

# STANDARD TERMS & CONDITIONS FOR THE SALE OF GOODS AND/OR SUPPLY OF SERVICES

**The Purchaser's attention is specifically drawn to clauses 5 and 11 which limits liability**

## 1. INTERPRETATION

1.1 In these terms and conditions ("the Conditions"):

'Combined' means Goods combining both Static and Mobile;

'Conditions' means these terms and conditions as amended from time to time in accordance with clause 2.4;

'Contract' means the contract between the Seller and the Purchaser for the supply of Goods and/or Services in accordance with these Conditions;

'Delivery Point' means the place where delivery of the Goods is to take place under Condition 4;

'Force Majeure' has the meaning given to it in clause 6;

'Goods' means any goods (or any part of them) set out in the Order;

'Good Specification' means any specification for the Goods including any relevant plans or drawings that is agreed in writing between the Seller and the Purchaser;

'Mobile' means Goods (including spare parts) supplied by the Seller manufactured by Powerscreen (Terex/Pegson) Doppstadt and any other manufacturer where the Goods are deemed by the Seller to be mobile

'Purchaser' means the person(s) or company by whom the goods are purchased and/or to whom the Services are supplied as set out in the Sales Order;

'Sales Order' means the Sales Order or proposal issued by the Seller to the Purchaser in respect of the Goods or Services;

'Seller' means Blue Machinery (Central) Limited (registered in England and Wales) under number 02746788;

'Services' means the repair, installation, servicing or maintenance of goods in the possession of the Purchaser;

'Static' means Goods (including spare parts) supplied by the Seller and manufactured by Blue Mac and Marathon/Nexgen or any other manufacturer where the Goods are not deemed by the Seller to be Mobile;

'Website' means [www.bluegroup.co.uk](http://www.bluegroup.co.uk)

## 2. FORMATION

2.1 Subject to any variation under Condition 2.4 these Conditions form part of the Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation or order or similar document)

2.2 All orders from the Purchaser for Goods and/or Services shall be deemed to be an offer by the Purchaser to purchase Goods and/or Services subject to these Conditions.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

2.4 Any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by a Director of the Seller.

2.5 No order placed by the Purchaser whether in writing (including email) or by telephone shall be accepted by the Seller until a Sales Order is issued by the Seller or the Seller delivers the Goods or provides the Service to the Purchaser (whichever is earlier).

2.6 The Purchaser must ensure that the terms of in the Sales Order and any applicable specification are accurate.

2.7 Any quotation given by the Seller to the Purchaser shall, unless earlier withdrawn or unless the quotation otherwise states, be open for acceptance for a period of thirty days commencing on the date of the quotation.

2.8 No order which the Seller has accepted nor any Sales Order signed by the Purchaser may be cancelled by the Purchaser except with the written agreement of the Seller and on terms that the Purchaser shall indemnify the Seller in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of such cancellation.

2.9 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## 3. DESCRIPTION

3.1 The Contract is not a contract for sale of goods by description.

3.2 All drawings, descriptive matter, specification and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogue website or brochures or any manufacturers brochure provided by the Seller are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They will not form part of the Contract.

## 4. DELIVERY AND PERFORMANCE

4.1 Delivery of the Goods shall be made at the Seller's place of business or if some other place for delivery is agreed by the Seller in writing by delivery of the Goods to that place.

4.2 Any dates quoted for delivery of the Goods are approximate only and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure event or the Purchaser's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.3 Where delivery of Goods shall be made at the Seller's place of business the Seller shall notify the Purchaser when the Goods are ready for delivery.

4.4 The Goods may be delivered by the Seller before any specified date upon giving reasonable notice to the Purchaser.

4.5 Where delivery of the Goods is to be made at the Seller's place of business the Purchaser will take delivery of the Goods within 14 days of the Seller giving it notice that the Goods are ready for delivery.

