

Terms and Conditions of Sale

Bornmore Metals Ltd (the “Company”)

BACKGROUND

- A. The Company carries on the business of selling the Goods.
- B. The Buyer wishes to buy, and the Company wishes to supply the Goods on these Conditions.

1. DEFINITIONS

- 1.1 In these Conditions: -

Business Day: a day (other than Saturday, Sunday or public holiday) when banks in London are open for business.

Business Hours: the period from 8:30am to 5.00 pm on any Business Day.

Buyer: the person or company who purchases the Goods from the Company.

Carrier: the person who accepts custody of or responsibility for the Goods for the purpose of transporting them.

Conditions: are these terms and conditions of sale and (unless the context otherwise requires) including any special terms and conditions on the face of the Company's quotation or written acceptance of the Buyer's order).

Contract: means the contract between the Company and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.

Company: Bornmore Metals Limited (registered in England and Wales with Company number 07793125) with registered address at Units 10 & 11, Walker Industrial Park, Guide, Blackburn, Lancashire, BB1 2QE.

Force Majeure Event: an event or circumstance beyond a party's reasonable control including but not limited to the following: acts of God, war, terrorism, earthquakes, hurricanes, acts of government, riots, lockouts, strikes or other labour disputes, plagues or epidemics, restraints or delays affecting carriers / or delays in obtaining supplies of adequate materials.

Goods: are the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions.

Intellectual Property Rights patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Mandatory Policies: the Company's business policies as updated from time to time.

In Writing: shall refer to communication by letter and e-mail.

Order: the Buyer's order for the Goods as set out in the Buyer's purchase order form or the Buyer's written acceptance of the Company's quotation.

Specification any specification for the Goods provided by the Buyer, including any related plans and drawings, that is agreed in writing by Company.

- 1.2 **Group:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

- 1.3 Clauses and headings are for convenience only and do not affect interpretation of these Conditions.
- 1.4 In these Conditions, references made to the masculine include the feminine and the neuter and references made to the singular include the plural and vice versa, as the context admits or requires.
- 1.5 Any references in these Conditions to any provisions of a statute shall be construed as a reference to that provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2. BASIS OF THE CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 All Goods sold are subject to these conditions, which shall govern the Contract to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, whether contained in the Order or howsoever otherwise, or which are implied by trade, custom and practice or course of dealing. No variation to these Conditions and Contract shall be binding unless agreed in writing by a Director of the Company.
- 2.3 An Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate and for providing to the Company any necessary information within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 2.4 The Order will only be deemed to be accepted when the Company issues a written acceptance of the Order to the Buyer, at which point the Contract shall come into existence.
- 2.5 Each Order shall be deemed to be a separate offer by the Buyer to purchase Goods on the terms of these Conditions, which the Company shall be free to accept or decline at its absolute discretion.
- 2.6 The quantity and description of and any Specification for the Goods shall be those set out in or expressly referred to in the Company's acceptance of the Order. Where the materials are being procured directly for an Order, and subject to a yield tolerance from the Steel Mill, the Company reserves the right to increase or decrease the delivery quantity by a maximum of 10%. The Buyer shall not be entitled to object to or reject the Goods by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.
- 2.7 The Company's employees, agents and other representatives are not authorised to make any representations concerning the Goods unless set out in the Contract. The Contract constitutes the entire agreement between the Company and the Buyer. In entering into the Contract, the Buyer acknowledges that it does not rely on and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any representations which are not set out in the Contract.
- 2.8 Any advice or recommendation given by the Company or its employees or agents or other representatives to the Buyer or its employees or agents as to the application, use or storage of the Goods not set out in the Contract is followed or acted upon entirely at the Buyer's own risk.
- 2.9 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or on its website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.10 Any typographical, numerical clerical or other error or omission in any specification, quotation, acceptance of offer, delivery note, or invoice issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.11 A quotation for the Goods given by the Company shall not constitute an offer. A quotation will only be valid for a period of 24 hours from its date of issue.

2.12 No Order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

3. THE GOODS

3.1 The Goods are described in the Company's Order acceptance which is based on the Buyer's Specification and:-

- (a) Subject to clause 2.5 above the quantity, quality and description of and any Specification for the Goods shall be those set out in the Buyer's order (to the extent accepted in Writing by the Company in accordance with clause 2.4);
- (b) All quantities and sizes quoted will be subject to industry standard tolerances or if agreed in writing by the Company the relevant National or International standards. The Company's standard processing tolerances are detailed in QD241 issue 1 which is available upon request.

