

TERMS AND CONDITIONS FOR PROVISION OF GOODS AND/OR SERVICES

1. Definitions and Interpretation

1.1 Definitions In these Conditions, the following definitions apply:

Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with condition 14.3;
Contract	the contract between the Supplier and the Customer for the supply of the Goods and/or Services in accordance with these Conditions, the Order and the Specification (where applicable);
Customer	the person or firm who purchases the Goods and/or Services from the Supplier;
Deliverables	all documents, outputs and materials developed by the Supplier as part of or in relation to the Services in any form or media, including drawings, calculations, maps, plans, diagrams, designs, data, specifications and reports (including drafts);
Force Majeure Event	has the meaning given in condition 13;
Goods	the goods (or any part of them) set out in the Order;
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
Order	the Customer's order for the supply of the Goods and/or Services, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be or in respect of an order for the Services only in an online environment such order form as is completed to confirm the Customer's acceptance of these Conditions;

Services	the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Order, including those services provided under the brand name Project Builder;
Specification	any specification for the Goods, including any related plans and drawings and additional product warranties where applicable, that is agreed in writing by the Customer and the Supplier; and
Supplier	whichever of the SFS group companies is identified on the Order as the supplier of the Goods and/or Services requested and being one of SFS Group Fastening Technology Limited (registered in England and Wales with company number 01737942), Nvelope Rainscreen Systems Limited (registered in England and Wales with company number 04359972) or QBM Distributors Limited (registered in England and Wales with company number 03081879).

1.2 **Interpretation** In these Conditions, the following rules apply:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (c) a reference to **writing or written** includes e-mails, save for the purposes of condition 14.6.

2. **Basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence. Once the Contract comes into existence, the Customer shall not cancel or vary the Order without the Supplier's express written consent. The Supplier reserves the right to charge the Customer reasonable cancellation charges and/or a restocking fee of 25% in the event of any such cancellation and the right to refuse the return of Goods, in particular Goods which a Customer may have requested the Supplier to configure to the Customer's own Specification.
- 2.4 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced

for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 Any quotation given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 60 Business Days from its date of issue.

2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with these Conditions.

3. **Goods**

3.1 The Goods are described in the Supplier's catalogue as modified by any applicable Specification.

3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

3.3 It is the Customer's responsibility to determine its selection of the Goods and to evaluate for itself whether the Goods are suitable for its anticipated purpose (even if such purpose is made known to the Supplier). The Customer will ensure that the Goods are only used for such intended purposes as are identified by the manufacturer of the Goods (whether the Supplier or a third party manufacturer).

3.4 The Customer shall be liable for and shall ensure that the Supplier's or the manufacturer's oral or written instructions are followed as to the storage, commissioning, installation, fixing, use and maintenance of the Goods or (if there are none) that good trade practice regarding the same (including the applicable laws, regulations, British Standards and guidelines on use of the relevant Goods) are complied with.

3.5 The Customer shall indemnify, keep indemnified and hold harmless the Supplier in respect of any loss, liability, damage, costs and expenses (including, without limitation, legal costs) suffered or incurred by the Supplier arising from or in connection with the Customer's selection of the Goods and evaluation of whether the Goods are suitable for its intended purpose and/or any breach of condition 3.4.

4. **Delivery of the Goods**

4.1 The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall return such packaging materials as are required either:

(i) at the Customer's own expense; or

(ii) by prior agreement with the Supplier.

- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (or to the nearest area of hard standing appropriate for the vehicle making such delivery as is reasonable) (**Delivery Location**).
- 4.3 The Customer shall:
- (a) provide all necessary delivery instructions, documents, licences, authorisations, labour and equipment to enable the Goods to be safely unloaded at the Delivery Location and shall ensure that each delivery of Goods is signed for; and
 - (b) procure that, at the time anticipated for delivery of the Goods, the Delivery Location is in a condition which does not constitute a danger to vehicles, the Goods or the persons responsible for carriage of such Goods.
- 4.4 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the cost of reasonably sourced replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Supplier is unable to deliver the Goods due to the Customer's breach of condition 4.3 then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 17:00 on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready;
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance and additional transportation costs); and
 - (c) the Customer shall indemnify, keep indemnified and hold harmless the Supplier in respect of any loss, liability, damage, costs and expenses (including, without limitation, legal costs) suffered or incurred by the Supplier arising from or in connection with the Customer's breach of condition 4.3.
- 4.8 If 30 Business Days after the day on which the Supplier first attempted delivery of the Goods the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.9 The Customer shall not be entitled to reject Goods if the Supplier delivers up to and including 2.5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be

made to the relevant invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

- 4.10 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. **Quality of Goods**

- 5.1 Subject to the other provisions of this condition 5, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery or, in respect of those Goods which are Soter-branded goods only, 12 months from the date of initial certification by a competent person (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be fit for any purpose held out by the Supplier.