4.6 The Goods shall be delivered by such means as the Seller thinks fit.

4.7 Where the Delivery Point is not the Seller's place of business the Seller shall arrange for carriage of the goods to the Delivery Point. The carrier shall be deemed to be the Purchaser's agent except for the purposes of sections 44, 45 and 46 Sale of Goods Act

- 1979 as amended by Sale and Supply of Goods Act 1994 or any subsequent enactment.
- 4.8 Delivery of the Goods to the Purchaser may be made at any time of the day.
- 4.9 Any dates specified by the Seller for delivery of the Goods and or completion of the Services are approximate. If no dates are so specified, delivery of the Goods and or completion of the Services will be within a reasonable time.
- 4.10 Subject to the other provisions of these Conditions the Seller will not be liable for any loss (including loss of profit) costs or damages, charges or expenses caused directly or indirectly by the provision of or any delay in the delivery of Goods or Services (even if caused by the Seller's or its agents carriers or contractors negligence).
- 4.11 The Purchaser must accept delivery of the Goods and pay for them in full notwithstanding any delay.
- 4.12 If the Purchaser fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licenses or authorisations required to enable the Goods to be delivered on time (except because of the Seller's fault)
- 4.12.1 Risk in the Goods will pass to the Purchaser (including for loss or damage caused by the Seller's negligence) within 14 days of provision of the notice pursuant to clause 4.4 above
- 4.12.2 the Goods will be deemed to have been delivered with 14 days of provision of the notice pursuant to clause 4.4. above; and
- 4.12.3 (without prejudice to its other rights) the Seller may
- 4.12.3.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Purchaser for all related costs and expenses (including storage and insurance); and or
- 4.12.3.2 sell any of the Goods at such price as is reasonably obtainable in the circumstances and (after deducting all amounts payable by the Purchaser to the Seller) account to the Purchaser for the excess over the price due under this Contract together with payment of the Seller's reasonable costs and expenses or charge the Purchaser for any shortfall below the price under this Contract.
- 4.13 Performance of the Services will only take place at the Delivery Point for the relevant Goods unless the Seller otherwise agreed in writing.
- 4.14 The Goods are described in the Goods Specification.
- 4.15 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Purchaser, the Purchaser shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Goods Specification. This Clause 4.15 shall survive termination of the Contract.

- 4.16 The Seller reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.
- 4.17 The Seller shall provide the Services to the Purchaser in accordance with the Seller's usual standard orders and custom practice prevailing from time to time in the market place.
- 4.18 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Sales Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 4.19 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Purchaser in any event.

## 5. NON-DELIVERY AND LOSS

- 5.1 The Seller shall not be liable for any non-delivery of the Goods or for loss of any separate package forming part of the Goods (even if caused by the Seller's negligence) unless:-
- 5.1.1 notice is given to the carrier at the time of delivery of the Goods on the carrier's delivery docket and;
- 5.1.2 notice is given to the Seller within 5 days of the date when the Goods would in the ordinary course of events have been received if the Goods are not delivered; or
- 5.1.3 notice is given to the Seller within 5 days of delivery of part of the package where any separate package forming part of the Goods has been lost.
- 5.2 Any liability of the Seller for the Goods and/or the Services shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for the Goods and/or the Services.
- 5.3 A signature qualifying the acceptance of the delivery on a carrier's delivery note shall not be written notice to the Seller for the purpose of these Conditions.

## 6. FORCE MAJEURE

- 6.1 The Seller shall not be liable to the Purchaser in any manner or be deemed to be in breach of the Contract because of any delay in performing or any failure to perform any of the Seller's obligations under the Contract if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 6.2 Without prejudice to the generality of Condition 6.1 the following shall be included as causes beyond the Seller's reasonable control;
- 6.2.1 government actions war threat of war or civil disturbance sabotage or requisition
- 6.2.2 Act of God fire flood epidemic or accident
- 6.2.3 Import or export regulations or embargoes
- 6.2.4 Labour disputes including disputes involving the Seller's work-force or the work-force of any carrier, manufacturer of the Goods or supplier of materials to the site
- 6.2.5 Inability to obtain or delay in obtaining supplies of adequate or suitable material fuel parts machinery or labour; or
- 6.2.6 Accident to or breakdown of machinery or transportation problems

