

Staytite Limited August 2017

Trading Agreement (Terms and Conditions for Sale of Goods)

1 Definitions

SELLER means Staytite Limited (Registered in England 01373472)

BUYER means the person, firm or company who buys or agrees to buy Goods from the Seller.

GOODS means the items which the Buyer agrees to buy from the Seller as set out in the schedule.

CONDITIONS means the Terms and Conditions of sale as set out in this document and any special Terms and Conditions agreed in writing by the Seller.

2 Conditions

2.1 These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Goods, to the exclusion of all other Terms and Conditions including the Buyer's standard Conditions of purchase or any other Conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.

2.2 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.

2.3 These Conditions may not be varied unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.4 These Conditions supersede any other Conditions previously issued.

2.5 The Seller's employees or agents are not authorised to make any representation concerning the Goods unless confirmed in writing by the Seller. In entering into the contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 Price

3.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.

3.2 All prices quoted lapse after 30 days (unless otherwise stated).

3.3 The price quoted excludes delivery on orders of less than £100 (subject to amendment) and otherwise includes delivery to the UK mainland.

3.4 Unless otherwise stated, the price quoted is an illustrative estimate only (the price charged will be the Seller's current price at the time of delivery).

3.5 Rates of tax and duties on the Goods will be those applying at the time of delivery.

3.6 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery date, quantities or specifications for the Goods which is required by the Buyer, or any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4 Delivery

- 4.1 The Seller will endeavour to dispatch Goods on an agreed delivery date. However, all delivery times quoted are estimates only. Time of delivery shall not be of the essence of the contract.
- 4.2 If the Seller fails to deliver within a reasonable time, the Buyer may (by informing the Seller in writing) cancel the contract, however:
- 4.2.1 The Buyer may not cancel if notice is received by the Seller after the Goods have been dispatched.
- 4.2.2 If the Buyer cancels the contract, the Buyer can have no further claim against the Seller under that contract.
- 4.3 If the Buyer accepts delivery of the Goods after the estimated delivery time, it will be on the basis that the Buyer has no claim against the Seller for delay (including indirect or consequential loss, or increase in the price of the Goods).
- 4.4 Unless otherwise agreed in writing the Seller may deliver the Goods in instalments over a maximum 12-month period. Each instalment is treated as a separate contract.
- 4.5 The Seller may deliver the Goods in quantities of 10% more or less than the quantity ordered and charge the Buyer for the quantity actually delivered.
- 4.6 If short delivery occurs the Buyer may not reject the Goods but shall accept the Goods as part performance of the contract, and a pro-rata adjustment to the price shall be made.
- 4.7 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for dispatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of doing so.
- 4.8 If the Seller fails to deliver for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer of similar Goods (in the cheapest available market) to replace those not delivered over the price of the Goods.

5 Delivery and safety

- 5.1 The Seller may decline to deliver if:
- 5.1.1 The Seller considers that it would be unsafe, unlawful or unreasonably difficult to do so.
- 5.1.2 The Buyer's premises (or the access to them) are unsuitable for our vehicle.

6 Risk

- 6.1 The Goods are at the Buyer's risk from the time receipt of Goods takes place.
- 6.2 Receipt takes place either:
- 6.2.1 At the Seller's premises (if Buyer is collecting them or arranging carriage).
- 6.2.2 At Buyer's premises (if Seller is arranging carriage).
- 6.3 The Buyer must inspect the Goods on delivery. If any Goods are damaged (or not delivered), Buyer must give notice in writing within three working days of delivery (or within ten days of the expected delivery time). The Seller must be allowed (and any carrier) a reasonable chance to inspect the damaged Goods.
- 6.4 The Buyer must store all Goods so that they are identifiable by batch number. Failure to do so may invalidate a claim.