3.2 The Company reserves the right to amend the Specification and/or the Goods which are required to conform to any applicable statutory or regulatory requirements.

4. PRICE OF THE GOODS

4.1 The price of the Goods shall be the price set out in the Company's written acceptance of the Order.

4.2 The Company reserves the right to alter the prices by giving notice to the Buyer at any time before delivery to reflect any increase in the cost of the Goods which is due to:-

- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties and increases in the cost of raw materials or labour and other manufacturing costs);
- (b) changes to the Company's costs of supplying the Goods;
- (c) the Buyer's change of delivery date, design, quantities or specification of Goods, or
- (d) delay caused by any failure of the Buyer to give the Company adequate or accurate information or instructions.

4.3 When Goods comprised in any Contract are despatched in more than one consignment, the price of the Goods comprised in each consignment will be the price ruling at the date of delivery of that consignment. In the event of variation to any Contract or suspension of work on any Contract on the Buyer's instructions, any price quoted by the Company may be adjusted accordingly.

4.4 Unless otherwise agreed in writing, the price quoted for the Goods is EXW (ex works) as defined in Incoterms 2020 and exclusive of the costs of packaging, insurance and carriage of the Goods. The cost of carriage shall be charged to the Buyer as an addition to the quoted price on all Goods where the Company has agreed to arrange/provide carriage. Unless otherwise agreed, the cost of carriage by the most cost effective manner, dependent upon weight and volume of the Goods shall be selected by the Company according to the rates ruling at the date of despatch and shall be paid by the Buyer when it pays for the Goods.

4.5 All prices included in any quotation, acknowledgement or Contract are exclusive of any applicable value added tax, import or export duties and other taxes or duties. The Buyer shall on receipt of a valid VAT invoice from the Company in respect of these additional costs, pay to the Company such additional amounts in respect of VAT as are chargeable in relation to the supply of the Goods.

5. TERMS OF PAYMENT

5.1 Payment for the Goods (and if appropriate, carriage costs) shall be made in full by the Buyer on the placing of an Order unless the Buyer has a credit account with the Company, in which case the Company may invoice the Buyer for the price of the Goods (plus the cost of any agreed carriage) at any time after the Company has notified the Buyer that the Goods are ready for collection by the Buyer.

- 5.2 On the establishment of a credit account, unless other credit terms have been agreed in writing, the Buyer shall pay the Company's invoices in full and in cleared funds by the end of the month following the month the invoice was dated. The Company shall be entitled to withdraw the Buyer's credit account at any time at its discretion. The Company may recover the amount invoiced notwithstanding that delivery may not have taken place and title in the Goods has not passed to the Buyer. The time of payment shall be of the essence of the Contract. Any variation to these terms must be agreed in writing by a Director of the Company.
- 5.3 If the Buyer fails to make any payment when due or breaches any provisions of the Contract or any other contract with the Company
- (a) the Company may cancel the Contract and any other contract with the Buyer or suspend any further deliveries or collections under the Contract and any other contract with the Buyer without any liability to the Buyer;
 - (b) the Company may appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer);
 - (c) the Buyer hereby indemnifies the Company in full from and against all losses, liabilities, costs, fees and expenses (including legal and other professional fees and court costs) suffered or incurred by the Company in recovering the overdue amount from the Buyer or as a result of the breach of the Contract; and
 - (d) the Company may charge the Buyer interest (both before and after any judgment) on the amount unpaid, at a rate not exceeding 8% per annum over the Bank of England base rate until payment in full is received. The Company may further charge the Buyer for collection costs in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.4 The Buyer will pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.