6.2.7 Failure by the manufacturer of the Goods to supply the Goods correctly or at all

## **7. RISK/TITLE/LIEN**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Purchaser at the time of delivery or deemed delivery to the Purchaser or its agent (subject to Condition 4.11) and in the event of deemed delivery the risk of deterioration in the Goods necessarily incidental to the course of transit or effluxion of time shall also pass to the Purchaser.
- 7.2 The title in the Goods (both legal and equitable) ("the Property") shall not unless otherwise agreed in writing pass to the Purchaser until the Seller has received in full (in cash or cleared funds);
- 7.2.1 the price of the Goods and/or Services plus all carriage insurance duties and value added tax payable in connection with the Goods and their delivery and
- 7.2.2 all other sums (whether payable under the Contract or not) which are or will afterwards become due or owing from the Purchaser to the Seller.
- 7.3 Until the Property in the Goods has passed to the Purchaser, in accordance with clause 7.2 above the Purchaser shall;
- 7.3.1 hold the Goods on a fiduciary basis as the Seller's bailee
- 7.3.2 store the Goods (at no cost to the Seller) separately from all other goods of the Purchaser or third parties and identify them as the Seller's property
- 7.3.3 not destroy deface or obscure any identifying marks on the Goods or their packaging
- 7.3.4 keep the Goods in satisfactory condition and keep them insured on the Seller's behalf for the full price of the Goods against "all risks" to the reasonable satisfaction of the Seller from the date of delivery and upon request produce the policy of insurance to the Seller; and
- 7.3.5 hold all proceeds of any claim made under an insurance policy as referred to in Condition 7.3.4 on trust for the Seller and shall not mingle them with any other money nor pay the proceeds into an overdrawn bank account; and
- 7.3.6 notify the Seller immediately if it becomes subject to any of the events listed in clause 12.
- 7.4 At any time before the Property in the Goods has passed to the Purchaser the Seller may by written notice end the Purchaser's right to use and sell the Goods and the Purchaser shall immediately return the Goods to the Seller (at the Purchaser's cost). After giving such notice the Purchaser shall no longer be entitled to use or retain possession of the Goods and herewith irrecoverably consents to the Seller and/or its representative(s) entering any premises where the Goods are or are reasonably believed to be and removing the Goods. The Purchaser hereby represents and warrants to the Seller that it has the authority to grant the Seller the rights of access set out in this clause 7.4
- 7.5 The Seller shall be entitled to a general lien on all goods of the Purchaser in the Seller's possession for the unpaid price of any other goods sold and delivered and/or the supply of Services to the Purchaser by the Seller under the same or any other contract.

7.6 Nothing in this Condition 7 shall alter the Purchaser's obligation to pay for the Goods.

## **8. PRICE**

- 8.1 Subject to Condition 8.4 the price for the Goods and/or the Services shall be the price set out in the Sales Order issued by the Seller or if an Sales Order has not been issued on the invoice proposal or quotation issued by the Seller ("the Price").
- 8.2 The Price for the Goods and/or the Services is exclusive of any VAT or any other applicable tax which the Purchaser shall pay in addition when it is due to pay for the Goods and/or Services.
- 8.3 The Price for the Goods unless otherwise stated is given on an ex-works basis and the Purchaser shall in addition pay the Seller's charges for delivery when it is due to pay for the Goods.
- 8.4 The Seller may vary the Price for the Goods and/or Services at any time between the date of issue of the Sales Order and the date of the Seller's invoice to reflect any increase in the cost to the Seller of providing the Goods and/or Services

## **9. PAYMENT**

- 9.1 The Purchaser shall unless otherwise agreed in writing pay the Seller a deposit of 30% of the Price where the Goods are Static and 10% of the Price where the Goods are Mobile within 7 days of the date of issue of the Sales Order ("the Deposit").
- 9.2 In addition to the Deposit the Seller shall invoice the Purchaser or any such funder or bank as the parties may agree for the balance of the Price as follows:-  
For Static Equipment:-  
60% on notice that the Goods are available for collection by the Seller from the manufacturer  
10% on completion of installation of the Goods to the Seller's reasonable satisfaction or on delivery if no installation is required  
For Mobile Equipment-  
90% on delivery of the Goods in accordance with the Contract  
For Services or spare parts:-  
100% of the Price is payable within 30 days of the earlier of the date of invoice for the Goods or Services or completion of the Services to the Seller's reasonable satisfaction.
- 9.3 Time for payment of the Price shall be within 7 days of the date of the Seller's invoice unless expressly agreed otherwise and time for payment shall be of the essence and failure of the Purchaser to make any payment under the Contract on the due date shall entitle the Seller at its option to treat the Contract as repudiated or to require all outstanding monies are paid into an escrow account from which the Seller can draw monies in accordance with this Agreement. If the Seller requires payment into an escrow account in accordance with this clause 9.3 then it shall not be obliged to perform any part of the Contract until payment into the escrow account has been made. The Seller shall not be liable in respect of any delays whilst awaiting payment into the said escrow account.
- 9.4 Payment of the Price for the Goods and/or Services is unless otherwise agreed due to be paid by cheque to the Seller at New Cheshire Business Park Wincham Lane Wincham Northwich Cheshire SW9 6GG or by BACS or TT to Seller's bank account (as notified to the Purchaser in writing)

- 9.5 No payment shall be deemed to have been received until the Seller has received cleared funds.
- 9.6 All payments payable to the Seller under the Contract shall become due immediately upon termination of the Contract notwithstanding any other provision of the Contract.
- 9.7 The Purchaser or its financier or bank ("the Funder") shall make all payments due under the Contract without any deduction whether by way set-off, of counterclaim or otherwise
- 9.7.1 except for any liquidated sum due and payable by the Seller to the Purchaser; or
- 9.7.2 unless such deduction has been agreed in advance with the Seller; or
- 9.7.3 unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Purchaser.
- 9.8 If the Purchaser fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) the Seller may charge the Purchaser interest (both before and after judgment) on the amount unpaid at the annual rate of 4% above National Westminster Bank PLC's base rate from the time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest)
- 9.9 The Seller may at its option provide a discount to the Purchaser such discount to be individually negotiated.
- 9.10 The Seller may by agreement invoice the Purchaser's Funder. Neither agreement to do so nor acceptance of payment direct from the Funder shall release the Purchaser from any of the duties obligations or liabilities under this Agreement save for the need to pay the price already paid by the Funder. The Purchaser has irrecoverably represented and warranted to the Seller that notwithstanding payment by the Funder the Purchaser is the purchaser of the Goods. If the Purchaser is in breach of this clause in the event of non-payment (whether in whole or in part) of the Price the Purchaser shall act as agent for the Seller and recover the Goods from the Funder and return the Goods immediately to the Seller.

## 10. QUALITY

- 10.1 The Seller warrants that (subject to the other provision of these Conditions) upon delivery the Goods will;
- 10.1.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979)
- 10.1.2 be reasonably fit for the purposes for which the Goods were manufactured
- 10.2 The Seller warrants that the Services will be carried out with reasonable skill and care.

## 11. LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

(e) defective products under the Consumer Protection Act 1987

### 11.2 Subject to Clause 11.1:

- (a) the Seller shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Seller's total liability to the Purchaser 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, shall in no circumstances exceed £20,000.00.

11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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,

11.4 This Clause 11 shall survive termination of the Contract.

11.5 Nothing in these Conditions shall exclude or limit the liability of the Seller for death or personal injury caused by the Seller's negligence.

11.6 Except as set out in Conditions 11.1 and 11.2

11.6.1 the Seller shall not be liable to the Purchaser for any consequential loss (including loss of profit) costs damages charges or expenses arising out of the delivery non-delivery supply or use of the Goods for performance of the Services (even if caused by the Seller's negligence); and

11.6.2 the Seller's liability under the Contract in the aggregate shall not exceed the amount of net profit received by the Purchaser under this Contract.

11.7 The Purchaser acknowledges that the Seller may have insurance and that delay in notifying any claim may prevent the Seller recovering any money under such policy and that its right to recover from the Purchaser shall be restricted accordingly.

