goods and verifying the compliance by the Buyer with its obligations under this Condition 7 and/or where the Buyer's right of possession of those Goods has ended, for the purposes of recovering those Goods.

## **8. INSPECTION/SHORTAGES**

- 8.1 The Company shall have no liability for any damage or shortages that would be apparent on careful inspection by the Buyer unless a written complaint is delivered to the Company within seven days of delivery detailing the alleged damage or shortage and the Company is allowed access to inspect the affected Goods before any use is made of them.
- 8.2 Subject to Condition 8.1 the Company shall make good any shortage in the Goods for which it is responsible and where appropriate repair or at its option replace any Goods damaged during loading or unloading by the Company, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

## **9. WARRANTY**

- 9.1 The Company warrants that it has title to and the unencumbered right to sell the Goods.
- 9.2 There shall be no term implied into the Contract:-
- 9.2.1 as to any compliance of the Goods with any sample or descriptive material except as identified specifically in the Company's quotation or order confirmation, and section 13 of the Sale of Goods Act 1979 and section 3 of the Supply of Goods and Services Act 1982 are hereby excluded;
- 9.2.2 as to the quality of the Goods, and section 14(2) of the Sale of Goods Act 1979 and section 4(2) of the Supply of Goods and Services Act 1982 are hereby excluded; and
- 9.2.3 as to the fitness or suitability of the Goods for any or any particular purpose, and section 14(3) of the Sale of Goods Act 1979 and section 4(5) of the Supply of Goods and Services Act 1982 are hereby excluded.

Any claim regarding the quality of the Goods or any alleged defect in any Goods shall be dealt with in accordance with Condition 12.2.

- 9.3 The Buyer expressly acknowledges that for all purposes the ability and expertise of the Buyer in evaluating any description of or information as to the Goods is equal to that of the Company and the Buyer has not relied on the skill and judgement of the Company in selecting the Goods for any purpose.
- 9.4 The Company undertakes no responsibility for the suitability of sites or foundations or for supports of any nature, or for compliance with any local bylaws or statutory regulations with regard to the Goods, or for the fulfilment of any special requirements which the Buyer may be bound to observe or fulfil.
- 9.5 If Goods are made or amended or Services are carried out to any specification, instruction, information or design supplied by the Buyer or any third party on behalf of the Buyer, then the suitability and accuracy of that specification, instruction, information or design will be the sole responsibility of the Buyer and the Company shall have no responsibility to verify it for suitability or accuracy. In such circumstances, the

Buyer will in addition indemnify the Company against any infringement of any patent, design right, registered design, trade mark, trade name, copyright or other intellectual property right arising from the sale and/or supply of the said Goods or Services and any loss, damage or expense the Company may incur because of any such infringement or alleged infringement in any country.

## **10. SERVICES**

- 10.1 The Company shall be bound to supply only those Services specifically identified in the contract. Any Services involving the preparation of designs for any structure and/or services at a site and/or services involving advice in relation to the installation of Goods shall be taken to exclude any obligation to undertake structural or load bearing calculations or verification (and the Buyer shall undertake such work itself and verify any designs or calculations provided) unless and only to the extent that the contract contains an express statement signed by an authorised person on behalf of the Company that the Company shall undertake such calculations or verification.
- 10.2 The Buyer shall supply as soon as reasonably practicable all information or documents reasonably required or requested by the Company in order to allow the Company to carry out the Services.
- 10.3 Should the Buyer fail to provide any information or documents required or requested for the purposes of carrying out the Services, the Company may either (at its sole option) delay the carrying out of the Services for so long as the information or documents are outstanding or make such assumptions as it in its sole discretion regards as appropriate, or refuse to carry out the Services. In such circumstances the Buyer shall have no right to damages or any other relief.
- 10.4 The Company shall not be responsible for any error or defect in the Services which is a result of an inadequacy or error in the information supplied by or on the behalf of the Buyer.
- 10.5 If at the Buyer's request the Company undertakes any services additional to the Services, or by reason of any design changes requested by the Buyer or any other circumstances beyond the Company's control the Company is required to undertake extra work, a fair and reasonable additional hourly fee will be payable as certified by the Company.
- 10.6 The Company shall exercise reasonable care and skill in the provision of the Services supplied under the contract.
- 10.7 Subject always also to the other restrictions on duty or liability set out in these terms and conditions the Company shall have no liability (whether in misrepresentation, contract, tort or otherwise whatever) in respect of any expression of opinion, recommendation, design, selection of materials, calculations, information or literature provided by it prior to the making of the contract or which it is not contracted to provide except to the extent that such matter is incorporated into the contract expressly in the quotation or order confirmation of the Company or by an express written variation signed by an authorised person on behalf of the Company.
- 10.8 It shall be the exclusive obligation of the Buyer, unless the Company is expressly contracted to undertake such work in the contract, to ensure that all ground conditions, foundations, fixing points, ports or other structural elements in, on or onto which Goods are to be installed by the Company or others, are such that they will provide satisfactory support and stability to the Goods and any other dependant item or structure so that once installed the performance of the Goods in their intended function will not be adversely affected by such matter. Except as provided in these Conditions the Company shall have no liability or obligation in respect of any such matter.
- 10.9 The Company shall have no liability in respect of any loss or damage alleged to arise by reason of any Services (whether in contract, tort or otherwise whatever) if the Company has recommended the use of certain of its products in particular applications related to the Buyer's project but instead other products are used in whole or part as a result of a decision by any party other than the Company.