- 5.2 Subject to condition 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in condition 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, which shall be the sole remedy available to the Customer in such circumstances.

- 5.3 The Supplier shall not be liable for any Goods' failure to comply with the warranty set out in condition 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with condition 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's or the manufacturer's oral or written instructions as to the storage, commissioning, installation, fixing, use and maintenance of the Goods or (if there are none) good trade practice regarding the same (including the applicable laws, regulations, British Standards and guidelines on use of the relevant Goods);
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage (including vandalism), negligence, or abnormal storage or working conditions;

- (f) the defect arises as a result of the presence of chemically active materials not previously notified to and agreed with the Supplier;
 - (g) the defect arises as a result of the presence of associated materials or products which affect or are capable of affecting the mechanical performance or weather-tightness of the Goods (including sheets, purlins, spacers and rooflights);
 - (h) the defect arises as a result of a Force Majeure Event; or
 - (i) the Goods differ from their description or any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this condition 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 No warranty provided by the Supplier shall act to exclude, limit or relieve any other third party from their duties or obligations in relation to the storage, commissioning, installation, use and/or maintenance of the Goods (including their ongoing compliance with any applicable laws, regulations and guidelines and good trade practice relating to the same).
- 5.7 If the Supplier is prevented from providing the remedy pursuant to condition 5.2 due to acts required of the Customer and/or any third party, resolution of such remedy by the Supplier shall be suspended until the required acts of the Customer and/or the relevant third party have been completed.
- 5.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6. Title and risk**
- 6.1 Risk in the Goods shall pass to the Customer on completion of delivery of such Goods.
- 6.2 Title to the Goods shall pass to the Customer upon the Supplier receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) ensure the Goods remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in condition 11.1;

- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time; and
 - (f) permit or procure permission for the Supplier, its agents and authorised representatives to enter any premises of the Customer or of any third party where the Goods are stored in order to inspect whether the Customer is in compliance with this condition 6.3 and/or recover the Goods.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to an Insolvency Event (as defined in condition 11.1), then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer must immediately notify the Supplier of the event;
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
7. **Goods Recall**
- 7.1 If the Customer becomes aware of or is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it must immediately notify the Supplier in writing and attach a copy of the Recall Notice.
- 7.2 Unless required by law, the Customer may only undertake a recall or withdrawal of the Goods from the market with the written permission of the Supplier and in accordance with clause 7.4.
- 7.3 The Supplier may issue a notice to recall or withdraw the Goods from the market (**Voluntary Recall Notice**) if:
- (a) the supply or use of the Goods infringes, or may infringe, a third party's intellectual property rights;
 - (b) the Goods are, or may be, unsafe;
 - (c) the Goods are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;
 - (d) a defect in the Goods may cause harm to the Supplier's reputation or brand; or
 - (e) any other reasonable ground.
- 7.4 The Customer must:
- (a) promptly comply with any Recall Notice or Voluntary Recall Notice; and
 - (b) give such assistance as the Supplier reasonably requires to recall or withdraw the Goods from the market, and promptly comply with the Supplier's instructions about the process of implementing that recall or withdrawal, including, for the avoidance of doubt, the issuing of any communication to any third parties regarding that recall or withdrawal.

8. Performance of the Services

- 8.1 The Supplier shall from the date specified in the Order provide the Services to the Customer in accordance with the Contract in all material respects.
- 8.2 The Supplier shall use reasonable endeavours to perform the Services by any date specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 8.3 The Customer shall provide the Supplier with such data and information as the Supplier reasonably requests to enable it to perform the Services and create the Deliverables. All Deliverables are created based on specific data and information provided to the Supplier by or on behalf of the Customer. The Customer is responsible for the relevance, accuracy, completeness and quality of all such data and information provided to the Supplier for the purposes of enabling the Supplier to perform the Services and create any Deliverables.
- 8.4 The Supplier warrants that it shall provide the Services with reasonable care and skill. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5 All warranties, terms, conditions and duties implied by law relating to the fitness, quality or adequacy of the Services and/or any Deliverables are excluded to the fullest extent permitted by law.
- 8.6 The Services and any Deliverables are provided without charge and, as a result, the Supplier cannot give any warranty, representation or undertaking for or in relation to and, subject to condition 12.1, the Supplier shall have no liability for any loss, liability, damage, costs and expenses (including, without limitation, legal costs) suffered or incurred by the Customer as a result of:
- (a) any use or inability to use the Services at any time;
 - (b) any faults or defects in any Deliverables;
 - (c) the efficacy, usefulness, safety or commercial or technical viability of the Deliverables and/or any products made or chosen or processes carried out using the Services or in reliance on the Deliverables;
 - (d) any reliance on or presumptions drawn from the Deliverables in relation to differing data and information from that which was provided by the Customer to the Supplier for the provision of the Services or in relation to differing projects or sites to those identified by the Customer for these purposes;
 - (e) the volumes, accuracy or quality of the Goods which may be ordered by the Customer through the use of the Deliverables;
 - (f) the Deliverables infringing the Intellectual Property Rights or other rights of any third party.
- 8.7 Nothing in this Contract, nor any other materials or documents issued by the Supplier including the Deliverables, shall create or be deemed to create any obligation, whether expressed or

implied by the Supplier under the Construction (Design and Management) Regulations 2015 in whatever capacity.

