

**The Customer's attention is drawn in particular to the provisions of clause 12.**

**1. INTERPRETATION**

**1.1 Definitions:**

<b>“Business Day”</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>“Company”</b>	Pentland Wholesale Limited (registered in England and Wales with company number 02761041).
<b>“Conditions”</b>	the terms and conditions set out in this document as amended from time to time in accordance with Clause 14.6.
<b>“Contract”</b>	the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
<b>“Customer”</b>	the person or firm who purchases the Goods from the Company.
<b>“Force Majeure Event”</b>	an event, circumstance or cause beyond a party's reasonable control.
<b>“Goods”</b>	the goods (or any part of them) set out in the Order and which may include Graded Goods or Special Order Goods.
<b>“Graded Goods”</b>	Goods which have been supplied to customers previously and returned to the Company as defective.
<b>“Order”</b>	the Customer's order for the Goods, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Company's quotation as the case may be.
<b>“Parts and Labour Warranty”</b>	has the meaning given in clause 6.6.
<b>“Parts Only Warranty”</b>	has the meaning given in clause 6.5.
<b>“Special Order Goods”</b>	means goods which are noted as such on the Company's written acceptance of the Order and which are not standard stocked items and which have to be specifically ordered by the Company from its suppliers for the Customer.
<b>“Trade Marks”</b>	The Company's (and its licensors') trade marks, branding, logos and names (whether registered or unregistered) in respect of the Goods and which the Company notifies the Customer from time to time it is permitted to use in accordance with Clause 11.
<b>“Warranty”</b>	a Parts Only Warranty or a Parts and Labour Warranty.
<b>“WEEE Regulations”</b>	the Waste Electrical and Electronic Equipment (WEEE) Regulations 2006 (SI2006/3289) as amended from time to time, and any subsequent or replacement legislation in respect of the same.

**1.2 Interpretation**

- (a) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing or written** includes faxes and emails.
- (d) A reference to the **Goods** shall include a reference to the Graded Goods and the Special Order Goods save where application to one or the other is specified.

**2. BASIS OF CONTRACT**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings or advertising produced by the Company and any illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

**3. GOODS**

- 3.1 The Goods are described in the Company's catalogue. Special Order Goods are described in the relevant manufacturer's catalogue or in such other document as the Company shall provide to the Customer for the purposes of describing the Special Order Goods.
- 3.2 The Company reserves the right to modify or amend the specification, design and material of the Goods:
  - (a) provided that such modifications or amendments do not materially affect the quality or functionality of the Goods; or
  - (b) if required by any applicable statutory or regulatory requirements.
- 3.3 The Company shall not be responsible for including or affixing any warning notices to the Goods or their packaging concerning the use of the Goods. The Customer shall be responsible for ensuring that all such warning notices are in place in accordance with applicable law, and the Company gives no warranties nor makes any representation that the packaging for the Goods is suitable for the onward sale by the Customer.
- 3.4 Installation of the Goods may require a qualified person and the Customer shall be responsible for ensuring (save where the Company has agreed to install the Goods) that all applicable laws and regulatory requirements are met.
- 3.5 Any guidelines on health and safety within the workplace provided by the Company are for information purposes only and the Customer must satisfy itself as to its legal and regulatory requirements.
- 3.6 Any recommended retail prices quoted in the Company's or any manufacturer's price list or catalogues shall not limit the Customer's right to set its own resale price for the Goods.

**4. DELIVERY**

- 4.1 The Company:

- (a) may provide a delivery note with the Goods that shows certain details which may include the date of the Order, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) shall ensure that if it requires the Customer to return any packaging materials to the Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.
- 4.2 The Company shall deliver the Goods to the location set out in the Order or such other location in the United Kingdom as the parties may agree (**Delivery Location**) at any time after the Company notifies the Customer that the Goods are ready. Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.3 All deliveries outside of mainland UK (excluding Northern Ireland) shall be subject to express written agreement and shall be delivered EXW (Ex Works) (Incoterms) and the Customer shall be responsible for all necessary import licences, clearances and other consents necessary for the purchase of the Goods and to ensure that the Goods comply with all local legislative or legal obligations and shall be responsible for any customs duties, clearance charges, taxes, broker's fees and other amounts payable in connection with the exportation and importation of the Goods.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day after the day on which the Company notified the Customer that the Goods were ready; and
- (b) the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If five Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods.
- 4.8 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 The Customer shall inspect the Goods and notify the Company of any apparent defects or deficiencies within 24 hours of delivery. The Customer shall be deemed to accept any Goods (save in the case of non-apparent defects or deficiencies) should it not notify the Company within this timescale.

