

**CONDITIONS OF SALE OF TIBBETTS GROUP LIMITED****1 DEFINITIONS**

- 1.1 **“Accepted Order”** means an Order which is accepted by the Company in accordance with Condition 3.6.
- 1.2 **“Affected Party”** has the meaning given in clause 12.2.
- 1.3 **“Business Day”** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.4 **“Claim”** has the meaning given in clause 10.3
- 1.5 **“Clutch”** means a mechanism for connecting and disconnecting an engine and the transmission system in a motor vehicle and includes any component of that mechanism, including without limitation, a cover, plate or bearing.
- 1.6 The **“Company”** means Tibbetts Group Limited, registered in England and Wales with company number 05536038.
- 1.7 **“Conditions”** means the terms and conditions of sale set out in this document (as amended from time to time in accordance with Condition 13.6) and any special terms and conditions agreed in writing.
- 1.8 **“Contract”** means any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these Conditions.
- 1.9 The **“Customer”** means the person who purchases the Goods from the Company.
- 1.10 **“Delivery”** has the meaning set out in Condition 4.2
- 1.11 **“Delivery Location”** has the meaning set out in Condition 4.1.
- 1.12 **“Export Customers”** means Customers who order Goods to be supplied outside of the United Kingdom.
- 1.13 **“Force Majeure Event”** has the meaning given in Condition 12.
- 1.14 **“Goods”** means the articles which the Customer agrees to buy from the Company.
- 1.15 **“Heavy Vehicles”** means motor vehicles (other than Special Vehicles) having at least three wheels and a maximum permissible load exceeding 3.5 tonnes.
- 1.16 **“Light Vehicles”** means motor vehicles (other than Special Vehicles) having at least three wheels and a maximum permissible load not exceeding 3.5 tonnes.
- 1.17 **“Order”** means the Customer’s order for the Goods.
- 1.18 **“Product Recall”** means any corrective action taken by the Company in relation to Goods that are no longer within the Company’s control and which the Company knows or has reason to believe may be unsafe, defective, unfit for purpose or otherwise non-compliant with any applicable law or the Company’s own quality standards.
- 1.19 **“Relevant Defects”** has the meaning given in clause 11.4.2.
- 1.20 **“Special Order”** means an Order designated as such in the Contract.

- 1.21 **“Special Vehicles”** means vehicles used:
- 1.21.1 for any type of competition or rally, including but not limited to racing, any type of track day event, off road activities, speed testing, pace making or reliability trials, or
  - 1.21.2 for the carriage of goods or passengers for hire or reward, including but not limited to delivery or courier vehicles, rental or hire vehicles, taxis, private hire vehicles and chauffeur cars; or
  - 1.21.3 for driver instruction for reward; or
  - 1.21.4 as emergency vehicles.
- 1.22 **“Specification”** means any specification for the Goods, including any related diagrams and drawings that is agreed by the Customer and the Company.
- 1.23 **“Unit”** has the meaning given in clause 11.4.5.
- 1.24 **“United Kingdom Customers”** means Customers who order Goods to be supplied within the United Kingdom.
- 1.25 **“Vehicles”** means Heavy Vehicles and Light Vehicles.
- 1.26 **“Warranty Notice”** has the meaning given in clause 11.1.

## **2 CONSTRUCTION**

In these Conditions, the following rules apply:

- 2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 2.3 A reference to a statute or statutory provision is a reference to such statute or 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.
- 2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.5 A reference to **writing** or **written** includes faxes and e-mails.

