



Standard Terms & Clauses of Sale

THESE TERMS AND CLAUSES APPLY TO ALL CONTRACTS ENTERED INTO BY MANUAL ORDERS SENT TO THE MANUFACTURER BY E-MAIL OR OTHER COMMUNICATION.

THESE TERMS CONTAIN LIMITATIONS ON THE DUTIES AND LIABILITIES OF THE PARTIES AND YOUR ATTENTION IS DRAWN IN PARTICULAR TO CLAUSE 14.

1. Interpretation

In these Conditions the following words have the following meanings:

Applicable Law: means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rules of court or directives or requirements of any regulatory body applicable to the sale or procurement of goods relevant to the Goods or an Order in the country where the Goods are agreed to be delivered, including without limitation the Bribery Act 2010;

Business Day: means a day not being a Saturday, Sunday, or Bank Holiday or other statutory holiday in the Buyer's Country of residence;

Buyer: legal entity who purchases Goods from the Manufacturer

Carrier: the third party which delivers the Goods;

Clause: a clause of these Conditions;

Conditions: these standard terms and conditions for the sale of the Goods as set out on the Site from time to time as amended by the Manufacturer from time to time or sent to the Buyer with the Order Acknowledgement;

Contract: any Contract entered into between the Manufacturer and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;

D.O.A Policy: means the Manufacturer policy for claiming that Goods are dead on arrival;

Export Laws: means all relevant export laws and regulations relating to the United Nations, the European Union, the United Kingdom, the United States of America, China and the country to which the Goods are to be delivered;

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Manufacturer (including any part or parts of them);

Incoterms: means Incoterms 2010 as published by the International Chamber of Commerce;

Intellectual Property Rights: inventions, technical information, patents, know-how, registered and unregistered trademarks and service marks (including any trade, brand or business names and any URLs or domain names), registered designs, design rights,

copyright and moral rights and topography rights (in each case for the full period thereof and all extensions and renewals thereof), applications for any of the foregoing and the right to apply for or claim priority in respect of any of the foregoing in any part of the world and any similar rights situated in any country;

Manual Order: any written order from the Buyer which is accepted by the Manufacturer for the supply of Goods or performance of services;

Manufacturer: Cohuborate Ltd, a company registered in England and Wales with company number 10189020 whose registered office is at 13th Floor, City Tower, Piccadilly Plaza, Manchester, M1 4BT;

Order Acknowledgement: the email or other communication sent by the Manufacturer to a Buyer accepting the Buyer's offer to purchase Goods from the Manufacturer;

Packaging Costs: the cost of any packaging used to deliver the Goods;

Price List: the agreed price, terms and discount applied to the Agreement and are subject to change which are confirmed in the Order Acknowledgement;

Receipt of Order: the email or other communication sent by the Manufacturer to a Buyer acknowledging receipt of a Buyer's offer to Purchase Goods;

Returns Policy: means the Manufacturer policy from time to time for the return of Goods which have been incorrectly ordered;

Warranty Terms: are only applicable to the terms of the country where the goods are to be delivered by the Manufacturer.

VAT: Value Added Tax, indirect tax, sales tax, or equivalent in the Buyer's Country of business operation including any goods or services tax.

Withholding Tax: means tax deducted under the legislation of the Buyer's country of tax residence or the Territory on payments to non-residents for software royalty licence fees.

In these Conditions:

- (a) references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as amended from time to time, consolidated, modified, extended, re-enacted or replaced;
- (b) references to one gender include the other genders and references to the singular include the plural and vice versa as the context admits or requires; and
- (c) headings will not affect the construction of these Conditions.

2. Application of Conditions

2.1 No other terms or conditions endorsed upon, delivered with or contained in the Buyer's offer or order to purchase any Goods or contained in any email or other communication from the Buyer will form part of the Contract. Each order for Goods by the Buyer from the Manufacturer shall be deemed to be an offer by the Buyer to purchase Goods, subject only to these Conditions.