6. DELIVERY

- 6.1 The Company will ensure that each delivery of the Goods is accompanied by a delivery note that shows the despatch date, all relevant Buyer and Company reference numbers, the type and quantity of the Goods, special storage instructions (if any), all relevant quality references, documentation and certification and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 6.2 Unless otherwise agreed in writing, the Goods shall be delivered EXW (ex-works) as defined in Incoterms 2020. The Buyer will collect the Goods from the Company's premises as set out in the written confirmation of the Order issued by the Company within 48 hours after the Company notifies the Buyer that the Goods are available. This can be extended, subject to agreement of the Company. Delivery of the Goods shall be completed at the time of collection of the Goods by the Buyer from the Company.
- 6.3 If the Company agrees to organise carriage for the delivery of the Goods, the Company shall arrange such carriage to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**"). Where no Delivery Location is specified, delivery will be at the Company's premises as set out in the written confirmation of the Order issued by the Company. The Buyer agrees that the Company shall have no obligation to give notice under section 32(3) of the Sale of Goods Act 1979. Delivery of the Goods shall be completed at the time of collection of the Goods by the Carrier from the Company.
- 6.4 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in any instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated or cancel any other instalment.

- 6.5 Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.6 If the Company fails to deliver the Goods, the Company's liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 6.7 The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions that are relevant to the supply of the Goods.
- 6.8 Delays in the delivery of an Order shall not entitle the Buyer to:
- (a) refuse to take delivery of an Order;
 - (b) claim damages; or
 - (c) terminate this agreement, subject to clause 11.
- 6.9 If the Buyer fails to take delivery of the Goods within 3 Business Days of the Company notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- (a) Delivery of the Goods will be deemed to have been completed at 9.00am on the third Business Day after the day on which the Company notified the Buyer that the Goods were ready; and
 - (b) the Company will store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including insurance).
- 6.10 If 10 Business Days after the day on which the Company notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Company may dispose of the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer for the excess over sums owing by the Buyer or charge the Buyer for any shortfall.
- 6.11 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented or delayed in carrying on of its business due to a Force Majeure Event.

7. SHORTAGES, DAMAGE AND LOSS IN TRANSIT

- 7.1 No claim for non-delivery of the whole or part of any consignment nor for damage in transit, shortage of delivery, deviation, delay or detention will be entered unless separate notices in writing are given to the Carrier designated to the Buyer as responsible for delivery of the Goods and to the Company within 5 working days of the receipt of the Goods, or in the case of the non-delivery of a complete consignment within 14 days of notification by the Company that the Goods are ready for dispatch and in either case a complete claim is made in writing within a further 10 working days. The Goods in respect of which such claim for damaged goods is made shall be preserved intact for inspection. The Company and the designated Carrier of the Goods shall have the right to attend at the Buyer's place of business or otherwise the Delivery Location to investigate the claim.
- 7.2 The Buyer shall inspect the Goods on delivery and unless the Buyer notifies any defects within 5 Business Days of delivery, shall be deemed to have accepted them as in accordance with the Contract. If the Buyer fails to notify the Company of the defects within 5 Business Days, then the Buyer shall be deemed to have accepted the Goods.
- 7.3 After acceptance, the Buyer shall not be entitled to reject the Goods which are not in accordance with the Contract. In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject the Goods.

7.4 The Goods are sold as a batch. Without affecting any rights which the Buyer may have to reject all the batch, the Buyer is not entitled to accept part of the batch of Goods and reject others unless the Company agrees otherwise.

8. TITLE AND RISK

8.1 The risk in the Goods shall pass to the Buyer upon collection by the Buyer or where the Company is to arrange delivery, upon collection by the designated Carrier.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title to the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full for the price of the Goods and all other goods (including carriage costs) agreed to be sold by the Company to the Buyer for which payment is then due.

8.3 Until title to the Goods has passed to the Buyer, the Buyer shall:-

- (a) store the Goods separately from those of the Buyer and all third parties and properly stored, protected and insured so that they remain identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf against all risks for their full price from the date of delivery.
- (d) notify the Company if it becomes subject to any of the events listed in clause 11.1, and
- (e) give the Company such information relating to the Goods and the ongoing financial position of the Buyer as the Company may require from time to time.

8.4 Subject to clause 8.5 the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time:

- (a) it does so as principal and not as the Company's agent; and
- (b) title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.

8.5 If, before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 11.1 or the Company reasonably believes any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods remain in existence and have not been resold or irrevocably incorporated into another product, the Company may at any time without limiting any of its other rights and remedies, require the Buyer to deliver up all Goods in its possession to the Company's premises and, if the Buyer fails to do so promptly, the Company may enter upon any premises of the Buyer or any third party where the Goods are stored and recover the Goods.

8.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness for the Goods which remain the Company's property but if the Buyer does so all monies owing by the Buyer to the Company shall without limiting any other right or remedy the Company has, immediately become due and payable.

