

TERMS AND CONDITIONS OF SALE



1. Definitions

1.1 In these Terms:

“Business Day” means a day (other than Saturday, Sunday or public holiday) when banks in London are open for business;

“Company” means SAS International Limited (company number: 02949913) whose registered office is at 31 Suttons Business Park, Reading, Berkshire, RG6 1AZ;

“Contract” means the contract between the Customer and the Company for the supply of the Goods by the Company to the Customer, incorporating the Terms and the Order Acknowledgment;

“Customer” means the person, company, firm or other entity who purchases the Goods from the Company;

“Delivery Data” has the meaning given to that term in Clause 4.1;

“Delivery Date” means the date(s) on or by which the Company shall endeavour to deliver the Goods to the Delivery Location, with such date(s) being specified in the Order Acknowledgment;

“Delivery Location” means the place at which the Company shall deliver the Goods to the Customer, as specified in the Order Acknowledgement;

“Force Majeure Event” means an event or circumstances beyond the Company’s reasonable control;

“Goods” means the products to be supplied by the Company to the Customer, as specified in the Order Acknowledgement;

“Order” means the Customer’s order for the Goods, subject to the Company’s quotation;

“Order Acknowledgement” means the Company’s acceptance of the Order;

“Quotation” means the Company’s quotation issued to the Customer, setting out the indicative terms on which it is prepared to supply the Goods to the Customer;

“Specification” means the specification for the Goods, including any related drawings, as set out in the Order Acknowledgement;

“Terms” means the standard terms and conditions of sale of the Company, as set out in this document;

“Warranty” has the meaning given to that term in Clause 5.1;

“Warranty Period” has the meaning given to that term in Clause 5.1; and

“WEEE” means any waste electrical and electronic equipment relating to the Goods.

- 1.2 A reference to a statute or statutory provision is a reference to such a 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.
- 1.3 Any phrase introduced by the terms “including”, “include”, “in particular” or other similar expression shall be construed as illustrative only and shall not limit the sense of the words preceding those terms.
- 1.4 A reference to “writing” or “written” includes emails.
- 1.5 Clause headings are inserted for ease of reference and shall not affect interpretation.
- 1.6 Words suggesting a gender shall include all other genders and words denoting the singular shall include the plural and vice versa.
- 1.7 Persons includes natural persons, firms, partnerships, companies, corporations and that person’s personal representatives, successors and permitted assigns.

2 Basis of Contract

- 2.1 The Terms apply to the Contract to the exclusion of all other terms that the Customer may seek to impose, or which are implied by trade, custom, practice or course of dealing. No variation to the Terms and/or the Contract shall be binding unless agreed in writing between the Customer and the Company in accordance with Clause 11.4. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer which are inconsistent with the Terms.
- 2.2 The Customer shall provide to the Company any and all information which the Company reasonably requests in order to enable the Company to compile the Quotation. It is the Customer’s responsibility to ensure that the information it provides to the Company is accurate, up to date and complete as this data shall form the basis on which the Company will prepare the Quotation. A Quotation shall not constitute an offer and shall only be valid (subject to any earlier revocation of the Quotation by the Company) for a period of 30 days from its date of issue unless otherwise expressly stated to the contrary by the Company on the face of the Quotation. Any request from the Customer to change any details relating to the supply of the Goods as set out within the Quotation shall result in either a revised Quotation being issued by the Company or the Company shall set out in writing in an email to the Customer the revised details and amendments to its Quotation, as a supplement to the Quotation.

