

1. INTERPRETATION

1.1 In these Conditions:

Buyer means the person, firm or company which purchases the Goods and/or Services from the Seller.

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

Contract means the contract between the Buyer and the Seller for the sale and purchase of Goods and/or Services in accordance with these Conditions.

Deliverables means any documents, designs, information, materials and similar output of the Services to be delivered to the Buyer by the Seller under the Contract (but excluding any Goods).

Goods means the goods which the Seller is to supply to the Buyer under the Contract.

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Seller means Safehold Ltd, registered in England and Wales, which accepts the order and supplies the Goods and/or Services to the Buyer. Services means the services, including the Deliverables, which the Seller is to supply to the Buyer under the Contract.

2. BASIS OF THE SALE

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 trade, custom, practice or course of dealing.

2.2 Each order or acceptance of a quotation for Goods and/or Services by the Buyer constitutes an offer by the Buyer to buy the Goods and/or Services subject to the Conditions.

2.3 No order shall be deemed to be accepted until the Seller issues a written order acknowledgement or (if earlier) delivers the Goods or starts to perform the Services, at which point the Contract shall come into existence.

2.4 Any variation to the Contract or the Conditions, including the introduction of additional terms and conditions, shall only be binding when agreed in writing by the Seller.

2.5 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or any other contract between the Seller and the Buyer for the sale of the Goods and/or Services.

2.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages, charges and expenses incurred by the Seller as a result of cancellation.

2.7 Any quotation given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 days from the date of issue unless stated otherwise.

3. SPECIFICATIONS AND INFORMATION

3.1 The Buyer shall ensure that the terms of any order and the Seller's order acknowledgement (including any applicable specification) are complete and accurate and shall provide the Seller with such complete, accurate and timely information as the Seller may reasonably require to deliver the Goods or perform the Services in accordance with the terms of the Contract.

3.2 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Seller's quotation when confirmed in writing by the Buyer or, where varied, in the Seller's order acknowledgement.

3.3 If any Services are to be performed or Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification or drawing submitted by the Buyer, the Buyer shall indemnify the Seller against all liabilities, losses, damages, costs and expenses suffered or incurred by the Seller arising out of in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights resulting from the Seller's use of the Buyer's specification or drawing.

3.4 The Seller reserves the right to make any changes in the specification of the Goods and/or Services.

4. PRICE OF THE GOODS AND/OR SERVICES

4.1 The price of the Goods and/or Services shall be the Seller's quoted price or, where no price has been quoted or a quoted price is no longer valid, the price listed in the Seller's published price list in force as at the date of acceptance of the order.

4.2 The price of the Goods and/or Services is exclusive of value added tax and for Goods unless otherwise agreed is ex-works England. All packing, freight, postage and insurance costs will be additional and charged to the Buyer to be paid for on the same terms as payment for the Goods.

4.3 All prices quoted are valid for 30 days only (unless stated otherwise) or, if earlier, when an order is accepted by the Seller, after which time they may be altered by the Seller without giving notice to the Buyer.

4.4 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost of the Goods which is due to:

(a) any factor beyond the control of the Seller (including without limitation any foreign exchange fluctuations, increases in taxes and duties and increases in labour, materials and other manufacturing costs);

(b) any request by the Buyer to change the delivery date(s), quantities or type of Goods ordered, or the specifications; or

(c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

5. TERMS OF PAYMENT

5.1 Unless otherwise agreed in writing, the Seller shall invoice the Buyer:

(a) for Goods, and any additional charges in relation to the Goods, on or at any time after despatch or notification that the Goods are ready for collection; and

(b) for Services, monthly in arrears.

5.2 Unless otherwise agreed by the Company in writing, the Buyer shall pay each invoice in full and in cleared funds by the end of the month following the month in which the invoice was issued, notwithstanding that delivery of Goods may not have taken place. Time for payment shall be of the essence of the Contract. Receipts for payment will only be issued on request.

