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The customer's attention is drawn in particular to the provisions of clauses 5.4 and 13.

1 Interpretation

1.1 Definitions:

“**Applicable Laws**” means the laws of England and Wales relevant to the supply, use, re-sell and disposal of the Goods in accordance with this Contract;

“**Bespoke Goods**” means Goods that are requested in an Order that are not within the Seller's current standard goods list or which are within the Seller's current standard goods list but require modifications to such standards goods;

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

“**Buyer**” means the person or firm who purchases the Goods from the Seller;


“**Buyer Specification**” means a specification submitted by the Buyer to the Seller and as agreed in writing between the parties;

“**Certificate of Conformity**” means the document provided by the Seller to the Buyer for Goods being provided to the aerospace industry, confirming that the Goods have been Tested and, comply with the relevant standards and/or relevant Specification;

“**Chemical Analysis**” means the analysis of the Goods undertaken by the Seller at the request of the Buyer to clarify the chemical composition of Goods;

“**Conditions**” means the terms and conditions set out in this document as amended from time to time in accordance with clause 15.4;

“**Contract**” means the contract between the Seller and the Buyer for the sale and purchase of the Goods and/or Services (as relevant) in accordance with these Conditions, any Special Conditions and any other documents incorporated by reference in these Conditions;

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“Delivery Charges Document” means the document provided by the Seller to the Buyer setting out the charges for any delivery;

“Fees” means the fees payable by the Buyer to the Seller for the Certificate of Conformity, Chemical Analysis, Tests, Test Report and Re-Life Certificate and any additional tests (which are outside the scope of the Tests) undertaken by the Seller, which are required by the Buyer in respect of the Goods;


“Force Majeure Event” means an event or circumstance beyond a party’s reasonable control;

“Goods” means the goods (or any part of them) set out in the Order. References to **“Goods”** in these Conditions includes Bespoke Goods unless specifically excluded or the context so requires;

“Intellectual Property” means any and all intellectual property rights of any nature including but not limited to patents, rights to inventions, trade marks, registered designs, utility models, domain names, applications for and rights to apply for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, unregistered design rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), rights to prevent passing off or unfair competition, database rights, topography rights 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” means the Buyer’s order for the Goods and/or Services (as relevant), as set out in the Buyer’s purchase order form which is sent to the Seller by email in accordance with clause 2.2;

“Order Acknowledgement” means the order confirmation document sent by the Seller to the Buyer, agreeing to fulfil an Order and confirming the purchase order number, price and delivery cost;

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“**Quotation**” means a quote supplied by the Seller to the Buyer in response to the Buyer’s request for a quotation;

“**Re-Life Certificate**” means the document provided by the Seller to the Buyer for Goods provided to the aerospace industry, confirming that the Goods, after the expiry of their Shelf Life, have been examined by the Seller and comply with the Specification;

“**SDS**” means the safety data sheet or material safety data sheet (as applicable) for each type of the Goods, which includes a list of hazards and safety instructions provided by the Seller to the Buyer and also are available on the Seller’s website, as updated from time to time;

“**Seller**” means Indestructible Paint Limited, a company registered in England with company registration number 1376995, whose registered office is at 16-25 Pentos Drive, Sparkhill, Birmingham, B11 3TA, UK;

“**Seller Specification**” means the Seller’s standard specification for the Goods, as set out in the TDS;


“**Services**” means the technical services and/or training provided by the Seller to the Buyer as set out in the Order;

“**Shelf Life**” means the period of time that the Goods will continue to perform in accordance with the warranties set out at clause 6.1, as set out in the Shelf Life Document or where the Goods do not have a shelf life set out in the Shelf Life Document, either six (6) months when stored at a Tropical Climate or twelve (12) months when stored at a Temperate Climate, from the date of delivery or collection (as relevant);

“**Shelf Life Document**” means the document provided by the Seller to the Buyer detailing the Shelf Life, storage requirements and Testing in respect of the Goods;

“**Special Conditions**” means the price, delivery date and any delivery instructions and additional costs set out in the Order Acknowledgement;

“**Specification**” means either the Buyer Specification or Seller Specification (as relevant);

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“**TDS**” means a technical data sheet provided by the Seller to the Buyer which includes instructions for the use and application of the Goods;

“**Temperate Climate**” means a temperature between 5° Celsius and 35° Celsius and humidity of between 30-70%;

“**Test Report**” means the report of the data created by undertaking the Tests of the Goods;

“**Tests**” means the standard tests, carried out by the Seller, in respect of the Goods to determine that the Goods are compliant with the Specification and “**Testing**” and “**Tested**” and “**Test**” shall be construed accordingly and

“**Tropical Climate**” means a temperature or humidity higher than the Temperate Climate.