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- 2.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with the Terms. The Customer is responsible for ensuring that the terms of the Order, the Specification and the resulting Order Acknowledgement are complete, accurate and meet its requirements and that the Goods are fit for the Customer's purpose and the environment in which the Goods are to be utilised and/or installed (whether or not such information is made available to the Company). If the Customer identifies an issue within the documentation it must promptly notify the Company and (subject always to Clause 7.2) the Company shall revise the documentation accordingly. Any and all guidance given by the Company and its representatives during the contracting process relating to the Goods is simply for the Customer's information purposes only. This guidance and information may not be relied upon by the Customer; it shall not form part of the Contract and it shall not detract or affect the obligation on the Customer to ensure that the Goods meet its requirements.
- 2.4 The Order shall only be deemed to be accepted by the Company as and when the Company issues a written Order Acknowledgement, accepting the Order, at which point the Contract comes into existence.
- 2.5 If there is any conflict between the documents which form the Contract, they shall take priority in the following order to the extent of the conflict: (i) the Order Acknowledgement; and (ii) the Terms.
- 2.6 No agent of the Company has any authority to bind the Company, nor do they have the right to accept an Order on behalf of the Company.
- 2.7 Any samples, drawings, descriptive matter and advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures and/or on its website(s) or otherwise provided to the Customer are produced for the sole purpose of giving an approximate idea of the Goods. They do not form part of the Contract, nor do they have any contractual force. All samples, patterns, drawings and other materials produced by the Company (including any intellectual property rights which may exist in the same) shall remain the property of the Company. The Customer may only utilise, reproduce or disclose any such items to a third party with the prior written consent of the Company and the Customer shall return the same to the Company on request.
- 2.8 None of the Company's employees, agents, contractors and/or other representatives are entitled to make any representations about the Goods unless those representations are subsequently confirmed in writing to the Customer. In entering into the Contract, the Customer confirms that it has not, and does not, rely on such a representation which has not been confirmed in writing by the Company.
- 2.9 The Company may make changes to the Terms from time to time and such changed Terms shall apply to any and all contracts entered into by the Parties after the date of the variation. The Customer is advised to keep the Terms under review.

3 The Goods

- 3.1 The Goods to be supplied shall be as specified in the Order Acknowledgment and shall, subject to the Terms, comply with the Specification in all material respects.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer and/or the Customer provides information, data and other materials to the Company in order to enable the performance of the Contract:
 - 3.2.1 the Customer grants to the Company a non-exclusive royalty free licence (with the right to grant sub-licences) to use the Specification and any and all information, data and other materials provided by or on behalf of the Customer solely in order to perform the Contract; and
 - 3.2.2 the Customer shall indemnify and keep indemnified the Supplier 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 and/or confidential information arising out of or in connection with the Company's use of the Specification and/or any other information, data and/or materials provided by or on behalf of the Customer. This Clause shall survive the termination or expiry of the Contract.
- 3.3 The Company reserves the right to amend the Specification (whether supplied by the Customer or the Company) and the Goods at any time, including if required by applicable statutory or regulatory requirements.
- 3.4 Details of the Goods to be delivered are set out in the Order Acknowledgement. Any changes requested by the Customer to the nature of the Goods; the quantity of the Goods; the timelines for delivery of the Goods and/or the delivery requirements shall be a variation to the Contract (to be carried out in accordance with Clause 11.4) and shall entitle the Company to revise its pricing (including as a result of changes in batch sizes), delivery lead times and any other terms of the Contract (such changes to be agreed as part of the relevant Contract variation).
- 3.5 Irrespective of the Specification, all Goods are manufactured to the manufacturing, paint and finish tolerances of the Company in force from time to time and the manufacture of the Goods within these tolerances shall not be a breach of the Contract.

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- 3.6 The Parties agree that:
- 3.6.1 the Customer shall be solely responsible for compliance with the laws and regulations relating to the management of (as well as the payment for) the collection, recovery and environmentally sound disposal of all WEEE (such that the obligations in relation to the same shall be solely the Customer's, to the extent that the Parties are permitted to agree this is the case as a matter of law) to the extent relevant to the Goods supplied;
- 3.6.2 the Company shall (at the Customer's cost) provide the Customer's WEEE compliance scheme operator with such information, data and other assistance relating to the Goods as that scheme operator may reasonably and necessarily request from time to time, such as to assist the Customer in its compliance with legal requirements;
- 3.6.3 the Customer shall provide to the Company on request any data, documentation, information and other assistance as the Company may reasonably require to evidence the Customer's compliance with this Clause 3.6; and
- 3.6.4 the Customer shall indemnify and keep indemnified the Company from and against any and all losses, costs (including legal and professional costs), expenses, damages and any other liabilities arising as a result of the Customer's failure to comply with this Clause 3.6.

