

Eden Material Services (UK) Limited
Terms of Trading

1 Business customers and consumers

- 1.1 Some of these terms apply to consumers only; some apply to business customers only. Those terms are marked as such.
- 1.2 All other terms apply to all customers.
- 1.3 You are classified as a business customer if you indicate to us that the goods supplied by us will be used in the course of your business or if you use the goods in the course of your business.
- 1.4 If you are not a business customer, you are a consumer. You have certain statutory rights as a consumer which are not affected by these terms. Contact your local trading standards office for more information. Words in italic type are legal words which clarify, rather than alter, the meaning of the relevant clause.

2 Price

- 2.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- 2.2 Our quotations are only valid on the date they are given (unless otherwise stated in writing).
- 2.3 The price quoted excludes delivery insurance and packaging (unless otherwise stated).
- 2.4 Business customers: rates of tax and duties on the goods will be those applying at the time of delivery.
- 2.5 Business customers: unless otherwise stated, the price quoted to business customers is an illustrative estimate only and the price charged will be our price current at the time of order.
- 2.6 Business customers: at any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.
- 2.7 Should we have to store your goods for you a charge will be made.

3 Delivery

- 3.1 All delivery times quoted are estimates only.
- 3.2 If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the contract, however:
 - 3.2.1 you may not cancel if we receive your notice after the goods have been dispatched; and
 - 3.2.2 if you cancel the contract, you can have no further claim against us under that contract.
- 3.3 You will arrange for the necessary labour, access assistance and facilities to be available on delivery of goods.
- 3.4 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including *indirect or consequential loss*, or increase in the price of the goods).
- 3.5 We may deliver the goods in instalments. Each instalment is treated as a separate contract.
- 3.6 We may decline to deliver if:
 - 3.6.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
 - 3.6.2 the premises (or the access to them) are unsuitable for our vehicle.
- 3.7 Failure to collect goods within three days of being notified that they are ready for collection or if we arrange to store your goods for you storage costs will be charged.
- 3.8 We may deliver in quantities of 10% more or less than the quantity ordered and charge you for the quantity actually delivered. You shall not be entitled to reject the whole of the consignment if there is a variation in quantity.

4 Risk

- 4.1 The goods are at your risk from the time of delivery.
- 4.2 Delivery takes place either:
 - 4.2.1 at our premises (if you are collecting them or arranging carriage); or
 - 4.2.2 at our premises or address specified by you when the goods are lifted from the delivery vehicle (if we are arranging carriage).
- 4.3 You must inspect the goods on delivery. If any goods are damaged or not delivered, you must write to tell us within seven days of delivery or the expected delivery time. You must give us (and any carrier) a fair chance to inspect the damaged goods.

5 Payment terms

- 5.1 You are to pay us in cash or in cleared funds on or prior to delivery, unless you have an approved credit account.
- 5.2 Business customers: If you have an approved credit account, payment is due no later than the last day of the month following the month of invoice unless otherwise agreed in writing.
- 5.3 If you fail to pay us in full on the due date we may:
 - 5.3.1 suspend or cancel future deliveries;
 - 5.3.2 cancel any discount offered to you;
 - 5.3.3 charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;
 - a. calculated (on a daily basis) from the date of our invoice until payment;
 - b. compounded on the first day of each month; and
 - c. before and after any judgment (unless a court orders otherwise);
 - 5.3.4 claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and
 - 5.3.5 recover (under clause 5.8) the cost of taking legal action to make you pay.
- 5.4 If you have an approved credit account we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may take any of these actions at any time and without notice.
- 5.5 Business Customers: you do not have the right to set off any money you may claim from us against anything you may owe us.
- 5.6 Consumers: you may only set off money you claim from us against money you owe us with our written agreement and on such terms as we may state.
- 5.7 While you owe money to us, we have a right to keep any property we may hold of yours until you have paid us in full (*a lien*).
- 5.8 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.
- 5.9 Consumers: clause 5.8 means that you are liable to us for losses we incur because you do not comply with these terms. We may claim those losses from you at any time and if we have to take legal action we will ask the court to make you pay our legal costs.