1.2 Interpretation:

1.2.1 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.

1.2.2 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.


1.2.3 a reference to **writing** or **written** includes emails, but not fax.

1.2.4 in the event of any conflict or inconsistency between these Conditions and the Special Conditions, the Special Conditions shall prevail to the extent of any conflict or inconsistency only.

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2 Basis of contract

- 2.1 These Conditions and the Special Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 An Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions. An Order may only be made by email to sales@indestructible.co.uk. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate. The Seller shall be entitled (at its option) to require that a sales account form must be completed by the Buyer and returned to the Seller before the Seller will accept any Order placed by the Buyer.
- 2.3 An Order shall only be deemed to be accepted when the Seller issues an Order Acknowledgment, at which point the Contract shall come into existence.
- 2.4 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions and any applicable Special Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller'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 Seller shall not constitute an offer. A Quotation shall only be valid for a period of thirty (30) Business Days from its date of issue.
- 2.7 If the Buyer is a new customer, the Seller will send a sales account form and Shelf Life Document with any Quotation.
- 2.8 The cancellation of any Order may be requested by the Buyer, which the Seller may agree to in writing in its sole discretion, at any time up to the loading of the Goods by the Seller, the Buyer or the Buyer's carrier (as relevant in accordance with clause 5.2). Where the Seller agrees to the cancellation on an Order, the Buyer shall pay the Seller

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all costs and expenses incurred by the Seller in fulfilling the Order up until the date of the cancellation, including all loss of profits and all other losses or damages suffered or incurred by the Seller as a result of such cancellation.

3 Goods

3.1 The Goods are described in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Buyer Specification and/or the Buyer requests Bespoke Goods, the Buyer shall indemnify the Seller and shall keep the Seller fully and effectively indemnified from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Buyer's Specification or Bespoke Goods. This clause 3.2 shall survive termination of the Contract.

3.3 The Seller reserves the right to amend the Specification without the consent of the Buyer if required by any Applicable Law, or if the amendment will not materially affect the nature or quality of the Goods, and the Seller shall notify the Buyer in any such event.


4 Samples

4.1 The Buyer may order samples of the Goods through the Seller's website, or by email to sales@indestructible.co.uk.

4.2 The Seller shall confirm the order of a sample of the Goods by providing an Order Acknowledgment.

4.3 The price payable by the Buyer to the Seller for any samples of any Goods shall be agreed between the parties in writing.

4.4 If the Buyer has ordered Bespoke Goods (or samples of the same), the Buyer shall co-operate in good faith and provide all reasonable assistance to the Seller in developing

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and providing the Bespoke Goods. All such cooperation and/or assistance provided by the Buyer shall be completed within the timescales agreed with the Seller and in any event within the timescales to allow the Seller to comply with its obligations under the Contract.

4.5 Subject to the exclusion in clause 4.6 below, all other terms in this Contract shall apply to the provision of a sample of the Goods.

4.6 As the Goods provided under this clause 4 are samples only, these are provided to the Buyer on an “as is” basis without any warranties or quality assurances whatsoever.


5 Delivery

5.1 The Seller shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the order number, the type and quantity of the Goods (including the code number of the Goods, where applicable).