4 Delivery

- 4.1 If the Company is to deliver the Goods to a location other than the Company's own premises, the Customer shall be responsible for providing to the Company, prior to the placement of an Order and so as to enable the Company to build such data into its Quotation, details of the relevant delivery site, its access restrictions and requirements and any specific packaging requirements for the Goods, to enable the Company to calculate the costs of delivering the Goods and to set the delivery dates and times ("**Delivery Data**"). The Order Acknowledgement issued by the Company shall be based on the Delivery Data notified to it by the Customer prior to that point. If there is any change to the Delivery Data, the Customer must promptly inform the Company in accordance with Clause 4.2 below.
- 4.2 The Customer shall be responsible for the accuracy and completeness of the Delivery Data. If any of the Delivery Data proves to be incomplete, inaccurate and/or out of date:
 - 4.2.1 prior to the Company issuing to the Customer an Order Acknowledgement, the Customer shall promptly notify the Company of the changed Delivery Data and the Company shall reflect the revised data in its pricing within the relevant Quotation and/or Order Acknowledgement or otherwise inform the Customer of the impact of the revised data on the proposed contract terms;
 - 4.2.2 after the Company has issued its Order Acknowledgment, the Customer shall promptly inform the Company of the correct details and the Company shall be entitled to vary the price and contract terms as a consequence of the revised data in accordance with Clause 7.2;
 - 4.2.3 the Company shall be entitled to charge the Customer for any additional costs and expenses which the Company incurs in delivering the Goods to the Customer as a result of the incomplete, inaccurate and/or out of date Delivery Data; and
 - 4.2.4 the Company shall not be in breach of the Contract and/or have any liability to the Customer under or in respect of the Contract as a result of any failure on the part of the Company to deliver the Goods to the Customer in accordance with the terms of the Contract if such failure is as a result of the inaccurate, incomplete and/or out of date Delivery Data.
- 4.3 The Company shall ensure that each delivery of the Goods is accompanied by a delivery slip that shows the Contract number and date and the type and quantity of the delivered Goods.
- 4.4 All Goods shall be delivered to the Customer in boxes and/or pallets. Any Goods which are of a non-standard configuration shall be packed in non-returnable, packaging. The Company shall endeavour to meet any specific packaging requirements of the Customer which are notified to the Company as part at the time of placing the order. There shall be an additional cost to the Customer for any special packaging requirements and this shall be notified by the Company to the Customer.
- 4.5 The Company shall use reasonable endeavours to deliver the Goods to the Customer at the Delivery Location on or by the Delivery Date(s). All deliveries shall be made in normal daytime working hours. Time is not of the essence for delivery.
- 4.6 If the Delivery Location is the Company's premises:
 - 4.6.1 the Company shall notify the Customer as and when the Goods are ready and/or will be ready for collection by the Customer;
 - 4.6.2 the Customer shall agree a collection date and time with the Company, with all collections to be made within normal daytime working hours; and
 - 4.6.3 if the Customer does not collect the Goods from the Delivery Location within 10 Business Days of the agreed date of collection and/or the Customer has not arranged a date for collection of the Goods within 10 Business Days of the date on which the Company notifies the Customer that the Goods are (or will be) ready for collection then Clause 4.9 shall apply.
- 4.7 Subject always to Clause 9.2, if the Company fails to deliver the Goods (whether on time or otherwise), its liability shall be limited to the reasonable 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.
- 4.8 The Company shall not be liable for any delay in the delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Delivery Data; to update the Delivery Data and/or to give any other instructions relevant to the supply of the Goods.