2.2 These Conditions apply to all Goods available for purchase from the Manufacturer through Manual Orders. We may revise or update these terms and conditions at any time without notice. The current version of these terms and conditions can be found on our web site at www.cohuba.com

- 2.3 When the Manufacturer receives an order from the Buyer it will issue an Order Acknowledgement by email (or otherwise) notifying the Buyer that the Manufacturer has received the order. The Order Acknowledgement may also advise the Buyer of any clarification required by the Manufacturer in relation to the order and it may also reject the order. The Purchase Order will not constitute an acceptance of the Buyer's order. When the Buyer's order has been verified by the Manufacturer and any matters which the Manufacturer has requested clarification of have been addressed to the satisfaction of the Manufacturer then the Manufacturer will issue an "Order Acknowledgement" by email (or otherwise) telling the Buyer whether the Manufacturer accepts or rejects the order. The Buyer will be required to verify the Order Acknowledgement within 24-hours of its date of creation. If the Buyer does not respond within this 24-hour period then a Contract will be deemed to have been formed on the basis of the Order Acknowledgement.
- 2.4 No order placed by the Buyer shall be deemed to be accepted by the Manufacturer until an Order Acknowledgement is issued by the Manufacturer.
- 2.5 The Manufacturer may at its discretion refuse to accept any Manual Order placed. Goods are subject to availability.
- 2.6 The Order Acknowledgement will provide a target date for shipment of the Goods together with an estimated shipping time. No guarantee or assurance is given that a particular date will be met. All dates are indicative only.
- 2.7 A Contract will be formed when the Manufacturer issues an Order Acknowledgement which accepts the Buyer's order.
- 2.8 The Buyer must ensure that the details of any Manual Order and the Order Acknowledgement are complete and accurate.
- 2.9 Any payment made by the Buyer through the Site is given on the basis that no Contract will come into existence until and unless a Buyer receives the Order Acknowledgement from the Manufacturer.
- 2.10 The Manufacturer reserves the right to alter the price of Goods at any time and in particular prior to the receipt by a Buyer of the Order Acknowledgement.
- 2.11 For the avoidance of doubt nothing on the Site shall be construed as making an offer by the Manufacturer capable of acceptance by a Buyer.

3. Description of Goods

- 3.1 The quantity and product code for the Goods shall be as set out in the Order Acknowledgement. The product code corresponds to the description of the Goods as set out on the Site, or in the case of Manual Orders in the stock list.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Manufacturer and any descriptions or illustrations contained in any of the Manufacturers catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.

4. Intellectual Property Rights

- 4.1 All Intellectual Property Rights in the Goods and in any materials used in the manufacture of the Goods do and shall continue to belong to the Manufacturer or a supplier to the Manufacturer and the Buyer agrees that it will not infringe any of

the Manufacturers Intellectual Property Rights. In addition, the Buyer agrees to notify the Manufacturer as soon as it becomes aware of any third-party infringement of Intellectual Property Rights in relation to the Goods or any of them.

- 4.2 The Buyer shall leave in position and not cover, deface or erase any notices or other marks (including, without limitation, serial numbers and notices that a trade mark, design, patent or copyright relating to the Goods is owned by the Manufacturer or a third party) which may be placed on or affixed to the Goods.

5. Delivery and installation

- 5.1 In respect of orders for Goods the delivery of which is requested outside the United Kingdom, the Manufacturer may refuse to accept such order, or may at its discretion place restrictions or controls on such order to the extent that the Manufacturer is required to comply with any regulatory restrictions and /or export controls, which controls have not been satisfied by the Buyer.
- 5.2 The Buyer acknowledges and agrees that the hardware and software in the Goods, and technology subject to this Contract, are subject to the export control laws and regulations of the United States, EU, UN and National legislation. The Buyer will comply with all such applicable laws and regulations.
- 5.3 The Buyer shall not, without prior appropriate government authorisation, export, re-export or transfer any hardware or software in the Goods, or technology subject to this Contract, either directly or indirectly, to any country subject to a US. Trade embargo or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the US Department of Commerce or the list of "Specifically Designated Nationals" and "Blocked Persons" maintained by the US Department of Treasury or any other comparable European, UN or local regulation.
- 5.4 The Buyer will fully indemnify the Manufacturer and keep the Manufacturer fully indemnified from and against all and any costs, claims, damages, demands and expenses (including legal costs) suffered or incurred by the Manufacturer as a consequence of any non-compliance with any relevant export laws or regulations.
- 5.5 Delivery of the Goods shall take place at the place of business specified in the Order Acknowledgement. The Buyer will be responsible for ensuring that there will be appropriate facilities and personnel to allow for delivery of the Goods at the delivery location and suitably qualified personnel to move all Goods to their place of use or installation.
- 5.6 Time for delivery shall not be of the essence, unless otherwise stated in the Order Acknowledgement. Where delivery is requested by the Buyer to a place other than the Buyer's place of business then the Order Acknowledgement will specify who will arrange for delivery and where delivery will take place. Where the Manufacturer other than on an ex-works basis, is responsible for delivery then the Manufacturer will arrange for delivery either using a Carrier or will itself deliver the Goods. Where a Carrier is used by the Manufacturer then delivery will be subject to the Carriers terms and conditions of use from time to time ("Carriers Terms") and such terms shall be deemed incorporated into and form part of these Conditions. The Carriers Terms will be in addition to the terms of Delivery set out in this Clause 5. In the event of any conflict or inconsistency between the Carriers Terms and these Conditions,