- 8.8 The limitations in this Contract are necessary in order to allow the Supplier to provide the Services and Deliverables without charge. If the Customer requires greater protection then the Supplier may have to modify the limitations and extend its guarantees in return for the payment of a price for the Services to be agreed in writing between the parties.

9. **Intellectual Property**

- 9.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of the Supplier or (as the case may be) the third party rights owner.

- 9.2 Unless otherwise agreed in writing, all Intellectual Property Rights arising in the performance of the Services (including the Deliverables) shall be owned by the Supplier.

- 9.3 Unless otherwise agreed in writing, the Customer may use the Deliverables only for the purpose of receiving the Services and determining for itself any subsequent order for Goods. The Customer shall not supply the Deliverables to any third party or use the Services or the Deliverables to provide a service to any third party.

- 9.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify, keep indemnified and hold harmless the Supplier from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation whether arising in tort (including negligence), in contract or otherwise and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier as a result of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Specification. This condition 9.4 shall survive termination of the Contract.

- 9.5 The Supplier may inform third parties that it provides or has provided the Goods to the Customer. The Customer licenses the Supplier to use its name and logo(s) for this sole purpose.

10. **Price and payment**

- 10.1 The price of the Goods shall be the price set out in the Supplier's written acceptance of the Order.

- 10.2 Unless otherwise agreed in writing the Services are provided without charge.

- 10.3 The Supplier may, without being required to give any notice to the Customer, at any time before delivery increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 10.4 The price of the Goods is inclusive of transport costs provided the value of the Order is equal to or in excess of the Supplier's published minimum order value from time to time applicable and that the delivery Location is in mainland United Kingdom (excluding Ireland).
- 10.5 Subject to condition 10.4, the price of the Goods is exclusive of:
 - (a) the costs and charges of packaging, insurance and transport of the Goods, which the Customer shall pay to the Supplier; and
 - (b) amounts in respect of value added tax (**VAT**), which the Customer shall pay to the Supplier at the prevailing rate, subject to receipt of a valid VAT invoice.
- 10.6 The Supplier will invoice the Customer for the Goods on or at any time after the point of despatch.
- 10.7 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 10.8 Payment shall fall due in accordance with condition 10.7 and the Supplier shall accordingly be entitled to sue for the price once it is due, despite the fact that title to the Goods has not passed to the Customer.
- 10.9 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 10.11 Any offer of trade credit by the Supplier to the Customer will be subject to the Supplier receiving, upon request, two approved trade references and one banker's reference, together with such other company information as the Supplier may request. Any trade credit offered shall be subject to such conditions as specified by the Supplier in writing.

11. **Termination and suspension**

- 11.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - (a) the Customer (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the

giving of any notice) by it or by any other person in respect of any of these circumstances (an **Insolvency Event**);

- (b) the Customer (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application or the giving of any notice) by him or any other person in respect of any of these circumstances) (also an **Insolvency Event**) (or, the Customer being a partnership, has a partner to whom any Insolvency Event applies); or
- (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

11.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to an Insolvency Event, or the Supplier reasonably believes that the Customer is about to become subject to an Insolvency Event, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

11.3 On termination of the Contract for any reason:

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

11.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

11.5 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. **Limitation of liability**

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

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (e) defective products under the Consumer Protection Act 1987; or

- (f) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

12.2 Subject to condition 12.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:
 - (i) any indirect, special, consequential or pure economic loss or damage;
 - (ii) any loss of profits, anticipated profits, revenue or business opportunities; or
 - (iii) damage to goodwill(in each case arising as a direct or indirect result of the relevant claim); and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, in relation to the Goods shall in no circumstances exceed £4,000,000 (four million pounds).

13. **Force majeure**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, vandalism, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

14. **General**

14.1 **Assignment and other dealings**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

14.2 **Entire agreement** The Contract (incorporating these Conditions) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has

not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

14.3 Variation

- (a) Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- (b) The Customer shall not vary the Contract or the Goods except as directed in writing by the Supplier or with the Supplier's prior written consent.

14.4 Waiver No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

14.6 Notices

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:(i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the correct address; (ii) if sent by pre-paid first-class post or other next working day delivery service, at 09:00 on the second Business Day after posting or at the time recorded by the delivery service.
- (c) This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under the Contract is not valid if sent by fax or email.

14.7 Third party rights No one other than a party to the Contract (and their permitted assignees) shall have any right to enforce any of its terms.

14.8 Relationship Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Supplier and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

14.9 Governing law The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

14.10 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).