

## Terms and conditions for the supply of goods and services

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.1.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.8.

**Complete Layer:** means the maximum amount of Goods which the Supplier is able to deliver in the packaging which it supplies such Goods in.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Customer:** the person or firm set out in the Order Form.

**Data Protection Laws:** any relevant law, order, regulation, code of practice or guidance (as amended, consolidated or re-enacted from time to time) relating to the protection of individuals with regards to the processing of Personal Data including the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679.

**Deliverables:** means the Goods or Services or both as the case may be.

**Delivery Location:** means the delivery location set out in the Order Form.

**Force Majeure Event:** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract: (i) including an act of God, fire, flood, lightning, earthquake or other natural disaster, epidemic or pandemic, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce; (ii) but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay.

**Goods:** the goods (or any part of them) set out in the Order Form.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier or as set out in the Order Form.



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**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Machinery:** means the machine to be installed by the Supplier at the Customer's premises as detailed in the Order Form.

**Minimum Order Quantity:** means the minimum order quantity set out in the Order Form.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Order Form.

**Order Form:** The Order Form appended to these Conditions containing the Customer's Order.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer as set out in the Order Form.

**Special Conditions:** the terms and conditions appended at Section 3 of this letter.

**Supplier:** as set out in the Order Form.

**Supplier Materials:** has the meaning given in clause 8.1(h).

#### 1.1 Interpretation:

- (a) a reference to the Contract includes these Conditions, the Order Form and the Special Conditions and their respective schedules, appendices and annexes (if any).
- (b) any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions.
- (c) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (d) A reference to a party includes its personal representatives, successors and permitted assigns.
- (e) words in the singular include the plural and vice versa.
- (f) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (g) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (h) A reference to **writing** or **written** includes faxes and emails.

## 2. Basis of contract

- 2.1 The Contract shall come into existence on the date on which the Customer confirms in writing its acceptance of the terms of this letter or if the Customer does not accept confirm such acceptance the date on which deemed acceptance takes place as set out at the beginning of this letter (**Commencement Date**).

- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing including any terms and conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, conformation of order, specification or any other document.
- 2.3 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.4 The Customer accepts all liability for any damage caused to the Goods during shipping if any Order placed by the Customer is requested by the Customer not to be shipped in Complete Layers or cannot be delivered in Complete Layers by the Supplier.
- 2.5 Any samples, descriptive and technical specifications (other than Goods Specifications and Service Specifications), drawings, photographs, particulars of weights or dimension and general literature descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or Machinery or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

### **3. Goods**

- 3.1 The Goods are described in the Order Form.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer of such amendment in any such event.

### **4. Delivery of Goods**

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b)
  - (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense (further details of the packaging which the Customer is required to return is set out in the Special Conditions).

- 4.2 The Supplier shall deliver the Goods to or make the Goods available at the Delivery Location set out in the Order Form.
- 4.3 In the event the the Delivery Location is the Customer's premises, delivery shall be made by the Supplier at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.4 In the event that the Delivery Location is the Supplier's premises, the Customer shall collect the Goods from the Supplier's premises set out in the Order Form within three Business Days of the Supplier notifying the Customer that the Goods are ready.
- 4.5 Delivery of the Goods shall be completed:
- (a) in the event that the Delivery Location is the Customer's premises, on completion of the Supplier (or its third party carrier) unloading the Goods at the Customer's premises; or
  - (b) in the event that the Delivery Location is the Supplier's premises, on on the completion of or loading the Goods onto the Customer's (or its third party carrier's) vehicle.
- 4.6 The Goods shall be deemed delivered and accepted by the Customer if the Customer does not inform the Supplier in writing:
- (a) of damage or partial loss of any Goods, within 1 day of delivery of the Goods; and
  - (b) of non-delivery, within 7 days of the Supplier notifying the Customer that the Goods were ready for delivery or collection.
- 4.7 Any dates quoted for delivery of the Goods (including lead times) are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.8 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by: (a) a Force Majeure Event; (b) in the event the Delivery Location is the Customer's premises, failure by the Customer to prepare the Delivery Location; or (c) the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.9 If the Customer fails to take or accept (depending on the Delivery Location) delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready for collection or delivery, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready for collection or delivery; and
  - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance)
- 4.10 If 10 Business Days after the Supplier notified the Customer that the Goods were ready for delivery or collection and the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable

storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 4.11 The Customer shall not be entitled to reject any delivery of Goods on the basis that an incorrect volume of Goods has been supplied, provided the volumes are within the tolerances set out in accepted industry standards and/or within the Special Conditions.
- 4.12 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Deliveries made in instalments shall be apportioned over a period not exceeding one month after the first delivery of the instalment. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.13 If there is a Minimum Order Quantity of Goods, such Goods will be processed by the Supplier within 6 months or receiving the Customer's Order.

## **5. Quality of Goods**

- 5.1 Subject to clause 5.2, the Supplier warrants that on delivery, and for a period of 6 months from the date of delivery (**warranty period**), the Goods shall:
- (a) conform in all material respects with their description and the Goods Specification.
  - (b) be free from material defects in design, material and workmanship.
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (d) be fit for any purpose held out by the Supplier.
- 5.2 Without prejudice to the terms of the Special Conditions and clause 5.3, the Supplier shall, at its option, (i) repair; (ii) replace; or (iii) refund the price of, the Goods that do not comply with the warranty in clause 5.1, provided always that:
- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
- (d) The provisions of this clause 5.2 are the Customer's sole and exclusive remedy in respect of the Goods that do not comply with the warranty in clause 5.1.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after providing the Supplier with a notice in accordance with clause 5.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice.
  - (c) the defect arises as a result of the Supplier following any drawing, design, or Goods Specification supplied by the Customer.
  - (d) the Customer alters or repairs such Goods without the prior written consent of the Supplier.
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

- (f) the Goods differ from the Goods Specification as a result of changes made by or on behalf of the Supplier to ensure they comply with applicable statutory or regulatory standards; and/or
- (g) the Customer does not notify the Supplier in writing of any defect in the Goods, which would not be apparent to a reasonable person on inspecting the Goods at the point of delivery, within 1 week of the Customer using the Goods for their intended purpose.

5.4 In the event that the Customer informs the Supplier that any of the Goods fail to comply with the warranty in clause 5.1, the Customer shall store the Goods in a satisfactory condition until such time as the Supplier (or its agent) can inspect the Goods.

5.5 Except as provided in this clause 5 the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

(a) .

5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. Title and risk**

6.1 The risk in the Goods shall pass to the Customer:

- (a) in the event that the Supplier delivers the Goods to the Customer's premises or a third party carrier nominated by the Customer, on completion of delivery; or
- (b) in the event that the Customer will collect the Goods from the Supplier's premises:
  - (i) at the point of collection at the Supplier's premises when the Customer or third party carrier appointed on its behalf begins to load the Goods;
  - (ii) if the Customer or third party carrier appointed on its behalf fails to collect the Goods; or
  - (iii) if the Customer or third party carrier appointed on its behalf fails to collect the Goods on the agreed date, either:
    - (A) the date on which the Supplier dispatches the Goods to the Customer or its third party carrier; or
    - (B) seven days after the Supplier informs the Customer that such Goods are ready for collection,
  - (iv) (whichever is earlier).

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums.

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

- (a) hold the Goods as bailee for the Supplier;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier'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 in the condition in which they were delivered;

- (e) keep them insured against all risks for their full price with a reputable insurer on the Supplier's behalf (noting the Supplier's interest on the policy) from the date of delivery;
  - (f) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b) to 13.2(d); and
  - (g) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 13.2(b) to 13.2(d). However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Supplier's agent; and
  - (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer: (i) the Supplier terminates in accordance with clause 13.3; or (ii) the Customer informs the Supplier, or the Supplier reasonably believes that the Customer has or is likely to become subject to any of the events listed in clause 13.2(b) to 13.2(d), then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
  - (b) the Supplier may at any time:
    - (i) require the Customer, at the Customer's cost, to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. Supply of Services**

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in any Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 The Supplier shall not be liable for any delay in or failure to perform the Services caused by a Force Majeure Event.