5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:

(a) cancel the Contract or suspend any further deliveries of Goods or performance of Services;

(b) appropriate any payment by the Buyer to such Goods and/or Services as have been supplied under the Contract, or any other contract between the Buyer and the Seller, as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

(c) charge the Buyer interest on the amount unpaid at the rate of 4% per annum above Metro Bank PLC base rate from time to time accruing on a daily basis from the due date until payment is made whether before or after judgment, compounding quarterly;

(d) notwithstanding clause 5.3(c), the Seller may in the alternative claim interest and penalties at its discretion under the Late Payment of Commercial Debts (Interest) Act 1988; and

(e) charge the Buyer on a full indemnity basis for any legal and/or administrative costs it incurs in attempting to recover or recovering any monies due.

5.4 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller 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 Seller to the Buyer.

6. DELIVERY OF GOODS

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises within three working days of the Seller notifying the Buyer that the Goods are ready for collection, or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the time of delivery shall not be or be made of the essence by notice.

6.3 Subject to the other provisions of these Conditions, the Seller shall not be liable for any direct, indirect or consequential loss, costs, damages or expenses caused directly or indirectly by any delay in delivery of the Goods, nor shall any delay entitle the Buyer to terminate or rescind the Contract.

6.4 The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.5 If, other than by reason of the Seller's failure to comply with its obligations under the Contract, the Buyer fails to collect or take delivery of the Goods in accordance with clause 6.1 or fails to give the Seller adequate delivery instructions then without prejudice to any other right or remedy available to the Seller:

(a) the Seller may store the Goods until delivery takes place and charge the Buyer for all reasonable related costs and expenses (including insurance); and
(b) delivery of the Goods shall be deemed to have been completed:
(i) in the case of Goods for collection at 9.00am on the third working day following notification; or
(ii) when the Seller tendered or notified the Buyer that the Goods were ready for delivery.

6.6 If 10 days after the Seller has tendered delivery or notified the Buyer that the Goods are ready for delivery the Buyer has not taken delivery, the Seller may resell or otherwise dispose of part or all of the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

6.7 The Seller may deliver the Goods by instalments, which, unless otherwise agreed, 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 Buyer to cancel any other instalment.

6.8 If the Seller fails to deliver the Goods, its 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. The Seller 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 Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7. RISK AND TITLE

7.1 Risk in the Goods shall pass to the Buyer on completion of delivery whether deemed or actual, whichever is the sooner.

7.2 Title in the Goods shall not pass to the Buyer until the Seller has received payment in full in cash or cleared funds for:
(a) the Goods; and
(b) all other sums due from the Buyer to the Seller on any account whatsoever.

7.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
(a) hold the Goods on a fiduciary basis as the Seller's bailee;
(b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the time that risk passed;
(e) notify the Seller immediately if it becomes subject to any of the events listed in 13.2; and
(f) give the Seller such information relation to the Goods as the Seller may require from time to time, but the Buyer may resell or use the Goods in the ordinary course of its business.

7.4 The Buyer hereby grants the Seller its agents and employees an irrevocable licence to enter any of its premises where the Goods are stored in order to recover them or to inspect them and mark them as the Seller's property at any time.

7.5 Until title in the Goods passes to the Buyer and provided the Goods and have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods and if the Buyer fails to do so promptly to enter upon any premises of the Buyer or any third party where the Goods are stored in order to recover them.

7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) immediately become due and payable.

8. QUALITY OF GOODS

8.1 In respect of Goods not manufactured by the Seller, the Seller shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.

8.2 In respect of Goods manufactured by the Seller, the Seller warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall:
(a) conform in all material respects with their description and any applicable specification;
(b) be free from material defects in design, material and workmanship; and
(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

8.3 Subject to clause 8.4, if:
(a) during the warranty period, the Buyer gives notice in writing to the Seller within 5 days of delivery, or in the case of a latent defect within 5 days of discovery, that some or all of the Goods do not comply with the warranty set out in clause 8.2; and
(b) the Seller is given a reasonable opportunity of examining such Goods; and
(c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

8.4 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 8.2 if:
(a) the Buyer fails to give notice in accordance with clause 8.3(a); or
(b) the Buyer makes any further use of such Goods after giving such notice; or
(c) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or
(d) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer; or
(e) the Buyer alters or repairs such Goods without the written consent of the Seller; or
(f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

8.5 Except as provided in this clause 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 8.2.

8.6 These Conditions shall apply to any Goods repaired or replaced by the Seller under clause 8.3 except that the warranty period in respect of such Goods shall be the unexpired portion of the initial 12 month warranty period referred to in clause 8.2.