## **3 BASIS OF CONTRACT**

- 3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.2 A quotation for the Goods given by the Company shall not constitute an offer but only an invitation to the Customer to make an Order. A quotation shall only be valid for a period of 30 days from its date of issue.
- 3.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 3.4 The Company gives no warranty that the Goods are suitable for any particular purpose or for

use under any specific conditions, unless before the parties enter into the Contract:

- 3.4.1 the Customer has made such purpose or conditions known to the Company in writing providing sufficient detail to allow the Company to assess the suitability of the Goods for that purpose or use under those conditions; and
- 3.4.2 the Company has confirmed in writing to the Customer that the Goods are suitable for that purpose or use under those conditions .
- 3.5 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents including as to the suitability or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly and subject always to Condition 10 the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 3.6 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 3.7 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 3.8 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force and the Company reserves the right to correct any typographical, clerical or other error or omission in any such document.
- 3.9 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

#### **4 DELIVERY OF GOODS**

- 4.1 The Company shall deliver the Goods to the location set out in the Accepted Order or such other location as the parties may agree in writing (**Delivery Location**).
- 4.2 Delivery of the Goods (**Delivery**) shall be completed by:
  - 4.2.1 the delivery method set out in the Accepted Order; or
  - 4.2.2 where no delivery method is set out in the Accepted Order on the Goods' arrival at the Delivery Location, in which case the Company shall be entitled to charge the Customer for the reasonable costs of Delivery.
- 4.3 The expressions "**Ex Works**", "**DAP**", "**DDP**", "**FOB**" and "**CIF**" shall have the meanings set out in Incoterms 2010 (or any subsequent revision thereof).
- 4.4 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. The Company shall not be liable for any delay in Delivery that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to take delivery of the Goods within 10 Business Days of the Company or

its nominated third party carrier attempting to deliver the Goods, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:

- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the tenth Business Day following the day on which the Company or its nominated third party carrier attempted to deliver the Goods; and
  - 4.6.2 the Company shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the Company or its nominated third party carrier attempted to deliver the Goods, the Customer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 Tolerances:
- 4.8.1 The Customer shall not be entitled to reject the Goods if the Company delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
  - 4.8.2 In the case of Special Orders, the Company reserves the right to deliver, and charge for, 10 per cent (10%) more or less than the quantity ordered.
- 4.9 Without prejudice to the Company's rights under Conditions 4.6 and 4.7, the Customer grants to the Company a license to offer and/or resell to other customers any Goods supplied pursuant to a Special Order of which the Customer fails to take delivery.
- 4.10 Claims in respect of incomplete or incorrect delivery or of Goods damaged in transit must be notified in writing to the carrier and the Company as soon as possible and in any event within three Business Days of Delivery or in the case of non-delivery within 15 Business Days of the Customer's receipt of the Company's invoice.
- 4.11 Provided always that the Company shall be under no obligation to accept the return of any Goods which are in accordance with the Contract, the Company may in its absolute discretion choose to accept returns of Goods overstocked by the Customer if they are in perfect condition whereupon it shall be entitled to levy a handling charge of up to and including 25% of the invoice price. Such Goods must be returned by the Customer carriage- paid to the Company in their original packaging.
- 4.12 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 an instalment shall not entitle the Customer to cancel any other instalment. All ordered stock against a customer sales order must be taken within 6 months of the initial promised delivery date.

## **5 TITLE AND RISK**

- 5.1 The risk in the Goods shall pass to the Customer on completion of Delivery.
- 5.2 Subject to Condition 5.6, title to the Goods shall not pass to the Customer until the earlier of:
  - 5.2.1 the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which

payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

- 5.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Condition 5.4.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
- 5.3.4 notify the Company immediately if it becomes subject to any of the events listed in Condition 8.1; and
- 5.3.5 give the Company such information relating to the Goods and their storage as the Company may require from time to time.
- 5.4 Subject to Condition 5.5, the Customer 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 Customer resells the Goods before that time:
- 5.4.1 it does so as principal and not as the Company's agent; and
- 5.4.2 title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 5.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 8.1, then, without limiting any other right or remedy the Customer may have:
- 5.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 5.5.2 the Company may at any time:
- a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 5.6 In the case of sales of Goods outside England and Wales, Condition 5.2.1 shall not apply, and in place thereof there shall be substituted the following Condition:

"5.2. the Company receives payment in full (in cash or cleared funds) for the Goods which the Company has supplied to the Customer pursuant to the Contract; and"

## **6 PRICE AND PAYMENT**

- 6.1 The price of the Goods shall be the price set out in the Accepted Order. The Company reserves the right to apply a minimum charge on small value orders.
- 6.2 The Company may, by giving notice to the Customer at any time before Delivery, increase the

price of the Goods to reflect any increase in the cost of the Goods that is due to:

- 6.2.1 any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 6.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 6.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 6.3 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.4 Packing:
- 6.4.1 United Kingdom Customers:  
  
Wooden or metal containers will be charged for if they are not returned carriage paid and in good condition with 30 days of Delivery; the Company must be notified of the return at the date of despatch.
  - 6.4.2 Export Customers:  
  
The price of the Goods includes normal packing for export and such packing is non-returnable.
- 6.5 Insurance:
- 6.5.1 The Customer shall maintain adequate insurance in respect of the Goods from the date or dates on which the risk therein passes to the Customer in accordance with Condition 5.1.
  - 6.5.2 At the Company's request, the Customer shall:
    - a) ensure that the Company's interest is noted on any relevant insurance policy;
    - b) promptly send a copy of the receipt for the relevant premiums to the Company; and
    - c) provide the Company with copies of the relevant insurance policy certificates and detail of the cover provided.
  - 6.5.3 For the avoidance of doubt, the Company reserves the right to refuse to accept the Customer's Order until such time as adequate evidence of insurance has been provided in accordance with Condition 6.5.2 above.
- 6.6 Payment:
- 6.6.1 UK Customers:  
  
Unless otherwise agreed in writing, the Customer shall pay the Company's invoice in full with the Order from UK Customers.
  - 6.6.2 Export Customers:  
  
Unless otherwise agreed in writing, Orders from Customers outside the United Kingdom will only be accepted subject to one of the following modes of payment having been arranged:

- a) net cash with Order; or
- b) deposits at a bank nominated by the Company; or
- c) an irrevocable documentary credit issued by a bank acceptable to the Company.

6.6.3 Time of payment is of the essence.

- 6.7 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at higher of (a) the rate of 6% per annum above Barclays Bank PLC's base rate from time to time and (b) the rate in force pursuant to the provision of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer. Any agreed rebates are only payable if all other company conditions have been adhered to.

## **7 PRODUCT RECALL**

- 7.1 In the event of a Product Recall by the Company of Goods in possession or control of the Customer, the Customer will comply with the Company's product recall procedures (as notified to it by the Company) and will cooperate and give all reasonable assistance to the Company to ensure that the Product Recall is dealt with promptly and effectively.
- 7.2 The Customer will immediately notify the Company of any defect or possible defect in the Goods of which the Customer should be reasonably aware and which could require a Product Recall.
- 7.3 The Customer shall not publish any press releases or other communications associated with a Product Recall, without the Company's prior consent in writing.

## **8 TERMINATION AND SUSPENSION**

- 8.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 8.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 (ten) Business Days of being notified in writing to do so;
  - 8.1.2 the Customer takes any step or action or any event occurs in respect of the Customer in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 8.1.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 8.1.4 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 8.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in Condition 8.1, or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.3 On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and the Company shall not be under any obligation to deliver any Goods or the balance of any Goods which have not been delivered as at the date of termination.
- 8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 9 EXPORT TERMS

Where the Goods are supplied for export from the United Kingdom the Customer shall be responsible for complying with any legislation governing:

- 9.1 the importation of the Goods into the country of destination; and
- 9.2 the export and re-export of the Goods,

and shall be responsible for the payment of any duties on the Goods.