5.2 The parties will agree in the Order and Order Acknowledgement one of the following delivery options:

5.2.1 to delivery of the Goods to an address in the UK. The Seller shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (“**Delivery Location**”) at any time after the Seller notifies the Buyer that the Goods are ready. Any delivery to the UK shall be subject to the delivery charges set out in Delivery Charges Document or as agreed with the Seller’s sales department. The Seller shall not be responsible for unloading the Goods at the Delivery Location; or

5.2.2 that the Goods shall be collected by the Buyer (or the Buyer’s agent) from the Seller’s premises at 16-25 Pentos Drive, Sparkhill, Birmingham, B11 3TA or such other location as may be advised by the Seller prior to delivery (“**Collection Location**”). The Buyer shall collect the Goods within fourteen (14) days of the Seller notifying the Buyer that the Goods are ready. The Seller shall not be responsible for loading the Goods at the Collection Location; or

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5.2.3 to delivery of the Goods to an address outside of the UK. Delivery shall be in accordance with Ex Works (INCOTERMS 2010) from Indestructible Paint Limited, 16-25 Pentos Drive, Sparkhill, Birmingham, B11 3TA or such other location as may be agreed in writing between the Buyer and the Seller prior to delivery (“**Ex Works Location**”). The Seller shall not be responsible for loading the Goods at the Ex Works Location.

5.3 Where:

5.3.1 clause 5.2.1 applies, delivery is completed on the completion of unloading of the Goods at the Delivery Location; and

5.3.2 clause 5.2.2 and 5.2.3 applies, delivery is completed on either

(i) the loading of the Goods at the Collection Location where clause 5.2.2 applies; or


(ii) immediately prior to loading at the Ex Works Location where clause 5.2.3 applies.

5.4 Any dates quoted for delivery are approximate only, and the time of delivery shall not be of the essence. The Seller shall not be liable for any delay in delivery of the Goods.

5.5 If the Seller fails to deliver the Goods or the Goods are not ready for collection, the Seller and the Buyer shall use their reasonable endeavours to agree a new delivery date as soon as possible.

5.6 If the Buyer fails to take or accept delivery of the Goods (as appropriate) within twenty-one (21) days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller’s failure to comply with its obligations under the Contract:

5.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the twenty-first Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and

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5.6.2 the Seller may store the Goods until delivery or collection takes place, and charge the Buyer for all related costs and expenses (including insurance) and if delivery or collection does not take place within 1 month of the date of delivery or the date that the Seller notifies the Buyer that the Goods are ready for collection (as relevant), the Seller may sell or otherwise dispose of the Goods and the Buyer shall be liable to the Seller for any losses, costs and expenses suffered or incurred by the Seller.

5.7 If the Seller delivers up to and including five per cent (5%) more or less than the quantity of Goods ordered the Buyer may not reject them, but on receipt of notice from the Buyer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

5.8 The Seller 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 Buyer to cancel any other instalment.

6 Quality

6.1 The Seller warrants that on delivery and for the duration of the Shelf Life (“**warranty period**”) the Goods shall:


6.1.1 conform in all material respects with any Certificate of Conformity supplied with the Goods; and

6.1.2 be free from material defects in material and workmanship.

6.2 The Buyer shall:

6.2.1 carry out a visual inspection of the Goods immediately upon delivery or collection (as relevant); and

6.2.2 carry out its own testing and shall inform the Seller of any defects as soon as reasonably practicable and in any case, within fourteen (14) days of delivery or collection (as relevant).

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6.3 Subject to clause 6.9, any defects which it would not be reasonably possible for the Buyer to have identified through the inspection and testing referred to at clause 6.2, that the Buyer discovers within the warranty period such that some or all of the Goods do not comply with the warranty set out in clause 6.1, shall be immediately notified by the Buyer by giving written notice to the Seller and:

6.3.1 the Buyer (if asked to do so by the Seller) shall return such Goods to the Seller's place of business at the Buyer's cost; and


6.3.2 the Seller shall be given a reasonable opportunity to examine and Test such Goods; and

the Seller shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.


6.4 If the Buyer considers there is a defect in any of the Goods (whether in accordance with clause 6.2 or 6.3 above), the Buyer must promptly contact the Seller's sales department by using any of the following methods: email to sales@indestructible.co.uk, phone +44 (0)121 702 2485 or by writing to the Seller's address above. The Seller will provide to the Buyer a return materials authorisation number ("**RMA number**"). Providing the Goods are within the warranty period, the Seller shall authorise the return of the Goods. The Buyer shall write the RMA number on an address label and attach it to the packaging of the returned Goods. Any defacement of the packaging or Goods or damage caused by inadequate packaging may result in the rejection of the return or the Buyer being required to pay to the Seller an additional restocking fee, at the Seller's sole discretion. Returned Goods will not be accepted without a valid RMA number.

6.5 The Seller does not accept any liability for packages and/or Goods damaged during the loading, transit or unloading of Goods which are being returned to the Seller from the Buyer. It is the Buyer's responsibility to pack the Goods adequately to prevent damage during loading, transit and unloading.


6.6 The parties accept and agree that proof of postage is not proof of delivery. The Buyer is advised to return the returned Goods by recorded delivery, registered post or courier, and to insure the Goods for their full replacement value.

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- 6.7 Within a reasonable period of time from its receipt of the returned Goods, the Seller shall inspect the Goods to identify whether or not there is a defect in the Goods, as notified by the Buyer in accordance with either clause 6.2 or 6.3 (as relevant). If the Seller does not find any defect in the Goods and that the Goods are compliant with the warranty given in clause 6.1, , the Seller shall return them to the Buyer and the Buyer shall reimburse to the Seller any delivery charges incurred by the Seller in connection with the return of the Goods within 30 days of the date of the Seller's invoice. Subject to clause 6.3, the Buyer may not return any Goods unless it has notified the Seller of any non-compliance of the Goods with clause 6.1 within 14 days of delivery (in accordance with clause 6.2.2).
- 6.8 Subject to any earlier cancellation of an Order in accordance with clause 2.8, the Buyer may request within 14 days after delivery of the Goods to return any unwanted Goods, which the Seller may agree to in writing in its sole discretion, subject always to the terms of this clause 6.8. To return any unwanted Goods, the Buyer must inform the Seller by using any of the following methods: email to sales@indestructible.co.uk, phone +44(0)121 702 2485 or by writing to the Seller's address stated above. If the Seller agrees to accept the Buyer's request to return unwanted Goods, the Seller will provide an RMA number and the affected Goods must be returned to the Seller, at the Buyer's expense within 14 days of the date on which those Goods were delivered to the Buyer. Goods will only be accepted for return by the Seller if those Goods are in a re-saleable condition and compliant with the warranties provided under the Contract. The Seller may (at its own discretion) charge the Buyer a handling fee of 15% of the price of the Goods being returned (the price being the price paid by the Buyer for those Goods, less VAT and delivery charges) or £25 (whichever is the greater), which shall be paid by the Buyer to the Seller within 30 days of the date of the Seller's invoice. Subject to compliance with the terms of this clause 6.8, the Seller will provide a refund of the price (excluding the original delivery and VAT charges) to which the Buyer is entitled in the form of a credit note.
- 6.9 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
- 6.9.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 6.2 or 6.3 or makes further use of such Goods after realising there is a defect (but does not give notice);

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- 6.9.2 the defect arises because the Buyer failed to follow the Seller's oral and/or written instructions as to the storage, commissioning, application, use and maintenance of the Goods or (if there are none) good industry practice regarding the same including instructions included in the Shelf Life Document, SDS, TDS or on the packaging of the Goods;
- 6.9.3 the defect arises as a result of the Seller manufacturing the Goods in accordance with the Buyer Specification;
- 6.9.4 the Buyer alters or modifies such Goods without the written consent of the Seller;
- 6.9.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or application conditions;
- 6.9.6 the Goods differ from the Specification as a result of changes made by the Seller to ensure they comply with applicable statutory or regulatory requirements; or
- 6.9.7 the Buyer decants the Goods into different packaging or containers without the prior written consent of the Seller.
- 6.10 Except as provided in this clause 6, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.11 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.
- 6.12 These Conditions shall apply to any replacement Goods supplied by the Seller.
- 6.13 The Buyer may request the Test Report in respect of the Tests carried out on the Goods. The Seller shall provide the relevant Test Report for the Fee. If the Buyer requires repeat Tests to be undertaken, the Seller shall carry out these Tests on behalf of the Buyer for the Fee.
- 6.14 If the Buyer requires additional tests to be undertaken, which are outside of the scope of the Tests, the Seller may, in its own discretion, undertake such tests on behalf of the


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Buyer for a fee agreed in writing between the Buyer and the Seller. The Seller does not provide any warranty as to the compliance of the Goods with any tests outside of the Tests.

