

# LGM PRODUCTS LIMITED

## Terms and Conditions of Sale

These are the Terms and Conditions of Sale of **LGM PRODUCTS LIMITED**, Company number 03574049, with registered office at Unit 3 Quantum Business Park, Beacon Hill Road, Fleet, Hampshire, England, GU52 8EA, known here as the “**Supplier**”.

### 1 Definitions and interpretation

1.1 In these Terms and Conditions, the following definitions apply:

<b>Affiliate</b>	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
<b>Applicable Law</b>	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction;
<b>Bribery Laws</b>	means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010;
<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
<b>Confidential Information</b>	means any commercial, financial or technical information, information relating to the Goods, this Contract, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
<b>Contract</b>	means the agreement between the Supplier and the Customer for the sale and purchase of the Goods, in a confirmed Sales Order, incorporating these Terms and Conditions and including all its schedules, attachments, annexures and statements of work;
<b>Control</b>	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and <b>Controls, Controlled and under common Control</b> shall be construed accordingly;
<b>Customer</b>	means the party placing the Purchase Order for the Goods from the Supplier;
<b>Documentation</b>	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Goods;
<b>Force Majeure</b>	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including but not limited to an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, epidemic or pandemic, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
<b>Goods</b>	means the goods and related Documentation and other physical material set out in the confirmed Sales Order or understood by the parties to be included in the Goods and the Sales Order, and to be supplied by the Supplier to the Customer in accordance with the Contract;
<b>Location</b>	means the address or addresses for delivery of the Goods as provided by the Customer in the Purchase Order or otherwise confirmed in the Sales Order;
<b>Purchase Order</b>	means an order for the purchase of Goods placed by the Customer, which for the avoidance of doubt is subject to being accepted by the Supplier;
<b>Price</b>	the price for the Goods and associated costs as defined in clause 3.1;
<b>Sales Order</b>	means confirmed order for Goods as accepted by the Supplier in writing. For the avoidance of doubt any interim acknowledgment of a Purchase Order does not amount to a confirmed Sales Order;
<b>Supplier</b>	means LGM Products Limited, whose details are set out above.
<b>Terms and Conditions</b>	means the Supplier's terms and conditions of sale set out in this document;
<b>VAT</b>	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods; and
<b>Warranty Period</b>	has the meaning given in clause 8.1.

1.2 In these Terms and Conditions, unless the context requires otherwise:

- 1.2.1 a reference to the Contract includes these Terms and Conditions, the confirmed Sales Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Terms and Conditions is included for convenience only and shall have no effect on the interpretation of the Terms and Conditions;
- 1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to legislation is a reference to that legislation as in force at the date of the Contract;
- 1.2.11 a reference to legislation includes all subordinate legislation made as at the date of the Contract under that legislation; and
- 1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

### 2 Application of these Terms and Conditions and acceptance of Orders

- 2.1 These Terms and Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in any of the Customer's purchase conditions, purchase order, specification or other document shall form part of the Contract.
- 2.3 No variation of these Terms and Conditions, to a confirmed Sales Order, or otherwise to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Supplier and the Customer respectively.
- 2.4 Each Purchase Order submitted by the Customer to the Supplier shall be an offer to purchase the Goods subject to the Contract including these Terms and Conditions, and is subject to acceptance by the Supplier as communicated through a written Sales Order confirmation from the Supplier.