6 Title

- 6.1 Consumers: your statutory rights are unaffected.
- 6.2 Business customers: until you pay all debts you may owe us:
 - 6.2.1 all goods supplied by us remain our property;
 - 6.2.2 you must store them so that they are clearly identifiable as our property;
 - 6.2.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
 - 6.2.4 you may use those goods and sell them in the ordinary course of your business, but not if:
 - a. we revoke that right (by informing you in writing); or
 - b. you become insolvent.
- 6.3 Business customers: you must inform us (in writing) immediately if you become insolvent.
- 6.4 Business customers: if your right to use and sell the goods ends you must allow us to remove the goods.
- 6.5 Business customers: we have your permission to enter any premises where the goods may be stored:
 - 6.5.1 at any time, to inspect them; and
 - 6.5.2 after your right to use and sell them has ended, to remove them, using reasonable means to oppose resistance, if necessary.
- 6.6 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.
- 6.7 You are not our agent. You have no authority to make any contract on our behalf or in our name.

7 Warranties

- 7.1 We warrant that the goods:
 - 7.1.1 comply with their description on our acknowledgement of order form; and
 - 7.1.2 are free from material defect at the time of delivery (as long as you comply with clause 7.4).

- 7.2 Business customers: we give 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.

- 7.3 Consumers: the warranty in clause 7.1 is in addition to your statutory rights.

- 7.4 If you believe that we have delivered goods which are defective in material or workmanship, you must:

- 7.4.1 inform us (in writing), with full details, as soon as possible; and
- 7.4.2 allow us to investigate (we may need access to your premises and product samples).

- 7.5 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 7.4) in full, we will (at our option) repair the goods replace the goods or refund the price.

- 7.6 We are 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 we are negligent.

- 7.7 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to ten million pounds.

- 7.8 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.

- 7.9 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

- 7.10 Any sample shown to you will not constitute a sale by sample and it is provided only to give a general indication of goods available.

8 Specification

- 8.1 If we prepare the goods in accordance with your specifications or instructions you must ensure that:

- 8.1.1 the specifications or instructions are accurate;
- 8.1.2 goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and
- 8.1.3 your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.

- 8.2 Business Customers:

- We reserve the right;
- 8.2.1 to make any changes in the specifications of our goods that are necessary to ensure they conform to any applicable safety or statutory requirements; and
- 8.2.2 to make without notice any minor modifications in our specifications we think necessary or desirable.

9 Return of goods

- 9.1 We will accept the return of goods from you only:
 - 9.1.1 by prior arrangement (confirmed in writing);
 - 9.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered) and
 - 9.1.3 where the goods are as fit for sale on their return as they were on delivery.

10 Export terms

- 10.1 Where the goods are supplied by us to you by way of export from the United Kingdom Clause 10 of these terms applies (except to the extent that it is inconsistent with any written agreement between us).
- 10.2 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.
- 10.3 Unless otherwise agreed, the goods are supplied ex works our place of despatch.
- 10.4 Where the goods are to be sent by us to you by a route including sea transport we are under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.
- 10.5 You are responsible for arranging testing and inspection of the goods at our premises before shipment (unless otherwise agreed). We are not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.
- 10.6 We are 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).

11 Cancellation

- 11.1 You may not cancel the order unless we agree in writing (and clauses 3.2.2 and 11.2 then apply).
- 11.2 If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.
- 11.3 We may suspend or cancel the order, by written notice if:
 - 11.3.1 you fail to pay us any money when due (under the order or otherwise);
 - 11.3.2 you become insolvent;
 - 11.3.3 you fail to honour your obligations under these terms.

12 Waiver and variations

- 12.1 Any waiver or variation of these terms is binding in honour only unless:
 - 12.1.1 made (or recorded) in writing;
 - 12.1.2 signed on behalf of each party; and
 - 12.1.3 expressly stating an intention to vary these terms.
- 12.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.

13 Force majeure- business customers only

- 13.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.
- 13.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

14 General

- 14.1 English law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.
- 14.2 If you are more than one person, each of you is liable for all of your obligations under these terms (*joint and several liability*).
- 14.3 If any of these terms are unenforceable as drafted:
 - 14.3.1 it will not affect the enforceability of any other of these terms; and
 - 14.3.2 if it would be enforceable if amended, it will be treated as so amended.
- 14.4 We may treat you as insolvent if:
 - 14.4.1 you are unable to pay your debts as they fall due; or
 - 14.4.2 you (or any item of your 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; or
 - c. any application, procedure or proposal overseas with similar effect or purpose.
- 14.5 Business customers: all brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.
- 14.6 Business customers: any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
- 14.7 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.
- 14.8 The only statements upon which you may rely in making the contract with us are those made in writing by someone who is (or whom you reasonably believe to be) our authorised representative and either:
 - 14.8.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
 - 14.8.2 which expressly state that you may rely on them when entering into the contract.
- 14.9 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

TERMS OF PURCHASE

1. Interpretation

1.1 In these Conditions:

"Buyer" means Eden Material Services (UK) Ltd.