## **8. Customer's obligations**

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Service Specification and/or the Goods Specification are complete and accurate;

- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification and/or the Goods Specification.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform the Services and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order (a copy of which is available from the Supplier on request); and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer (further details of which are set out in the Special Conditions).

9.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Order Form;
- (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;



- (c) the Supplier shall be entitled to charge an overtime rate of [150]% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the [Retail Prices Index] in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index or Average Earnings Index;
- (b) increase the price of the Deliverables, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Deliverables to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Deliverables ordered, or the Goods Specification or Services Specification (as applicable); or
  - (iii) any delay caused by any instructions of the Customer in respect of the Deliverables or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Deliverables.

9.4 In respect of Machinery, the Supplier shall raise invoices to the Customer on the following milestones:

- (a) 50% on the Supplier's acknowledgement and acceptance of the Customer's Order;
- (b) 45% on [shipping;] and
- (c) 5% on installation at the Customer's premises.

9.5 In respect of Services, the Supplier shall invoice the Customer on completion of the Services.

9.6 The Customer shall pay each invoice submitted by the Supplier:

- (a) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract; and
- (b) within [14, 28 or 30] days of the date of the invoice [or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer;] and

9.7 [In the event credit terms are agreed with the Customer, the Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.]

9.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in

respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.9 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10. Intellectual property rights**

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer to the Supplier in order for the Supplier to provide the Services) shall be owned by the Supplier.

10.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, irrevocable non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

10.3 The Customer grants the Supplier a further right to use any materials provided by the Customer to the Supplier for the purposes of the Supplier advertising and promoting Goods and Services to other companies which operate the same or similar businesses as the Customer. For the avoidance of doubt, this shall include using such materials on the websites which the Supplier operates and any trade fairs which it participates in.

## **11. Confidentiality**

11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;

(c) any other losses which cannot be excluded or limited by law.

12.2 Subject to clause 12.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

12.3 Subject to clause 12.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total charges paid under the Contract.

12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 and sections 12 to 16 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.5 This clause 12 shall survive termination of the Contract.

### **13. Termination**

13.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract by giving the other party not less than 1 months' written notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Customer.

13.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

#### **14. Consequences of termination**

14.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Machinery or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

#### **15. Force majeure**

15.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from a Force Majeure Event. The party subject to the Force Majeure Event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 30 days, the party not affected may terminate the Contract by written notice to the other party.

#### **16. Data Protection**

16.1 The parties acknowledge and agree that **each Party: (a)** may need to Process Personal Data relating to the other Party's employees or staff under or in connection with this Contract(in their respective capacity as Controllers) for the purpose of facilitating this Contract; and **(b)** shall only do so in accordance with Data Protection Laws.

16.2 For the purposes of this Contract, Controller, Personal Data, Process, **Processes, Processing** shall have the meanings given to them in Data Protection Laws.

#### **17. General**

17.1 **Assignment and other dealings**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

**17.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Order Form.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**17.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**17.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**17.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**17.6 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**17.7 Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 17.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 17.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## 17.11 Section 3