## 5. CANCELLATION

- 5.1 Without prejudice to Clause 6, Orders for Special Order Goods cannot be cancelled or returned under any circumstances.
- 5.2 With respect to Orders other than Orders for Special Order Goods and without prejudice to Clause 6, the Company shall not be obliged to accept cancelled Orders or returns unless expressly agreed otherwise. The Customer should contact the Company's service desk on 01254 614 444 to obtain a Goods Return Authorisation, and the Company shall not be obliged to accept any returns without such Goods Return Authorisation.
- 5.2 Any returned Goods must be unused, in the original packaging and include all manuals or other documentation supplied with the Goods. The Customer must provide proof of purchase and delivery.
- 5.3 The Customer shall pay all costs of redelivery of the returned Goods to the Company or the costs to the Company of collection of the returned Goods as applicable and shall be liable for a restocking fee equal to 25% of the price of the Goods.
- 5.4 Where the Company authorises the return of Goods that are in transit but have not yet been delivered, the Customer shall be responsible for an abortive delivery charge.

## 6. QUALITY

### Warranties

- 6.1 The Company warrants that on delivery and for the relevant warranty period applicable to the Goods (as described in clause 6.2) the Goods shall function in all material respects with their description and shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 6.2 With the exception of Graded Goods, all Goods are sold with a Parts Only Warranty of either 1, 2 or 3 years. The warranty period applicable to the Goods purchased by the Customer will be stated in the Company's catalogue or website and commences on delivery of the Goods. The warranty period applicable to Special Order Goods will be stated in the Company's order acknowledgement.
- 6.3 Save in the case of Orders for delivery outside of mainland UK (excluding Northern Ireland) and Graded Goods, the Customer can elect to purchase a Parts and Labour Warranty. The duration of the Parts and Labour Warranty will be the same as the Parts Only Warranty in accordance with clause 6.2.
- 6.4 Graded Goods are sold on an "as is" basis with a 12 month Parts Only Warranty and the Customer agrees, acknowledge and accepts that such Goods will not be free from defects.
- 6.5 "**Parts Only Warranty**" if the Company fails to comply with the warranty in clause 6.1 then provided that the Customer complies with the Warranty Claim Procedure in clause 6.7 and none of the Exclusions in clause 6.10 apply, the Company agrees to replace all defective electromechanical parts in the Goods like for like or with a component which is compatible with the Goods. Unless damaged in transit (and not due to the default of the Customer or its representatives) and notified to the Company within 24 hours of delivery, all cosmetic items, consumables and fabricated items including the following items and components are specifically not covered by the warranty:
- (a) Shelves / baskets, trays and pans;
- (b) Glass covers or glass panels;
- (c) Light bulbs, tubes, gaskets and trims; and
- (b) Other consumable items and breakables.
- 6.6 "**Parts and Labour Warranty**" if the Company fails to comply with the warranty in clause 6.1 then in addition to the Company's obligations under the Parts Only Warranty, provided that the Customer complies with the Warranty Claim Procedure in clause 6.7 and none of the Exclusions in clause 6.10 apply then the Company will use its reasonable commercial efforts to repair the defective Goods at the Customer's site. The Company may at its option replace the defective Goods and where the Goods are to be replaced more than

28 days following delivery, the Company may use refurbished or repaired Goods.

### Warranty Claim Procedure

6.7 In order to claim under a Warranty the Customer must, during the relevant warranty period applicable to the Goods:

- (a) notify the Company by contacting the Company service department (available during Business Hours Monday to Friday 8:30am – 5pm) within 24 hours of delivery (or in the case of non-apparent defects within 1 (one) Business Day of discovery of the defect);
- (b) cease using the defective Goods as soon as the defect becomes apparent;
- (c) provide full details of the fault and cooperate fully with the Company service team by answering honestly and accurately to any questions and undertaking any testing required by the Company services team member in order to attempt to determine the fault remotely;
- (d) provide the serial number of the faulty Goods;
- (e) return the Goods to the Company (if requested to do so by the Company) at its cost;
- (f) allow an engineer onto its site to assess the Goods and assist and cooperate with the engineer, providing full and accurate details about the usage, maintenance and history of the Goods;
- (g) provide service and maintenance history details and logbooks to the Company or engineer as requested.

6.8 Where specific site health and safety inductions and/or security clearances are necessary for an engineer to attend the premises where the Goods are located, then the Customer shall be responsible for the costs of any such inductions or clearances (including all costs and fees for the engineer's time) regardless of whether a Warranty claim is upheld.