8.7 If Goods are destroyed by an insured risk prior to the same being paid for by the Buyer, the Buyer shall receive the proceeds of the insurance as trustee for the Company.

8.8 The Company shall be entitled to a contractual and special lien on any Goods including raw materials and tooling ("**Buyer's Materials**") which the Buyer may have supplied to the Company for the purposes of the Contract which are in the Company's possession until the Company shall have received in cash or cleared funds payment in full for the price of the Goods and all other goods agreed to be sold by the Company (including insurance and carriage costs) for which payment is then due and the Company may use or dispose of the same to set-off against sums owing by the Buyer and at such price as the Company sees fit.

9. WARRANTIES

- 9.1 The Company warrants that it holds unencumbered title to the Goods.
- 9.2 Subject to the conditions set out in these terms, the Company warrants, for a period of 12 months from the date of delivery ("**Warranty Period**"), that the Goods supplied correspond in all material respects with their description or Specification as set out in the Company's written acceptance of the Order.
- 9.3 The Company shall not be liable for the Goods failure to comply with the warranty set out in clause 9.2:-
- (a) if the Buyer makes any further use of the Goods after giving notice in accordance with clause 9.4;
 - (b) in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage, improper installation or maintenance, abnormal working conditions, failure to follow the Company's oral or written instructions) misuse or alteration or repair of the Goods without the Company's approval;
 - (c) if the defect arises as a result of the Company following any drawing, design or Specification supplied by the Buyer;
 - (d) if the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
 - (e) if any sum owing by the Buyer to the Company has not been paid, or
 - (f) for parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 9.4 Subject to clause 9.3 and if:-
- (a) the Buyer gives notice in writing to the Company (and in any event before expiry of the Warranty Period) within a reasonable time of discovery that some or all of the Goods do not comply with the warranty in clause 9.2;
 - (b) the Company is given a reasonable opportunity of examining such Goods; and
 - (c) the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost, then,
- the Company shall at its option, replace or repair those Goods which do not meet the warranty as stated in clause 9.2 or, at the Company's sole discretion refund to the Buyer the price of those Goods but the Company shall have no further liability to the Buyer in this regard.
- 9.5 Except as expressly provided in these Conditions, all warranties, conditions, representations and other terms implied by statute or common law and all the laws of the country where the Buyer is located are excluded from the Contract to the fullest extent permitted by law.
- 9.6 Save as specified by the Company in the written acceptance of Order, or as stated in any test certificate supplied by the Company in respect of the Goods, the Company does not guarantee that the Goods will comply with any industry codes of practice or specific industry standards.
- 9.7 These Conditions shall apply to any repairs or replacement Goods supplied by the Company and to any Orders for refurbishment of Goods supplied previously by the Company, save that refurbishments, replacements or repairs shall be warranted for an additional period of three months or until the expiry of the original Warranty Period for the Goods, whichever is the longer.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable).
- (b) fraud or fraudulent misrepresentation.
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or
- (d) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

10.2 Subject to clause 10.1:

- (a) the Company shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for
 - (i) any indirect, special, consequential or pure economic loss or damage;
 - (ii) loss of use or corruption of software, data or information;
 - (iii) any loss of profits, anticipated profits or savings revenue or business opportunities; or
 - (iv) loss or damage to goodwill,(in each case arising as a direct or indirect result of the relevant claim) and
- (b) the Company's total liability to the Buyer 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 100% of the price of the Goods.

10.3 The Company shall not be liable to the Buyer 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 Company's obligations, if the delay or failure was due to a Force Majeure Event or any default of the Buyer or its representatives or agents. This clause 10 shall survive termination of the Contract.

11. TERMINATION

11.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if the Buyer:

- (a) fails to make payment with 30 Business Days of the due date for payment;
- (b) commits a material breach of any material term of Contract (and if such a breach is remediable) fails to remedy that breach within 10 Business Days of receiving notice requiring it to be remedied;
- (c) breaches any one or more terms of the Contract more than once;
- (d) is, or is deemed to be, unable to pay its debts as they fall due or is insolvent, suspends making payments on any debts or announces an intention to do so, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of actual or anticipated financial difficulties, has a moratorium declared in respect of any of its indebtedness, ceases or threatens to cease to carry on business, applies for an interim order under Section 252 Insolvency Act 1986 or has a bankruptcy petition presented against it, has appointed in respect of it or any of its assets a liquidator, trustee in bankruptcy, judicial custodian, supervisor, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case whether out of court or otherwise), pledges or charges any Goods which remain the property of the Company, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances; or
- (e) appears to the Company due to its credit rating to be financially inadequate to meet its obligations under this Contract.

- 11.2 For the purposes of Clause 11.1(c), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of the Contract.
- 11.3 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in clause 11.1(a) to clause 11.1(e) or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason:
- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest; and
 - (b) each party shall promptly:
 - (i) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its Group in connection with the supply and purchase of the Goods under this Contract;
 - (ii) return to the other party all documents and materials (and any copies) containing the other party's confidential information;
 - (iii) erase all the other party's confidential information from its computer systems (to the extent possible); and
 - (iv) on request, confirm to the other party that it has complied with the requirements of this clause
- 11.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12. CONFIDENTIALITY

- 12.1 Each party undertakes that it shall not at any time, and for a period of two years after the termination of the Contract disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the Group to which the other party belongs, except as permitted by clause 12.2. As regards confidential information of the Company, this includes but is not limited to the source of supply of all raw materials, component parts and other items sourced by the Company.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12, and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13. INTELLECTUAL PROPERTY

- 13.1 All copyright and other Intellectual Property Rights in and to the Goods, all drawings, designs, sketches, prototypes and prototype designs suggested or submitted by the Company to the Buyer including any documents provided in accordance with clause 14.10 (**Company Materials**) are vested in and shall remain the property of the Company unless specifically agreed otherwise in writing by a Director of the Company. All Intellectual Property Rights in and to the Goods and all and any products displayed in the Company's catalogue, website or other trade literature including all photography are owned by and/or registered in the name of the Company.
- 13.2 The Buyer shall not disclose to any other person or use any Company Materials for any purpose other than the receipt of the Goods under the Contract and use thereof in its internal business operations.
- 13.3 Any infringement of the Company's rights will be vigorously contested.
- 13.4 The Buyer shall indemnify the Company 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 costs (calculated on a full indemnity basis) and all and other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Goods. This clause 13.3 shall survive termination of the Contract.

14. GENERAL

- 14.1 In performing its obligations under the agreement, the Buyer shall and shall procure that each member of its Group comply with:
- (a) all applicable laws, statutes, regulations from time to time in force; and
 - (b) the Mandatory Policies.
- 14.2 The Company may terminate the agreement with immediate effect by giving written notice to the Buyer if the Buyer commits a breach of clause 14.1.
- 14.3 The Company may at any time assign, transfer, charge or sub contract its rights and obligations under the Contract. The Buyer may not assign any of its rights and obligations under the Contract without the prior written consent of a Director of the Company. No one other than a party to this Contract and its permitted assignees shall have the right to enforce its terms.
- 14.4 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email (but only if evidence of successful transmission is provided by the party and if the parties have communicated on contract matters by that email route).
- 14.5 Any notice will have deemed to have been received:
- (a) if delivered by hand, when left at the registered office or such other address that has been notified;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9am on the second Business Day after posting;
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - (d) if sent by email, at the time of transmission, or if this falls outside Business Hours in the place of receipt, when Business Hours resume.
- 14.6 The provisions of this clause 14.4. and 14.5 do not apply to the service of any proceedings or other documents in any legal action.

- 14.7 No delay or failure by the Company in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Company shall be effective unless in writing.
- 14.8 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the Contract and the remaining provisions of the Contract shall continue in full force and effect.
- 14.9 If any provision or part-provision of this agreement is deemed deleted under this clause 14.8 the Buyer and Company shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.10 Save in respect of Goods produced under a Specification, the Company shall provide to the Buyer without charge, one set of such documentation as the Company considers appropriate for the Buyer to facilitate correct installation, utilisation and maintenance of the Goods supplied. These may include (but are not limited to) test certificates, materials certificates and operating instructions. Subsequent requests by the Buyer for additional copies of these documents will incur a charge to the Buyer not exceeding £25.00 (twenty-five pounds Sterling) (or equivalent in the currency invoiced) or such other charges as notified from time to time by the Company. Such charges shall be levied by way of invoice to the Buyer and be payable in advance of receipt from the Buyer.
- 14.11 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions.

15. GOVERNING LAW AND JURISDICTION

- 15.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.