"Conditions" means the terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions specified by the Buyer in its order or agreed in Writing between the Buyer and the Seller

"Contract" means a contract for the purchase and sale or provision of Goods and any Contract shall include the Conditions

"Documents" includes without limitation drawings, artwork, designs, specifications, plans, photographs, models, patterns, samples, data, programs, discs, tapes, digital transmissions, computer aided design and technical information of every description whether written, oral or three dimensional

"Goods" means goods (including any instalment of goods or any parts for them) and/or services and work which a Seller is to supply provide or carry out or supplied provided or carried out by a Seller for the Buyer and includes the packaging of goods.

"Indemnified Matters" includes without limitation all liability, actions, proceedings, claims, demands, injury, loss, (including consequential and indirect loss) damage, damages, costs and expenses whatsoever and howsoever arising

"Intellectual property rights" means intellectual and industrial property rights of all kinds including without limitation know-how, patents, trade marks, service marks whether registered or unregistered, registered design copyright and unregistered design rights

"Seller" means any person firm or company with whom the Buyer places an order or who sells or provides Goods to the Buyer

"Tooling" includes without limitation blocks, dies, patterns, moulds, parts, tools, materials (for processing or otherwise), equipment and machinery

"Writing" includes telex, cable, facsimile transmission and comparable means of communication

1.2 Any reference in the Conditions to any provision of a statute or of a statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time

1.3 The headings in these Conditions are for convenience only and shall not affect interpretation

2. Basis of the contract

2.1 The Conditions shall apply to any order, to any acceptance of an order and to any contract to the exclusion of any other terms or conditions. No variations or additions shall be effective unless agreed in writing by a director of the Buyer. Any terms or conditions in a Seller's quotation or otherwise sought to be imposed by a Seller and not agreed by the Buyer in writing shall have no effect. Delivery by a Seller shall of itself imply and constitute acceptance of the Conditions. The Conditions supersede all conditions previously issued by the Buyer.

2.2 An order shall not be binding on the Buyer unless issued on its official order form and duly signed by a director

2.3 The buyer has authority to make any changes to the Seller's acceptance, acknowledgement, invoice, delivery note or other documents to make them conform to the Conditions and the Contract under Condition 2.1

3. Price

3.1 The price of Goods shall be the price set out in the Buyer's order. The price is fixed and shall not be increased for any reason other than a change in the rate of Value Added Tax

3.2 If for any reason no price is stated in the Buyer's order the Buyer shall not be bound and the Seller may not invoice the Buyer until a price has been agreed in Writing

3.3 If the Buyer has previously agreed in writing that Goods are to be charged at the Seller's prices ruling at the date of despatch (or otherwise) the Seller shall give immediate notice in Writing of any price changes and the order (or the balance of the order) shall be subject to the Buyer's written approval of the price

3.4 If the Buyer has previously agreed price escalation provisions in writing, the Seller shall give the Buyer immediate notice of any proposed increase; the notice will include full supporting details and evidence to justify the increase and will not be effective unless and until approved by the Buyer; if the Seller at the date of order has sufficient material in stock to complete the Contract no subsequent increase in cost of materials will be taken into account; and no increase in costs after the delivery date (Condition 9.1) will be taken into account.

3.5 The price includes delivery and packaging

3.6 Discount periods will be calculated from the date of receipt of invoice by the Buyer or if the Buyer returns an invoice for clarification or correction will be calculated from date of receipt of invoice approved by the Buyer

3.7 The Seller warrants that prices charged to the Buyer do not exceed prices charged by the Seller to any other customer for the same items in the same or smaller quantities and similar condition

4. Payment

4.1 The date of payment shall be as specified in the Buyer's order or if not so specified shall be made 60 days after the end of the month of delivery or the receipt of the invoice by the Buyer (if later)

4.2 The Seller shall notify the Buyer immediately if the price of Goods is less than any minimum charge of the Seller and the Buyer may cancel or amend its order.

5. Warranties and Representations

5.1 In addition to all statutory warranties the Seller warrants that Goods shall:-

5.1.1 in all respects shall be safe and free from any defects, whether or not affecting matters of safety;

5.1.2 Shall comply with all statutory requirements and be such that they can be lawfully supplied or used by the Buyer including (But without limitation) supply or use without breach of any requirement to supply or use goods which conform to a general safety requirement;

5.1.3 unless notified in Writing to the Buyer prior to delivery, do not comprise or contain any substance hazardous to health within the meaning of The Control of Substances hazardous to Health Regulations 1988

5.1.4 in all respects shall be of merchantable quality and of the best design, materials and workmanship and be fit for the purpose for which they are required;

5.1.5 in all respects shall correspond exactly with any samples, drawings and specifications or other descriptions

5.1.6 in the case of the provision of services shall be carried out in a good and workmanlike manner and with the best care and skill

and without prejudice to the generality of the foregoing that Goods will maintain the above requirements for twelve months or such longer period as is reasonable in all the circumstances of the case.

5.2 The Seller further warrants that:-

5.2.1 all statements and representations made or given by it or on its behalf at any time prior to the making the Contract and whether verbally or in writing are true in all material respects and the Seller acknowledges that the Buyer has relied on the Seller for the accuracy thereof and that such statements and representations wholly or partially induced the Buyer to enter into this Contract

5.2.2 it has and will take all reasonable steps (including but not limited to examination, testing and the performance of appropriate research) to ensure that Goods are safe and without risk to the health of the Buyer's employees, agents, sub-contractors, customers and any other persons who work on, use, acquire or otherwise come into contact with Goods

5.3 Any inspection or testing of the Goods carried out by the Buyer whether before or after delivery shall not in any way diminish the Sellers obligation to ensure that the goods comply with the terms of the Contract

6. Standards of Quality

6.1 Goods shall comply with any appropriate British Standard specification or British Code of Practice issued by the British Standards Institution and all EC norms, standards and requirement current at the date of this Contract and on request the Seller shall provide written evidence of conformity with such standards

6.2 The Seller shall supply to the satisfaction of the Buyer certificates of analysis which shall accompany the Goods or if required by the Buyer be sent to it in advance of delivery

7. Visits to Premises

7.1 The Buyer shall have the right to visit any premises of the Seller or sub-contractors on reasonable notice to examine work on and progress of the Goods or services which are to be supplied. The Buyer may reject any Goods which in its opinion do not or will not conform to the requirements of the Contract. The Seller will supply all relevant documentation and information as is reasonably necessary for such examination to be carried out properly

8. Property and Risk

8.1 The property in Goods will pass to the Buyer free of any charge or encumbrance when Goods are unconditionally appropriated to the Contract. Without prejudice to such provision, the risk in Goods shall not pass to the Buyer until such time as Goods have been delivered and are accepted by the Buyer as being in full conformity with the Contract

9. Delivery

9.1 The delivery date (unless otherwise agreed in Writing) is the date stipulated in the Buyer's order and is of the essence of the Contract. Where no delivery date is specified, delivery is to be made within a reasonable time and the Buyer shall have the right at any time, on giving such notice as it considers reasonable in all the circumstances, to require the Seller to deliver Goods by a stated date which will then be of the essence

9.2 The place for delivery of Goods shall be the place specified in the Buyer's order or, if not so specified, the Buyer's premises

9.3 The Seller shall deliver the Goods in one consignment, unless the Buyer has ordered for scheduled delivery or by instalments or over a period. In these cases the Buyer may fix or vary rates of delivery by reasonable notice. No delivery shall commence without the Buyer's prior approval. The Seller shall provide a delivery note at the time of delivery quoting the Buyer's order number and detailing Goods being delivered

10. Packaging

10.1 Goods shall be securely packed and despatched in packages which are free of all charge to the Buyer and are not returnable and which the Buyer may dispose of in such manner as it may choose

11. Acceptance

11.1 The Buyer shall not be deemed to have accepted Goods until it has give written notice of acceptance whether or not payment has been made

11.2 Payment of or on account of the price shall not imply acceptance of Goods or admission by the Buyer of the performance by the Seller of any obligation

12. Faulty Goods and Breach

12.1 In the event of Goods in any way failing to comply with the Contract and without prejudice to any other rights which it may have, the Buyer may:-

12.1.1 reject Goods and/or all further instalments of Goods in which event it may return Goods at the Seller's expense or require the Seller to collect them. If the Goods are not collected by the Seller within a reasonable time of rejection the Buyer may dispose of the Goods as it thinks fit including sale and shall be liable to account to the Seller only for the proceeds of any such sale after deduction of all losses and costs incurred

12.1.2 require the Seller at the Buyer's option to repair or replace Goods as soon as is practicable. The terms

of the Contract shall apply in full to Goods so repaired or replaced as though they were Goods originally supplied

12.2 The Seller shall indemnify the Buyer against the Indemnified Matters arising directly or indirectly by reason of any acts or omissions of the Seller or its sub-contractors or agents, any breach of the Contract by the Seller or faulty design, workmanship or materials

12.3 For the avoidance of doubt the fact that goods are repaired or replaced shall not affect any liability of the Seller for supplying Goods which required such repair or replacement

12.4 If the Seller fails to comply with any Condition or commits any breach of Contract or fails to deliver Goods in accordance with Condition 9 the Buyer at any time thereafter and notwithstanding any lapse of time may without prejudice to any other rights or remedies (and whether or not the Buyer has accepted Goods or property in Goods has passed) do any or all of the following:-

12.4.1 rescind the Contract without liability

12.4.2 return any Goods to the Seller at the cost of the Seller

12.4.3 claim damages arising whether or not such damages were in the contemplation of the Seller at the time the Contract was made and notwithstanding rescission of the Contract

13. Information

13.1 The Seller shall forthwith give the Buyer all information it has as to any defect or safety hazards in the Goods, their transport, handling or use or in that type of goods supplied by it of which it becomes aware or of which it ought reasonably to have become aware of

13.2 On request the Seller shall advise the Buyer of the name and address of any person who supplied the Seller with Goods or of any component part or of the name and address of any person who has supplied them at any time before the supply to the Seller

14. Instruction, Warnings etc

14.1 The Seller will ensure that Goods:-

14.1.1 are supplied with appropriate instructions in English where it is reasonable to suppose that the Goods cannot be safely used without such instructions

14.1.2 are clearly marked and labelled as appropriate in such a way that best ensures their safe use

14.1.3 carry all appropriate hazard and danger symbols

15. Third Party Rights

15.1 The Seller will indemnify the Buyer against the Indemnified Matters in respect of any claim (whether settled or not) which alleges that Goods infringe any third party Intellectual property rights

16. Documents Tooling and Information

16.1 The property in any Documents and Tooling supplied or paid for by the Buyer and all Intellectual property rights therein shall be and remain with the Buyer

16.2 Any Documents or Tooling supplied by the Seller for the Buyer or at its request and all Intellectual property rights therein shall be the property of the Buyer and shall be deemed to have been assigned to the Buyer by the Contract where necessary or appropriate to effect transfer of title. The Seller shall at its expense take such action as may be necessary or appropriate to secure such Intellectual property rights for the Buyer or to assign them to it

16.3 The Supplier shall at all times as well after as during the performance of a Contract maintain and procure strict confidentiality as to Contracts and all matters and concerns of the Buyer and its business and affairs and any Documents, Tooling and Intellectual property rights of the Buyer and shall not disclose the same to any third party or use the same except as may be necessary for the performance of the Contract only

16.4 The Seller shall at the request of the Buyer at any time immediately deliver all Documents and Tooling the property of the Buyer to the Buyer together with all copies thereof in its possession or control

16.5 The Seller shall keep any Documents or Tooling or other property of the Buyer which is in the possession or under the control of the Seller safe, properly stored, in good condition and insured in their full value in the name of the Buyer

16.6 The Seller shall indemnify the Buyer against the Indemnified Matters in respect of any loss or damage to the Buyer's tangible property which is at any time in the Seller's possession or control

17. Assignment

17.1 The Seller shall not assign or sub-contract this Contract without the consent of the Buyer in writing

17.2 Where the Seller has sub-contracted all or part of the Contract it will:-

17.2.1 furnish the Buyer with copies of all relevant documents

17.2.2 ensure that it contracts with the sub-contractor on terms which are not less favourable to the Buyer than the terms of this Contract

17.2.3 remain responsible for the due performance of this Contract

17.3 Upon request the Seller will assign to the Buyer all rights which it might have against any sub-contractor

18. Performance

18.1 The Buyer shall not be liable to the Seller or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Buyer's obligations in relation to the Contract if the delay or failure was due to any cause beyond the Buyer's reasonable control including, without limitation, Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Buyer or of a third party); difficulties in obtaining materials, labour fuel, parts or machinery; power failure or breakdown in machinery

18.2 In any such event the Buyer may without any liability suspend or terminate the Contract. Where the Buyer elects to suspend the Contract it may without liability subsequently terminate the Contract if in its opinion the suspension has lasted or appears likely to last for more than a reasonable time