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- 4.9 Subject to the provisions of Clause 4.13 and Clause 4.14. If the Customer fails to take delivery of the Goods within 10 Business Days of:
- 4.9.1 if the Company is delivering the Goods to a Delivery Location: the date of delivery set out in the Order Acknowledgement; or
- 4.9.2 if the Customer is collecting the Goods: the date on which the Company notifies the Customer that the Goods are ready for collection at the Delivery Location or the date on which the Parties agreed that the Customer would collect the Goods, (collectively the “**Intended Delivery Date**”) then, except where the failure or delay is caused by the Company’s failure to comply with its obligations under the Contract:
- 4.9.3 delivery of the Goods shall be deemed to have taken place at 9am on the 10th Business Day after the Intended Delivery Date;
- 4.9.4 the Company may (without prejudice to any other rights and/or remedies it may have):
- (i) charge the Customer the Company’s costs of storing and insuring the Goods for every day after the 10th Business Day period referred to above, including the transportation costs incurred in moving the affected Goods to a storage area and any additional costs incurred in delivering the Goods to the Customer; and
- (ii) invoice the Customer for the Goods in accordance with Clause 7; and
- (iii) if the Customer has not taken delivery of the Goods within 20 Business Days of the Intended Delivery Date (and subject always to any agreement reached by the Parties in accordance with Clause 4.13) resell or otherwise dispose of the Goods (in whole or in part) and, after deducting reasonable storage, insurance and disposal costs, charge the Customer for any shortfall below the agreed price of the Goods (or account to the Customer for any excess over and above the price the Goods (to the extent that the Customer has paid for the same in full and cleared funds)).
- 4.10 The Company has the right to deliver the Goods in instalments and each instalment shall be paid for separately. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.11 Subject to Clause 4.9.3, delivery of the Goods is deemed complete as and when the Goods are delivered by or on behalf of the Company to the Delivery Location.
- 4.12 The Customer shall:
- 4.12.1 unless otherwise expressly agreed with the Company as part of the Contract, be responsible for the safe offloading of the Goods from the delivery vehicle (including the provision of equipment and labour);
- 4.12.2 check the Goods against the delivery note;
- 4.12.3 procure that one of its representatives signs the Company’s proof of delivery note at the date and time of delivery to confirm receipt of the Goods. Whilst the Company will endeavour to procure that the proof of delivery is signed by the Customer’s specific representative as notified to the Company, the Company may arrange for another individual at the Delivery Location to sign the proof of delivery. Any and all persons who sign the proof of delivery are deemed to be authorised to do so by and on behalf of the Customer; and
- 4.12.4 notify the Company of any shortages or damage to the Goods delivered within 72 hours of delivery (and in the case of damage, to the extent that the Customer can identify the damage without unpacking the Goods). The Company shall promptly investigate any reported shortages and/or damage to the Goods and the Customer shall allow the Company access to the Goods to investigate the reported issues at the Company’s request. The Company shall replace any damaged Goods and/or make up any shortages as soon as reasonably practicable and this shall be the sole remedy of the Customer in respect of the same. All other issues relating to the Goods shall be addressed by way of the Warranty
- 4.13 If agreed between the Customer and the Company (in all cases at the Company’s sole discretion) the Company shall store the Goods on behalf of the Customer at one of its sites for an agreed period of up to 3 months from the Intended Delivery Date (subject always to there being available and suitable capacity at the Company’s sites for such storage) (“Storage Period”). If a Storage Period is agreed by the Parties:
- 4.13.1 the Company shall invoice the Customer for the purchase price of the Goods in question in accordance with Clause 7 below irrespective of the Goods having not been delivered to the Customer;
- 4.13.2 the Company shall be entitled to invoice the customer for its transportation costs associated with the movement of the Goods by the Company between its sites (whether at the start of any Storage Period and/or during the course of any storage Period), such transportation costs to be charged.
- 4.13.3 prior to the expiry of the Storage period, the Company can provide to the Customer details of local storage companies and it shall be the responsibility of the Customer to select its own storage provider and contract with that storage company for the ongoing storage of the Goods, as well as the management of the storage arrangements (if it is not taking delivery of the Goods from the Company in accordance with clause 4.13.4 below);
- 4.13.4 The company shall deliver the Goods to the customer to the Delivery location or the customer shall arrange for the Goods to be collected from the company and
- 4.13.5 if agreed between the Parties, the company shall arrange for the transportation of the Goods from its site to the selected storage provider (at a cost agreed by the Parties following the Company’s receipt of the Customer’s request to transportation); and
- 4.13.6 if the customer fails to arrange for delivery of the Goods by the Company/ the collection of the Goods and/or the removal of the Goods from the company’s site on or by the end of the storage Period, the Company’s rights and remedies as set out in Clause 4.9 shall apply,