## 10 INDEMNITIES

- 10.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer 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 and other reasonable professional costs and expenses) suffered or incurred by the Company 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 Company's use of the Specification. This Condition 10.1 shall survive termination of the Contract.
- 10.2 The Company shall indemnify the Customer against all liabilities, costs, expenses, damages and losses reasonably incurred by the Customer arising out of or in connection with any claim made against the Customer 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, save to the extent that such claim arises out of or in connection with the supply by the Company of Goods manufactured in accordance with a Specification supplied by the Customer.
- 10.3 The Company's liability under the indemnity at Condition 10.2 is conditional on the Customer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under the indemnity (**Claim**), the Customer shall:
- 10.3.1 as soon as reasonably practicable, give written notice of the Claim to the Company, specifying the nature of the Claim in reasonable detail;
- 10.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Company;
- 10.3.3 give the Company and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Company



and its professional advisers to examine them and to take copies (at the Company's expense for the purpose of assessing the Claim; and

10.3.4 be deemed to have given the Company sole authority to avoid, dispute, compromise or defend the Claim.

10.4 Nothing in this Condition 10 shall restrict or limit a party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under the indemnities.

## 11 WARRANTY

11.1 The Customer shall lodge with the Company in writing within 14 days after Delivery any claims in respect of defects in the Goods which are reasonably capable of detection by careful examination in the ordinary course of business describing the defects complained of and the amount claimed accompanied by valid invoices or binding quotations where needed to support the full value of the claim (a **Warranty Notice**).

11.2 Defects which are not detectable by careful examination in the ordinary course of business within 14 days after Delivery shall be notified by submission of a Warranty Notice as soon as practicable and in any event no later than the earliest of:

11.2.1 in the case of Clutches purchased for installation in Light Vehicles:

- a) 60 days after discovery of the defect by the Customer; and
- b) 3 years after date of fitment; or
- c) the date on which the distance travelled by the vehicle in which the Clutch has been installed in the period following the date of installation of the Clutch reaches 30,000 miles (48,000 km);

11.2.2 in the case of Clutches purchased for installation in Heavy Vehicles:

- a) 60 days after discovery of the defect by the Customer; and
- b) 3 years after date of fitment; or
- c) the date on which the distance travelled by the vehicle in which the Clutch has been installed in the period following the date of installation of the Clutch reaches 300,000 miles (480,000 km);

11.2.3 in the case of Clutches purchased for installation in Special Vehicles:

- a) 30 days after discovery of the defect by the Customer; and
- b) 90 days after date of fitment; and

11.2.4 in the case of all other Goods:

- a) 60 days after discovery of the defect by the Customer; and
- b) 12 months after Delivery.

11.3 For claims in respect of defects in Clutches under Conditions 11.2.1 and 11.2.2, the Warranty Notice must be submitted using the Company's warranty claim process.

11.4 The Company shall deliver to the Customer replacements of, or credit for the price of, any Goods in which defects appear which are notified to the Company in accordance with Conditions 11.1, 11.2 and 11.3 above

PROVIDED that:

11.4.1 where practicable, the Goods and in the case of a Clutch, the entire mechanism of the Clutch is returned to the Company, transportation charges being prepaid by the Customer and in the case that the Goods are found to have Relevant Defects the Company will refund reasonable transportation charges;

11.4.2 examination by the Company of such Goods shall disclose that defects exist in them which have not been caused by;

- a) accident or normal wear and tear; or
- b) misuse or neglect; or
- c) improper storage, application fitment, installation, or handling; or
- d) repair or alteration not effected by the Company; or
- e) oil contamination or evidence of 'copper' based grease.

**(Relevant Defects);**

11.4.3 the Customer shall afford to the Company all reasonable facilities to inspect any engine and any mechanical parts of the vehicle which are alleged to have been damaged as a result of Relevant Defects;

11.4.4 where the outcome of the examination is that the Company is not liable for any defects in the Goods or any damage alleged to have been caused by defects in the Goods:

- a) the Customer shall pay to the Company the cost (as certified by the Company) of any examination of the Goods and any relevant mechanical parts; and
- b) the Customer will collect the Goods within 30 days failing which the Company shall be entitled to dispose of them.