19. Termination

19.1 This clause applies:-

19.1.1 if the Seller shall commit any breach of this or any other contract with the Buyer including (without limitation) any failure to make any payments on the due dates;

19.1.2 if being an individual the Seller shall die;

19.1.3 if a meeting of the shareholders of the Seller (being a company) is convened for the purpose of considering a resolution for the winding up of the Seller or a meeting of the creditors of the Seller is convened or the Seller goes into liquidation or there is a winding up petition or if circumstances exist in which the Seller may be wound up by the Court;

19.1.4 if the Seller does or fails to do anything which could entitle any person (including without limitation any debenture holder or secured creditor) to initiate or which could give rise to a relevant event; or if any step is taken (including without limitation a resolution being passed, a meeting being called, a petition being presented or any order being made) for or towards a relevant event; or if any relevant event shall occur; and in this condition a "relevant event" means a voluntary arrangement (as defined by Ss1 and 253(1) Insolvency Act 1986), any scheme, arrangement or composition with or any assignment for the benefit of all or any creditors of the Seller; bankruptcy of the Seller (being an individual) or of any member of the Seller (being an unincorporated firm or a partnership); the levying, threat or enforcement of any distress, execution or other legal process upon or sued against or any other exercise of rights over or against any assets, property or undertaking of the Seller; the taking possession by an encumbrancer of any asset, property or undertaking of the Seller; the appointment of a receiver or manager or an administrative receiver, liquidator or other similar official or insolvency practitioner in respect of the Seller or any assets, property or undertaking of the Seller; the appointment of an administrator or similar official or the making of an administration order of or in respect of the Seller; and any similar or analogous event;

19.1.5 if the Seller becomes insolvent or unable to pay its debts (within the meaning of S123 or S268 Insolvency Act 1986) or permits any judgement against it to remain unsatisfied for 14 days;

19.1.6 if the Seller ceases or threatens to cease to carry on business;

19.1.7 if any event occurs in relation to the Seller under the laws of any other jurisdiction which is similar to or analogous with any of the events described above; or

19.1.8 if the Buyer reasonably considers that any of the events mentioned above is about to occur and notifies the Seller accordingly

19.2 If this clause applies the Buyer may without prejudice to its other rights cancel the Contract or suspend any further deliveries under the Contract without any liability

20. Insurance

20.1 The Seller shall at all times maintain insurance with reputable insurers against all damage and/or injury to persons or property caused or contributed to by the negligence of the Seller or persons for whom it is responsible or by any defect in the Goods, or breach of any of the terms of the Contract in a sum not less than £2,000,000 in respect of each occurrence

20.2 The Seller shall produce to the Buyer on demand such policy of insurance and receipt for payment of the current premium

21. General

21.1 21.1.1 Any notice hereunder may be sent by post, telex or facsimile or delivered to the Buyer at its registered office or to the Seller at any address which it may have used in correspondence with the Buyer or (if the Seller is a company) at its registered office or may be served personally on any director or the secretary of the Seller

21.1.2 A notice by first class post shall be deemed served on the next day after posting

21.1.3 A notice by telex or facsimile shall be deemed served at the time of sending

21.2 No indulgence, forbearance or delay by the Buyer or delay permitted by the Buyer shall constitute any bar to enforcement of its rights at any time and no waiver by the Buyer of any breach shall operate as a waiver of any other or subsequent breach

21.3 These conditions are considered to be reasonable in the circumstances and the trade. Any avoidance or restriction or limitation upon them or their effect by statute shall be limited to the condition or the part of the condition and the issue to which it specifically relates and applies. If any condition or part of a condition or limitation of liability is found to be invalid and would be valid if modified by extension of time or otherwise it shall at the option of the Buyer take effect with such modification or amendment as may be necessary to make it valid and effective. If the Buyer at its discretion decides that the effect of any such avoidance restriction or limitation is to defeat the original intention of the parties the Buyer may without liability terminate the Contract

21.4 The Contract between the Buyer and the Seller shall be deemed to have been made in England and shall be governed in all respect by English law. The Seller shall submit to the jurisdiction of the English courts provided that the Buyer at its option may bring any legal proceedings against the Seller in the courts of any other country

21.5 Any dispute at the option of the Company in its sole discretion may be referred to an arbitrator or expert to be appointed by the President for the time being of the Birmingham Law Society and his award including any direction as to payment of fees and costs in the arbitration or award shall be binding on both parties