6.9 All engineer's service calls will be made during normal Business Hours (unless otherwise agreed and an additional charge may be payable) and are only available in mainland UK.

### Exclusions

6.10 The Company shall not be liable under any Warranty in any of the following events:

- (a) the Customer makes any further use of such Goods after becoming aware of the defect;
- (b) if the Customer alters or repairs such Goods or permits any non-approved technicians to carry out any repairs, parts replacements or assessment of the Goods;
- (c) the Customer has used the Goods other than for their designated purposes;
- (d) the Customer has not carried out the cleaning and maintenance instructions provided by the Company or the manufacturer and as a minimum has failed to clean condensers every month and water systems on Icemakers every 6 months;
- (e) the Customer has misused or abused the Goods or the defect otherwise arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions including but not limited to damage caused by the Goods being relocated or moved within the existing premises, blocked drains, the use of defective or inappropriate power source or use of extension sockets;
- (f) unless apparent on delivery and notified within 24 hours of delivery, the defect is superficial or cosmetic in nature and does not affect the functionality of the Goods; or
- (g) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.11 **Rejected Warranty Claim**

Where the Company has attended the Customer's premises to repair or replace the Goods and it is found, in the Company's reasonable opinion, that any of the Exclusions listed in clauses 6.10(a) to 6.10(g) applies or has occurred, then the Warranty claim will be rejected and the Customer shall be responsible for the costs of any repairs or replacement and may be subject to an administrative charge in respect of any aborted visit or the engineers time and costs.

### Damage in Transit

6.12 If the Goods are already damaged on arrival (and not due to the default of the Customer or its representatives) then the Customer must notify the Company within 24 hours of delivery. The Customer acknowledges that this is necessary to permit the Company to pursue a damage in transit claim with its courier. Failure to provide such notice may invalidate the Customer's Warranty claim and the Company shall have no liability to repair or replace the damaged Goods.

### No further liability

6.13 The Company's liability for any breach of the warranty in clause 6.1 is limited to the Customer's rights under the relevant Warranty and, subject to clause 12.1, the Company shall have no further or other liability to the Customer in respect of any faults, failures or defects in the Goods including for any stock loss or other losses, damage and liabilities suffered or incurred by the Customer as a result of or in connection with the Goods provided.

6.14 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.15 Clause 6 shall apply to any repaired or replacement Goods supplied by the Company.

## 7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Clause 7.4.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery. If required, the Customer shall endorse any such insurance policy with the Company's interest;
- (d) notify the Company immediately if it becomes subject to any of the events listed in Clause 10.1; and
- (e) give the Company such information relating to the Goods as the Company may require from time to time.

7.4 Subject to Clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Company's agent; and

- (b) title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 10.1, then, without limiting any other right or remedy the Company may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Company may at any time:
- (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8. WEEE REGULATIONS**
- 8.1 Unless otherwise agreed in the Order, the Company shall sell the Goods with the Customer adopting the producer's obligations under the WEEE Regulations.
- 8.2 The Customer agrees to disclose the Contract (including these Conditions) to any subsequent purchaser of the Goods, as may be required by the WEEE Regulations.
- 8.3 The Customer agrees that the Company shall not be responsible under the WEEE Regulations for financing the collection, treatment, recovery and environmentally sound disposal of any product supplied before 13 August 2005 where a similar new product is being supplied. Any collection, treatment, recovery and/or environmentally sound disposal of any product supplied before 13 August 2005 (or outside of the scope of the WEEE Regulations) shall be at the cost and expense of the Customer and subject to the Company's then current disposal rates.
- 9. PRICE AND PAYMENT**
- 9.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery.
- 9.2 The Company may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 9.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer
- 9.4 Where the Customer requests a credit account, the Company may take references (including from credit reference agencies) to assess the creditworthiness of the Customer. The Company shall be under no obligation to provide credit facilities, and may place such conditions or limits on any such credit account as it may see fit. The Company reserves the right to revoke, suspend or alter credit limits from time to time as it sees fit. For details of how the Company uses this information please see our Privacy Policy available at [www.pentlandwholesale.co.uk](http://www.pentlandwholesale.co.uk).
- 9.5 Where the Customer has been granted a credit account, the Company may invoice the Customer for the Goods on or at any time after delivery of the Goods and the Customer shall pay the invoice in full and in cleared funds within 30 days of the date of invoice.
- 9.6 Where the Customer has not requested, or been declined, a credit account then the Company may invoice the Customer for the Goods on or at any time after acceptance of the Order and the Company shall not be obliged to deliver the Goods until payment in full has been received.
- 9.7 A non-refundable deposit of 30% of the price of the Special Order Goods shall be payable by the Customer to the Company at the time an Order for Special Order Goods is placed. The Company shall not place an order with its manufacturer for the Special Order Goods until such time as it has received the deposit in full and in cleared funds.
- 9.7 Payment shall be made to the bank account nominated in writing by the Company. Time for payment is of the essence.
- 9.8 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then (i) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time (subject to a minimum rate of 4%). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; (ii) the Company may suspend its obligations under the Contract and any other Contract it has in place with the Customer; (iii) the Customer shall indemnify the Company against all costs, fees, charges, expenses and costs (including debt recovery fees, legal and other professional fees and court costs) it suffers or incurs as a result of the late payment.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 10. TERMINATION**
- 10.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without limiting its other rights or remedies, the Company may suspend or cancel provision of the Goods under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in Clause 10.1(a) to Clause 10.1(d), or the Company reasonably believes that the Customer is about to become subject to any of them, or if the