### 17.12 Special Conditions

#### 17.13 All cans

- 17.14 1. Due to the impact of Covid-19, the Supplier has had difficulties obtaining cans from certain suppliers. Where possible, the Supplier will supply the brand of can as set out in the Order Form, however the Customer acknowledges that a different brand of can may be provided depending on the Supplier's stock levels. The Supplier will inform the Customer if it cannot supply the brand of can requested. Specifications for all can brands are available from the Supplier on request.
- 17.15 2. The Customer acknowledges that due to the fragile nature of the Goods, the Goods may be damaged during transit. The Supplier will use all reasonable efforts to minimise any damage during transportation. The Supplier recommends that the Customer orders 1.5% more Goods than it requires to take into account any damage during transportation. The Customer may purchase cardboard sleeves from the Supplier to protect the Goods during transit at an additional cost.
- 17.16 3. The Customer accepts that the Goods delivered may not reflect the quantity ordered. For blank cans, minor variations to the quantity ordered in line with industry standards must be accepted by the Customer. For decorated cans (sleeved, printed and labelled) the Customer shall accept deliveries of Goods which are up to +/- 10% than the quantity ordered. Any variation in the order quantity will not affect the price paid by the Customer for the Goods.
- 17.17 4. Delivery is made through a pallet network. Dedicated door to door delivery can be made by the Supplier on request by the Customer. The Supplier shall inform the Customer of the cost of door to door delivery at the time of the enquiry.
- 17.18 5. The Customer shall pay for the costs of the pallets and packaging used to transport the Goods in addition to the price of the Goods. Where possible, the Supplier will use wooden one way pallets to deliver the Goods (which are not required to be returned to the Supplier). Where this is not possible, the Supplier will use plastic pallets (which are returnable). The Supplier will arrange for plastic pallets to be collected from the Customer's premises and returned to the Supplier's premises. In order for the plastic pallets to be returned safely, the Customer shall strap the pallets and toppers to a maximum height of 2 metres. The Customer shall be charged the collection fee for the return of the plastic packaging. The Supplier recommends that such return is booked as a economy service (4 – 5 days) to minimise the collection fee payable by the Customer (which is approximatley £55 per pallet). If the Customer may recommend a more cost effective method of delivery to reduce the collection fee.

#### 17.19 Decorated Cans

- 17.20 1. All orders for decorated cans will be invoiced to the Customer (and accepted by the Customer) within 3 months of the first production date of the Customer's Order.
- 17.21 2. All payments for reprographic costs associated with the decorated cans will be made on a pro-forma invoice issued on the day of printing the decoration for the cans (unless credit terms have been agreed between the parties).
- 17.22 3. The Supplier accepts no liability or responsibility for any artwork or wording provided by the Customer to be used on decorated cans. Copyright in any sesigns, sketches, engineering drawing and proofs created by the Supplier for the purpose of the decorated cans will remain vested in the Supplier (unless otherwise agreed in wriiting between the parties).

- 17.23 4. Unless specifically agreed in writing between the parties, all tools, dies, printing plates, negatives, blocks and engravings provided by the Supplier for the purpose of the manufacturing decorated cans will remain the property of the Supplier (regardless of whether the Customer is charged the costs incurred by the Supplier using any of the above for the purpose of manufacturing the decorated cans).
- 17.24 **Plate Printed Cans only**
- 17.25 1. If at the time the Customer places its Order, the Supplier has not requested payment, the full balance of the Order must be paid by the Customer within 60 days of the Order Date.
- 17.26 2. If the Customer fails to pay the full balance in line with paragraph 1 above, the Supplier will store any printed cans ordered by the Customer at its premises or the premises of its third party couriers (the Supplier will inform the Customer if the cans will be stored with a third party courier). The Supplier will invoice the Customer for all costs incurred by the Supplier in relation to such storage which will be paid by the Customer within 30 days of the date of the invoice.
- 17.27 3. If the Customer does not request the Supplier to deliver any printed cans which are being stored by the Supplier on the Customer's behalf in line with paragraph 2 above within 60 days from the date which the Supplier first started storing such printed cans, the Supplier will arrange for all printed cans which it is currently holding on the Customer's behalf to be delivered to the Customer's premises. If the Customer fails to take delivery of such printed cans, the Supplier will not accept any future orders from the Customer for printed cans.
- 17.28 4. The Customer acknowledges that the rights and remedies set out in paragraph 1 – 3 above are in addition to any of the remedies which the Supplier is entitled to under the terms and conditions set out at section 2 of this letter. The failure by you to comply with paragraphs 1 – 3 above may result in us taking any other actions which we deem necessary (e.g. court action).