- 2.5 The Supplier may issue a Purchase Order acknowledgment, however, such Purchase Order acknowledgement by the Supplier is not acceptance of the Purchase Order and does not form the Contract. Such acceptance does not occur until the conditions of clause 2.6 have occurred. If the Supplier is unable to accept a Purchase Order, it shall notify the Customer in writing as soon as reasonably practicable.
- 2.6 The Supplier may accept or reject a Purchase Order at its discretion. A Purchase Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
- 2.6.1 the Supplier's written confirmation via a confirmed Sales Order; or
- 2.6.2 the Supplier dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).
- 2.7 Rejection by the Supplier of a Purchase Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Customer. Quotations are time limited and subject to confirmation by the Supplier via a confirmed Sales Order.
- 2.9 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.
- 2.10 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, confirmed Sales Order, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2.11 This Contract is applicable to business customers only. The Customer confirms, warrants and represents that it is acting as a business and in no circumstances is acting as a consumer. For the purposes of these terms, a 'consumer' is a person who buys products as an individual for purposes wholly or mainly outside of any trade, business, craft or profession. And a 'business customer' is a person or entity that buys products for purposes relating to a trade, business, craft or profession.
- 3 Price and Cancellation**
- 3.1 The offered price for the Goods, including delivery and other costs or charges, shall be as set out in any valid and current quote provided by the Supplier, as confirmed by the Supplier in the confirmed Sales Order or, where no such quote is provided or where the quote has expired, shall be calculated in accordance with the Supplier's current published price list in force from time to time, or other price list as may have been agreed specifically with Customer, before the date the Purchase Order is submitted, subject in all cases to confirmation of the prices by the Supplier in accordance with the Sales Order confirmation (the "Price").
- 3.2 Prices are exclusive of:
- 3.2.1 shipping, carriage and other transit insurance, customs, handling, import and/or export duties and all other related charges or taxes or other relevant elements which are the responsibility of the Customer in accordance with INCOTERMS 2020 (as updated or superseded); and
- 3.2.2 VAT (or equivalent sales tax) as applicable.
- 3.3 The Customer shall pay in GBP Pounds Sterling (unless otherwise agreed) along with any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4 The Supplier may at its discretion accept a cancellation request from the Customer in relation to all or part an confirmed Sales Order if received within 14 days of dispatch of the relevant Goods or part thereof. Accepted cancellations are subject to a restocking / handling fee of 25% of the relevant Price related to the relevant Goods. Cancellation is only available in relation to stocked Goods, and is not available for bespoke orders. Subject to confirmation of cancellation by the Supplier and provision of returns information by the Supplier, Customer will arrange and is responsible for all costs and risks in transportation and re-delivery of any returns back to the original dispatch point. Refunds or credit notes will be processed subject to receipt of the returned Goods in good condition within 30 days of accepted cancellation.
- 4 Payment**
- 4.1 The Supplier shall invoice the Customer for the Goods, partially or in full, at any time following dispatch of the Goods.
- 4.2 The Customer shall, if advance payment has not been required, pay all invoices:
- 4.2.1 in full without deduction or set-off, in cleared funds within 28 days of the end of the month following the date of each invoice, unless otherwise agreed; and
- 4.2.2 to the bank account nominated by the Supplier.
- 4.3 The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.
- 5 Import and export licences**
- 5.1 The Customer shall obtain and maintain all licences, clearances and other consents that are necessary for the supply of the Goods (including import licences).
- 5.2 Without limiting clause 5.1, the Customer shall at its own cost provide to the Supplier, or (where local laws or regulations require the Supplier to do so) assist the Supplier in procuring, any documents necessary under applicable laws and regulations for the Supplier to export the Goods to the Location in accordance with such laws and regulations.
- 6 Dispatch or Collection**
- 6.1 The Goods shall be dispatched by the Supplier for delivery to the notified Location, on or around the indicative date(s) set out in the Sales Order confirmation. Alternatively the parties may agree for the Goods to be collected by or on behalf of the Customer from Supplier's premises or a third party location as agreed.
- 6.2 The Goods shall be deemed delivered EXW, DAP or other method as set out in the Sales Order confirmation, as those terms are defined in the INCOTERMS 2020 (as updated or superseded).
- 6.3 The Supplier may dispatch, or allow collection of, the Goods in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.4 The Customer shall not be entitled to reject a delivery or collection of the Goods on the basis that an incorrect volume of the Goods has been supplied.
- 6.5 Time of dispatch or delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet dispatch dates but such dates are indicative only.
- 6.6 The Supplier shall not be liable for, and the Customer shall be responsible and compensate Supplier for all direct costs or losses incurred in relation to any delay in or failure of dispatch or delivery caused by:
- 6.6.1 the Customer's failure to make the Location available, or to collect as applicable;
- 6.6.2 the Customer's failure to prepare the Location or to be available as required for receipt of the Goods; or
- 6.6.3 the Customer's failure to provide the Supplier with correct Location details and/or accurate details in relation to the Location, or otherwise adequate instructions for delivery or otherwise relating to receipt of the Goods;
- 6.7 If the Customer fails to take delivery of, or collect as applicable, the Goods, the Supplier shall store and insure the Goods pending dispatch or collection, and the Customer shall pay all reasonable costs and expenses incurred by the Supplier in doing so.
- 6.8 If 28 days following the due date for dispatch or collection of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell or otherwise dispose of the Goods without any obligation or liability to the Customer, save as provided for in clauses 6.8.1 and 6.8.2. The Supplier shall:
- 6.8.1 deduct all reasonable storage charges and costs of resale; and
- 6.8.2 invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.
- 6.9 The Customer will inspect the Goods on delivery and will within 7 days from and including the date of delivery give written notice to the Supplier of any defect causing non-conformance with the warranty in Condition 8.1 is apparent in relation to those Goods. If the Customer does not give such notice to the Supplier, the Customer will be deemed to have accepted the Goods.