- 6.15 Unless otherwise agreed in writing, the Seller does not guarantee the suitability of Goods for the Buyer's purposes and the Buyer shall be responsible for assessing the suitability of the Goods for the Buyer's intended purpose.
- 6.16 If the Buyer returns unwanted Goods to the Seller in accordance with clause 6.8, title and risk in such Goods shall pass to the Seller after the Goods have been unloaded at the Seller's business.
- 6.17 If the Buyer returns defective Goods in accordance with clause 6.4 and the Seller agrees that the Goods are defective, then title and risk in such defective Goods shall pass to the Seller when the Seller confirms to the Buyer that the Goods are defective.

7 Services

- 7.1 The Seller shall supply the Services to the Buyer in all material respects accordance with any relevant Specification.
- 7.2 The Seller shall use all reasonable endeavours to meet any dates agreed in writing for the performance of the Services, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 7.3 The Seller reserves the right to amend any applicable Specification if necessary to comply with any Applicable Law, or if the amendment will not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.
- 7.4 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill and any other terms and conditions that may otherwise be implied by law (whether by statute, common law or otherwise) are hereby executed to the fullest extent permitted by law.


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8 Buyer Responsibilities


- 8.1 The Buyer is responsible, in accordance with the Applicable Laws and any other laws applicable to the jurisdiction where the Buyer operates, for the proper and legal disposal of all packaging material or containers provided by the Seller. The Seller may, in its sole discretion, offer some advice to assist the Buyer comply with its obligations under this clause 8.1. For the avoidance of doubt, the Seller shall have no liability for the disposal of any packaging material or containers.
- 8.2 The Buyer shall not decant the Goods into any packaging or containers other than that provided with the Goods.
- 8.3 The Buyer shall comply with all instructions, both written and oral, in respect of the use, storage and safety requirements provided by the Seller from time to time, including in the Shelf Life Document, SDS, TDS and any instructions on the packaging of the Goods.
- 8.4 Where the Buyer re-sells any of the Goods, it shall pass on to its customers all instructions, information and warnings, including the Shelf Life Document, SDS and TDS and any instructions on the packaging of the Goods, supplied to it by the Seller.

9 Title and risk

- 9.1 The risk in the Goods shall pass to the Buyer on completion of delivery or collection (as relevant determined in accordance with clauses 5.2 and 5.3).
- 9.2 Title to the Goods shall not pass to the Buyer until the earlier of:
- 9.2.1 the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer 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
- 9.2.2 the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 9.4.
- 9.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

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- 9.3.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - 9.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 9.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 9.3.4 notify the Seller immediately if it becomes subject to any of the events listed in clause 12.1; and
 - 9.3.5 give the Seller such information relating to the Goods as the Seller may require from time to time.
- 9.4 Subject to clause 9.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- 9.4.1 it does so as principal and not as the Seller's agent; and
 - 9.4.2 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 9.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 12.1, then, without limiting any other right or remedy the Seller may have:
- 9.5.1 the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 9.5.2 the Seller may at any time:
 - (i) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

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- (ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

9.6 The Seller may, at any time, at its option by notice in writing revoke the Buyer's right of resale or use in clause 9.4.

9.7 Notwithstanding the foregoing provisions of this clause 9, the Seller shall be entitled (at its option) to transfer title to the Goods to the Buyer at any point even if payment has not been received.

10 Price and payment

10.1 Subject to clause 10.2, the price of the Goods and Services shall be the price set out in the Order Acknowledgment, or, if no price is quoted, the price set out in the Seller's published price list for the Buyer in force as at the date of delivery.


10.2 If the price set out in the Order Acknowledgment or in the price list in accordance with clause 10.1 is below the Seller's current minimum order charge, as updated by the Seller from time to time, the minimum order charge will apply.

10.3 The Seller may, by giving notice to the Buyer increase the published price list for the Buyer of the Goods and Services to reflect any increase in the cost of the Goods that is due to any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs). The updated published price list shall have effect for all new Orders placed with the Seller by the Buyer after the date of the price increase.

