

NATIONAL HICKMAN
TERMS AND CONDITIONS OF SALE OF GOODS AND SUPPLY OF SERVICES (the “Conditions”)
July 2008

1. DEFINITIONS

1.1. In these Conditions the following words and expressions shall have the following meanings:

“**Assembly**” the assembly of the Goods, by the Company (employees, agents or sub-contractors) off-Site and the meaning of “**Assembled**” shall follow;

“**Buyer**” the person, firm, company or other body from whom an order is accepted by the Company as identified in the Order Acknowledgment;

“**Buyer Materials**” any materials provided, made available or disclosed by or on behalf of the Buyer to the Seller, pursuant to or in connection with a contract, whether before, on or after the date of a contract, including any third party materials, and any materials relating to the Buyer’s or a third party’s business, products, Buyers or services;

“**Company**” National Hickman, a trading division of Hickman Industries Ltd, (company number 03635461) whose registered office is at Sutherland Avenue, Wolverhampton, West Midlands, WV2 2JQ;

“**Conditions**” the terms and conditions set out herein;

“**Contract**” a contract between the Company and the Buyer formed pursuant to Condition 2.1;

“**Deliverables**” all services, works and materials to be and/or actually supplied, designed, obtained, generated, acquired, developed, produced or provided by the Seller as part of or in or towards performance of a Contract;

“**Goods**” any timber related or other building product, to be supplied by the Company to the Buyer under any Contract;

“**Order Acknowledgment**” the Company’s written acknowledgement of the Buyer’s order also known as the “**Order Confirmation**”;

“**Services**” all services and works, including without limitation Assembly, processing, cutting, design services and warranty repair services to be supplied by the Company under any Contract;

“**Site**” any site, premises or location of the Buyer or any third party where the Company is to deliver or install any Goods or perform any Services as confirmed in an Order Acknowledgment;

“**Specification**” any description and/or specification of the Goods (including without limitation dimensions) as set out or referred to in an Order Acknowledgment, or as otherwise agreed in writing by the parties; and

“**Warranty**” means the warranties given under the section entitled “**Warranty Terms**” in these Conditions and any other applicable express, implied or collateral warranty, term or condition as to the specification, standard, quality, fitness for purpose or condition of any Goods or Services.

2. CONTRACT FORMATION

2.1. The Buyer’s order to the Company is an offer to enter into a contract to purchase the Goods and the Services from the Company and to take delivery of and, if appropriate, permit the Assembly of the Goods on and subject to these Conditions. Acceptance occurs and a Contract is formed only upon the Company 1) despatching to the Buyer its Order Acknowledgment; or 2) when the Goods are delivered, or performance of the Services commences, whichever is later. A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise any quotation at any time prior to the Company’s acceptance of the Buyer’s order.

2.2. The Company shall sell and the Buyer shall purchase the Goods and the Services in accordance with and on the basis of these Conditions and each contract shall be subject to and shall incorporate these Conditions and the Order Acknowledgment which shall comprise the only terms and conditions upon which the Company will supply the Goods and the Services to the Buyer.

2.3. In the event of any conflict or inconsistency between the above documents and any terms or conditions contained in any purchase order, acceptance of estimate or quotation specification or other document proffered at any time by the Buyer or otherwise brought to the Company’s attention by the Buyer, these Conditions and the Order Acknowledgment shall prevail with the Conditions taking precedence over the provisions of the Order Acknowledgment unless the Order Acknowledgment expressly states otherwise.

2.4. No order which has been accepted by the Company may be cancelled or varied by the Buyer, except in accordance with the terms of Condition 17 or on terms otherwise agreed in writing by the Company.

2.5. In relation to any Contract, these Conditions shall constitute the entire agreement between the Buyer and the Company and supersede any previous agreement or arrangement between them relating to the subject matter of that Contract.

2.6. No representation, undertaking, promise or statement shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of any Contract except as expressly stated in that Contract. The Buyer shall not have any remedy in respect of any untrue statement made by the Company (including without limitation in the case of giving advice, if any, in relation to the Buyer’s selection of particular Goods or otherwise) upon which the Buyer relied in entering into a Contract (unless such untrue statement was made fraudulently or was as to a fundamental matter including a matter fundamental to the Company’s ability to perform its obligations under the Contract) and the Buyer’s only remedies shall be for breach of contract as provided for in these Conditions. Misrepresentations as to fundamental matters shall be subject to the terms of Condition 10.

3. PRICE AND SPECIFICATION

3.1. The price payable for the Goods and the Services shall be as set out by the Company in an Order Acknowledgment or as otherwise agreed in writing by the parties and/or any additional amount the Company is entitled to charge in addition to the price under Condition 3.3.

3.2. The Company reserves the right at any time by giving notice to the Buyer, to increase the price of the Goods or Services by any amount attributable to any increase in cost to the Company which is attributable to any factor beyond the control of the Company including without limitation:

3.2.1. any variation or fluctuation in the cost of materials, manufacturing costs, labour, transport, duties, taxes, exchange rates or any other costs of whatsoever nature including without limitation between the date of the Contract and the date of delivery of the Goods; and/or

3.2.2. any change in or delay or insufficiency of the Buyer’s instructions, Specification or information.

3.3. Unless otherwise specified in an Order Acknowledgment or otherwise in writing by the Company, the price of the Goods shall include the cost of delivery to the Site and all relevant packaging (“the Price”), but shall not include the cost of the provision of any Services. In the event that the Company agrees to deliver Goods other than to the Site, the Buyer agrees to pay all costs of packaging, freight, insurance, delivery charges and all applicable taxes, duties, tariffs and charges directly in respect of the delivery of the Goods to an alternative location. Without prejudice to the generality of the foregoing, the Price of the Goods is exclusive of Value Added Tax which the Buyer shall be additionally liable to pay to the Company. Any additional costs specified by the Company pursuant to this Condition 3.3 shall be payable by the Buyer in addition to the Price for the Goods in accordance with the provisions of Condition 3.

3.4. Unless otherwise agreed in an Order Acknowledgment or otherwise in writing the Specification shall be in accordance with the Company’s Specifications. The Company may at any time change the Specification for any Goods to conform to any change in any law or standard applicable to the Goods occurring after the date of any Contract and in any event reserves the right to alter or change the specification of the Goods supplied within reasonable limits having regard to the nature of the Goods. Without prejudice to the foregoing, except where finished dimensions are given in respect of the Goods (e.g. on machined sections) all other dimensions for timber sections are nominal (i.e. before any re-sawing or machining operations). The Company reserves the right to substitute metric dimensions for imperial dimensions (or vice versa) unless the Order Acknowledgment specifically states the minimum dimensions required.

3.5. The Buyer shall be responsible to the Company for ensuring the accuracy of the detail of any order (including without limitation any Specification, drawings, information, advice or recommendation and any other Buyer Materials) submitted by the Buyer and for providing the Company with all necessary information including without limitation in relation to the required Specification of the Goods or the Services in sufficient time to enable the Company to perform the Contract in accordance with its terms. Consideration, examination, or use by the Company of any of the Buyer Materials shall in no way limit the Buyer’s liability hereunder in respect of the Buyer Materials and the Buyer hereby confirms that the Company shall have no responsibility to advise the Buyer in respect of the suitability of any Buyer Materials unless this is expressly agreed in an Order Acknowledgment.

3.6. In the event that the Goods are to be manufactured or any process is to be undertaken in respect of the Goods by the Company in accordance with the Specification submitted by the Buyer the terms of Condition 12.2 shall apply.

3.7. For the avoidance of doubt, the Company shall not be obliged to accept any change to Specification of Goods or Services requested by the Buyer. All requests for change to Specification must be in writing and the Company shall at its sole discretion decide whether to agree to any requested change to Specification which shall only be binding on the Company if it is confirmed to the Buyer in writing by the Company. The Company shall be entitled to increase the Contract Price to take into account any such change in Specification.

4. PAYMENT TERMS

4.1. Subject always to the provisions of Condition 4.5 and unless terms of payment have been specifically otherwise agreed in the Order Acknowledgment or otherwise in writing by the Company, the Company shall be entitled to invoice the Buyer for the Price (together with any VAT and other charges payable) on or at any time after 1) delivery of the Goods is effected unless the Buyer fails to take delivery of the Goods as arranged, in which case the Company shall be entitled to invoice the Buyer for the Price at the date on which the Company has attempted to deliver the Goods to the Buyer or on the date the Goods were originally available for delivery (in the event that the Company agrees to a Buyer request to postpone delivery); and 2) performance of the Services.

4.2. Where the Goods are delivered in instalments or the Services performed in stages the Company shall be entitled to invoice each instalment or stage separately and the Buyer shall pay such invoices in accordance with these Conditions.

4.3. The Buyer shall make payment of any amount invoiced by the Company in full in pounds sterling (unless otherwise agreed in the Order Acknowledgment) not later than 30 days from but excluding the last day of the calendar month in which the invoice is dated (unless otherwise agreed in writing).

4.4. Unless otherwise agreed in writing, the Buyer shall pay all due amounts either by cheque or electronically using BACS or CHAPS using the bank details set out in the relevant invoice.

4.5. All amounts due under a Contract shall be paid in full by the Buyer without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law.

4.6. The Company reserves the right at any time to require advance payment in cleared funds to be made by the Buyer prior to delivery or collection (as the case may be) of the Goods or performance of the Services.

4.7. Time for payment of the Price due for Goods and Services supplied by the Company and all other amounts due to the Company under the Contract shall be of the essence of the Contract.

4.8. Failure by the Buyer to pay any sums owing to the Company under the Contract or any other contract will result in all indebtedness of the Buyer to the Company becoming immediately due and payable.

4.9. The Company may at any time in its absolute discretion appropriate any payment made by the Buyer in respect of Goods or Services to such outstanding debt as the Company thinks fit, notwithstanding any purported appropriation to the contrary by the Buyer.

4.10. Without prejudice to any other rights or remedies of the Company whether hereunder or otherwise at law or in equity, late payment of any amount due to the Company shall entitle the Company to charge interest on such amount from the date on which payment became due until the date on which the Company receives payment in full of such amount (whether before or after judgment has been obtained by the Company against the Buyer) at a rate of 4 per cent per annum above HSBC Bank Plc’s prevailing base lending rate from time to time.

4.11. The Buyer shall on demand fully indemnify and keep fully indemnified the Company from and against any and all charges, costs, expenses (including without limitation legal costs and expenses), and other liabilities whatsoever and howsoever incurred by the Company or its agents as a result of any failure by the Buyer to make payment in accordance with the provisions contained in this Condition 4, including (without

- limitation) any costs incurred by the Company or its agents in the collection of any monies due to the Company.
- 4.12. Without prejudice to any other rights or remedies of the Company, whether hereunder or otherwise at law or in equity. In the event of the Buyer defaulting on any of its obligations under either the Contract (including any Contract relating to an instalment) or any other contract between the Buyer and the Company and/or if the Company at any time has any concerns regarding the financial circumstances of the Buyer the Company reserves the right at any time at its sole option to:
- 4.12.1. require immediate payment in full or in part by the Buyer of the price and/or any other amounts payable to the Company under any Contract; and/or
- 4.12.2. require immediate payment in full or in part by the Buyer of the price and/or any other amounts payable to the Company under any other contract; and/or
- 4.12.3. suspend any further deliveries or performance to the Buyer (whether of the Goods, Services or any goods or services ordered under any other contract between the Company and the Buyer); and/or
- 4.12.4. cancel any allowance of credit (whether under the Contract or under any other contract between the Buyer and the Company); and/or
- 4.12.5. demand security for payment before continuing with an order or delivery of the Goods or performance of the Services or any instalment of the Goods or the Services and/or any other goods or services ordered under any other Contract or contract between the Buyer and the Company; and/or
- 4.12.6. cancel the Contract and/or any other contract between the Company and the Buyer.
5. **DELIVERY**
- 5.1. Unless otherwise agreed in an Order Acknowledgement or otherwise in writing, delivery of Goods shall be made by the Company or its nominated carrier to the Site. If the Buyer is unable to take delivery of the Goods or accept Assembly (if appropriate) at the site, for any reason whatsoever, including (without limitation) due to the Buyer's failure to i) prepare the Site in accordance with the requirements of Condition 6, ii) to give adequate delivery instructions; or iii) to agree in writing an alternative site for delivery with the Company, then delivery shall be deemed to have been effected 3 days from and including the date on which delivery was attempted at the Site.
- 5.2. Where delivery is to be made otherwise than at the Company's premises the Buyer will ensure the provision to the Company of full and adequate access to the point at which delivery is to be made and all other facilities and services necessary to enable the Company to deliver in accordance with the Contract. The decision of the Company's representative as to the nearest point of accessibility to the agreed or other point of delivery for the purpose of the Contract shall be accepted as final and shall be deemed to be the point of delivery. The Company accepts no responsibility for damage of any kind caused by its transport of the Goods to any access road or to the location at which delivery is to take place. However, the Buyer shall fully indemnify and keep the Company fully indemnified in respect of any costs or expenses incurred making good any damage to any vehicle used for such transport due to the condition or the location of the approaches thereto.
- 5.3. From the time delivery of the Goods is deemed to have taken place pursuant to Condition 5.1:
- 5.3.1. risk in the Goods including for loss or damage caused by the Company's negligence shall pass to the Buyer; and
- 5.3.2. the Company shall have no further obligations whatsoever in relation to the transportation, care or storage of the Goods **provided always** that if the Company elects to arrange transportation of the Goods to the Buyer, to load or unload the Goods and/or store the Goods pending collection by the Buyer (as applicable), the Buyer shall fully indemnify and keep indemnified the Company fully on demand in respect of any and all costs and/or expenses incurred by the Company in connection with or paid by the Company in so doing.
- 5.4. The Company agrees to use reasonable efforts to deliver the Goods to and perform the Services for the Buyer by any date or time stated in an Order Acknowledgement or elsewhere in writing or if not so stated, by such reasonable date as the Company shall specify. Any times or dates for delivery or performance shall be treated as estimates only and the Company will not be liable to the Buyer for any loss or damage whatsoever and howsoever sustained by the Buyer as a result of the Company's failure to comply with such delivery or performance periods or dates. Any such dates included by the Buyer in any order, acceptance of quotation or other document shall not form part of the terms of the Contract. Any estimated date provided by the Company is likely to be delayed in the event that the Company agrees to a request by the Seller to alter the specifications for the Goods or Services. The Buyer shall not be entitled to refuse to accept late delivery, to cancel a Contract or to treat late delivery or performance as a breach of contract. If the Company fails to deliver the Goods or perform the Services by any specified date or time the Company shall deliver the Goods or perform the Service by such reasonable final date as the Company shall further specify.
- 5.5. The Company may at its sole discretion consider any reasonable written request by the Buyer to postpone delivery of the Goods or performance of the Services but shall be under no obligation to do so or to agree to such postponement.
- 5.6. The Buyer shall be responsible for providing at its own cost any instructions, documents, licences, permissions or authorisations necessary to enable the Company to fulfil its obligations under Condition 5.1.
- 5.7. In the event that the Company agrees to supply Goods to the Buyer's Specification and/or the Company agrees to allocate Goods solely for supply to the Buyer, the Buyer hereby agrees to purchase from the Company the entire quantity of the Goods in question obtained by the Company in order to fulfil any such order placed by the Buyer in respect of such Goods.
- 5.8. If the Buyer fails to take delivery of Goods or accept performance of the services at the time stated for delivery or performance (otherwise than by reason of the Company's fault) for any reason whatsoever including without limitation due to the Buyer's failure to prepare the Site in accordance with Condition 6 or, fails to give the Company adequate delivery instructions or where the Company has refused a request to postpone delivery in accordance with Condition 5.5 then, without prejudice to any other right or remedy available to the Company, the Company may at its sole option without giving notice to the Buyer:
- 5.8.1. store Goods until actual delivery occurs and charge the Buyer for the reasonable costs (including handling and insurance) of storage; and/or
- 5.8.2. sell the Goods and retain any proceeds of sale and charge the Purchaser for the reasonable costs (including handling and insurance) and storage and selling expenses; and/or
- 5.8.3. dispose of the Goods in any manner it sees fit and recover from the Buyer (less any proceeds of sale retained by the Company pursuant to Condition 5.6.2 all sums payable to the Company under the Contract.
- 5.9. Where the Company accepts an order for the supply of Goods to be called off by the Buyer over a period, then the Company reserves the right to require in writing at any time that such call offs must be made by the Buyer so as to complete delivery of all of the Goods comprised in the Contract within a specified period from the date of the Contract.
- 5.10. Unless otherwise agreed by the Company in writing, all pallets and stands used by the Company in the delivery of the Goods shall remain the property of the Company and shall be returned promptly by the Buyer to the Company.
6. **SITE CONDITIONS AND ASSEMBLY**
- 6.1. The Buyer shall permit the Company at any time to conduct an inspection or survey of each relevant Site prior to delivery or Assembly of the Goods. If, when the Company commences delivery or Assembly of the Goods or provision of any Services at any Site, or when the Company carries out any inspection of any Site the Company finds any differences between the condition of the Site at that time and the condition of the Site required in compliance with the Site preparation checklist, the Company shall be entitled to refuse to carry out either or both of delivery and Assembly until such time as, in the reasonable opinion of the Company, the condition of the Site complies with its reasonable requirements. The Company shall be entitled to make an additional charge and to agree a reasonable extension of time for any resulting additional work, costs and/or expenses resulting therefrom.
- 6.2. Unless otherwise stated in the Order Acknowledgement or otherwise in writing the following assumptions are made concerning each Site and the Buyer shall be responsible for ensuring that (1) the Company and its employees, agents and sub contractors will have free and safe access to the Site on foot and by vehicle; (2) the Company will not be required to pull down or dismantle any part of the Site or any structure in order to provide sufficient room to let the Goods into the location where they are to be delivered and assembled; (3) the Buyer shall comply with all laws in relation to the Site, shall provide a controller of Site safety, and shall, where any personnel of the Company is to work alone, provide an escort adequately trained in health and safety to offer or be able to call for the first aid assistance, and where there is more than one, have a staff member on the Site adequately trained in health and safety; (4) that the Site will be safe, and that the Company will not have to deal with or make special provision for any safety hazards at the Site; and (5) the Site where the Goods shall be used shall meet all and any applicable safety legislation and standards.
- 6.3. If the Company is unable to get access to the Site, or the Site is not ready for Assembly on the dates agreed with the Company, or the Buyer does not accept delivery of the Goods or Services when tendered by the Company, or the Site does not meet with the requirements of this Contract such that it is not reasonable to deliver or Assemble the Goods, then unless due to the negligence or default of the Company: (1) the Company shall be entitled to defer delivery and Assembly of the Goods and provision of the Services; (2) the Buyer shall pay for the costs of storage of the Goods until such Goods are delivered; (3) the Buyer shall pay for the cost of returning the Goods to the Company and redelivery of the Goods to the Site; (4) the Buyer shall fully indemnify the Company and keep the Company fully indemnified in respect of all costs and expenses arising from the wasted cost of labour (including stand-down costs) for the days and personnel allocated to delivery, Assembly or any other Services and also expenses if any (including but not limited to travel, subsistence and accommodation expenses and all costs and expenses relating to the provision of equipment necessary to perform the Assembly (including without limitation wasted hire costs, re-hire costs and storage costs); and (5) the Company shall be entitled to invoice the Buyer for all Goods and Services as if they had been delivered or performed at the times and dates originally set out in an Order Acknowledgement or otherwise in writing.
- 6.4. For the avoidance of doubt, the Buyer shall be fully responsible for ensuring that the layout and positioning of any Goods at the Site complies with all relevant legislation, planning and health and safety requirements.
- 6.5. The Buyer shall on demand indemnify, and keep the Company fully indemnified, from and against all or any liability the Company may incur or suffer actual or threatened as a result of the layout or positioning of the Goods at the Site howsoever arising.
7. **SERVICES**
- 7.1. Except as otherwise stated in an Order Acknowledgement or otherwise agreed in writing by the Company, the Company shall be entitled to determine the plan and method for the content, design, supply and provision of the Services under the Contract.
- 7.2. The Buyer acknowledges that the Company shall rely on the timely provision and accuracy of any Buyer Materials and information in the provision of the Services. The Company shall have no liability to the Buyer in respect any inability of the Company to provide the Services at all, on time or in conformity with the Contract as a result of incomplete, incorrect, inaccurate, illegible, out-of sequence, or incorrectly formed Buyer Materials or information, or arising from the late arrival or non-arrival of such Buyer Materials or information, or any other fault of the Buyer. Where the Services are dependent on any service of any third party, then unless otherwise agreed, the Company shall not be responsible for or liable to the Buyer for any failure, non-operation, default, or non availability of such third party service or other malfunction in relation to such third party system or service or any resulting effects on the Services, or Deliverables unless due to the Company negligence or default.
- 7.3. The Buyer shall fully co-operate with the Company and do all those things which it has agreed to do or which are within its power or control to assist and facilitate the performance of the Services by the Company, including: (1) providing access to and assistance from relevant employees of the Buyer (2) providing any information, data, or materials and doing those things which are within the power, control and possession of the Buyer, which the Company requires or are necessary to perform the Contract and provide the Deliverables, and ensure that the same are accurate, (3) confirming its requirements for the Services, (4) approving any Deliverables to be supplied by the Company, and (5) performing all work which is agreed to be the responsibility of the Buyer. The Company shall have no liability to the Buyer for any errors, omissions or defects in any information (in any form whatsoever), materials, approvals (verbal or written) or appliances provided by the Buyer or for any losses, damage, claims, liabilities, costs, expenses (including legal expenses) arising therefrom in relation to the Services, the Goods or otherwise whatsoever.
- 7.4. The Buyer may only use the Deliverables for the benefit of its business, and may not use them for the benefit of any other person or resell them to any person. The Buyer must not use the Deliverables for any illegal or improper purposes or in a manner which may cause the Company to incur any liability or commit any crime.

8. **RETENTION OF TITLE**
- 8.1. Notwithstanding delivery and the passing of risk in any Goods legal and beneficial title to the Goods shall not pass to the Buyer and shall remain vested in the Company, until the Company has received payment in full (in cleared funds) of the price for them together with any other sums due to it under the Contract or any other contract from the Buyer. Goods in the Buyer's possession or control in relation to which legal and beneficial title remain vested in the Company are referred to in the following provisions of this Condition 8 as "Retained Goods".
- 8.2. Until payment in full in accordance with Condition 8.1, the Buyer shall:
- 8.2.1. hold any Retained Goods on a fiduciary basis as the Company's bailee;
- 8.2.2. store any Retained Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 8.2.3. not destroy, deface or obscure any identifying mark or packaging on or relating to any Retained Goods;
- 8.2.4. maintain any Retained Goods in good condition; and
- 8.2.5. at its own expense keep the Retained Goods insured on the Company's behalf against all risks to the reasonable satisfaction of the Company and on request produce the relevant policy of insurance for inspection by the Company.
- 8.3. The Company reserves the immediate right of repossession of any Retained Goods exercisable at any time after delivery or collection of the Goods. The Buyer hereby grants to the Company and the Company's agents, employees and contractors an irrevocable licence at any time to enter any premises where Retained Goods are being stored without prior notice for this purpose in order to inspect them, identify them as the Company's property and repossess them.
- 8.4. For the avoidance of doubt, the Buyer agrees that the Company shall be entitled to recover payment for any Retained Goods from the Buyer notwithstanding that legal and beneficial ownership of the same has not passed from the Company.
- 8.5. The repossession of Retained Goods by the Company in accordance with this Condition 8 shall be without prejudice to all or any of the Company's other rights against the Buyer under any Contract whether hereunder, at law or in equity.
- 8.6. On termination of the Contract howsoever caused, the Company's but not the Buyer's rights contained in this Condition 8 shall remain in full force and effect.
9. **WARRANTIES AND LIABILITY**
- 9.1. Subject to Condition 9.3, Condition 9.4 and Condition 9.5 the Company warrants to the Buyer that the Goods shall correspond with their Specification at the time of delivery of the Goods (deemed or otherwise pursuant to Condition 5) be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.2. Shortages must be brought to the attention of the driver of the delivery vehicle or other representative of the Company at the point of delivery and notified to the Company in writing by no later than 24 hours from the time of delivery or no responsibility will be accepted by the Company.
- 9.3. The Company shall be under no liability to the Buyer under Condition 9.1:
- 9.3.1. unless the Buyer complies with the obligations under Condition 9.4;
- 9.3.2. unless written notification of the breach of warranty is received by the Company not later than 3 days from the date of delivery (deemed or otherwise) or, where the discovery of the defect or failure was not discoverable on reasonable inspection, at the time of delivery within 3 days from and including the date of discovery of the defect or failure;
- 9.3.3. if the provisions of Condition 9.5 apply;
- 9.3.4. if the defect in question was drawn to the attention of the Buyer prior to formation of the Contract and the Company did not agree to remedy the defect or ought to have been discovered on inspection of the Goods by the Buyer at the time of receipt;
- 9.3.5. if the Goods were examined by the Buyer prior to formation of the Contract and such examination ought reasonably to have revealed the defect;
- 9.3.6. if the defect in question was caused by any repair, maintenance, alteration or addition to the Goods by any person other than the Company or an employee or agent of the Company;
- 9.3.7. if the defect in question was caused or aggravated by any act or omission on the part of any person other than the Company or any employee or agent of the Company, including (without limitation) use or storage of the Goods in a manner contrary to any written instructions of the Company or good trade practice, faulty or improper handling or Assembly (including at any time after notification of a defect is made);
- 9.3.8. if the defect in question arises from fair wear and tear, accident or neglect or any other failure to follow the Company's instructions;
- 9.3.9. if the defect in question was caused as a result of any reliance by the Company on any Buyer information;
- 9.3.10. if the Buyer makes any use or further use of the defective Goods after giving the Company notice of the defect; and/or
- 9.3.11. the alleged breach of warranty is due to any change, alteration or substitution which the Company is entitled to make under Condition 13.
- 9.4. If the Buyer becomes aware of a breach of warranty set out in Condition 9.1, the Buyer shall:
- 9.4.1. as soon as possible and in any event within 3 days of discovering the relevant defect in the Goods, supply the Company with written particulars of the defect or failure; and
- 9.4.2. permit the Company to inspect the defective Goods at the Buyer's premises; and
- 9.4.3. provide to the Company all necessary access and other reasonable facilities and all information, particulars and assistance as may be necessary to enable the Company to ascertain or verify the nature and cause of the defect claimed and to carry out its warranty obligations under Condition 9.5.
- 9.5. If the Goods are supplied to the Company by a third party and are not manufactured by the Company, the warranties set out in Condition 9.1 shall not apply to the Contract and the Buyer acknowledges and agrees that the Company shall provide no warranties in relation to the quality or fitness for purpose of the Goods. However, where the Company is given the benefit of warranties equivalent to those set out in Condition 9.1 from any third party the Company shall, to the extent only that the Company itself has the benefit of such equivalent warranties, grant to the Buyer the benefit of the remedies for breach of warranty set out in Condition 9.5 only.
- 9.6. Without prejudice to Condition 10.1 and subject to Condition 9.4, the Company's liability for any breach of the warranty contained in Condition 9.1 shall in all circumstances be limited to, at the Company's sole option, repair or replacement as soon as reasonably practicable of the defective Goods (or any part(s) in question) free of charge or where payment or part payment of the price has already been made by the

Buyer, crediting the Buyer with an amount equal to the amount already paid. Such repair, replacement or refund shall be the Company's sole liability and the Buyer's sole remedy for breach of the warranty in Condition 9.1.

10. **LIMITS OF LIABILITY**

- 10.1. Nothing in these Conditions shall exclude or limit the Company's liability for:
- 10.1.1. fraud or fraudulent misrepresentation;
- 10.1.2. death or personal injury caused by its negligence;
- 10.1.3. breach of terms regarding title implied under the Sale of Goods Act 1979; or
- 10.1.4. any other liability to the extent that the same may not be excluded or limited as a matter of law.
- 10.2. Without prejudice to Condition 10.1 above, the Company's maximum aggregate liability to the Buyer under or in connection with the Contract whether arising in contract, tort (including, without limitation, negligence) or otherwise shall in no event exceed the price paid by the Buyer under the Contract.
- 10.3. Without prejudice to Condition 10.1, the Company shall, in no circumstances, be liable to the Buyer by reason of breach of contract, tort (including, without limitation, negligence) breach of statutory duty or otherwise for any:
- 10.3.1. special damages; or
- 10.3.2. loss of profit (actual or anticipated), loss of income, loss of business, loss of revenue, loss of goodwill, loss of use or other economic loss; or
- 10.3.3. any loss arising from any claim against the Buyer by any third party; or
- 10.3.4. any consequential or indirect loss, damage or expense of any kind howsoever caused or arising whether or not such loss or damage was foreseeable or in the contemplation of the parties.
- 10.4. Save as expressly provided in Condition 10.1, all conditions, warranties, representations and terms, express or implied whether by statute, common law or otherwise in relation to the Goods and Services are hereby expressly excluded to the fullest extent permitted at law.

11. **INTELLECTUAL PROPERTY AND THIRD PARTY CLAIMS**

- 11.1. Notwithstanding delivery of and the passing of title in any Goods or Deliverables, nothing in any Contract shall have the effect of granting or transferring to, or vesting in, the Buyer any intellectual property rights, or any other right, title or interest in or to any Goods or Deliverables or any methodologies or the supply, design or content of the Deliverables or otherwise.
- 11.2. The Buyer shall indemnify and keep indemnified the Company fully on demand from and against any and all actions, claims, costs, losses (including without limitation, loss of profits whether actual or anticipated, revenue or goodwill), damages, demands, expenses (including without limitation legal costs and expenses), proceedings, and other liabilities incurred by, or awarded against, the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim of alleged infringement of any rights of a third party as a result of or in connection with the carrying out by the Company, its employee, sub-contractor or agent of the manufacture of the Goods or any work required to be done to Goods in accordance with the requirements or Specifications of the Buyer, changes to the required specifications of the Buyer which the Company agrees in writing to accept or arising out of any defect in the Goods to the extent occasioned or contributed to or resulting from any act or omission of the Buyer, its employee, sub-contractor or agent.
12. **INFRINGEMENT OF THIRD PARTY RIGHTS**
- 12.1. The Buyer shall promptly inform the Company of any threat, claim or allegation of which the Buyer becomes aware that the Goods or Deliverables (or any of them) infringe the intellectual property or other rights of any person.
- 12.2. The Buyer shall not take any action or make any admission of liability in connection with any threat, claim or allegation of the nature outlined in Condition 12.1 without the prior written consent of a duly authorised representative on behalf of the Company.
- 12.3. If required by a duly authorised representative on behalf of the Company, the Buyer agrees to take such action or steps in connection with any threat, claim or allegation notified to the Company pursuant to the Buyer's obligations under Condition 12.1 as the Company may request. Subject to Condition 12.4, any such action or steps taken by the Buyer shall be at the Company's cost.
- 12.4. Where any threat, claim or allegation of the nature outlined in Condition 12.1 has, in the reasonable opinion of the Company, arisen as a result of any use of the Goods or Deliverables by the Buyer in any manner or for any purpose prohibited by the Company or other than in accordance with the Company's instructions, any action or steps taken by the Buyer at the Company's request under Condition 12.2 shall be at the Buyer's sole cost.

13. **DESIGN ALTERATIONS AND SUBSTITUTION OF GOODS**

- 13.1. Subject to the provisions of Condition 11.2, the Company agrees that the Buyer shall be entitled to request in writing at any time an alteration or change to the Specification of the Goods as set out in an Order Acknowledgement. The Company agrees to consider any such request which shall be subject to the written acceptance of the Company.
- 13.2. The Buyer agrees that should any materials or products required for the Goods be unavailable or otherwise for any reason whatsoever, the Company reserves the right to supply substitute materials or products reasonably deemed by the Company to be similar to the required Specification and suitable for the general purpose of the Goods or suitable for the intended purpose of the Goods as understood by the Company and that any such change or alteration affecting the Goods and/or the use by the Company of such substitutes shall be accepted by the Buyer and deemed to constitute proper performance by the Company of its obligations under the Contract.
- 13.3. Should the Company be required by any regulatory authority, any safety requirement or other statutory requirement to alter the specification of any Goods, the Company reserves the right to amend the Specification of the Goods without prior notice to the Buyer.

14. **CONFIDENTIAL INFORMATION**

- 14.1. The Buyer shall treat all drawings, procedures, instructions, documents and other information of any kind whatsoever and in any form whatsoever (including without limitation any information relating to the price of Goods) supplied by the Company to the Buyer as strictly confidential (except to the extent that any such information is available in the public domain) and shall not without the prior written consent of the Company, disclose or part with possession of any such documents or information or extracts therefrom or copies thereof or use any such documents or information otherwise than in connection with the purchase and use (but not the re-sale of) the Goods or enjoyment by the Buyer of the Services to which they relate.

15. **FORCE MAJEURE**
- 15.1. The Company reserves the right to suspend, delay or cancel the performance of a Contract or any part thereof where the Company is prevented or hindered from performing the same due to any cause beyond its reasonable control.
- 15.2. Notwithstanding anything to the contrary in these Conditions, the Company shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of Goods or performance of the Services by the Company being prevented, hindered, delayed or rendered uneconomic or for the suspension or cancellation of a Contract by reason of any circumstances or event beyond the Company's reasonable control.
- 15.3. If due to such circumstances or events the Company has insufficient stocks or personnel resources to meet all its commitments, the Company may apportion available stocks or resources between its Buyers at its sole discretion.
- 15.4. Cancellation of a Contract by the Company under Condition 15.1 shall be without prejudice to any rights or liabilities of either party which accrued prior to the date of cancellation other than as a result of the relevant event beyond its reasonable control.
16. **INSOLVENCY OF BUYER**
- 16.1. Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to treat any Contract as repudiated and/or withhold any further deliveries of Goods or performance of Services without any liability to the Buyer and, if any Goods have been delivered or Service performed but not paid for, the total amount payable therefor shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, if:
- 16.1.1. the Buyer is, or is deemed to be insolvent, or is unable to pay its debtors as they fall due;
- 16.1.2. the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or passes a resolution for its voluntary winding up or has a petition for its compulsory winding up presented against it;
- 16.1.3. an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or
- 16.1.4. the Buyer ceases, or threatens to cease, to carry on business; or
- 16.1.5. any equivalent or analogous event or proceeding occurs in any other applicable jurisdiction; or
- 16.1.6. the Company reasonably believes that any of the events mentioned above is about to occur in relation to the Buyer or any other matter which in the opinion of the Company may prejudice its rights against the Buyer.
17. **CANCELLATION AND AMENDMENT**
- 17.1. No cancellation or amendment to these Conditions or any Contract shall be binding on the Company unless agreed in writing by a duly authorised representative of the Company and on the strict condition that the Buyer shall on demand fully indemnify and keep the Company fully indemnified from and against all and any costs and expenses incurred by the Company in relation to the Contract in question up to the time of the cancellation or arising out of the amendment and all loss of profits and all other loss, damage, claims, costs, charges and other expenses resulting to the Company by reason of and/or in connection with such cancellation or amendment (including, without limitation, as a result of or in connection with either or both the supply or manufacture of Goods to the Buyer's Specification and if applicable the provision of design services (the latter of which shall be charged for on a time spent basis at the relevant current hourly rate)).
- 17.2. Without prejudice to any other rights and remedies which the Company may have whether hereunder or otherwise at law or in equity, the Company shall have the right to cancel a Contract or any other contract with the Buyer.
- 17.2.1. if the Buyer commits any breach of the Contract or any other contract with the Company;
- 17.2.2. on the occurrence of an insolvency or other event in respect of the Buyer as set out in Condition 16; and/or
- 17.2.3. if the Company has any reason to doubt the credit worthiness of the Buyer.
18. **ASSIGNMENT**
- 18.1. The Buyer shall not assign, transfer, novate, charge or otherwise dispose of or deal in any other manner with a Contract or all or any of its rights, interests and/or obligations under a Contract without the prior written consent of an authorised representative of the Company.
19. **WAIVER**
- 19.1. No waiver by the Company of any of the Company's rights under a Contract shall be effective unless it is in writing and signed by a duly authorised representative on behalf of the Company. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Company's right in relation to different circumstances or the re-occurrence of similar circumstances.
20. **RIGHTS OF THIRD PARTIES**
- 20.1. The Company and the Buyer do not intend that any term of a Contract should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person who is not a party to the Contract save that where an agreement is entered into pursuant to which any rights contained in the Contract are assigned to a third party, nothing in this Condition 21 and any dispute arising out of or in connection with its subject matter shall, of itself, operate to prevent the assignee from taking the benefit of, and enforcing, any right so assigned.
21. **LAW AND JURISDICTION**
- 21.1. The formation, existence, construction, performance, validity and all aspects of any Contract and these Conditions and any dispute arising out of or in connection with its subject matter will be governed by and construed in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.
22. **CONSTRUCTION**
- 22.1. The headings of these Conditions are for convenience only and shall not affect the interpretation thereof.
- 22.2. Each of the Conditions contained herein shall be construed as a separate condition. If any provision or part of a provision of these Conditions shall be found by any court of competent jurisdiction to be invalid, void or unenforceable, it shall be deemed to be

severed from these Conditions and shall not affect the remaining provisions or parts of such provisions of these Conditions which shall continue in full force and effect.

23. **NOTICES**

- 23.1. Notice under these Conditions and any Contract shall be in writing and notices shall be deemed to be received on delivery if sent by hand, courier or recorded delivery and 48 hours (excluding Saturdays, Sundays and Bank and public holidays) after despatch if sent by pre-paid first class post, and on confirmation of transmission if sent by facsimile or e-mail.