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4.14 If the Company is to deliver the Goods to the Delivery Location and the Customer (or a third party at the Delivery Location) refuses to accept delivery of the Goods on the agreed delivery date(s) (“Refused Delivery”). The company may issue an invoice to the Customer for the costs of carriage associated with the Refused Delivery (and such invoice shall be payable by the Customer to the Company in accordance with the terms set out in Clause 7). In addition, the Company will notify the Customer of the carriage costs associated with any re-arranged delivery of the Goods, which the Company shall invoice to the customer in accordance with Clause 7 such rights are in addition, and without prejudice, to the rights and remedies of the company set out in Clause 4.9 above.

5 Quality

- 5.1 The Company warrants that, on delivery of the Goods, and for a period of 12 months thereafter (“**Warranty Period**”) the Goods shall:
- 5.1.1 conform in all material respects with the Specification; and
 - 5.1.2 be free from material defects in material and workmanship; together the “**Warranty**”.
- 5.2 Subject to Clause 5.3, provided that:
- 5.2.1 the Customer gives notice to the Company in writing during the Warranty Period within 7 days of discovery that some or all of the Goods do not comply with the Warranty; and
 - 5.2.2 the Company is given a reasonable opportunity to examine the Goods and the Customer provides to the Company (on request) any and all information, data and other materials required by the Company in order to assess the warranty claim; and
 - 5.2.3 the Customer (if asked to do so by the Company) returns such Goods to the Company (with the costs of the return to be borne by the Company if the Goods are subsequently found to be defective and in breach of the Warranty); the Company shall, at its option, repair or replace the defective Goods or refund the price paid by the Customer for the defective Goods.
- 5.3 The Company shall not be liable for the failure of the Goods to comply with the Warranty if:
- 5.3.1 the Customer makes any further use of the Goods after giving notice in accordance with Clause 5.2.1;
 - 5.3.2 the Customer has installed the Goods with knowledge of the defect;
 - 5.3.3 the defect arises because the Customer failed to follow the Company’s instructions as to the storage, commissioning, installation, use and/or maintenance of the Goods or (if there are none) good trade practice;
 - 5.3.4 the defect arises as a result of the combination and/or use of the Goods with products which have not been approved by the Company, including any fixing brackets;
 - 5.3.5 the defect arises as a result of the Company following any drawing, design, data, information or specification provide by the Customer;
 - 5.3.6 the Customer alters or repairs the Goods without the prior written consent of the Company;
 - 5.3.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage and/or working conditions; and/or
 - 5.3.8 the Goods differ from the Specification as a result of changes made to ensure that the Goods comply with applicable laws and regulatory requirements and/or as a result of the application of the manufacturing tolerances referred to in Clause 3.5 .
- 5.4 Except as provided in this Clause 5, the Company shall have no liability to the Customer in respect of the Goods’ failure to comply with the Warranty.
- 5.5 Any and all terms, conditions and/or warranties which may be implied by law, custom and/or trade practice into the Contract are hereby excluded to the fullest extent permitted by law.
- 5.6 The Warranty shall apply to any repaired and/or replaced Goods but only for the unexpired portion of the Warranty which was given by the Company in respect of the Goods initially supplied.

6 Title and Risk

- 6.1 Risk in the Goods shall pass to the Customer on delivery.
- 6.2 Title in the Goods shall not pass to the Customer until the earlier of:
- 6.2.1 the Company receiving payment in full and in cleared funds for the Goods (including any interest and other sums payable by the Customer to the Company in respect of the Goods in question), in which case title shall pass at the time of payment;
 - 6.2.2 the Customer resells and/or installs the Goods, in which case title shall pass to the Customer at the point identified in Clause 6.4 below; and
 - 6.2.3 the Company notifying the Customer in writing that it passes title in the Goods to the Customer.
- 6.3 Until title in the Goods passes to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain identifiable as the Company’s property;
 - 6.3.2 not remove, deface or obscure any identifying marks or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

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- 6.3.4 immediately notify the Company if it becomes subject to any of the events listed in Clauses 8.1.2 to 8.1.5; and
- 6.3.5 give the Company such information relating to the Goods as the Company may require from time to time.
- 6.4 Subject to the provisions of this Clause 6, the Customer may resell or use the Goods in the ordinary course of its business before the Company receives payment for the same. However, if the Customer resells or uses the Goods before that point, it does so as principal and not as an agent of the Company and title in the Goods shall pass from the Company to the Customer immediately before the time at which the resale and/or use occurs.
- 6.5 The Company may at any time require the Customer to deliver up all Goods in its possession and/or under its control which have not been resold, irrevocably incorporated into another product and/or installed. If the Customer fails to do so promptly, the Company may enter the premises of the Customer or any third party where the Goods are stored to recover them (and the Customer shall procure the right of access for the Company to do the same).

7 Price and Payment

- 7.1 The price for the supply of the Goods shall be as set out in the Order Acknowledgement, subject to variation in accordance with these Terms.
- 7.2 The Company may increase the price for the supply of the Goods by giving notice to the Customer at any time before delivery to reflect:
 - 7.2.1 any factor beyond the Company's control (including foreign exchange fluctuations; increases in taxes and duties and increase in labour and material costs);
 - 7.2.2 any request by the Customer to change the delivery dates; quantities, type of Goods and/or the Specification for the Goods and, more generally, any provisions of the Order Acknowledgement. The Company will charge the Customer for any and all costs and expenses which the Company has incurred and/or will incur if a Customer cancels the whole or any part of a Contract; or
 - 7.2.3 any delay caused by the instructions of the Customer and/or the failure of the Customer to give the Company accurate and/or adequate information or instructions, including the Delivery Data.
- 7.3 The price of the Goods:
 - 7.3.1 excludes VAT or other such sales taxes, which the Customer shall pay in addition to the Company at the then prevailing rate; and
 - 7.3.2 excludes the costs and charges of any special packaging and transport requirements which are not reflected in the Order Acknowledgement and/or included in the Delivery Data prior to the date on which the Order Acknowledgement is issued.
- 7.4 Subject always to the provisions of Clause 4, the Company may invoice the Customer for the Goods at any time on or after the dispatch of the Goods for delivery (if delivered by the Company) or notification to the Customer that the Goods are ready for collection by the Customer.
- 7.5 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month in which the invoice was dated. Payment shall be made to the bank account nominated by the Company. Time for payment is of the essence. Payments will be applied by the Company to the oldest invoice outstanding.
- 7.6 If the Customer fails to make any payment when due to the Company then the Customer shall pay interest on the overdue sum at the rate of 4% per annum above the base rate from time to time of the Company's bank. Such interest shall accrue on a daily basis from the due date until the actual date of payment of the overdue amount, whether before or after judgment.
- 7.7 The Customer shall pay all amounts due under the Contract in full and without set off, deduction, withholding or counterclaim (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.

8 Termination

- 8.1 Without prejudice to any other rights and remedies it may have, the Company may terminate a Contract with immediate effect by giving notice in writing to the Customer if:
 - 8.1.1 the Customer commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within [14] days of the Customer being notified in writing to do so;
 - 8.1.2 the Customer takes (or a third party takes) any step or action in connection with its entering administration, provisional liquidation or 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; (if the Customer is an individual) is declared bankrupt 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, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 8.1.4 the Customer's financial position deteriorates to such an extent that in the Company's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and/or
 - 8.1.5 the Customer is unable to pay its debts when due and/or otherwise indicates that it may be unable to do so.

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- 8.2 Without limiting any other rights and remedies it may have, the Company may suspend the 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 Clauses 8.1.2 to 8.1.5, or the Company reasonably believes that the Customer is about to become subject to any of them.
- 8.3 Without limiting any other rights and remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on or by the due date for payment.
- 8.4 The Company may, without any liability to the Customer as a result, terminate the Contract at any time prior to dispatch of the Goods by giving to the Customer at least 5 Business Days' notice in writing.
- 8.5 The Customer may terminate the Contract at any time prior to dispatch of the Goods by giving to the Company at least 3 Business Days' notice in writing. In such cases:
- 8.5.1 the Customer shall reimburse the Company for any and all costs and expenses incurred by the Company in respect of the performance of the Contract up to the point of the termination of the Contract, including any and all costs and expenses for all materials purchased for the manufacture of the Goods and for all parts which are fully or partially manufactured as at the date of termination; and
- 8.5.2 if the Customer fails to make payment of the costs and expenses referred to in Clause 8.5.1, the Company may deliver the Goods to the Customer and invoice the Customer for payment.
The Customer must note that the manufacture of the Goods may commence immediately upon the issue of the Order Acknowledgement and costs are likely to be incurred from such time in the performance of the Contract which shall be recoverable by the Company from the Customer under this Clause.
- 8.6 The Customer may, at the discretion (and with the agreement) of the Company, return any delivered Goods to the Company for re-sale, provided that:
- 8.6.1 the Customer pays to the Company 40% of the price for those Goods as a re-stocking charge for the returned Goods;
- 8.6.2 the Goods in question are fast moving items and current stock of the Company;
- 8.6.3 the Goods are returned to the Company at the Customer's cost; and
- 8.6.4 any cartons of Goods are full and unopened and the Goods are undamaged (and therefore suitable for resale).
- 8.7 On termination of the Contract, the Customer shall pay to the Company all of the Company's outstanding unpaid invoices and interest, as well as for any costs and expenses incurred by the Company prior to the date of the termination of the Contract in the performance of the Contract (up to the price under the Contract).
- 8.8 Termination of the Contract shall not affect any of the Parties' rights and remedies that have accrued as at termination. Any provision of the Contract that expressly or by implication is intended to come into force on or after termination shall remain in force and effect.

9 Liability

- 9.1 Nothing in the Terms shall limit or exclude the Company's liability for:
- 9.1.1 death or personal injury due to its negligence, or the negligence of its employees, agents or sub-contractors;
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 defective products under the Consumer Protection Act 1979; and/or
- 9.1.4 any matter in which it would be unlawful for the Company to exclude or restrict its liability.
- 9.2 Subject always to Clause 9.1:
- 9.2.1 the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any:
- (i) loss of profit;
- (ii) loss of business, loss of contracts and/or business opportunity;
- (iii) loss of anticipated savings;
- (iv) economic loss;
- (v) damage to goodwill and/or reputation; and/or
- (vi) any indirect or consequential losses arising under or in connection with the Contract;
- 9.2.2 the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, without in contract, tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the price of the Goods under the Contract.
- 9.3 If the Company's performance of the Contract is prevented or delayed as a result of any act and/or omission of the Customer and/or its representatives, the Company shall have no liability for any breach of the Contract arising as a result and the Customer shall reimburse the Customer on demand for any and all costs and expenses which the Company incurs as a result of the Customer's and/or its representatives' actions and/or omissions.

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10 Force Majeure Event

The Company shall not be in breach of the Contract nor liable for any delay in performing (or failure to perform) any of its obligations under the Contract if such delay or failure is as a result of a Force Majeure Event. If the period of delay or non-performance continues for more than 90 days, either Party may terminate the Contract by giving 5 Business Days' notice in writing to the other Party. For the purposes of this Clause, a Force Majeure Event shall include delays caused by adverse weather conditions, traffic delays and/or breakdowns of any carrier transport.

11. Brexit

- 11.1 For the purposes of this clause, "Brexit Change" means the United Kingdom (regardless of which countries comprise the United Kingdom at such date) ceasing to be a: (i) member state of the European Union; (ii) member of the European Economic Area; and/or (iii) member of the EU customs union; and which results in a change of law and/or the imposition of, or any change to (or new application of existing) taxes, customs, duties, tariffs, levies, charges or fees, licences or consents or any restriction to trade (not involving a tax or duty) for any reason whatsoever.
- 11.2 If as a result of a Brexit Change:
- 11.2.1 the ability of the Company to deliver the Goods on or by the Delivery Date is adversely impacted in any way (whether as a result of delays in the obtaining of component parts of the Goods and/or the delivery of the Goods themselves to the Buyer), the Company will notify the Customer and provide the Customer with a revised Delivery Date. The Company shall have no liability to the Customer as a result of the alteration of the Delivery date in such cases; and/or
- 11.2.2 the costs of the Company fulfilling the Contract increases, the Company may revise the price for the supply of the Goods to reflect the increase in costs. The Company shall use reasonable endeavours to mitigate any increase and shall notify the Customer of the revised price. If the Customer does not wish to accept this revision, it may terminate the Contract in accordance with clause 8.5
- 11.3 The Customer shall provide the Company with any and all assistance that the Company reasonably requests from time to time to aid performance of the Contract after a Brexit Change, including but not limited to assisting in the submission of customs declarations .
- 11.4 Without prejudice to clause [11.2], if any part of the Contract no longer applies, is deemed unenforceable and/or becomes materially different in terms of its implementation as a result of a Brexit Change, the parties shall work in good faith together to agree and resolve such issues and agree a change to the Contract to reflect the changed position (such that the resulting amendment as closely reflects the original position agreed within the Contract as possible and the consequences of the Brexit Change are mitigated as far as reasonably possible).

12 General

- 12.1 **Assignment:** The Company may at any time assign, transfer, mortgage, charge, sub-contract or deal in any manner with all or any of its rights and obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, sub-contract or otherwise deal in any manner with all or any of its rights and obligations under the Contract without the prior written consent of the Company.
- 12.2 **Confidentiality:** The Customer undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Company, except as permitted by this Clause. The Customer may disclose the Company's confidential information: (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Contract. The Customer shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the Company's confidential information comply with this Clause 11.2; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. The Customer shall only use the Company's confidential information to perform its obligations under the Contract.
- 12.3 **Entire Agreement:** The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 12.4 **Variation:** Subject to any clause to the contrary in the Terms, no variation of the Contract shall be effective unless it is in writing and signed by the Parties.
- 12.5 **Waiver:** 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.
- 11.6 **Severance:** 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 under this Clause shall not affect the validity and enforceability of the rest of the Contract.

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11.7 **Notices:**

- 11.7.1 Any notice given to a Party under or in connection with the Contract shall be in writing and shall be 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 such other address as that Party shall specify as a replacement address in writing in accordance with this Clause or sent by fax to its main fax number.
- 11.7.2 Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address if a Business Day; and (ii) 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 or at the time recorded by the delivery service; and (iii) if sent by fax, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 11.7.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 11.8 **Third Party Rights:** No one other than a Party to the Contract (and their permitted assigns) shall have any right to enforce it.
- 11.9 **Governing Law:** The Contract, any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with English Law. Each Party irrevocably agrees that the courts of England and Wales shall have the exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract, its subject matter and/or formation.