## 7 Risk and Title

- 7.1 Risk in the Goods shall pass to the Customer on delivery as determined under the INCOTERMS 2020 (as updated or superseded).
- 7.2 Title to the Goods shall pass to the Customer on the later of the date the Supplier has received payment in full and cleared funds for the Goods and the date the Supplier has itself acquired title to the Goods.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 hold the Goods as bailee for the Supplier;
  - 7.3.2 take all reasonable care of the Goods;
  - 7.3.3 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
  - 7.3.4 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 14.1, 14.2 or 14.3.1 to 14.3.14; and
  - 7.3.5 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 7.4 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 14.1, 14.2 or 14.3.1 to 14.3.14, the Supplier may:
- 7.4.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
  - 7.4.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

## 8 Warranty

- 8.1 The Supplier warrants that the Goods shall, for the relevant warranty period for each item of the Goods (as set out below in clause 8.2) (the "**Warranty Period**"):
- 8.1.1 conform in all material respects to the confirmed Sales Order and the Documentation;
  - 8.1.2 be free from material defects in design, material and workmanship; and
  - 8.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 8.2 As distributor of goods, all Supplier warranties and the relevant Warranty Period for each item of the Goods will be subject to and as provided by the relevant manufacturer of the Goods or otherwise as provided by the supplier of the Goods to the Supplier. Details of such relevant warranty and Warranty Period for the respective Goods may be made available by the Supplier in the Documentation or otherwise will be provided on request.
- 8.3 Prior to making any warranty claim, the Customer will notify the Supplier of the possible fault, with reasonable written, photo or video evidence or other details as requested by the Supplier, and will give the Supplier the opportunity to review and advise on correct installation and usage of the Goods. The Customer will implement any advice and test any adjusted installation or usage instructions before progressing with any warranty claim
- 8.4 Subject to clause 8.3 above, as the Customer's sole and exclusive remedy, the Supplier shall, at its option, and subject to confirmation and approval of the warranty claim by the relevant manufacturer or other supplier of the Supplier, repair, replace, or refund the Price of any of the Goods that do not comply with clause 8.1, provided that the Customer:
- 8.4.1 serves a written notice on Supplier during the Warranty Period as soon as reasonably possible after the Customer became aware (or should reasonably have become aware) of the suggested defect;
  - 8.4.2 provides the Supplier with sufficient information as to the nature and extent of the suggested defects and the uses to which the Goods had been put prior to the suggested defect arising;
  - 8.4.3 provides the Supplier with invoices and proof of purchase of the particular items from the Supplier;
  - 8.4.4 subject to provision of returns information by the Supplier, returns the suggested defective Goods to the Supplier at the Customer's expense; and
  - 8.4.5 on receipt by the Supplier, gives the Supplier a reasonable opportunity to examine the suggested defective Goods and confirm actual fault and applicability of the warranty in coordination with the relevant manufacturer or other supplier of the Supplier.
- 8.5 The provisions of these Terms and Conditions, including the warranties set out in clause 8.1, shall apply to any of the Goods that are repaired or replaced with effect from the date of delivery of the repaired or replaced Goods.
- 8.6 The Supplier shall not be liable for any failure of the Goods to comply with clause 8.1:
- 8.6.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
  - 8.6.2 to the extent caused by the Customer's failure to comply with the Documentation or the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
  - 8.6.3 to the extent caused by the Supplier being required by the Customer to make any modification or follow any specification, instruction or bespoke requirement in relation to alterations to or preparation of the Goods;
  - 8.6.4 where the Customer modifies any Goods, misuses the Goods, or fails to follow any user instructions or Documentation;
  - 8.6.5 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 8.1; or
  - 8.6.6 where the Customer fails to follow the process set out in clause 8.3 and 8.4.
- 8.7 Except as expressly set out in this Contract:
- 8.7.1 the Supplier gives no warranties and makes no representations in relation to the Goods;
  - 8.7.2 does not make any recommendations or provide any advice in relation to product selection or whether the Goods are appropriate for the Customer's needs; and
  - 8.7.3 all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

## 9 Anti-bribery

- 9.1 For the purposes of this clause 9 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 9.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that: all of its personnel; all others associated with it, and all of its subcontractors involved in performing the Contract so comply.
- 9.3 Without limitation to clause 9.2, neither party shall make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 9.4 The Customer shall immediately notify the Supplier as soon as it becomes aware of a breach or possible breach by the Customer of any of the requirements in this clause 9.
- 9.5 Any breach of this clause 9 by the Customer shall be deemed a material breach of the Contract that is not remediable and shall entitle the Supplier to immediately terminate the Contract by notice under clause 14.2.1.

## 10 Anti-slavery

- 10.1 The parties shall comply with the Modern Slavery Act 2015.
- 10.2 The Customer shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Customer's obligations under clause 10.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.

## **11 Limitation of liability**

- 11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clause 11.5, the Supplier's total liability in relation to any Goods shall not exceed the Price paid for the relevant Goods, or otherwise and in any event the maximum amount of liability recovered by the Supplier from the relevant manufacturer of the Goods or otherwise recovered by the Supplier from the supplier of the Goods to the Supplier.
- 11.3 Subject to clause 11.5, the Supplier shall not be liable for consequential, indirect or special losses.
- 11.4 Subject to clause 11.5, the Supplier shall not be liable for any of the following (whether direct or indirect): loss of profit; loss of revenue; loss or corruption of data; loss or corruption of software or systems; loss or damage to equipment; loss of use; loss of production; loss of contract; loss of commercial opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill; and/or wasted expenditure.
- 11.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.5.1 death or personal injury caused by negligence;
  - 11.5.2 fraud or fraudulent misrepresentation;
  - 11.5.3 any other losses which cannot be excluded or limited by Applicable Law; or
  - 11.5.4 any losses caused by wilful misconduct.

## **12 Confidentiality and announcements**

- 12.1 Each party shall keep confidential all Confidential Information of the other party and of any Affiliate of the other and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 12.1.1 any information which was in the public domain at the date of the Contract;
  - 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - 12.1.3 any information which is independently developed by a party without using information supplied by the other party or by any Affiliate of the other; or
  - 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12.2 This clause 12 shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 12.3 The parties shall not make any public announcement or disclose any information regarding the Contract, except by written agreement or to the extent required by law or regulatory authority.

## **13 Force majeure**

- 13.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 28 days, either party may terminate the Contract by written notice to the other party.

## **14 Termination**

- 14.1 The Supplier may terminate the Contract immediately if:
- 14.1.1 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 20 Business Days after the date that the Supplier has given notification to the Customer that the payment is overdue; or
  - 14.1.2 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or to supply the Goods.
- 14.2 Either party may terminate the Contract at any time by giving notice in writing to the other if:
- 14.2.1 the other commits a material breach of the Contract and such breach is not remediable; or
  - 14.2.2 the other commits a material breach of the Contract which is not remedied within 20 Business Days of receiving written notice of such breach;
- 14.3 Either party may terminate the Contract at any time by giving notice in writing to the other party if the other:
- 14.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 14.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
  - 14.3.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 14.3.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
  - 14.3.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
  - 14.3.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - 14.3.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 14.3.8 has a resolution passed for its winding up;
  - 14.3.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 14.3.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
  - 14.3.11 has a freezing order made against it;
  - 14.3.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
  - 14.3.13 is subject to any events or circumstances analogous to those in clauses 14.3.1 to 14.3.12 in any jurisdiction; or
  - 14.3.14 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 14.3.1 to 14.3.13 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 14.4 The Supplier may terminate the Contract any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 14.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## **15 Notices**

- 15.1 Any notice given by a party under these Terms and Conditions shall: be in writing and in English; be signed by, or on behalf of, the party giving it (except for notices sent by email); and be sent to the relevant party at the address set out in the Contract.
- 15.2 Notices may be given, and are deemed received: by hand: on receipt of a signature at the time of delivery; by *Recorded Signed For* post / courier: at 9.00 am on the *second* Business Day after dispatch; by *International Tracked & Signed* post or courier: at 9.00 am on the *fourth* Business Day after posting; or by email provided confirmation is sent by first class post on the Business Day following dispatch.
- 15.3 This clause 15 does not apply to notices given in legal proceedings or arbitration.

## **16 Cumulative remedies**

- 16.1 The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

- 17 Further assurance**  
17.1 The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.
- 18 Entire agreement**  
18.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.  
18.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.  
18.3 Nothing in these Terms and Conditions purports to limit or exclude any liability for fraud.
- 19 Variation**  
19.1 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Terms and Conditions and is duly signed or executed by, or on behalf of, each party.
- 20 Assignment**  
20.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed.
- 21 Set-off**  
21.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.  
21.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 22 No partnership or agency**  
22.1 The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 23 Equitable relief**  
23.1 The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 24 Severance**  
24.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.  
24.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 25 Waiver**  
25.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.  
25.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.  
25.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.
- 26 Conflicts within contract**  
26.1 If there is a conflict between the terms contained in the Terms and Conditions and the terms of the confirmed Sales Order, schedules, appendices or annexes to the Contract, the terms of the Terms and Conditions shall prevail to the extent of the conflict.
- 27 Costs and expenses**  
27.1 The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).
- 28 Third party rights**  
28.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 29 Dispute resolution**  
29.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 29.  
29.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.  
29.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:  
29.3.1 Within five *Business Days of service of the notice*, the contract managers of each of the parties shall meet to discuss the dispute and attempt to resolve it;  
29.3.2 If the dispute has not been resolved within *five Business Days* of the first meeting of the *contract managers*, then the matter shall be referred to the *chief executives* (or persons of equivalent seniority) of each of the parties. The *chief executives* (or equivalent) shall meet within *five Business Day* to discuss the dispute and attempt to resolve it.  
29.4 Until the parties have completed the steps referred to in clause 29.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.
- 30 Governing law and Jurisdiction**  
30.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.  
30.2 The parties irrevocably agree 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, its subject matter or formation (including non-contractual disputes or claims).