9. SUPPLY OF SERVICES

9.1 Services shall be supplied in all material respects with any agreed description or specification.

9.2 The Seller shall use reasonable endeavours to meet any performance dates agreed for the Services, but any such dates shall be estimates only and time for the performance of the Services shall not be or be made of the essence by notice.

9.3 The Seller shall be entitled to delay delivery of the Services (irrespective of whether performance has commenced) in circumstances where the Seller, in its absolute discretion, considers that not so doing would or may prejudice its ability to comply with clause 9.5

9.4 Subject to the other provisions of these Conditions, the Seller shall not be liable for any direct, indirect or consequential loss caused directly or indirectly by any delay in performance of the Services, nor shall any delay entitle the Buyer to terminate or rescind the Contract.

9.5 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.

9.6 The Buyer shall cooperate with the Seller in all matters relating to the Services.

9.7 If the Seller's performance of its obligations in respect of the Services is prevented or delayed by any act or omission of the Buyer or failure of the Buyer to perform any relevant obligation (Buyer Default):
(a) the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays such performance;
(b) the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 9.7; and
(c) the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

10. INTELLECTUAL PROPERTY RIGHTS

Unless otherwise agreed between the parties in writing, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Seller.

11. CONFIDENTIALITY

The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by the Seller, its employees, agents or subcontractors, and any other confidential information concerning the Seller's business or its products or its services which the Buyer may obtain. The Buyer shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Buyer. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY

12.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

12.2 Subject to clause 12.1:

- (a) the Seller shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by the Seller, its employees, agents or subcontractors); and
- (b) the Seller'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, including losses caused by a deliberate breach of the Contract by the Seller, its employees, agents or subcontractors shall not exceed the price paid for the Goods and/or Services under the Contract.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. BUYER'S INSOLVENCY OR INCAPACITY

13.1 If the Buyer becomes subject to any of the events listed in clause 13.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries or performance under the Contract or under any other contract between the Buyer and the Seller without incurring any liability to the Buyer, and all outstanding sums in respect of Goods and/or Services supplied to the Buyer shall become immediately due and in respect of Goods and/or Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice which shall be payable immediately on receipt.

13.2 For the purposes of clause 13.1, the relevant events are:

- (a) the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (c) (being an individual) the Buyer is the subject of a bankruptcy petition or order; or
- (d) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (e) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer; or
- (f) (being a company) a floating charge holder over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver; or
- (g) a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer; or
- (h) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(a) to clause 13.2(g) (inclusive); or
- (i) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- (j) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

14. EXPORT TERMS

14.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context requires otherwise any term or expression which is defined in or given a particular meaning by the provisions of the Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.

14.2 Where Goods are supplied for export from the United Kingdom the provisions of this clause 14 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provisions of these Conditions.

14.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties, taxes, levies or import/export charges thereon.

14.4 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered ex-works.

14.5 The Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

15. FORCE MAJEURE

(a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, failure or inability of suppliers to deliver materials or components, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

(b) The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents the Seller from providing any of the Services and/or Goods for more than 12 weeks, the Seller shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

16. GENERAL

16.1 Assignment and subcontracting

(a) The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

16.2 Notices

Any notice or other communication given to a party under or in connection with the Contract shall be in writing, 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 clause, and shall be delivered personally or sent by recorded delivery, commercial courier or fax.

16.3 Severance

(a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.4 Waiver A waiver of any right or remedy under the Contract 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.5 Third party rights A person who is not a party to the Contract shall not have any rights under or in connection with it.

16.6 Governing law and jurisdiction 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.