then the Carriers Terms will prevail. The Carriers Terms may be requested from the Manufacturer.

- 5.7 Unless otherwise stated by the Manufacturer, where applicable, the cost of delivery is as stated in the Order Acknowledgement and will be added to the total price and shown separately. Unless it is agreed that the Buyer shall be responsible for carriage of the Goods, the Manufacturer shall arrange for the delivery of the Goods by the Carrier at the Buyer's cost.
- 5.8 Except in the case of carriage to a relevant port or airport, the Manufacturer or the Carrier shall deliver the order to the main entrance of the delivery address. Any such deliveries carried into the delivery address shall only be made if the Buyer and the driver consent to this and will be at the Buyers risk. Where delivery is made to an airport it will be made to the required storage area where upon risk in the Goods will pass to the Buyer. In the case of delivery to a port, delivery will be made in accordance with the relevant Incoterms 2010.
- 5.9 Risk in the Goods will pass to the Buyer in accordance with the relevant Incoterms specified in the Order Acknowledgement provided always that where no Incoterms are specified in the Order Acknowledgement then Goods will be deemed to be delivered Ex Works. *[NB: Does this not contradict clause 7.1]*
- 5.10 Subject to the other provisions of these Conditions the Manufacturer will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Manufacturers negligence or the negligence of its Carrier). The Manufacturer shall use its reasonable endeavours to notify the Buyer of and reasons for such delay as soon as reasonably possible.
- 5.11 If for any reason the Goods conform to the Order Acknowledgement but the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Manufacturer (or its Carrier) is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then:
- (a) risk in the Goods will still have passed to the Buyer (including for loss or damage caused by the Manufacturers negligence) if it has not already done so;
 - (b) the Goods will be deemed to have been delivered; and
 - (c) the Manufacturer may store the Goods until the Buyer takes possession of them whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.12 The Manufacturer will not install the Goods unless otherwise agreed in writing. If installation is required the Buyer will only use a Manufacturer certified installer to install any Goods except where the Manufacturer specifically waives this requirement in writing, at its sole discretion, having been fully satisfied that an appropriately trained installer is used instead. If the parties so agree that the Manufacturer will install the Goods then, installation of the Goods shall be governed by the Manufacturers standard conditions of installation as revised from time to time. Unless the Order Acknowledgement provides that the Manufacturer has agreed to install the Goods, the Manufacturer accepts no liability for any loss, damage or injury of whatsoever nature caused by the installation of the Goods.

- 5.13 The Buyer shall procure that the installer of the Goods registers the Goods through the online the Manufacturers Registration portal (the web address as set out below) as updated from time to time to include, but not be limited to, the product serial number, product details, end user's name, address and email, the installation date and the installation engineer's name or company name provided that such information shall only be utilised by the Manufacturer for warranty and product liability purposes.

Manufacturer Registration Portal address www.cohuba.com .

- 5.14 The Buyer will provide at its expense adequate and appropriate equipment and manual labour for accepting the Goods upon delivery. Where a Carrier is used by the Manufacturer to deliver the Goods the Buyer will comply with all relevant terms and conditions applicable to delivery of the Goods as set out in the Carrier's terms, including but not limited to the suitability or adequacy of the delivery address.