11.8 The Seller shall not be liable for any defect in the quality of the Goods and/or Services (whether in contract negligence or otherwise) unless;

11.8.1 the Purchaser gives written notice during the warranty period of the defect to the Seller and, if the defect is a result of damage in transit, to the carrier within 7 days of;

11.8.1.1 the date the Purchaser receives the Goods (where the defect would be apparent to the Purchaser upon a reasonable inspection); or

11.8.1.2 the date when the Purchaser knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Purchaser upon a reasonable inspection); and

11.8.1.3 the Seller or his agent is given a reasonable opportunity after receiving the notice of examining such Goods and the Purchaser (if asked to do so by the Seller) shall transport the Goods to the Seller's place of business for the examination to take place there

11.9 The Seller shall not be liable for any defect in the quality of Goods and/or Services (whether in contract negligence or otherwise) if:-

- 11.9.1 the Purchaser makes any further use of such Goods after giving notice in accordance with Clause 11.8 or
  - 11.9.2 the defect arises because of carelessness or improper treatment or inadequate lubrication or neglect or improper adjustment or because the Purchaser fails to follow the Seller's or the manufacturer's oral or written instructions as to the storage use or maintenance of the Goods or (if there are no such instructions) general trade practice or;
  - 11.9.3 the Purchaser alters or repairs such Goods without the prior written consent of the Seller.
  - 11.9.4 the defect arises as a result of fair wear and tear, willful damage, negligence or abnormal working conditions, or
  - 11.9.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 11.10 If the Purchaser makes a valid claim against the Seller within 6 months of the date of delivery or deemed delivery of the Goods or completion of performance of the Services based on a defect in the quality of the Goods or the Services the Seller at its option may ;
- 11.10.1 repair or replace such Goods or the Goods upon which the Services were performed (or in either case the defective part) or refund the price of such defective Goods at the pro-rata contract rate or refund the price for the defective part of the Services on a pro-rata basis; or
  - 11.10.2 (if the Seller has not manufactured the Goods or the part of such Goods which is defective) at the Purchaser's request assign to the Purchaser such assignable rights (if any) as the Seller has against its own supplier of such Goods or the relevant part of such Goods
- 11.11 If the Seller complies with Condition 11.10 it shall have no further liability for any defect in the quality of the Goods or the Services (whether in contract negligence or otherwise)
- 11.12 Where the Goods or any part of them are manufactured by or on behalf of the Seller to the design or specification of the Purchaser then the Purchaser will indemnify the Seller and keep the Seller so indemnified against all actions, claims, costs, demands, expenses and liabilities of whatsoever nature suffered or incurred by the Seller as a result of any infringement of any patent, trade mark, registered design, copyright, topography or other intellectual property rights belonging to any third party. If any claim is brought or threatened against the Seller in respect of such an infringement the Seller will be entitled to suspend further deliveries of Goods to the Purchaser.
- 11.13 The Seller reserves the right to;
- 11.13.1 refuse, delay or accept in part or in whole any order for Goods if there are reasonable technical or commercial grounds for so doing; and/or
  - 11.13.2 modify the specification of any Goods ordered without notice provided the modification does not materially degrade the performance of the Goods
- 11.14 Except as provided in this Clause 11, the Seller shall have no liability to the Purchaser in respect of the Goods to comply with the warranty set out in Clause 10.
- 11.15 The terms of these Conditions shall apply to any repaired or replaced Goods supplied by the Seller under Clause 11.10.1
- ## 12. TERMINATION
- 12.1 Without prejudice to any other rights which the Seller may have the Seller shall be entitled to immediately terminate all Contracts with the Purchaser and demand payment of any amounts due or owing to the Seller whether under this Contract or otherwise retain any deposits or sums held in an escrow account re-sell the Goods and/or withhold or cancel any deliveries (whether in instalments or otherwise) due to be made if any of the following circumstances or events occur;
- 12.1.1 save for and excluding the Purchaser's obligations to make payment pursuant to clause 9 the Purchaser is in breach of any of its obligations under the Contract which if capable of remedy the Purchaser has not remedied within 14 days of receiving written notice from the Seller; or
  - 12.1.2 any Distribution Agreement between the Seller and any third party is terminated; or
  - 12.1.3 the Seller suspects that the Purchaser is unable to pay its debts in the ordinary course of business or the Purchaser enters into liquidation whether compulsory or voluntary (except for the purpose of reconstruction or amalgamation) or has a Receiver appointed or makes any arrangement or composition with its creditors or goes into administrative receivership;
  - 12.1.4 the Purchaser suffers a distress or other legal process to be levied enforced or sued upon or against any part of the property assets or revenue of the Purchaser which is not discharged or stayed within 7 days
  - 12.1.5 the Purchaser fails to pay the Price in accordance with clause 9 or such other terms as agreed between the parties
  - 12.1.6 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply];
  - 12.1.7 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or make a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies

- or the solvent reconstruction of that other party];
- 12.1.8 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 12.1.9 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 12.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 12.1.11 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 12.1.12 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 12.1.13 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 12.1.14 any event occurs or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 12.1.6 to 12.1.13 (inclusive);
- 12.1.15 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 12.1.16 the other party's financial position deteriorates to such an extent that in the Seller's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 12.1.17 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 12.2 On termination of the Contract for any reason:
- (a) the Purchaser shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Purchaser immediately on receipt;
- (b) the Purchaser shall return all of the Seller's Goods which have not been fully paid for. If the Purchaser fails to do so, then the Seller may enter the Purchaser's premises and take possession of them. Until they have been returned, the Purchaser shall be solely

responsible for their safe keeping and will not use them for any purpose not connected with their Contract.

- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

### **13. GENERAL**

- 13.1 Any provision of the Contract which becomes or is held by any competent authority to be invalid, illegal, void, voidable or unenforceable (in whole or in part) shall to the extent of such invalidity, or to the extent it is void, voidable or unenforceable be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.
- 13.2 A waiver by the Seller of any breach of the Contract by the Purchaser or a delay by the Seller in enforcing any of its rights will not be construed as a waiver of its rights or any subsequent breach of the same or any other provision
- 13.3 The Seller may assign licence or sub-contract all or any part of its rights or obligations under the Contract without the Purchaser's consent
- 13.4 The Contract is personal to the Purchaser who may not assign licence or sub-contract all or any of its rights or obligations under the Contract without the Seller's consent. Nothing in this Contract is intended to or shall be deemed to establish any partnership or joint venture between the parties, nor constitute either party the agent for another party for any purpose. Neither party shall have authority to act as agent for, or bind the other party in any way.
- 13.5 This agreement 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.
- 13.6 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 this Contract or its subject matter or formation (including non-contractual disputes or claims).

### **14. COMMUNICATIONS**

- 14.1 All communications between the parties about the Contract must be in writing and delivered by hand or sent by first class post ;
- 14.1.1 (in case of communications to the Seller) to its registered office or such changed address as shall be notified to the Purchaser by the Seller; or
- 14.1.2 (in the case of the communications to the Purchaser) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Purchaser set out in the Sales Order or such other address as shall be notified to the Seller by the Purchaser.
- 14.2 Communications addressed to the Seller shall be marked for the attention of the Managing Director.

## 15. WEBSITE

15.1 The Seller does not accept orders through the Website

15.2 The Seller shall have no liability in respect of the Purchaser's reliance on the description, dimensions, functionality or colours of the Goods on the Website

## 16. WARRANTIES

16.1 Unless agreed otherwise in writing the Goods are supplied only with the benefit of the manufacturer's warranty (a copy of which is available upon request) and will not include any liability for the Purchaser's consequential loss, loss of profit or damage to reputation or goodwill

## 17. PURCHASER'S OBLIGATIONS

17.1 The Purchaser shall:

- (a) co-operate with the Seller in all matters relating to the Services;
- (b) provide the Seller, its employees, agents, consultants and subcontractors, with access to the Purchaser's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Services;
- (c) provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (d) prepare the Purchaser's premises for the supply of the Goods and Services;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

17.2 If the Seller's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Purchaser or failure by the Purchaser to perform any relevant obligation ("**Purchaser Default**");

- (a) the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Purchaser remedies the Purchaser Default, and to rely on Purchaser Default to relieve it from the performance of any of its obligations to the extent the Purchaser Default prevents or delays the Seller's performance of any of its obligations.
- (b) the Seller shall not be liable for any costs or losses sustained or incurred by the Purchaser arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this Clause 17.2; and
- (c) the Purchaser shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Purchaser Default.

## 18. THIRD PARTIES

A person who is not a party to the Contract shall not have any rights to enforce its terms.