7 Payment terms

- 7.1 Buyer is required to pay in cash or otherwise in cleared funds on order, unless an approved credit account has been granted by the Seller.
- 7.2 If an approved credit account is provided, payment is due no later than 30 days after the date of invoice unless otherwise agreed in writing.
- 7.3 Unless otherwise agreed in writing the Buyer will be responsible for paying their (Remitter) bank charges and Seller will be responsible for paying their (Beneficiary) bank charges. If the Seller incurs the Buyer's bank charges these will be sent by additional payment to the Seller in order to reimburse them.

- 7.4 Failure to pay in full on the due date will result in the Seller being entitled to:
- 7.4.1 Suspend or cancel future deliveries.
 - 7.4.2 Cancel any discount offered to the Buyer.
 - 7.4.3 Charge interest at the rate of (8%) per annum above the Bank of England base rate from time to time in force. Such interest shall accrue both before as well as after any judgement.
 - 7.4.4 The Seller may recover the cost of taking legal action if deemed necessary to receive payment.
- 7.5 If the Buyer has an approved credit account, it may be withdrawn or reduced at any time without notice.
- 7.6 The Buyer does not have the right to set off any money owed by the Seller against payment of Goods unless otherwise agreed in writing.
- 7.7 Until payment is received in full the Seller has a lien on any of the Buyer's property in the Seller's possession.
- 7.8 Buyer is to indemnify the Seller in full and hold the Seller harmless from all expenses and liabilities incurred (directly or indirectly including financing costs and including legal costs on a full indemnity basis) following any breach by the Buyer of any of their obligations under these terms.

8 Title

- 8.1 Until the Buyer pays all debts:
- 8.1.1 All Goods supplied remain property of the Seller.
 - 8.1.2 Goods must be stored so that they are clearly identifiable as Seller's property;
 - 8.1.3 Buyer must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for Seller.
 - 8.1.4 Buyer may use those Goods and sell them in the ordinary course of business, but not if:
 - a) Seller revokes that right (by informing Buyer in writing); or
 - b) Buyer becomes insolvent.
- 8.2 Buyer must inform Seller (in writing) immediately if they become insolvent or are at risk of insolvency.
- 8.3 If Buyer's right to use and sell the Goods ends Buyer must allow Seller to remove the Goods.
- 8.4 Seller has Buyer's permission to enter any premises where the Goods may be stored:
- 8.4.1 At any reasonable time, to inspect them.
 - 8.4.2 After Buyer's right to use and sell the Goods has ended, to remove them, using reasonable force if necessary.
- 8.5 Despite Seller's retention of title to the Goods, Seller has the right to take legal proceedings to recover the price of Goods supplied should payment not be received by the due date.
- 8.6 Where the contract involves the Seller's property being located on the Buyer's premises (including but not limited to Racks and Bins):
- 8.6.1 The Buyer is responsible for insuring them against damage, theft or loss for which a prudent owner would insure them.
 - 8.6.2 If the Buyer is unable to return this property in a suitable state when required to do so by the Seller they will be held liable for the costs to replace them.
- 8.7 Buyer does not have authority to make any contract on behalf of the Seller or in Seller's name.

9 Warranties

- 9.1 The Seller warrants that the Goods comply with their description on acknowledgement of order form and are free from material defect at the time of delivery (as long as Buyer complies with clause 9.4).
- 9.2 The Seller gives no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the Goods or their fitness for any purpose.
- 9.3 In particular the Seller does not warrant the Goods to the extent:
- 9.3.1 any defect is due to hydrogen embrittlement or related defects.
 - 9.3.2 any defect in the Goods arises from any design, drawing or specification supplied by the Buyer.
 - 9.3.3 any defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Seller's instructions, improper use, alteration or repair of Goods.
 - 9.3.4 the total price of Goods has not been received by the agreed due date

9.3.5 any defect is due to improper storage, design or installation of the Goods by the Buyer and or third parties

9.3.6 the Seller is not the sole Seller of the Goods to the Buyer unless and to the extent that the Buyer can prove the Goods are from the Seller's Goods supplied.

9.4 If the Buyer believes that Goods have been delivered which are defective in materials or workmanship, Buyer must:

9.4.1 Inform Seller (in writing), with full details (including the batch number), as soon as possible.

9.4.2 Allow Seller to investigate (including access to premises and product samples).

9.5 If the Goods are found to be defective in material or workmanship following our investigations, and Buyer has complied with those Conditions (in clause 9.4) in full, Seller will (at their option) replace the Goods or refund the price.

9.6 Seller is not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of Goods or their use, even if deemed negligent.

9.7 Seller's total liability to Buyer (from one single cause) for damage to property caused by Seller's negligence is limited to £100,000.

9.8 For all other liabilities not referred to elsewhere in these terms Seller's liability is limited in damages to the price of the Goods.

9.9 Nothing in these terms restricts or limits Seller's liability for; death, personal injury resulting from Seller's negligence, fraud or fraudulent misrepresentation.

10 Specification

10.1 Where the Seller prepares the Goods in accordance with the Buyer's specifications, designs or instructions, or using Buyer's tools or materials:

10.1.1 Buyer must ensure that the specifications, designs or instructions are accurate and tools and materials are of good quality.

10.1.2 Buyer must ensure that Goods prepared in accordance with those specifications, designs or instructions (or using those tools or materials) will be fit for the purpose for which they intend to use them.

10.1.3 Buyer must ensure that Seller's use of Buyer's specifications, designs, instructions, tools or materials will not result in the infringement of any intellectual property rights of a third party.

10.2 Seller reserves the right to make any changes in the specifications of Goods which are necessary to ensure they conform with any applicable safety or other statutory requirements.

10.3 Seller also reserves the right to make without notice any minor modifications in specifications deemed necessary or desirable.

10.4 The specification of Goods against sample approval becomes that of the approved sample. The specification of the approved sample becomes the specification and this supersedes all previous specifications.

11 Return of Goods

11.1 Seller will accept the return of Goods from Buyer only:

11.1.1 By prior arrangement (confirmed in writing).

11.1.2 On payment of an agreed handling charge (unless the Goods were defective when delivered).

11.1.3 Where the Goods are as fit for sale on their return as they were on delivery.

12 Export terms

12.1 Where the Goods are supplied by way of export from the United Kingdom Clause 12 of these terms applies (except to the extent that it is inconsistent with any written agreement between parties).

12.2 The 'Incoterms' of the International Chamber of Commerce which are in force at the time when the contract is made apply to exports, but these terms prevail to the extent that there is any inconsistency.

12.3 Unless otherwise agreed, the Goods are supplied ex works High Wycombe.

12.4 Where the Goods are to be sent by the Seller to the Buyer by a route including sea transport Seller is under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.

12.5 Buyer is responsible for arranging testing and inspection of the Goods at Seller's premises before shipment (unless otherwise agreed). Seller is not liable for any defect in the Goods which would be apparent on inspection unless a claim is made before shipment. Seller is not liable for any damage during transit.

12.6 Seller is not liable for death or personal injury arising from the use of the Goods delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

13 Cancellation

13.1 If the order is cancelled (for any reason) the Buyer is required to pay Seller for all stock (finished or unfinished) that Seller may then hold (or to which are committed) for the order.

13.2 Seller may suspend or cancel the order, by written notice if:

13.2.1 Buyer fails to pay any money when due (under the order or otherwise);

13.2.2 Buyer becomes insolvent;

13.2.3 Buyer fails to honour obligations under these terms.

13.3 Buyer may not cancel the order unless agreed in writing (and clauses 4.2.2 and 13.1 then apply).

14 Waiver and variations

14.1 Any waiver or variation of these terms is binding in honour only unless:

14.1.1 Made (or recorded) in writing.

14.1.2 Signed on behalf of each party.

14.1.3 A written instruction expressly stating an intention to vary these terms.

14.2 All orders that Buyer places with Seller will be on these terms (or any that may be issued to replace them). By placing an order, Buyer is expressly waiving any terms they may have to the extent that they are inconsistent with the Seller's terms.

15 Force majeure

15.1 If the Seller is unable to perform obligations to the Buyer (or able to perform them only at unreasonable cost) because of circumstances beyond Seller's control, the Seller may cancel or suspend any obligations to the Buyer, without liability.

15.2 Examples of those circumstances include act of God, accident, explosion, fire, flood, threat of war, terrorism, civil disturbance, sabotage, transport delays, import or export regulations, material delays, breakdown in machinery, Goods failing to meet Seller's inspection criteria, strikes and other industrial disputes and difficulty in obtaining supplies.

16 General

16.1 The law of England and Wales is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction. Any disputes will be heard in the jurisdiction of England and Wales, in particular any court in the Greater London area.

16.2 If Buyer is more than one person, each person has joint and several obligations under these terms.

16.3 If any of these terms are unenforceable as drafted:

16.3.1 It will not affect the enforceability of any other of these terms.

16.3.2 If it would be enforceable if amended, it will be treated as so amended.

16.4 Buyer may be treated as insolvent if:

16.4.1 Buyer is unable to pay debts as they fall due.

16.4.2 Buyer (or any item of Buyer's property) becomes the subject of:

a) Any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements including a moratorium or bankruptcy).

b) Any application or proposal for any formal insolvency procedure.

c) Any application, procedure or proposal overseas with similar effect or purpose.

16.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between parties and Buyer should not rely on them in entering into any contract with the Seller.

16.6 Any notice by either party which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post, e-mail or by fax) the other's registered office or principal place of business. All such notices must be signed.

16.7 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the Buyer or Seller.

16.8 The only statements upon which the Buyer may rely in making the contract, are those made in writing by someone who is the Seller's authorised representative and either:

16.8.1 Are contained in Seller's estimate (or any covering letter) and not withdrawn before the contract is made.

16.8.2 Which expressly state that Buyer may rely on them when entering into the contract.

16.9 Nothing in these terms affects or limits the Seller's liability for fraudulent misrepresentation.

16.10 If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.

16.11 By signing any approval form, placing any order, providing and/or approving specification/samples the Buyer agrees to this trading agreement.

16.12 The contract forms the entire agreement between the Buyer and the Seller. No prior statements either orally or in writing form party of this agreement.

STAYTITE LIMITED ("the Company")

Terms and conditions of purchase

Definitions

COMPANY means Staytite Limited (Registered in England 01373472)

SUPPLIER means the person, firm or business who sells or agrees to sell Goods to the Company.

DELIVERABLES means the items which the Supplier agrees to sell to the Company as set out in the schedule.

TERMS means the Terms and Conditions of purchase as set out in this document and any special Terms and Conditions agreed in writing by the Company.

We, the Company, only purchase goods, rights and services ("Deliverables") on these terms and conditions ("the Terms"). If you accept our order it will be on these Terms and no other standard terms. If you act in a manner calculated to appear as an acceptance of our order, *that will act as an acceptance* and you will be bound by our Terms, regardless of any inconsistency in your own small print. If you wish to reject our order and make a counter-offer you MUST therefore reply to our order in words explicitly and clearly indicating *rejection*. Equally, if you make a counter-offer which is not clearly labelled as such (or as a rejection of our order) no subsequent behaviour of ours, in accepting Performance, can be taken to imply any acceptance by us of that counter-offer. These Terms can only be changed, or other terms agreed, in written correspondence signed by a director or other senior officer of the Company. These Terms are important and should be studied carefully.

1 The Contract

- 1.1 Our contract with you, our supplier, will comprise our express written order, these Terms, anything else we expressly agree under section 1.2, any content imposed by law, but nothing else.
- 1.2 If you want us to accept a term of yours, or accept a particular responsibility, or if you wish to rely on a representation we have made, you must therefore obtain our express agreement to that. *That means express written agreement, signed by a director or other senior officer of the Company and referring expressly to these Terms.* We will deal with you in reliance on these Terms, so be aware that our acceptance of contractual performance by you does *not* imply acceptance of any terms that are different to our Terms. You must indemnify us against any consequence of your seeking to rely on any contractual terms, or any statement, understanding or representation which is not contractually agreed as set out in this section 1. For purposes of this section, written agreement can be communicated by pre-paid post, fax or e-mail, save that we never accept small print terms communicated by fax, on grounds of uncertain legibility.
- 1.3 If any of the terms of the contract conflict with or contradict each other those terms will override each other in the following order of priority: (1) any express written agreement from us; (2) our order; (3) these Terms.
- 1.4 We are not contractually bound until we place a formal order and then only to the extent of the issues specifically covered by that order or in writing signed by an approved employee of Staytite Ltd. We will only be contractually bound to you when you accept our order with a formal order acknowledgement in writing or (if later) when we accept Performance by you (see below).

2 Price

- 2.1 The price of the Deliverables will be as stated in our order and, unless otherwise stated, will be:
 - 2.1.1 exclusive of any applicable VAT (which will be payable by us subject to receipt of a valid VAT invoice);
 - 2.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery, commissioning or performance of Deliverables to or at the delivery address, and of any duties or levies other than VAT;
 - 2.1.3 payable in the currency stated on our purchase order; and
 - 2.1.4 fixed for the duration of the Contract.
- 2.2 We will be entitled to any discount for prompt payment, bulk purchase or the like, either pre agreed or normally granted by you in comparable circumstances.
- 2.3 If we will be reliant on you for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the Deliverables ("Follow-on Deliverables") then you will provide those Follow-on Deliverables or procure them to be provided, for at least 36 months following full Performance, at fair and reasonable prices which take no advantage of our dependence on you for their supply.

3 Payment

- 3.1 Invoices for the Deliverables may be sent to us on, or after, completion of Performance (as defined in section 4.1). Each invoice must quote the number of our order. No sum may be invoiced more than six months late.
- 3.2 Unless otherwise pre agreed, we will pay the contract price within 60 days of the end of month in which we receive the invoice.
- 3.3 We will be entitled to set off against the price any money owed to us by you.

4 Specifications

- 4.1 If we order *goods*, then unless otherwise stated the order is deemed to include the supply of all relevant documentation and certification, and of any commissioning of those goods, necessary to enable the Company to use them for their intended purposes. If we order *services* then, unless otherwise stated, our order includes the complete performance of those services including any employee instruction, manuals, explanations or certifications necessary to enable the Company to benefit from them for their intended purposes. If we order goods or services then, unless otherwise stated, our order includes any *legal rights* necessary to use those goods or services for their intended purposes. As for those intended purposes, see section 6.3. References in these Terms to "Performance" are to complete performance of all your contract obligations as described in these Terms.
- 4.2 The quantity, quality and description of Deliverables will be as specified in our order and these Terms or as agreed by us in writing, subject to which then in full accordance with your representations (see section 6.1).
- 4.3 You have sole responsibility for complying with all applicable regulations and other legal and regulatory requirements concerning performance of the contract, and for ensuring that we can, in compliance likewise, fully utilise the Deliverables for their intended purposes
- 4.4 We will be allowed to inspect any contract goods (and your premises for) during manufacture and storage so long as we request an inspection by reasonable notice. If, as a result of the inspection, we are not satisfied that the quality of the goods or the standards of their manufacture, storage or handling conforms with the contract, you will take such steps as are necessary to ensure compliance. If, after that, we are still not satisfied we can cancel the contract without penalty.

- 4.5 If, before Performance has occurred in the relevant respect, we notify you in writing of any change in desired specification (including as to quality and time frame) you will respond as follows. We appreciate that a change may affect the contract price, or may even be unachievable. If the change would *reduce your costs*, the contract price will reduce to fairly reflect that saving. If the change would *increase your costs* you may notify us promptly, in writing, of a proposed revision of the contract price fairly and proportionately reflecting any unavoidable such increased cost: you and we will then use our reasonable efforts to agree the revised terms in full, including as to price, pending which the contract variation will not take effect. If the change would for any reason be *unachievable* you may notify us of that promptly and in writing, with reasons: again, both parties will then use reasonable efforts to reach a mutually acceptable contract variation. Failing notice under one of the two preceding sentences our proposed change will be deemed to have been accepted, and the contract will be deemed to have been varied with immediate effect to reflect the requested specification change with no price increase. What amounts to "prompt" notice for this purpose will depend on feasibility for you and urgency for us, but not in any case later than 48 hours (excluding hours of days which are Saturdays, Sundays or are recognised bank holidays in England) from our notice of proposed change. In no event, agreed or not, will we be liable to you in respect of any contract variation for more than a reasonable and proportionate reflection of such increased costs as you could not reasonably have been expected to avoid. The contract price will not in any circumstance increase except with our express written agreement under, or referring explicitly to, this sub-section.
- 4.6 To protect our business we may need, sometimes urgently, information as to precisely how Deliverables were performed, and as to all relevant activities of any suppliers or sub-contractors of yours. You will meet any reasonable such request as soon as reasonably possible, and will keep records adequate for that purpose for at least two years after completion of Performance. Without limitation, these records must provide full traceability for all goods comprised in, or used in making, any contract goods which are in any respect safety-critical. They must also demonstrate compliance of the contract work with all legal or regulatory requirements and with all contractually binding quality and Performance standards.
- 4.7 You will comply with any reasonable requirements we may have as regards the packaging and packing of any contract goods, and as to information to be displayed on packaging or included on dispatch documentation and bills of lading. Subject to that, you will ensure that all packaging, packing, labelling and documentation is such as to ensure full compliance with legal requirements throughout the scheduled delivery process.

5 Delivery and risk

- 5.1 Any goods will be delivered to, and any services performed at, the address and on the date stated in the order, or else under section 5.2, during usual business hours. If no address is specified, then delivery will be at our usual or main UK premises.
- 5.2 If we specify the date or delivery address after ordering, we will give you reasonable notice of the details. Failing a date, supply will be as soon as reasonably possible.
- 5.3 The date of delivery of any goods or rights, and the performance of any services, will be of the essence of this contract.
- 5.4 A packing note quoting the number of the order must accompany each delivery or consignment of goods and must be displayed prominently.
- 5.5 Where Deliverables are to be supplied in instalments, the contract is still to be treated as a single contract. If you fail to deliver or perform any instalment we may treat the whole contract as repudiated.
- 5.6 We may reject any Deliverables which are not fully in accordance with the contract. Acceptance does not occur until we have had a reasonable time to inspect or consider the relevant Deliverables following supply and, in the case of latent defect, a reasonable time after the defect becomes apparent.

- 5.7 We will not be bound to return to you any packaging or packing material, but if any relevant requirement for packaging recycling applies, you will take materials back free of charge on request.
- 5.8 If any Deliverables are not supplied on or by the agreed date then, in addition to any other remedies available to us, we will be entitled to deduct 1% of the overall contract price for those Deliverables, for every week's delay.
- 5.9 Risk of damage to or loss of any goods passes to us on delivery.
- 5.10 Property and ownership of any goods will pass to us on delivery unless we have paid in whole or in part for the goods in advance. In that case it will pass to us as soon as the goods have (or, if goods are being assembled for us, each successive component of the goods has) been appropriated to the contract.
- 5.11 If we supply any articles to you, e.g. for modification or copying, they stay our property at all times. Those articles must be kept confidential and secure and we can enter your premises at any time on reasonable notice to ensure that this is so. While those articles are in your custody you must not use them, copy them or disseminate them, electronically or otherwise, except in the performance of our contract. We retain copyright and any other available intellectual property rights in any plans, design drawings, computer programs, compilations of data, specifications or the like which we supply to you. You must indemnify us against any loss caused to us, and account to us for any profit which you make, through breach of this provision.
- 5.12 If any Performance occurs on our premises this sub-section will apply. You will ensure that best industry standards are adopted for the health and safety both of your personnel and of any other individuals affected by your actions. We may refuse or terminate access to any individual whom we reasonably consider undesirable to have on our premises. Your personnel must, while on our premises, comply with our reasonable requirements as to security, health and safety routines, times and areas of access, and otherwise. You will be responsible to us on a full indemnity basis for all damage and injury caused by your staff.
- 5.13 If the contract terms refer to terms such as F.O.B and C. & F. which bear defined meanings in the current edition of Incoterms, those defined meanings will apply unless expressly stated otherwise.
- 5.14 Any goods provided by us to you on a free issue basis will remain our absolute property throughout, and will be at your risk while the goods are, or are supposed to be, in your possession. You are not to part with possession (save to us) unless with our express prior consent.

6 Warranties and liability

- 6.1 You promise that:
 - 6.1.1 the quantity, quality, description and specification for the Deliverables will be those set out in our order, apart from which then of the best standards reasonably to be expected in the market for that kind of Deliverable; and
 - 6.1.2 any goods will be free from defects in materials and workmanship; and
 - 6.1.3 any Deliverables will comply with all statutory requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply; and
 - 6.1.4 all claims made by you about any Deliverables, and all apparently serious claims in your advertising and promotional material, are correct and can be relied upon; and
 - 6.1.5 any services will be performed by appropriately qualified and trained personnel; and
 - 6.1.6 neither the sale and supply of any Deliverable, nor its proper use by us for an intended purpose, will breach any property rights in or about that Deliverable, including intellectual property rights, of any other person.

- 6.2 All warranties, conditions and other terms implied by statute or common law in our favour will apply to any Deliverables bought from you.
- 6.3 It is your responsibility to find out from us the purposes that we intend the Deliverables to be put to (including any applicable deadline affecting us). You promise that they will be suitable for those intended purposes, save only for any unsuitability which you have, as soon as might reasonably have been expected of you (and in any case before starting Performance) expressly notified to us.
- 6.4 You will indemnify us and keep us indemnified immediately upon our written demand against any cost, claim, expense or liability arising from any risk for which you are responsible under this contract.
- 6.5 If you fail to comply with any obligation under the contract we will be entitled, at our discretion, to reject any Deliverable and you will not be entitled to receive payment for that Deliverable.
- 6.6 If any contract goods do not comply with all contract requirements we can demand that you repair them or supply replacement goods within seven days or, at our sole discretion, we can reject the goods and demand the repayment of any sum already paid for them.
- 6.7 We will not be liable to you for any delay or failure to perform any of our obligations under this contract if the delay or failure was due to a cause beyond our reasonable control.
- 6.8 If any contract goods or rights were bought or obtained by you from a third party then any benefits or indemnities that you hold from that other party, in respect of those items, will be held on trust for us.
- 6.9 You will insure yourselves, and keep insured until Performance is complete, against all normal insurance risks relevant to your work for or with us, on terms and for amounts consistent with normal business prudence. You will demonstrate to us the terms and currency of any such insurance on request.

7 Rights

- 7.1 Any rights which you are contracted to supply must be provided to us in accordance with sections 7.2 or 7.3 as applicable.
- 7.2 This sub-section will apply to the following types of contract right: where the contract expressly identifies particular rights as covered by it; where the rights in question are evidently not unique to our Deliverable (for instance you evidently supply the same thing, in the relevant respect, to others); or if those rights evidently derive from a third party of whom the same would be true (for instance you supply software on what you have told us is a proprietary third party platform). In those cases we are not to expect full ownership of those rights. You will however validly licence those rights to us, or procure them to be validly licensed to us, on the following terms: assignable; royalty-free; covering usage for any likely intended purpose; and free of any obligation on us save such as we expressly agree in the contract or as are the minimum reasonably necessary for the maintenance of the right in question.
- 7.3 This sub-section will apply to all contract rights to which section 7.2 does not. In that case you will transfer to us, or procure to be transferred to us, with full title guarantee the ownership of those rights to the full extent (including as to territory) that we reasonably need them for our intended purposes, and to the full extent of any wider rights available to you. You will execute any documents and make any declarations reasonably required by us, now or in future, to transfer those rights, you will not exploit those rights save for us or with our written consent, and you will (to the extent not yet legally transferred) hold all such rights on trust for us absolutely for the maximum permitted period of eighty years. We have your irrevocable power of attorney to execute any such documents and make any such declarations on your behalf if you fail to do so promptly on request.
- 7.4 If you carry out any development work at our request and wholly or primarily at our expense we will own all intellectual property rights generated by that work, and section 7.3 will apply to

those rights.

- 7.5 You will do anything reasonably required by us, during or after Performance, to perfect any transfer or licence of rights to us under this section or to assist us in registering or authenticating (but not at your cost enforcing or defending) those rights.

8 Termination

- 8.1 If goods have been offered by you as, or if they are, standard or stock items we can, by notice to you, at any time up to delivery cancel our commitment to buy them. Any other commitment of ours to receive and pay for Deliverables may be cancelled by us as follows. We will be bound to reimburse you for all irrecoverable costs incurred, or unavoidably committed, by you up to the point of cancellation. By "costs" is meant for this purpose the direct costs to you of Performance, to an aggregate amount not exceeding 80% of the purchase price for the cancelled commitment. We will be entitled, if we wish it, to the benefit of the part-finished Deliverables in question.
- 8.2 We may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the contract without any liability to you if you breach its terms, or if your business fails.
- 8.3 Your business will be treated for this purpose as having failed if:
- 8.3.1 you make any voluntary arrangement with your creditors;
 - 8.3.2 (being an individual or firm) you become bankrupt;
 - 8.3.3 (being a company) you become subject to an administration order or go into liquidation;
 - 8.3.4 any third party takes possession of, or enforces rights over, any of your property or assets under any form of security ;
 - 8.3.5 you stop or threaten to stop carrying on business;
 - 8.3.6 you suffer any process equivalent to any of these, in any jurisdiction; or
 - 8.3.7 we reasonably believe that any of the events mentioned above is about to occur and we notify you accordingly.
- 8.4 Any right of cancellation or suspension under this section is additional to any rights available to us under the law of any relevant jurisdiction.

9 Enforcement

- 9.1 You will keep strictly confidential all information which you learn about us or our customers, and use that information only for the performance, in good faith, of your contractual obligations to us. By way of illustration only, you may not use such information to help our competitors, poach our staff or disparage our reputation. This restriction will apply until the fifth anniversary of the contract date, and does not apply to information which was demonstrably public knowledge at the time of usage by you.
- 9.2 Our relationship is as independent contractors only, not as partners or as principal and agent. The contract is non-assignable by you. It is assignable by us only to a group company that is a company in the same ultimate beneficial ownership. You may sub-contract or delegate Performance in particular respects but not generally and not as regards your responsibility to us, nor your direct contact with us, in any respect.
- 9.3 You will procure that none of your associates behaves in a way which, had the behaviour been yours, would have breached the contract. We hold the contract on trust for ourselves and all associates of ours, and the contract is made for the benefit of all of them so that you will be liable for damage caused to our associates as well as ourselves. Our respective associates for this purpose are any parent company or ultimate controlling shareholder and any company owned by either.
- 9.4 No waiver by us of any breach of contract by you will be considered as a waiver of any

subsequent breach of the same or any other provision, or as a release of the provision which you breached. No delay by us in enforcement, and no toleration shown by us, is to imply any waiver or compromise of our rights.

- 9.5 If any provision of these Terms is held by competent authority to be invalid or unenforceable in whole or in part the validity of the other Terms and of the remainder of the provision in question will not be affected. Every provision is severable from every other.
- 9.6 Any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official postal service, or if sent by fax then on receipt of successful answerback, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by that e-mail route).
- 9.7 The contract will be governed by the law of England, and you submit to the non-exclusive jurisdiction of the English courts.