6. Non-delivery

- 6.1 The quantity of any consignment of Goods as recorded by the Manufacturer upon despatch from the Manufacturers place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.2 The Manufacturer shall not be liable for any non-delivery of Goods (even if caused by the Manufacturers negligence) unless written notice is given to the Manufacturer within 3 business days of the date when the Goods would in the ordinary course of events have been received.
- 6.3 Any liability of the Manufacturer for non-delivery of the Goods, and the Buyer's sole and exclusive remedy for such non-delivery, shall be limited in the Manufacturers discretion to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. Risk and title of Goods

- 7.1 The Goods are at the risk of the Buyer from either the time of delivery pursuant to Clause 5 or the time when title passes pursuant to the Contract, whichever is earlier.
- 7.2 TITLE TO THE GOODS SHALL NOT PASS TO THE BUYER UNTIL THE MANUFACTURER HAS RECEIVED FULL PAYMENT (IN CASH OR CLEARED FUNDS) OF:
- (a) ALL SUMS PAYABLE FOR SUCH GOODS; AND
 - (b) ALL OTHER SUMS WHICH ARE OR WHICH BECOME DUE TO THE MANUFACTURER FROM THE BUYER ON ANY ACCOUNT FROM TIME TO TIME.
- 7.3 Until title of the Goods has passed to the Buyer, the Buyer must:
- (a) hold the Goods on a fiduciary basis as the Manufacturers bailee;
 - (b) whilst the Goods are in the possession or under control of the Buyer, store of the Goods (at no cost to the Manufacturer) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Manufacturers property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) use its best endeavours to keep the Goods secure and safe from harm or theft;
 - (e) maintain the Goods in satisfactory condition and keep them insured on the Manufacturers behalf for their full price against all risks to the reasonable

- satisfaction of the Manufacturer. On request the Buyer shall produce the policy of insurance to the Manufacturer;
- (f) not allow any charge or other security to be created over the Goods; and
 - (g) inform the Manufacturer immediately in the event of any attempt by a third party (such as a liquidator) to interfere with or take possession of the Goods.
- 7.4 The Buyer grants the Manufacturer, its agents and employees the authority to enter any premises where the Goods are or may be stored at any time in order to check compliance with this Clause 7, to inspect the Goods or to recover them.
- 7.5 Nothing in this Contract prevents the Manufacturer from bringing an action for the price of the Goods under the Sale of Goods Act 1979.

8. Assignment

- 8.1 The Buyer shall not assign to a third party any rights or obligations of the Buyer regarding the Contract without the Manufacturers prior written consent not to be unreasonably withheld, provided that the assignee meets the Manufacturers reasonable requirements for credit worthiness and on condition that the assignee agrees with the Manufacturer to comply with the terms of the Contract.

9. Price and taxes

- 9.1 The price for the Goods shall be the price set out in the Order Acknowledgement subject only to any inadvertent technical mistake which the Manufacturer shall not be liable for. The price shall exclude any and all related VAT, sales tax or other withholding tax, import and customs taxes and duties whatever kind or any other sums levied by any third party on the sale, which shall be the responsibility of the Buyer.
- 9.2 The Manufacturer reserves the right to terminate the Contract with the Buyer if the Manufacturer is refused authority for payment or reasonably believes that payment will be refused at any stage. Any questions about the Buyer's order of the Goods should be directed to the Manufacturer using the contact details included in the Order Acknowledgement. The Manufacturer shall be entitled without liability to withhold delivery and shipment of Goods as long as any payment is overdue, or to the extent the Buyer's agreed credit limit with the Manufacturer would be exceeded.
- 9.3 Any and all taxes, impositions, or other similar amounts applicable to the sale of Goods including import duties, and all other amounts levied or imposed by any foreign, federal, state, provincial, local, municipal, or other governmental authorities resulting from the sale of Products to Buyers shall be the responsibility of the Buyer. Tax exemption certificates must be supplied to the Manufacturer for any exemptions.
- 9.4 The Manufacturer is not responsible for the collection of taxes at the time any Goods are sold and the buyer shall indemnify and hold the Manufacturer harmless from any taxes or claims, costs, or any other liability of any nature whatsoever related to taxes.
- 9.5 All prices charged and listed on the Price List are exclusive of shipping costs, handling costs, insurance costs and all other costs of satisfying the specific requirements of the distributor, reseller and/or Customer.
- 9.6 Details of any discount or other non-standard pricing structure that the Manufacturer agrees with the Buyer from time to time shall be treated by the Buyer as information of a confidential nature. The Buyer shall keep this information confidential and not disclose it to any third party