11.4.5 if any Goods, during their recommended service life, and if fitted to an application stated in the current catalogue or bulletin of the Company are found to be subject to Relevant Defects then in addition to replacing the Goods or crediting their price, the Company will compensate the Customer for any damage directly caused by the Goods to the mechanical parts (the **Unit**) of the vehicle, aircraft, conveyance, vessel, machine, equipment or structure in which they are fitted, provided that:

- a) the Company shall not be liable to pay any sum in excess of the value of a Unit in satisfactory condition; and
- b) in the case of Vehicles, the Company will pay:
  - i. directly associated labour at up to £30 or EUR 37.50 per hour (based on ICME repair times); and
  - ii. all reasonable recovery costs (including storage, vehicle hire, accommodation, personal travel, subsistence or any other similar costs) up to a maximum of £150 incurred as a direct result of Relevant Defects in any Goods supplied by the Company;
- c) the Customer shall pay to the Company the cost (as certified by the Company) of any examination of the Goods and any relevant mechanical parts; and
- d) the Customer will collect the Goods within 30 days failing which the Company shall be entitled to dispose of them.

- 11.5 The foregoing provisions shall be in lieu of any warranties and conditions whether express or implied by statute common law or otherwise howsoever, which warranties and conditions are hereby expressly excluded.
- 11.6 Save as aforesaid and save in respect of death or personal injury resulting from the negligence of the Company, its servants or agents, the Company shall not be liable for any claim or claims for direct or indirect consequential or incidental injury loss or damage made by the Customer against the Company whether in contract or tort (including negligence on the part of the Company, its servants or agents) arising out of or in connection with any defect in the Goods or work or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the contract or breach of a fundamental term thereof) or the Company, its servants or agents in the performance of the contract.
- 11.7 WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, NOTHING HEREIN CONTAINED SHALL OPERATE TO EXCLUDE ANY WARRANTY OR CONDITION IMPLIED BY STATUTE IN THE EVENT OF THE BUYER DEALING AS A "CONSUMER" AS DEFINED BY SECTION 2 OF THE CONSUMER RIGHTS ACT 2015. IN SUCH A CASE THE CUSTOMER'S STATUTORY RIGHTS ARE UNAFFECTED BY THESE TERMS AND CONDITIONS.
- 11.8 The Customer accepts as reasonable that the Company's total liability for defective Goods and delivery of the Goods shall be as set out in these Conditions; in fixing that limit the Company has had regard to the contract price of the Goods, the nature of the Goods, the use they will receive, and the resources available to each party including insurance cover, to meet any liability.
- 11.9 If any provision or part-provision of this Condition 11 is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition 11 shall not affect the validity and enforceability of the rest of this Condition 11.

## 12 FORCE MAJEURE

- 12.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 12.2 Provided it has complied with Condition 12.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 12.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 12.4 The Affected Party shall:
- 12.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 3 Business Days from its start, notify the other party in writing of the Force

Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

12.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

12.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 30 days, the party not affected by the Force Majeure Event may terminate by giving 30 days' written notice to the Affected Party.

### **13 GENERAL**

#### **13.1 Assignment and other dealings.**

13.1.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

#### **13.2 Notices.**

13.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and in English or accompanied by an accurate translation into English, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition 13.2.1, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

13.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 13.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by airmail, at 9.00 am in the country of receipt on the fifth Business Day after posting, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

13.2.3 For the purpose of Condition 13.2.2 and calculating deemed receipt; all references to time are to local time in the place of deemed receipt.

13.2.4 The provisions of this Condition 12 shall not apply to the service of any proceedings or other documents in any legal action.

#### **13.3 Severance**

13.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition 13.3.1 shall not affect the validity and enforceability of the rest of the Contract.

13.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 13.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.
- 13.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 13.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).