## **11. DESIGN**

- 11.1 Any design, calculations, data, drawings or other materials (the "Materials") produced by the Company whether specifically for the Buyer or not shall belong to the Company together with all copyright, design rights and other intellectual property rights related to them. The Buyer shall have a non exclusive licence to use the Materials only in relation to the specific project in respect of which the Materials were prepared or supplied by the Company. The licence shall only allow the use of the Materials provided the Buyer purchases from the Company all of the goods or materials set out in or required or described by or in the Materials that the Company is in the business of supplying.

- 11.2 The Company shall not be liable for any use by the Buyer or its nominees of any drawings and other documents for any purposes other than those for which they were originally prepared by the Company.

## **12. LIABILITY**

- 12.1 The prices charged for the Goods and Services are based strictly on the limitations and exclusions of the Company's liability specified in these Conditions. Should the Buyer before accepting the Company's offer wish to obtain higher limits of liability or varied exclusion terms, the Company should be approached for an alternative quotation as it may be prepared to consider this in return for an addition to the price but no such discussion shall result in any variation to these Conditions unless and until agreed to by the Company in accordance with Condition 2.4.
- 12.2 The Company agrees that if any defect covered by this Condition 12.2 is discovered during the period of 12 months commencing with the date of despatch, the Company will at its option replace or repair the Goods as necessary and correct any defective Services. This Condition 12.2 only covers defects in the Goods (or their packaging or instructions) which render them non-compliant with the Company's or their manufacturer's design and specifications which have been incorporated into the contract in accordance with these Conditions, or defects in the Services or part of them as a result of the Company's failure to exercise reasonable care and skill. It does not cover defects caused by: (i) abnormal storage, working conditions, use, misuse, neglect or accident, fair wear and tear; (ii) any failure by the Buyer or any third party to follow the Company's oral or written instructions as to the storage, handling and use of the Goods and/or any failure to follow good trade practice regarding the same; (iii) any alteration to the Goods made by the Buyer or any third party; and/or (iv) other matters which are excluded or restricted by these Conditions including, without limitation, Conditions 9 or 10.
- 12.3 The Buyer cannot claim (and shall be deemed to have waived) the benefit of Condition 12.2 unless it informs the Company of the relevant defect in writing within 30 days of discovering it or within 30 days of when it is notified to the Buyer by any third party (provided in each case it was discovered within the time described in Condition 12.2). The Buyer must ensure that the Company is afforded a reasonable opportunity to inspect the Goods in order to claim the benefit of Condition 12.2.
- 12.4 The remedies provided by Condition 12.2 shall be in place of all other claims for damages or loss or compensation arising from or related to defects in, or non-compliance with the contract of the Goods or Services or any aspect of them.
- 12.5 The Company shall have no liability in tort or for non-fraudulent misrepresentation arising from or related to any aspect of the contract or its performance or from events or statements prior to the making of the contract.
- 12.6 The Company shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises in contract or tort or in other way (including without limitation from non-fraudulent misrepresentation).
- 12.7 The Company shall in no event (whether in contract, tort or otherwise whatever including non-fraudulent misrepresentation) be liable for:-
- 12.7.1 loss of profits or anticipated profits;
  - 12.7.2 loss of anticipated savings;
  - 12.7.3 loss of or interruption to production;
  - 12.7.4 delay to other works;
  - 12.7.5 delay in the completion of any project or works;
  - 12.7.6 damage to reputation;
  - 12.7.7 increased costs of working;
  - 12.7.8 liability to pay compensation or damages to third parties;
  - 12.7.9 distress of end customers;
  - 12.7.10 loss of enjoyment of end customers;
  - 12.7.11 administrative or management costs or time used in dealing with the issues relating to defective product and each of the above sub-clauses shall be read as an independent term where the introductory wording forms part of each sub-clause.
- 12.8 The Company's total aggregate liability to the Buyer arising from or related to each contract in respect of any and all claims (whether arising in contract, tort or otherwise whatsoever and including without limitation non-fraudulent misrepresentation) shall not exceed £25,000 or five times the price payable by

the Customer under the contract in question, whichever is the greater, up to a maximum aggregate of £500,000 (five hundred thousand pounds).

- 12.9 The Company does not seek to limit or exclude in any way its liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; in respect of any breach of any condition implied under section 12 of the Sale of Goods Act 1979; and/or for any other matter or liability which cannot be lawfully limited or excluded. Each provision of these Conditions and of any contract shall be read as subject to this Condition 12.9 and no provision of these Conditions or any contract is intended to nor shall be interpreted as seeking to limit or exclude any of the foregoing types of liability.
- 12.10 Each of these Conditions is to be treated as separate and independent.
- 12.11 Where Goods are supplied to the Buyer located in, or for delivery in another country outside the UK, there shall be no term of the contract, whether express or implied, that the Goods will be suitable for the conditions (or some of them) within, or will comply with any legal requirements of such other country, and the Buyer agrees to rely entirely on its own assessment and enquiries in this respect.
- 12.12 No claim of any description related to any contract or the Goods or Services, or to the terms or circumstances or statements surrounding their supply, shall be brought by the Buyer against the Company at any time after two years from the date of the first invoice in respect of the contract price for such Goods and/or Services.
- 12.13 The Buyer agrees to indemnify the Company against any claim (including any legal or other costs incurred by the Company defending such a claim) made by a third party against the Company in respect of which liability is excluded or limited as between the Company and the Buyer under these Conditions and in any event arising from or related or connected to:-
  - 12.13.1 the Goods, including their packaging and instructions (or any part of them) or Services; or
  - 12.13.2 any other matter.
- 12.14 To the extent not otherwise excluded or limited under these Conditions, the Company's liability to the Buyer whether contractual, in tort and/or for any breach of statutory duty or otherwise shall in all events be limited to that proportion of the Buyer's losses which it would be just and equitable to require the Company to pay having regard to the extent of the Company's responsibility for the same on the following assumptions, namely that:
  - 12.14.1 all other consultants, contractors, sub-contractors and suppliers in respect of any project for which the Goods and/or Services are purchased have provided contractual undertakings to the Buyer that they have exercised and shall continue to exercise all reasonable skill and care in the performance of their services in connection with the said project and that they have and will supply only goods and materials that comply with their contracts; and
  - 12.14.2 any such other consultants, contractors, sub-contractors and suppliers have paid to the Buyer such proportion of the losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Buyer's losses.

### **13. FORCE MAJEURE**

- 13.1 The Company shall not be liable for any failure to carry out its obligations arising from circumstances outside the Company's control.
- 13.2 Non-exhaustive illustrations, of such circumstances would include act of God, war, riot, terrorism, explosion, abnormal or extreme weather conditions, fire, flood, strikes, lock-outs, government action or regulations (UK or otherwise), delay by suppliers, accidents and shortages of materials, labour, utilities or manufacturing facilities.
- 13.3 If the circumstances preventing the performance of the contract are still continuing three months after the said circumstances have arisen, then either party may give written notice to the other cancelling the contract and neither party shall be under any further liability to the other except that the Buyer shall be liable to pay the contract price less a reasonable allowance for what has not been performed by the Company.

### **14. SALES DOCUMENTATION AND TECHNICAL DATA**

- 14.1 No information or expression of opinion contained in any catalogues, technical circulars, pricelists and other literature or material published on the Company's or any other website shall give rise to any liability whatsoever for the Company, whether in contract, tort, misrepresentation or otherwise save that the

foregoing shall not act so as to limit or exclude any liability for fraud or fraudulent misrepresentation or for any other matter which the Company is not lawfully permitted to limit or exclude liability for..

- 14.2 Unless otherwise expressly agreed in writing by the Company, any samples provided and/or technical details issued by the Company are merely indicative of the type of Goods or Services to be supplied and shall not constitute any representation, warranty or condition of the contract as to colour, composition, quality, fitness for any purpose, or compliance with such sample or technical details.

#### **15. PACKAGING AND HANDLING**

- 15.1 Any packaging supplied is intended for delivery to the Buyer and is not intended for onward transportation purposes and the Buyer is responsible for any subsequent movement of the Goods and any necessary packaging in that regard. If the Buyer supplies packaging materials to the Company it shall be solely responsible for the suitability and safety of such packaging and shall be responsible for any loss or damage arising out of the Company's use of such packaging.
- 15.2 Goods will, unless otherwise agreed in writing between the Company and the Buyer, be packaged in a manner that the Company deems reasonably suitable for the method of delivery to be adopted. The Buyer will not be entitled to reject Goods on the basis of defective or inadequate packaging.

#### **16. SEVERANCE**

- 16.1 If any term of any contract shall be held to be void or unenforceable for any reason whatsoever it shall be deemed severed from that contract without affecting the other provisions of that contract which will remain in full force and effect. If any such provision would be valid if part of the wording of such provision was deleted then the provision shall apply with such modification as shall make it valid and effective while preserving to the maximum extent its intended effect.

#### **17. NOTICES**

- 17.1 Any notice to be given under any contract shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its registered office address or such other address as the party may from time to time notify in writing in accordance with this Condition 17.1 and shall be deemed to have been served, if sent by post, 48 hours after posting. If there is no registered office or notified address for the Buyer then the Company may serve notice to any address where the Buyer has corresponded from.

#### **18. COMPLIANCE WITH LAWS AND POLICIES**

- 18.1 The Buyer shall and shall procure that each member of its group comply with all applicable laws, statutes, regulations and codes from time to time in force and the Mandatory Policies.
- 18.2 Without prejudice to the general obligations under Condition 18.1 the Buyer shall:
- 18.2.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- 18.2.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 18.2.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate; and
- 18.2.4 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of any contract.

#### **19. GENERAL**

- 19.1 Where any contract refers to one of the groups of Incoterms, those Incoterms shall be incorporated into the contract except to the extent that those Incoterms are inconsistent with these Conditions, in which case these Conditions prevail unless otherwise agreed in writing between the parties.
- 19.2 Unless otherwise agreed in writing where Goods are to be exported from the UK, payment shall be in Sterling. Further in all export contracts unless agreed otherwise in writing payment shall be made prior to despatch of the Goods.
- 19.3 When payment is made in a currency other than Sterling, the sum payable shall be increased, in order to maintain the value of the payment when converted to Sterling, by the percentage of any depreciation of

the payment currency against Sterling (as quoted by the Company's principal bankers) which has arisen between the date of the contract and the date when payment is due (or if later the date when payment is actually made).

- 19.4 The Company will be responsible for obtaining any necessary United Kingdom export licence. The Buyer will be responsible for obtaining all necessary licences which it may require to enable it to import and use the Goods and the Buyer shall not be discharged from its obligations hereunder by any total or partial prohibition on import or by the refusal or non-availability of any import licence or by the imposition of any conditions or restriction upon the grant of such licence.
- 19.5 In the event of the Buyer failing to obtain the necessary licences on or before the date of dispatch of the Goods by the Company, the Company shall be entitled (at its option and without prejudice to its other rights) to deal with the Goods as set out in Condition 3.5.
- 19.6 The Company and the Buyer are with respect to each other independent contractors and nothing in any contract and no actions taken by the parties under any contract shall be deemed to constitute any agency, partnership, association, joint venture or other co-operative enterprise between the parties.
- 19.7 The Buyer may assign, novate, transfer or sub-contract the performance of any of its rights and/or obligations under any contract other than with the prior written consent of the Company.

## **20. LAW AND JURISDICTION**

- 20.1 These Conditions, each contract and any dispute or claim arising out of or in connection with the same or their respective subject matter or formation (including any non-contractual disputes or claims) shall be governed by English Law and any dispute or action arising out of these Conditions, any contract or related to the substance of or otherwise in connection with the same shall be subject to the exclusive jurisdiction of the English Courts save that the Company may at any time at its option and whether in relation to one or more matters of dispute or actions bring proceedings against the Buyer in any state or territory that the Company chooses and which accepts jurisdiction.
- 20.2 Nothing in these Conditions or any contract shall be treated as limiting the right of the Company to proceed to enforce any judgment or order or award in any other jurisdiction as it may in its discretion determine, nor shall the taking of proceedings or enforcing any judgment or order or award in one or more jurisdictions preclude the Company from taking proceedings or enforcing any judgment or order in any other jurisdiction whether concurrently or not.

## **21. RIGHTS, REMEDIES AND WAIVER**

- 21.1 Save in respect of any rights or remedies which may not be lawfully limited or excluded, the rights and remedies which are available to the Buyer under these Conditions are the exclusive rights and remedies available to the Buyer and are exclusive of any other rights or remedies which might otherwise be implied or available to the Buyer as a matter of general law. Any right or remedy available to the Company under any contract is not exclusive and the exercise by the Company of any right or remedy shall be without prejudice to the exercise of any other right or remedy which may be available to the Company whether under any contract and/or as a matter of general law. The rights and remedies of the Company shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies.

## **22. HEADINGS**

- 22.1 The headings of these Conditions are for convenience only and shall have no effect on the interpretation.

Version: 10/18