Customer fails to pay any amount due under the Contract on the due date for payment.

- 10.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Company all the Company's outstanding unpaid invoices and interest.
- 10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract that existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

### 11. INTELLECTUAL PROPERTY

- 11.1 The Company grants the Customer the non-exclusive right to use the Trade Marks in the promotion, advertisement and sale of the Goods, subject to the terms of this Clause 11. The Customer acknowledges and agrees that all rights in the Trade Marks shall remain in the Company (and its licensors) and that the Customer has and will acquire no right in them by virtue of the discharge of its obligations under the Contract, except for the use of the Trade Marks as expressly provided in these Conditions.
- 11.2 The Customer shall market and sell the Goods only under the Trade Marks and not in association with any other trade mark, brand or trade name.
- 11.3 The Customer shall comply with all rules for the use of the Trade Marks issued by the Company and shall not, without the prior written consent of the Company:
- (a) alter or make any addition to the labelling or packaging of the Goods displaying Trade Marks save to the extent necessary for legal or regulatory requirements;
  - (b) make any additions or modifications to the Goods or to any advertising and promotional material supplied by the Company; or
  - (c) alter, deface or remove any reference to the Trade Marks, any reference to the Company or any other name attached or affixed to the Goods or their packaging or labelling.
- 11.4 The Customer shall not sub-license, assign, transfer, charge, or otherwise encumber the right to use, reference, or designate the Trade Marks to any other party without the prior written consent of the Company.
- 11.5 The Customer shall not do, or omit to do, anything in its use of the Trade Marks that could adversely affect their validity or reputation.
- 11.6 The Customer shall immediately on request enter into any further agreements with the Company, in a form satisfactory to the Company, necessary for the recording, registration or safeguarding of the Company's Trade Mark rights or the marketing of the Goods under the Trade Marks.
- 11.7 Where the Customer has specified any artwork, logo, device, brand or company names, or other mark (whether registered or unregistered) for inclusion or incorporation into the Goods (**Customer Artwork**), the Customer grants the Company a licence to use the Customer Artwork for such inclusion or incorporation, and further that it may use images or representations of such finished Goods (including the Customer Artwork) for use in promotional or advertising material in respect of the Company's goods and services.
- 11.8 The Customer warrants and represents that it has the authority and capacity to grant the licence contained in Clause 11.7 and agrees to fully and effectively indemnify, and keep indemnified, the Company against any and all claims, losses, expenses (including legal and

professional fees) suffered or incurred by the Company arising out of or in connection with the Company's use of the Customer Artwork.

### 12. LIMITATION OF LIABILITY

- 12.1 Nothing in these Conditions shall limit or exclude the Company'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;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - (d) defective products under the Consumer Protection Act 1987; or
  - (e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 12.2 Subject to clause 12.1:
- (a) the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - (b) the Company's total liability to the Customer 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, shall in no circumstances exceed the price of the Goods.

### 13. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

### 14. GENERAL

#### 14.1 Assignment and other dealings.

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

#### 14.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of 5 years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 14.2(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 14.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## Terms and Conditions of Sale

### 14.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

14.4 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

### 14.7 Notices.

(a) 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, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 14.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the two Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.8 **Third party rights.** No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

14.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

14.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**I/We acknowledge receipt of these Terms and Conditions of Sale:**

Customer:

Authorised Signatory:

Print Name:

Title:

Date: