

ASH & LACY CONDITIONS OF SALE
(relating to the supply of goods and services to businesses)

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

- 1.1 Interpretation:
- 1.1.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.1.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.1.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2 Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England and Wales, when banks in London are open for business;
"Commencement Date"	has the meaning given in condition 2.2;
"Contract"	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions;
"Conditions"	these terms and conditions as amended from time to time in accordance with condition 28.7;
"Customer"	the person or firm who enters into the Contract with the Supplier;
"Delivery Point"	means the place where delivery of the Goods is to take place;
"Free Issue Goods"	shall mean the goods of the Customer after the Supplier has provided Free Issue Services in relation to the Free Issue Materials;
"Free Issue Materials"	any components, items, materials, products or other tangible articles provided by the Customer to the Supplier so as to enable the provision of the Free Issue Services by the Supplier in relation the same;
"Free Issue Services"	means any services to be provided by the Supplier to the Free Issue Materials in its possession, including (as applicable) the application of any processes, treatment, spraying, painting, dipping, coating, colouring, pressing, cutting or punching; and any engineering, assembling, repairing or overhauling;
"Free Issue Service Specification"	the specification for the Free Issue Services as agreed by the parties;
"General Services"	means the services to be provided by the Supplier to the Customer (excluding Free Issue Services) pursuant to a Contract; including for example any design or advisory services;
"General Services Specification"	the specification for the General Services as agreed by the parties;
"Goods"	means, as the context of the Contract requires, (a) the Free Issue Goods; and/or (b) the Sale Goods;
"Insolvency Event"	means the occurrence of one or more events, in relation to the Customer: the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performs any of his/its obligations under the Contract or any other contract between the Supplier and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade;
"IPR"	patents, copyright and related rights, moral rights, trade marks rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Order"	the Customer's order for the purchase of the Sale Goods and/or for the supply of the Services (as the case maybe);
"Order Acknowledgment"	the Supplier's acknowledgement of the Order as referred to in condition 2.2;
"Services"	means, as the context of the Contract requires (a) the Free Issue Services; and/or (b) the General Services;
"Supplier"	means the applicable group company in the Ash & Lacy group of companies, being the company issuing the Order Acknowledgment and being one of the following: Ash & Lacy Building Systems Limited (Co No. 149058), Ash & Lacy Finishes Limited (Co No. 10805186), Ash & Lacy Automotive Limited (Co No 00529602) and Ash & Lacy Perforating Limited (10805479) and Ash & Lacy Solutions Ltd (Co No10805226).
"Sale Goods"	means the goods to be sold by the Supplier to the Customer pursuant to a Contract (not being Free Issue

Goods which are the property of the Customer);

"Sale Goods Specification"
"Specification"
the specification for the Sale Goods, including, as relevant, plans or drawings agreed in writing by the parties; and means as the context of the Contract requires (a) the Free Issue Services Specification; (b) the General Services Specification; and/or (c) the Sale Goods Specification.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase the Sale Goods and/or for the supply of the Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues formal written acceptance of the Order to the Customer (**Order Acknowledgment**) at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate from time to time (including any conditions of purchase), or which are implied by trade, custom, practice or course of dealing. No terms or conditions endorsed upon, delivered with or contained in the Customer's Order, confirmation of order, specification or other document will form part of the Contract.
- 2.4 Any quotation shall remain open for a maximum period of 30 days only from its date and be in pounds sterling (unless, in either case, otherwise stated on the quotation). Quotations are not binding contractual offers and shall not be open for acceptance by the Customer. Where Goods are quoted for supply from stock they are quoted subject to being unsold when the Customer's Order is accepted.
- 2.5 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event as soon as reasonably practical.

3. DESCRIPTION AND INFORMATION

- 3.1 The description of the Goods shall be as set out (as the case maybe) in the Supplier's catalogue, the Supplier's quotation, the Specification for the Goods or in the Supplier's Order Acknowledgment.
- 3.2 The Customer shall be responsible for ensuring the accuracy and sufficiency of its Order (including any applicable Specification and/or sample and/or information it provides). The Supplier shall be entitled to charge the Customer for all costs incurred by it (and a reasonable element for profit) where variations to Goods are requested by the Customer and, at the Supplier's absolute discretion, accepted in writing by the Supplier. Without limitation, the Supplier may refuse such request where it has commenced manufacture of the Goods or, in the case of Goods not manufactured by the Supplier, where the Supplier has procured Goods from a third party.
- 3.3 The information supplied by the Supplier (including information contained in advertising sales and technical literature) are approximate only. Any illustrations, performance details, examples of installations, methods of assembly, all descriptive and technical specification, catalogues, particulars of weight and dimensions and all other technical data supplied by the Supplier are approximate and are provided for general guidance only and the Supplier reserves the right without notice to the Customer to make alterations thereto and to supply the Goods so altered in the performance of the Contract, where such alterations do not materially change the nature or quality of the Goods.
- 3.4 Where samples are to be supplied by the Supplier, the Customer shall as soon as reasonably practicable and in any event within 14 days after receipt notify the Supplier that the samples are in all respects satisfactory or of any respect in which the samples are not satisfactory. In default of such notification the Supplier shall be entitled but not bound to proceed in the manufacture of the remainder of the Contract. Notwithstanding anything in this condition and notwithstanding that any goods may have been exhibited to or inspected by the Customer no Contract shall constitute a sale by sample. Further any delivery dates indicated by the Supplier are strictly dependant on receipt of approved samples within the pre agreed / determined time.

4. DELIVERY OF GOODS

- 4.1 Delivery of the Goods shall take place at the Delivery Point agreed by the Supplier and the Customer or, if no specific Delivery Point has been agreed, at the Supplier's place of business.
- 4.2 It shall be the Customer's responsibility to advise the Supplier in writing of any special delivery requirements and the Supplier reserves the right to charge for accommodating any special requirements; whether by charging upfront and/or subsequently, including where the special requirements are subsequently changed or amended.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or (where agreed by the parties) make all arrangements necessary to collect the Goods as soon as being notified that the Goods are available for collection.
- 4.4 Any dates and times specified by the Supplier for delivery of the Goods are an estimate only and time for delivery shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time. Where any Goods are to be supplied from stock, times quoted are subject to the availability of stock at the expected date of delivery.
- 4.5 If the Customer requests that the date for delivery is to be delayed the Supplier may in its absolute discretion accept the Customer's request in writing. If the Supplier accepts the Customer's request the Supplier shall in any event be entitled to issue an invoice for the Goods on the original date for delivery as if delivery had occurred for the amount which would have been billed had delivery taken place on the original date for delivery.
- 4.6 Notwithstanding anything to the contrary in these conditions, if for any reason the Customer has not accepted delivery of any of the Goods when they are tendered for delivery, or the Customer fails to collect the Goods when notified that they are ready for collection, or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then:
- 4.6.1 the Goods will be deemed to have been delivered;
- 4.6.2 risk in the Goods will pass to the Customer;
- 4.6.3 the Supplier may require the Customer to pay for the Goods;
- 4.6.4 the Supplier may (without prejudice to its other rights and remedies) store the Goods until delivery; and the Customer will be liable for all related costs and expenses (including without limitation storage, transportation, handling or other charges and insurance) incurred by the Supplier as a result; and
- 4.6.5 the Supplier may sell the Goods at any time and, after deducting all costs and expenses, account to the Customer for any excess over the price already paid under the Contract or charge the Customer for any shortfall between the Contract price and such costs and expenses.
- 4.7 The Customer will provide at its risk and expense at the Delivery Point adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.8 The Supplier reserves the right, where delivery is to be made in bulk, to deliver up to 10% more or less than the quantity ordered and the Customer shall not be entitled to reject the Goods or any of them by reason of such surplus or

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- shortfall and the Supplier shall charge for the Goods in accordance with the quantity actually delivered.
- 4.9 The Supplier reserves the right to deliver all or any of the Goods in advance of the estimated delivery date.
- 4.10 The Supplier may deliver the Goods by separate instalments. Each separate instalment may be invoiced separately and, if so, shall be paid for in accordance with the Contract.
- 4.11 Failure by the Supplier to deliver any one or more of the instalments in accordance with these conditions or any claim by the Customer in respect of any one or more instalment shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 4.12 Without prejudice to any other right or remedy of the Supplier if the Customer is in breach of any of the terms of the Contract, or of any other contract with the Supplier, the Supplier may without notice and at its sole discretion terminate any such other contract with the Customer or may suspend performance of its obligations under any such contract until the Customer's remedies its default.
- 5. ADVANCED PURCHASING**
- 5.1 Where the Supplier has purchased goods and/or materials as a result of the Customer having placed a prior order with the Supplier for the same ("**Advanced Purchased Goods**"), then unless otherwise agreed in writing:
- 5.1.1 the Customer shall accept delivery of the Advanced Purchase Goods promptly after the Supplier notifies the Customer that they are ready to be delivered to the Customer either by the Supplier or by a third party (or ready for collection by the Customer, as applicable); and
- 5.1.2 the Supplier shall be entitled to render an invoice for the same upon such delivery / collection.
- 5.2 In any event and overriding any other agreement or arrangement, if for any reason by the expiry of the period of 3 months (such period commencing on the date of the Supplier's purchase order for the Advanced Purchasing Goods in issue), delivery (or collection, as applicable) of the Advanced Purchase Goods has not been achieved despite the Supplier serving notice on the Customer that the Advanced Purchase Goods are ready to be delivered (or collected as applicable), then the provisions of clauses 4.6.1 to 4.6.5 (inclusive) shall be deemed to fully apply to the Advanced Purchase Goods, as if Advanced Purchase Goods instead of Goods was referred to therein.
- 6. EXPORT TERMS**
- 6.1 The provisions of this condition 6 shall apply (except to the extent that it is inconsistent with any written agreement agreed by the Supplier and Customer) to the supply of goods over an international border or overseas.
- 6.2 The 'Incoterms' of the International Chamber of Commerce which are in force at the time when the contract is made shall apply to exports, but the terms of this condition 6 shall prevail over the Incoterms to the extent that there is any inconsistency. Unless otherwise agreed, the Goods are supplied ex works at the Supplier's place of manufacture.
- 6.3 Where the Goods are to be sent by the Supplier to the Customer by a route including sea transport, the Supplier shall be under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.
- 6.4 The Customer shall be responsible for arranging testing and inspection of the Goods at the Supplier's premises before shipment (unless otherwise agreed in writing). The Supplier shall not be liable for any defect in the Goods which would be apparent on inspection unless a claim is made before shipment. The Supplier shall not be liable for any damage during transit.
- 6.5 The Supplier shall not be liable for death or personal injury arising from the use of the Goods delivered in the territory of another State, within the meaning of section 26(3)(b) Unfair Contract Terms Act 1977.
- 7. RETURN OF GOODS**
- 7.1 In circumstances where the Customer wishes to return unwanted Goods which are not defective then it must contact the Supplier for permission (which the Supplier may give or withhold at its absolute discretion).
- 7.2 If the Supplier exercise its discretion to accept the return of unwanted Goods then this will be by prior written arrangement (confirmed in writing) and subject to the Customer having first paid an agreed handling charge of 25%.
- 7.3 Any such return shall be on the condition that all such Goods returned must be as fit for sale on their return as they were on their delivery and the Supplier reserves the right to make a reasonable deduction from any prepayment if this is not the case and/or to seek damages for any loss suffered by virtue of the condition of the returned Goods.
- 8. TERMINATION AND SUSPENSION**
- 8.1 Without prejudice to any other rights and remedies available to it, the Supplier shall be entitled, forthwith on written notice to the Customer, either to terminate the Contract wholly or in part and/or any other contract with the Customer, or to suspend all or any of its obligations under the Contract and/or any other contract with the Customer, (and on the giving of such notice all monies outstanding from the Customer to the Supplier shall become immediately due and payable) if:
- 8.1.1 any sum owing to the Supplier from the Customer on any account whatsoever shall be unpaid after the due date for payment (in which event the Supplier shall have a general lien for any such sum on all and any property of the Customer in its possession);
- 8.1.2 if one or more Insolvency Events occur; or
- 8.1.3 the Customer commits any breach of any contract (including without limitation the Contract) with the Supplier.
- 8.2 In the event of a suspension of performance the Supplier shall be entitled, as a condition of resuming performance, to require pre-payment, or such other security as it may require.
- 8.3 On termination of the Contract then without prejudice to any other rights and remedies of the Supplier, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and/or Goods supplied but for which no invoice has been submitted, the Supplier shall be entitled to submit an invoice, which shall be payable by the Customer immediately on receipt. The Supplier shall also be entitled to deliver and/or invoice where Services and/or Goods are partly or fully complete but have not yet been delivered.
- 8.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 8.5 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect
- 9. SHORT AND NON-DELIVERY AND SIGNING FOR GOODS**
- 9.1 The quantity of any consignment of Goods as recorded by the Supplier upon despatch or collection from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery or collection.
- 9.2 Notification of any claim of short delivery (measured by weight or number) or damage in transit must be made by the Customer to the Supplier by 4.30 pm on the next Business Day following the date of delivery of the Goods. Such notification to the Supplier may initially be made by telephone but must be confirmed in writing to the Supplier (either by email or by post) such confirmation to be received by the Supplier before the passing of the third Business Day after the date of delivery. Failure to adhere to the above will result in any such claim not being considered.
- 9.3 Where the Supplier delivers the Goods to the Customer's premises / site or to the premises / site of a third party (as nominated by the Customer and agreed by the Supplier) then (unless the Supplier is expressly advised in writing by the Customer prior to dispatch of the Goods of a particular individual (or individuals) who is authorised to accept delivery of the Goods on behalf of the Customer the "**Nominated Individual**") the Customer expressly agrees and acknowledges that the Supplier shall be fully entitled to rely upon, for the purposes of proof of delivery of the Goods, the signature of any person at the applicable premises / site who signs for delivery of the Goods and irrespective of whether that person is a member of the Customer's staff, or otherwise.
- 9.4 The Customer agrees and acknowledges that it is its responsibility to notify the Supplier of any Nominated Individual(s) in writing prior to dispatch of the Goods. Notification of an allegation of non-delivery must be made in writing to the Supplier within 14 days after the date of the Supplier's invoice. For the avoidance of doubt so as to defeat any claim for non-delivery the Supplier shall be fully entitled to rely upon the provision of clause 9.3.
- 9.5 Where the Supplier considers that a claim is valid, the Supplier shall at its option either (a) adjust the price payable (and where relevant, as a deduction from any part of the price remaining unpaid) or (b) repair or replace any such non-delivery, short delivery or damage notified as aforesaid. In no event shall the Supplier be liable to the Customer in connection with any damage or loss in transit where delivery takes place at the Supplier's premises.
- 10. RISK/TITLE**
- 10.1 Risk in the Goods shall pass to the Customer when they are made available at the Delivery Point.
- 10.2 Notwithstanding delivery, ownership of the Sale Goods shall stay with the Supplier until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:-
- 10.2.1 the Sale Goods; and
- 10.2.2 all other sums which are or which become due to the Supplier from the Customer on any account.
- 10.3 Until ownership of the Sale Goods has passed to the Customer, the Customer must:-
- 10.3.1 hold the Sale Goods on a fiduciary basis as the Supplier's bailee;
- 10.3.2 store the Sale Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;
- 10.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Sale Goods;
- 10.3.4 maintain the Sale Goods in satisfactory condition; and
- 10.3.5 indemnify and keep indemnified the Supplier against all claims, damages, demands, costs, expenses and liabilities of whatsoever nature arising by virtue of the Supplier's ownership of the Sale Goods.
- 10.4 The Customer may resell the Sale Goods before ownership has passed to it solely on the following conditions:-
- 10.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- 10.4.2 any such sale shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 10.5 The Customer's right to deal with the Sale Goods shall terminate immediately if:-
- 10.5.1 an Insolvency Event occurs in relation to the Customer; or
- 10.5.2 the Customer encumbers or in any way charges any of the Sale Goods.
- 10.6 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Sale Goods has not passed from the Supplier.
- 10.7 Until ownership of the Sale Goods has passed to the Customer, the Supplier (including its agents and employees) shall be entitled at any time on demand to:
- 10.7.1 enter any premises (without the need for consent from any third party) where the Sale Goods are located for the purpose of inspecting or repossessing them;
- 10.7.2 repossess the Sale Goods and, where the Sale Goods are incorporated or attached to other assemblies of fabrications, to remove the Sale Goods (without being liable for any damage thereby occasioned); and
- 10.7.3 sell all or any of the Sale Goods.
- 11. PRICE**
- 11.1 Unless otherwise agreed by the Supplier in writing, the price for the Goods and/or Services shall be the price given by the Supplier or if no price has been given, the price for the Goods shall be the price set out in the Supplier's price list or agreed terms published on the date of the Customer's Order. Any price quoted by the Supplier is based upon costs current as at the date of quotation. The Supplier shall be entitled to give notification of an increase in the price for the Goods if there has been any increase in the cost of raw materials between the conclusion of the contract with the Customer and the actual date of delivery. The Customer shall not be entitled to terminate the contract because of such an increase except where the increase exceeds 100% of the VAT inclusive price.
- 11.2 Unless otherwise agreed in writing, the price for the Goods shall be exclusive of any value added tax and all costs or charges including other tax or duties, packaging, carriage and insurance all of which amounts the Customer will pay in addition when it is due to pay for the Goods.
- 11.3 Subject to prior written agreement to the contrary, the Supplier shall be entitled to invoice the Customer for the price of the Goods on or at any time after the Supplier has notified the Customer that the Goods are ready for collection or the Supplier has tendered delivery of the Goods.
- 12. PAYMENT**
- 12.1 Customers are required to pay for Goods and/or Services in full in cash or in cleared funds on account and prior to delivery of the Goods and/or provision of the Services, unless otherwise agreed in writing or unless the Customer have an approved credit terms (as defined in condition 12.2).
- 12.2 Approved credit terms means that credit insurance cover can be secured for the Customer with a sufficient credit limit to cover the value of the Order or Orders to be placed and that any previous payments have been made in accordance those terms.
- 12.3 The Supplier further reserves the right to require full or part-payment at the time the Order is placed and to require further stage payments prior to delivery depending on the nature of the Order.
- 12.4 For first orders for new Customers or Customers that have not placed an order with the Supplier for a period over 2 years, then the Supplier reserves the right

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- to require full payment to be received in cleared funds before the Order is processed and/or despatched, unless otherwise agreed in writing.
- 12.5 Any payments made by business customers by credit or charge cards will be subject to a minimum handling charge of 2.4% unless otherwise agreed in writing;
- 12.6 Save in cases where the Customer is obliged to make payment in full prior to delivery under condition 12.1 or before the Order is processed pursuant condition 12.3 then the Customer shall make payment in full within 30 days of the end of the month in which the Customer receives the Supplier's invoice unless agreed otherwise by the Supplier in writing.
- 12.7 Time for payment shall be of the essence.
- 12.8 No payment shall be deemed to have been received until the Supplier has received cleared funds.
- 12.9 All payments payable to the Supplier under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 12.10 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
- 12.11 Without prejudice to any other rights of the Supplier, if the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Customer will be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of 8% above the official dealing rate of the Bank of England prevailing at the end of the due date for payment, calculated on a daily basis until payment is made, whether before or after any judgement or, if greater, as determined in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall pay all legal and other costs and expenses incurred by the Supplier in recovering any amounts owing from the Customer and any Goods in which title has been retained by the Supplier. Such costs shall be payable immediately on invoice.
- 12.12 Where payment is agreed to be made by instalments, any delay or default by the Customer in making payment in respect of any one instalment shall render all the remaining instalments due forthwith, and interest will be charged in accordance with condition 12.11 with immediate effect until the date of actual payment.
- 12.13 The Supplier may appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Supplier and the Customer) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer).
- 12.14 The Supplier reserves the right to apply amounts received first in settlement of interest on overdue debts and then of debts due beginning with the oldest.
13. **QUALITY OF SALE GOODS**
- 13.1 In the case of Sale Goods manufactured or produced by the Supplier, the Supplier warrants that (subject to the other provisions of these conditions) upon delivery, and for such periods as specified in the relevant product literature issued at such date of delivery, the Sale Goods will conform in all material respects with any applicable specification and will be of satisfactory quality within the meaning of the Sale of Goods Act 1994.
- 13.2 In the case of Sale Goods not manufactured by the Supplier the only obligation accepted by the Supplier will be to use its reasonable endeavours to pass on to the Customer by way of assignment or transfer (if and to the extent possible) the benefit of any manufacturer's guarantee or warranty.
- 13.3 The Supplier shall not be liable for a breach of the warranty in condition 13.1 unless:-
- 13.3.1 any failure to meet specification is notified in writing to the Supplier within 7 days from the date of delivery or (where the failure was not apparent on reasonable inspection) within a reasonable time after discovery of the failure and in any event such failure must be notified within 14 days after delivery;
- 13.3.2 any such defect in design, materials and/or workmanship shall have appeared within the warranty period as defined within condition 13.1 and shall have been thereupon promptly notified to the Supplier in writing; and/or
- 13.3.3 the Supplier is given a reasonable opportunity after receiving such notice, to examine such Sale Goods and the Customer (if asked to do so by the Supplier) returns such Sale Goods to the Supplier's place of business at the Customer's cost (but credited by the Supplier if the claim is accepted) for the examination to take place there.
- 13.4 The Supplier shall not be liable for a breach of the warranty in condition 13.1 if:-
- 13.4.1 the Customer makes any further use of such Sale Goods after giving such notice;
- 13.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Sale Goods or (if there are none) good trade practice;
- 13.4.3 the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions or misuse; or
- 13.4.4 the Customer alters or repairs such Sale Goods without the written consent of the Supplier.
- 13.5 Subject to conditions 13.3 and 13.4 if any of the Sale Goods do not conform with the warranty in condition 13.1 the Supplier shall at its option repair or replace (but not install) such Sale Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Supplier so requests, the Customer shall, at the Customer's expense (but credited by the Supplier if the claim is accepted), return the Sale Goods or the part of such Sale Goods which is defective to the Supplier.
- 13.6 Any Sale Goods replaced will belong to the Supplier and any repaired or replacement Sale Goods manufactured or produced by the Supplier will be warranted on these terms for the unexpired portion of the warranty period as defined in condition 13.1.
- 13.7 For the avoidance of doubt the Customer shall not be entitled to any claim to set-off in respect of any repairs or alterations undertaken by the Customer without the prior written consent of the Supplier.
- 13.8 The Supplier shall be under no liability in respect of any defect in the Sale Goods arising from any drawings, design or specification supplied by the Customer.
- 13.9 In circumstance where the Supplier provides design services then it is the responsibility of the Customer to check and confirm that its instructions have been interpreted correctly and, in such instances, the Supplier may request that the Customer signs and returns a copy of any design (or other document as applicable) to confirm that the Customer has ensured that the design meets its Specification.
- 13.10 The Customer agrees that the Supplier is not obliged to commence the Services (and that the Supplier may suspend them) until such time as the Supplier has received the returned and signed copy (by way of approval) of the documentation referred to in condition 13.9.
14. **COLOUR VARIATION**
- 14.1 Due to the nature of the raw materials and the manufacturing process variation in colour and shade may be an inherent characteristic of certain Goods and a reasonable variation in colour will be deemed acceptable. The Supplier shall not therefore be liable for a breach of the warranty in condition 13.1 above in the event of colour variation for these reasons and this shall not entitle the Customer to a claim for breach of warranty in condition 13.1.
- 14.2 Any complaint that the Customer has as regards the aesthetic finish or visual standard of Goods shall not be classified as a defect (and so the Supplier has no liability in respect of the same to the Customer), unless such aesthetic finish or visual standard was expressly set out as a requirement in the Specification to the Contract.
15. **THIRD PARTY CONTRACTORS**
- 15.1 By entering into a Contract the Customer agrees that: (a) the Supplier may utilise third party suppliers and contractors in carrying out Services under that Contract, including passing possession of Free Issue Materials to such third parties for the purposes of receiving such Services and (b) notwithstanding condition 20 (Confidentiality) the Supplier may share information, including the Specification, with third party suppliers and subcontractors as required.
16. **TITLE AND RISK IN THE FREE ISSUE MATERIALS AND FREE ISSUE GOODS**
- 16.1 Where the Customer provide Free Issue Materials for the purpose of the Supplier performing Free Issue Services under a Contract then: (a) the Free Issue Materials will be at the Supplier's risk only for such time as they are in the Supplier's possession and (b) title to the Free Issue Materials and the Free Issue Goods shall remain with the Customer all times during the Contract.
- 16.2 The Supplier may exercise a lien over the Free Issue Materials and the Free Issue Goods in its possession until such time as the Supplier has received payment in full of (a) all amounts due to Supplier under the applicable Contract; and (b) all other sums due to the Supplier from the Customer under any other contracts or accounts whatsoever which are outstanding.
- 16.3 The Supplier is in no way responsible for the quality or fitness for purpose of the Free Issue Materials and, if unsatisfactory cannot be held responsible for consequential delays to deliveries and/or the quality of products delivered by the Supplier.
17. **SUPPLY OF SERVICES**
- 17.1 The Supplier warrants that it will supply the Services to the Customer with reasonable care and skill.
- 17.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Contract but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 17.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.
18. **QUALITY OF SERVICES**
- 18.1 If following provision of the Services the Customer considers that the Supplier has failed to provide the Services with reasonable care and skill then the Customer shall provide written notice of this to the Supplier within 7 days after the provision of the completed Services or (where the failure was not apparent on reasonable inspection) within a reasonable time after discovery of the failure and in any event such failure must be notified to the Supplier within 14 days after the provision of the completed Services. In the event that the Customer does not serve notice written within this time scale then the provision of the Services shall be deemed to be in accordance with the Contract.
- 18.2 In the case of valid claims the Supplier shall, at its option (a) re-perform any Services not in conformance with the Contract or (b) refund the charges of any General Services and/or Free Issue Services (as applicable) provided that:
- 18.2.1 the Customer gives notice in writing during the period referred to condition 18.1 above;
- 18.2.2 the Supplier is given a reasonable opportunity of examining the allegations and where applicable the Free Issue Goods; and/or
- 18.2.3 the Customer (if asked to do so by the Supplier) returns such non-conforming Free Issue Goods to the Supplier's place of business at the Customer's cost.
- 18.3 Any complaint that the Customer has as regards the aesthetic finish or visual standard of the Free Issued Goods shall not be classified as a defect (and so the Supplier has no liability in respect of the same to the Customer), unless such aesthetic finish or visual standard was expressly set out as a requirement in the Specification to the Contract.
- 18.4 The Supplier shall not be liable for the Free Issue Goods' failure to comply with the warranty in condition 18.1 if the defect arises because:
- 18.4.1 the Customer's failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Free Issue Goods or (if there are none) good trade practice;
- 18.4.2 the defect arises as a result of the Supplier following any drawing, design or content of the Specification supplied by the Customer and/or its agents;
- 18.4.3 the Customer alters or repairs the Free Issue Goods without the written consent of the Supplier; or
- 18.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
19. **CUSTOMER'S OBLIGATIONS**
- 19.1 The Customer shall:
- 19.1.1 ensure that the terms of the Order and any information it provides to the Supplier (including as to the content of any Specification) are complete and accurate;
- 19.1.2 co-operate with the Supplier in all matters relating to the sale of the Sale Goods or the provision of the Services;
- 19.1.3 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods and/or Services, and ensure that such information is complete and accurate in all material respects;
- 19.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the receipt of the Services before the date on which the Services are to start; and
- 19.1.5 comply with all applicable laws, including health and safety laws;
- 19.2 In relation to any contract concerning the provision of Free Issue Services then the Customer warrants to the Supplier that:
- 19.2.1 the Free Issue Services Specification is complete, accurate and fit for the Customer's purpose.
- 19.2.2 it has the right to have the Free Issue Services carried out on or in relation to the Free Issue Materials;
- 19.2.3 the Free Issue Materials are suitable to have the Free Issue Services applied / performed on them; and

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- 19.2.4 the Free Issue Materials conform to any requirement specified in the Specification or any instruction from the Supplier.
- 19.3 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees or by any third parties, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed a reasonable extension of time to perform its obligations and shall also be entitled to claim from the Customer any additional costs or expenses suffered or incurred by the Supplier as a result of such act or omission.
20. **CONFIDENTIALITY**
- 20.1 Each party 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 other party, except as permitted by condition 20.2.
- 20.2 Each party may disclose the other party's confidential information:
- 20.2.1 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. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this condition 20; and
- 20.2.2 as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.
- 20.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
21. **LIMITATION OF LIABILITY**
- 21.1 Subject to the provision of clause 6.5, nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 21.1.1 death or personal injury caused by the negligence of the Supplier;
- 21.1.2 fraud or fraudulent misrepresentation; or
- 21.1.3 any other matter where such liability cannot be excluded or limited by law.
- 21.2 Subject to condition 21.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 21.2.1 loss of profits, business, or damage to goodwill (whether direct or indirect loss); and
- 21.2.2 any indirect, special or consequential loss.
- 21.3 Subject to condition 21.1 the Supplier shall be discharged of all liability to which these conditions apply unless (without extending statutory limitation) proceedings are begun and served within 12 months after the Customer became aware (or should reasonably have become aware) of the facts giving rise to such liability.
- 21.4 Subject to conditions and 21.1, 21.2 and 21.3 the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 120% of the total price payable under the Contract.
- 21.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
22. **ASSIGNMENT**
- 22.1 The Contract is personal to the Customer and the Customer shall not be entitled to assign, transfer or charge the Contract or any part of it without the prior written consent of the Supplier.
- 22.2 The Supplier may assign, transfer or charge the Contract.
23. **FORCE MAJEURE**
- 23.1 The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier, including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, energy or services. In such case the time for performance shall be extended by the period of any such delay. If the event in question continues for a continuous period in excess of 3 months, the Supplier shall be entitled to give notice in writing to the Customer to terminate the Contract.
24. **COMMUNICATION**
- 24.1 Any notice or other communication 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). Any notice or other communication shall be deemed to have been received: (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (b) 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. This condition 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.
25. **HEALTH AND SAFETY**
- 25.1 For the purposes of Section 6(8) of the Health and Safety at Work Etc Act 1974 the Customer undertakes to comply with all instructions relating to the Goods received from the Supplier from time to time and to take such other steps sufficient to ensure, so far as is reasonably practicable, that the Goods will at all times be safe and without risk to health when being properly used, set, cleaned and maintained by a person at work.
26. **INTELLECTUAL PROPERTY RIGHTS**
- 26.1 All IPR in any drawings, designs or other data and in all materials, tools, patterns or other items prepared or made available by the Supplier for the Contract shall, unless otherwise expressly agreed by the Supplier in writing, be and remain the Supplier's property and the Customer shall not copy or reproduce the same in whole or in part in any form or allow others to do so.
- 26.2 If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the IPR of any other person or any claim is made in respect of passing off or unauthorised use of Confidential Information in relation to the Goods and/or their use or resale the Customer shall forthwith notify the Supplier in writing and the Supplier shall be given full control of any proceedings or negotiations in connection with any such claim. The Customer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations and except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier (which shall not be unreasonably withheld). The Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Supplier may have in relation to such infringement.
- 26.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a Specification submitted by the Customer, the Customer shall (without prejudice to the other rights and remedies of the Supplier) indemnify the Supplier in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Supplier as a result of or in connection with:
- 26.3.1 any claim for infringement of any IPR or for passing off and/or unauthorised use of confidential Information which results from the Supplier's use of the Customer's Specifications; and
- 26.3.2 any other liability of any kind to any third party including without limitation for defective Goods, personal injury or death to the extent that it arises from the Customer's Specification.
27. **DATA PROTECTION**
- 27.1 The Customer authorises the Supplier and its agents to carry out checks (including enquiries relating to directors and other relevant individuals) with credit reference agencies and to disclose such information to one another. The Customer further acknowledges that the agencies concerned may keep and share information supplied to them with other businesses in assessing applications for credit and/or fraud prevention.
28. **GENERAL**
- 28.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.
- 28.2 If any provision of these conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of these conditions and the remainder of such provision shall continue in full force and effect.
- 28.3 Failure or delay by the Supplier 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.
- 28.4 Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 28.5 A person who is not a party to these conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 28.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 28.7 No variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).