- 9.7 If and to the extent that the Manufacturer is required to account for any such indirect tax on any supply it makes to the Buyer, it shall be entitled to charge the Buyer for this indirect tax in addition to the Price or other amount to which the tax relates.
- 9.8 The Buyer shall pay the Manufacturer any such indirect tax in addition to and in accordance with the payment conditions that apply to the Price or other amount to which the tax relates.
- 9.9 The Buyer must provide the Manufacturer with its appropriate valid VAT or indirect tax registration number.
- 9.10 It is not anticipated that Withholding Tax on royalties will be payable in payments for software under this contract and Withholding Tax must not be deducted from any payments from the Buyer without prior written agreement from the Manufacturer. In the event that Withholding Tax is payable under the law of the Buyer's country of tax or the Territory residence then any such Withholding Tax is the liability of the Buyer and will be added to the price for the Goods.

10. Packaging Costs

- 10.1 Unless otherwise stated, all shipping, delivery and handling costs may be charged to the Buyer in addition to the price for the Goods. If the Buyer makes a request for packaging over and above what the Manufacturer considers being necessary for the safe carriage of goods, the Manufacturer reserves the right to charge the Buyer a separate charge relating to the Packaging Costs of the Goods.
- 10.2 All packaging shall be non-returnable unless otherwise stated by the Manufacturer or required by applicable laws and regulations. The Buyer will be responsible (at its own cost) for the safe disposal of all and any packaging items in accordance with the laws of the county in which the Goods are delivered.

11. Compliance with Laws

- 11.1 The Buyer will be responsible for the safe and proper disposal of any goods in situ at the delivery address which are to be replaced by the Goods in accordance with all applicable laws and regulations (which in the case of Existing Goods in the European Union will include but not be limited to the Waste Electrical and Electronic Equipment Directive and associated laws and regulations adopted countries of the European Union and the Batteries and Accumulators Directive).
- 11.2 The Buyer, agrees to comply fully with the Applicable Laws and all Export Laws to ensure that neither the Goods nor any part thereof are either: (a) exported or imported, directly or indirectly, in violation of Export Laws; or (b) are intended to be used for any purposes prohibited by Export Laws; or (c) supplied, sold, transferred, or retransferred to an individual, entity or body subject to Restrictive Sanctions Measures.
- 11.3 The Buyer warrants and represents to the Manufacturer (which warranty and representation will be deemed to be repeated each time an Order is placed by the Buyer) that it:
 - 11.3.1 will not engage in any activity, practice or conduct which would constitute an offence under section 1, 2, or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom ("Relevant Requirements");

- 11.3.2 has and will maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements;
- 11.3.3 will immediately notify the Manufacturer (in writing) if a foreign public official become an officer, executive or senior employee of the Buyer or acquires a material direct or indirect interest in the Buyer (and the Buyer warrants that it had not foreign public officials as officers, senior employees or direct or indirect owners at the date of each Order).

12. Payment

- 12.1 Payment will be made by the Buyer in accordance with the payment method specified by the Manufacturer to the Buyer. The Manufacturer may set up a trading account for the Buyer with a credit limit, which the Manufacturer may increase or decrease or withdraw at any time without prior notice. If the Buyer has a trading account with the Manufacturer then the Buyer shall keep within its credit limit at all times. If the Buyer exceeds its credit limit, or if the value of an order would make the Buyer exceed it, then the Manufacturer will not supply the Buyer with any further Goods or provide any further Services until the Buyer reduces the outstanding balance sufficiently
- 12.2 Goods will not be shipped if no credit terms are available and until payment is received in cleared funds by the Manufacturer for the price of all Goods (as set out in the Order Acknowledgement) and any associated VAT, customs duties, indirect taxes, handling, shipping and packaging costs.
- 12.3 The price for the Goods, packaging, shipping and handling costs will be payable in the invoiced currency (which unless otherwise agreed will be the currency stated in the Order Acknowledgement). The Buyer will bear any bank charges incurred as a result of the Buyer's selected method of payment.
- 12.4 Where an invoice is issued by the Manufacturer, the Buyer shall make payment within the terms of such invoice. Invoices will be issued by the Manufacturer when the Goods are dispatched from or made available at the relevant the Manufacturers site.
- 12.5 The Manufacturer reserves the right to claim interest on any amount which is overdue for payment, payable by the Buyer immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% per annum above the base rate from time to time of Svenska Handelsbanken AB in the UK. Such interest shall accrue on a daily basis and be compounded quarterly. The Buyer will reimburse the Manufacturer all costs and expenses (including legal costs on a full indemnity basis) incurred in the collection of any overdue account.

13. Returns, Repairs & Warranty

- 13.1 If the Buyer considers that the Goods are faulty then the Buyer must notify the Manufacturer within 5 business days the date of delivery and otherwise comply with the terms of the Manufacturer D.O.A Policy from time to time. Time will be of the essence for the notification to be given by the Buyer to the Manufacturer pursuant to this sub clause. The Manufacturer D.O.A Policy may be accessed using the following link: <https://www.cohuba.com>
- 13.2 In the event that the Buyer considers that an order has been inadvertently placed then it must notify the Manufacturer within 24 hours or 1 working day of the order being placed.

- 13.3 Any repairs unable to be carried out remotely will be carried out at a designated Manufacturer site as notified by the Manufacturer from time to time. Where applicable, the Buyer will arrange and accept liability for return of Goods, unless prior agreement has been given in writing by the Manufacturer.
- 13.4 The warranty terms applicable to the Goods depend upon the country of delivery. The Warranty Terms at the date of the Order Acknowledgement will apply to the Goods ordered by the Buyer providing the conditions in clause 13.5 below are met. The Warranty Terms may be accessed using the following link. www.cohuba.com/support Terms will be deemed to be incorporated into and form part of these Conditions.
- 13.5 If the Buyer is purchasing the Goods for onward sale it shall ensure that the end users are made aware of the Manufacturer's Warranty Terms. The Buyer shall not be entitled to amend the Manufacturer's Warranty Terms. If the Buyer offers their own separate warranty services for the Goods then the Buyer acknowledges that it does so at its own risk.
- 13.6 The Buyer shall promptly provide all reasonable support and assistance requested by the Manufacturer in case of a product recall or safety related issue regarding the Goods.
- 13.7 All software is supplied in accordance with the applicable software license agreement.

14. Limitation of liability

- 14.1 Subject to Clause 13, the following provisions set out the entire financial liability of the Manufacturer (including any liability for the acts or omissions of its employees, agents and subcontractors, including any Carrier) to the Buyer in respect of any representation, statement or tortuous act or omission, including negligence, arising under or in connection with the Contract.
- 14.2 All warranties, Clauses and other terms implied by statute or common law (save for the Clauses implied by section 12 of the Sale of Goods Act 1979 or similar provisions in other legislation) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 Nothing in these Clauses excludes or limits the liability of the Manufacturer for death or personal injury caused by the Manufacturers negligence, or fraudulent misrepresentation or concealment.
- 14.4 Subject to Clauses 14.2 and 14.2:
- (a) The Manufacturers total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the smallest of the following;
 - i. the actual amount of any loss or damage suffered by the Buyer;
 - ii. a sum equal to the current value of the Goods at the time when the Buyer's claim arises; or
 - iii. the amount paid to the Manufacturer for the Goods in relation to which the Buyer makes a claim; and
 - (b) The Manufacturer shall not be liable to the Buyer for any loss of profit, loss of business, depletion of goodwill or otherwise), costs, claims, demands or expenses (in each case whether direct or indirect) or for any other indirect or consequential loss whatsoever (howsoever caused) which arise out of or in connection with the

Contract, including, but not limited to, the Goods and all workmanship of the Manufacturer whether pursuant to Clause 13 or otherwise.

- 14.5 The Buyer must familiarise itself and any relevant personnel with the operating instructions and safety advice provided by the Manufacturer. The Manufacturer will not be liable to the extent that any loss or damage arises because of incorrect use of the Goods.

15. Force Majeure

The Manufacturer reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Manufacturer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 180 days, either Party shall be entitled to give notice in writing to the other to terminate the Contract.

16. General

- 16.1 Each right or remedy of the Manufacturer under the Contract is without prejudice to any other right or remedy of the Manufacturer whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly invalid or unenforceable it shall to the extent of such invalidity or unenforceability be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Manufacturer in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Manufacturer of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 16.5 Neither party intends that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 THE FORMATION, EXISTENCE, CONSTRUCTION, PERFORMANCE, VALIDITY AND ALL ASPECTS OF THE CONTRACT SHALL BE GOVERNED BY ENGLISH LAW AND, SUBJECT TO CLAUSE 16.7, THE PARTIES SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE ENGLISH COURTS.
- 16.7 IF ANY DISPUTE ARISES OUT OF THE CONTRACT, THE PARTIES WILL FIRST ATTEMPT TO SETTLE IT BY MEDIATION IN ACCORDANCE WITH THE CENTRE FOR DISPUTE RESOLUTION (CEDR) MODEL MEDIATION PROCEDURE. THE PARTY FOUND TO BE IN DEFAULT WILL PAY THE ASSOCIATED COSTS FOR SUCH MEDIATION. NEITHER PARTY TO THE CONTRACT SHALL SEEK TO ENFORCE ITS RIGHTS VIA THE COURTS

UNTIL AT LEAST 42 DAYS FROM THE INITIATION OF THE MEDIATION, SAVE WHERE NECESSARY (i) TO PREVENT A LIMITATION PERIOD FROM EXPIRING, OR (ii) TO SEEK INJUNCTIVE OR OTHER EQUITABLE RELIEF. FOR THE AVOIDANCE OF DOUBT ANY ALLEGED DISPUTE OR CONTROVERSY RELATING TO OR ARISING OUT OF ANY LATE OR NON-PAYMENT OF ANY SUMS DUE TO THE MANUFACTURER FROM TIME TO TIME WILL NOT BE SUBJECT TO THE REQUIREMENT TO MEDIATE PURSUANT TO THIS CLAUSE 16.7. ALL SUCH DISPUTES OR CONTROVERSIES WILL BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE ENGLISH COURTS WITHOUT THE REQUIREMENT TO MEDIATE IN ACCORDANCE WITH THIS CLAUSE 16.7.

- 16.8 The Contract constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes all prior agreements, negotiations and discussions between the parties relating to it. In particular nothing in the Contract shall be construed as making the parties partners or joint ventures or render either party liable for any of the debts or obligations of the other party.
- 16.9 In the event of any conflict arising within any Clause relating to other documentation arising from transactions under this Contract, unless otherwise expressly agreed in writing by the Manufacturer, these Conditions shall prevail.

17. Communications

- 17.1 All communications made otherwise than through the Site between the parties about the termination of any Contract or any pending or threatened legal proceedings or allegation of breach of Contract must be in writing and delivered by hand or by first class post or by international courier:
- (a) in case of communications to the Manufacturer) to its registered office or such changed address as shall be notified to the Buyer by the Manufacturer, marked for the attention of the Company Secretary; or
 - (b) in the case of the communications to the Buyer to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Manufacturer by the Buyer.
- 17.2 Except in the case of Buyers in Germany, communications shall be deemed to have been received:
- (a) if sent by pre-paid first-class post, 2 days (excluding Saturdays, Sundays and Bank and public holidays and the date of posting);
 - (b) if delivered by hand, on the day of delivery;
 - (c) if sent by international courier, when signed for by a member of staff of the Manufacturer or by Buyer as the case may be;
- 17.3 Any communications concerning any matter apart from those specified in Clause 17.1 above will be by email or telephone.

18. Buyers in Jurisdictions other than the United Kingdom

- 18.1 Variations to the aforementioned Conditions may be required in order to meet the legal requirements of certain jurisdictions outside of the United Kingdom. Schedule 1 specifies those Clauses which are specifically varied to meet the specific requirements of jurisdictions as listed in Schedule 1. For Buyers to which the provisions of Schedule 1 apply then the Clauses 1-18 will be varied as described in Schedule 1. For all other Buyers, Clauses 1-18 inclusive.