

HOMAG UK LTD

Standard Terms and Conditions of Sale

<p>The Buyer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).</p> <p>1. Interpretation The following definitions and rules of interpretation apply in these Conditions.</p> <p>1.1 Definitions: Brexit: The United Kingdom ceasing to be a member state of the European Union. Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. Collection Location: has the meaning given in clause 4.2. Commencement Date: has the meaning given in clause 2.2. Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8. Contract: the contract between the Seller and the Buyer for the supply of Goods and/or Services in accordance with these Conditions. Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation. Buyer: the person, company, partnership or firm who purchases the Goods and/or Services from the Seller. Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party. Delivery Location: has the meaning given in clause 4.2. Deposit: means a sum equivalent to 20% of the Order value. Force Majeure Event: has the meaning given to it in clause 16.1. Goods: the goods (or any part of them) set out in the Order. Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Buyer and the Seller. Insolvency Event: means an event where a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction. Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up [and trade dress], 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. Order: the Buyer's order for the supply of Goods and/or Services, as set out in the Buyer's purchase order form, the Buyer's written acceptance of the Seller's quotation, or the Buyer's acceptance of the Seller's order form or overleaf, as the case may be. Services: the services, supplied by the Seller to the Buyer as set out in the Service Specification. Service Specification: the description or specification for the Services provided in writing by the Seller to the Buyer. Seller: Homag U.K. LTD registered in England and Wales with company number 01150111, whose registered office address is at 10c Sills Road, Willow Farm Business Park, Castle Donington Derby, Derbyshire, DE74 2US Seller Materials: has the meaning given in clause 8.1(g). UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (EU) 2016/679; the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended. Warranty Period: means the period described in clause 5.1.</p> <p>1.2 Interpretation:</p> <p>(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).</p> <p>(b) A reference to a party includes its personal representatives, successors and permitted assigns.</p> <p>(c) 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.</p> <p>(d) 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.</p> <p>(e) A reference to writing or written includes email.</p> <p>2. Basis of contract</p> <p>2.1 The Order (whether or not preceded by an accepted Quotation) constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.</p> <p>2.2 The Order shall only be deemed to be accepted when the Seller receives from the Buyer a signed Order, which sets out the terms of the order (including, but not limited to, price, delivery, and a pre-delivery document setting out each party's responsibilities prior to delivery) (Commencement Date) However, this acceptance is subject to clause 2.3 below.</p> <p>2.3 The Seller shall confirm the Order with a signed official order confirmation issued by the Seller which may include updated specifications, pricing and other terms, on which date the Contract shall come into existence in final form replacing any previously agreed contracts on the same subject matter (Formation Date).</p> <p>2.4 The Buyer shall pay the Deposit to the Seller on the Commencement Date. Such Deposit shall be non-refundable in the event of early termination of the Contract.</p> <p>2.5 Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Seller'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 nor have any contractual force.</p>	<p>2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.</p> <p>2.7 Any quotation given by the Seller shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.</p> <p>2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.</p> <p>3. Goods</p> <p>3.1 The Goods are described in the Goods Specification. The Buyer is fully and solely responsible for checking the accuracy of any Goods Specification and promptly notifying the Seller of any inaccurate information. By signing and returning the Goods Specification to the Seller (where a signature is required), the Buyer accepts it is correct and assumes full liability for any inaccuracies in the Goods Specification which are not notified to the Seller prior to signature.</p> <p>3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Buyer, the Buyer shall indemnify the Seller 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 Seller arising out of or in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.</p> <p>3.3 The Seller reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Seller shall notify the Buyer in any such event.</p> <p>4. Delivery of Goods</p> <p>4.1 The Seller shall ensure that:</p> <p>(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, 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</p> <p>(b) it states clearly on the delivery note any requirement for the Buyer to return any packaging material to the Seller. The Buyer shall make any such packaging materials available for collection at such times as the Seller shall reasonably request.</p> <p>4.2 Subject to what is agreed between the parties in the Order:</p> <p>(a) the Seller shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Seller notifies the Buyer that the Goods are ready; or</p> <p>(b) the Buyer shall collect the Goods from the Seller's premises at such location as is notified to the Buyer before delivery (Collection Location) within seven days of the Seller notifying the Buyer that the Goods are ready.</p> <p>4.3 Delivery of the Goods shall be completed at the arrival of the Goods at the Delivery Location or loading of the Goods at the Collection Location (as the case may be).</p> <p>4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Under no circumstances shall delivery times be, or be capable of being, made of the essence of the Contract. The Seller shall not be liable for any delay in delivery of the Goods (including without limitation, any delay that is caused by Brexit, a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods).</p> <p>4.5 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by Brexit, a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.</p> <p>4.6 If the Buyer fails to take or accept delivery of the Goods within seven days of the Seller notifying the Buyer that the Goods are ready, then:</p> <p>(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the seventh day following the day on which the Seller notified the Buyer that the Goods were ready. Accordingly the Buyer shall pay the Seller for the Goods in accordance with the payment terms set out in clause 9; and</p> <p>(b) the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including without limitation: insurance, haulage, crane hire, storage, and admin).</p> <p>4.7 If ninety days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting storage, insurance, admin and selling costs, charge the Buyer for any shortfall below the price of the Goods.</p> <p>4.8 If the Seller delivers up to and including 5% more or less than the quantity of Goods ordered the Buyer may not reject them, but on receipt of notice from the Buyer that the wrong quantity of Goods was delivered, the Seller shall make a pro rata adjustment to the invoice for the Goods.</p> <p>4.9 The Buyer will be deemed to have accepted the Goods on delivery unless the Buyer notifies the Seller to the contrary within 7 days in writing following delivery. The Goods will at the Buyer's request (but subject to any additional charges arising) be made available for inspection and demonstration before delivery at the Seller's premises prior to dispatch. Payment in connection with the said demonstration must be made to the Seller by the Buyer in cleared funds at or before the time of such inspection/demonstration.</p> <p>4.10 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.</p> <p>5. Quality of Goods</p> <p>5.1 The Seller warrants that on delivery and for such period that is the shortest from the following:</p> <p>(a) a period of 12 months from the date of delivery (or for such other period specified in the order form); or</p> <p>(b) the Goods (where they are a machine) operating in excess of 2,500 operating hours (or for such other period specified in the order form), that the Goods shall conform in all material respects with the Goods Specification and be free from material defects in design, material and workmanship.</p> <p>5.2 Subject to clause 5.3, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:</p> <p>(a) the Buyer gives notice in writing during the Warranty Period that some or all of the Goods do not comply with the warranty set out in clause 5.1;</p>	<p>(b) the Seller is given a reasonable opportunity of examining such Goods; and</p> <p>(c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost.</p> <p>5.3 The Seller shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:</p> <p>(a) the Buyer makes any further use of such Goods after giving a notice in accordance with clause 5.2;</p> <p>(b) the defect arises because the Buyer failed to follow the Seller'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;</p> <p>(c) the defect arises as a result of the Seller following any drawing, design or Goods Specification supplied by the Buyer;</p> <p>(d) the Buyer alters or repairs such Goods without the written consent of the Seller;</p> <p>(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or</p> <p>(f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.</p> <p>5.4 Except as provided in this clause 5, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.</p> <p>5.5 The warranty set out in clause 5.1 shall not apply to the any parts, materials or equipment that is not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any applicable manufacturer's warranty (to the extent that the same can be passed on by the Seller).</p> <p>5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller.</p> <p>6. Title and risk</p> <p>6.1 The risk in the Goods shall pass to the Buyer on completion of delivery.</p> <p>6.2 Title to the Goods shall not pass to the Buyer until the earlier of:</p> <p>(a) the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and</p> <p>(b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 6.4.</p> <p>6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:</p> <p>(a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;</p> <p>(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;</p> <p>(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery;</p> <p>(d) notify the Seller immediately if it becomes subject to any of the events listed in clause 14.3(c) to clause 14.3(e); and</p> <p>(e) give the Seller such information as the Seller may reasonably require from time to time relating to:</p> <p>(i) the Goods; and</p> <p>(ii) the ongoing financial position of the Buyer.</p> <p>6.4 Subject to clause 6.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:</p> <p>(a) it does so as principal and not as the Seller's agent; and</p> <p>(b) title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.</p> <p>6.5 At any time before title to the Goods passes to the Buyer, the Seller: may by notice in writing, terminate the Buyer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and</p> <p>(b) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.</p> <p>7. Supply of Services</p> <p>7.1 The Seller shall supply the Services to the Buyer in accordance with the Service Specification in all material respects.</p> <p>7.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.</p> <p>7.3 The Seller 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 Seller shall notify the Buyer in any such event.</p> <p>7.4 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.</p> <p>8. Buyer's obligations</p> <p>8.1 The Buyer shall:</p> <p>(a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;</p> <p>(b) co-operate with the Seller in all matters relating to the Services;</p> <p>(c) provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Services;</p> <p>(d) provide the Seller with such information and materials as the Seller may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;</p> <p>(e) prepare the Buyer's premises for the supply of the Services;</p> <p>(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;</p> <p>(g) comply with all applicable laws, including health and safety laws;</p> <p>(h) keep all materials, equipment, documents and other property of the Seller (Seller Materials) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation; and</p> <p>(i) comply with any additional obligations as notified by the Seller from time to time.</p> <p>8.2 If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (Buyer Default):</p> <p>(a) without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of</p>
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- its obligations in each case to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
- (b) the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer 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 Seller's published price list as at the Commencement Date;
- (b) shall be inclusive of all costs and charges of packaging and transport of the Goods (if the same is stated in the Seller's quotation);
- (c) shall be inclusive of all costs associated with installation and training, if the same is stated in the Seller's quotation;
- (d) is exclusive of any costs for pallets and containers, which shall be charged to the Buyer, if the same are not returned to the Seller within 14 days of the date of delivery. All such items must be returned in good condition.
- 9.2 The charges for Services shall be calculated in accordance with the terms set out in the order form. The Seller shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Seller 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 Seller for the performance of the Services, and for the cost of any materials.
- 9.3 The Seller reserves the right to increase the price of the Goods and/or Services, by giving 7 days' notice to the Buyer, to reflect any increase in the cost of the Goods to the Seller that is due to:
- (a) any factor beyond the control of the Seller (including Brexit, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification or the Service Specification; or
- (c) any delay caused by any instructions of the Buyer in respect of the Goods or Services or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods or Services.
- 9.4 The Seller shall invoice the Buyer in accordance with the invoicing terms set out in the order form.
- 9.5 The Buyer shall pay each invoice submitted by the Seller in full and in cleared funds to a bank account nominated in writing by the Seller within 30 days of the date of the invoice (or such other period that is stated within the signed order form).
- 9.6 Time for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Buyer 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 Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8 If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then, without limiting the Seller's remedies under clause 14 (Termination), the Buyer 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 9.8 will accrue each day at 4% a year above Lloyds Bank Plc's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.9 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 Buyer) shall be owned by the Seller.
- 10.2 The Buyer grants the Seller a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Buyer to the Seller for the term of the Contract for the purpose of providing the Services to the Buyer.
- 11. Data protection**
- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 11, **Applicable Laws** means (for so long as and to the extent that they apply to the Seller) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the controller and the Seller is the processor.
- 11.3 Without prejudice to the generality of clause 11.1, the Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Seller for the duration and purposes of the Contract.
- 11.4 Without prejudice to the generality of clause 11.1, the Seller shall, in relation to any personal data processed in connection with the performance by the Seller of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Buyer unless the Seller is required by Applicable Laws to otherwise process that personal data. Where the Seller is relying on Applicable Laws as the basis for processing personal data, the Seller shall promptly notify the Buyer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Seller from so notifying the Buyer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Buyer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
- (i) the Buyer or the Seller has provided appropriate safeguards in relation to the transfer;
- (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- (iii) the Seller complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (iv) the Seller complies with reasonable instructions notified to it in advance by the Buyer with respect to the processing of the personal data;
- (e) assist the Buyer, at the Buyer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Buyer without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Buyer, delete or return personal data and copies thereof to the Buyer on termination of the Contract unless required by Applicable Law to store the personal data; and maintain complete and accurate records and information to demonstrate its compliance with this clause 11.
- 12. Confidentiality**
- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Buyers, clients or Sellers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information: to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 13. Limitation of liability: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 13.1 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) any other liability which cannot be limited or excluded under applicable law.
- 13.3 Subject to clause 13.2, the Seller's total liability to the Buyer under legislation, contract law, common law, equity or otherwise (including, but not limited to, for breach of contract and negligence) concerning the Contract specific Goods and/or Services shall not exceed a sum equal to 110% in aggregate of the value of the Goods and/or Services, in turn subject to an aggregate maximum cap of 110% of the total fees paid by the Buyer to the Seller under the Contract.
- 13.4 Subject to clause 13.2, the following types of loss listed are wholly excluded by the Seller:
- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) wasted expenditure
- (f) loss of use or corruption of software, data or information;
- (g) loss of or damage to goodwill; and
- (h) indirect or consequential loss.
- 13.5 The Seller has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.6 The Seller and the Buyer acknowledge and accept that the terms of clause 13 are reasonable in the commercial and operational context of the Contract.
- 13.7 This clause 13 shall survive termination of the Contract.
- 14. Termination**
- 14.1 Without affecting any other right or remedy available to it, the Seller may terminate the Contract by giving the Buyer not less than one month's written notice.
- 14.2 The Buyer may terminate the Contract without cause, upon providing the Seller with written notice, but the Buyer shall, in such circumstances:
- (a) forfeit the Deposit and the same shall not, for the avoidance of doubt, be refunded to the Buyer, in the event of termination under this clause 14.2;
- (b) pay to the Seller, immediately on demand, a cancellation charge equal to 20% of the full Order value (or such other cancellation charge as is notified by the Seller to the Buyer); and
- (c) pay to the Seller, immediately on demand, all costs, charges, expenses incurred or otherwise suffered by the Seller in fulfilling the Order up until the date on which the cancellation notice is received by the Seller.
- 14.3 Without affecting any other right or remedy available to it, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer, if the Buyer:
- (a) commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;
- (b) fails to pay any amount due under the Contract on the due date for payment;
- (c) is subject to an Insolvency Event;
- (d) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 14.4 Without affecting any other right or remedy available to it, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under the Contract on the due date for payment, the Buyer becomes subject to an Insolvency Event or the Seller reasonably believes that the Buyer is about to become subject to one.
- 15. Consequences of termination**
- 15.1 On termination of the Contract:
- (a) the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- (b) the Buyer shall return all of the Seller Materials and any Goods which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 16. Force majeure**
- 16.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility services.
- 16.2 Subject to the provisions of clause 13.2, the Seller shall be excused from liability if the performance of the Contract (or any part of it) is prevented, delayed or hindered by a Force Majeure Event.
- 17. General**
- 17.1 Assignment and other dealings**
- (a) The Seller 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 Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Seller.
- 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:
- (i) 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
- (ii) sent by email to the address specified in the Order.
- (b) Any notice or communication shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at the time recorded by the delivery service; and
- (iii) if sent email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or 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 deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 17.3, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 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 right or remedy. 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 the Buyer's own standard/general terms and conditions and all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral or arising from course of conduct or custom and practice, 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 party rights.**
- (a) Unless it expressly states otherwise, 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 17.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless and until it is expressly and specifically agreed in writing and signed by the parties in wet-ink form or using e-signatures (or their authorised representatives) – with no content set out in an email itself (as opposed to an signed document attached to an email) being treated as a signature. Subject to the first sentence of this clause 17.8, delivering a document or communication to the Seller with the Buyer's own terms and conditions stated or incorporated in that document or communication is not binding on the Seller.
- 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.
- 17.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England 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.