10.4 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect only any increase in the cost of the Goods that is due to:

10.4.1 any request by the Buyer to change the delivery date(s), quantities, types of Goods ordered, or the Specification or delivery method; or

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

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10.5 The price of the Goods:

10.5.1 excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and

10.5.2 excludes the costs and charges of packaging, insurance, transport, Certificate of Conformity, Chemical Analysis, Test Report, Re-Life Certificate and any additional tests of the Goods, which shall be invoiced to the Buyer.

10.6 Subject to clause 10.8, the Seller may invoice the Buyer for the Goods on or at any time after the completion of delivery.


10.7 Subject to clause 10.8, the Buyer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Seller by BACS or such other method as may be reasonably specified by the Seller. Time for payment is of the essence.

10.8 Notwithstanding clause 10.7, the Seller reserves the right to require payment from the Buyer in cleared funds in advance of delivery.

10.9 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of three percent (3%) per annum above National Westminster Bank plc's base rate from time to time. 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 Buyer shall pay the interest together with the overdue amount.


10.10 The Buyer 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 Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

10.11 Where the Goods are delivered by instalments, the Seller may invoice each instalment separately, and the Buyer shall pay such invoices in accordance with the Contract.

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11 Intellectual Property

- 11.1 All Intellectual Property in the Goods, Seller's Specification and any documentation provided to the Buyer by the Seller in accordance with this Agreement shall be the exclusive property of the Seller and shall at all times remain the exclusive property of the Seller and its licensors, as the case may be, and except to the extent expressly stated in this Contract, the Buyer shall obtain no licence, rights, title or interest in or to the Intellectual Property in the Goods, Seller's Specification or any documentation provided to the Buyer by the Seller in accordance with this Agreement.
- 11.2 The Buyer shall not, without the Seller's express prior written consent (which the Seller may withhold or give subject to conditions):
- 11.2.1 use any of the Seller's trade marks, except, as is strictly necessary to offer the Goods for sale, or use any trade mark which is similar to the Seller's;
- 11.2.2 use any trade mark which is similar to the Seller's;
- 11.2.3 make any modification to the Goods or their packaging, including but not limited to allowing any of our trade marks or other words, notices or marks applied to the packaging of the Goods to be obliterated, obscured or omitted nor add any additional marks or words; and
- 11.2.4 reproduce, or attempt to reproduce, in any manner or form the subject matter of the Seller's Intellectual Property (in whole or in part) including but not limited to the trade marks, formulations or any photographs and the Goods.
- 11.3 If the Buyer breaches clause 11.2:
- 11.3.1 such breach shall, without limitation, constitute a material breach of the Contract; and
- 11.3.2 without prejudice to any other rights and remedies available to the Seller, the Buyer shall immediately take such steps as the Seller may require to remedy such breach.

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11.4 With effect from the Seller withdrawing or terminating any consent or agreement which it has given or granted under these Conditions or otherwise, the Buyer agrees that it shall immediately cease all activity for which such consent or agreement was given and take such steps as the Seller may require to ensure that such activity does not continue.

11.5 To the extent that the Goods are Bespoke Goods, the Buyer shall indemnify the Seller and shall keep the Seller fully and effectively indemnified from and against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller arising out of or in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Buyer's Specification.

12 Termination


12.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

12.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of the Buyer being notified in writing to do so;

12.1.2 the Buyer 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or


12.1.4 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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- 12.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods and/or Services under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 12.1.1 to clause 12.1.4, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 12.4 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 this Contract that existed at or before the date of termination.
- 12.5 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.
- 12.6 Without limiting the generality of Clause 12.5 above, clauses 3.2, 4.6, 6.8, 8, 9, 11, 13, 15.2, 15.3, 15.9 and 15.10, shall survive termination of the Contract.

13 Limitation of liability and Indemnity

- 13.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 13.1.2 fraud or fraudulent misrepresentation;
 - 13.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 13.1.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 13.2 Subject to clause 13.1:

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13.2.1 the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of reputation, interest, penalties, legal costs, other professional costs and expenses, or any indirect, special or consequential loss, arising under or in connection with the Contract; and

13.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the price of the Goods.


13.3 Notwithstanding any other provisions within the Contract, the Seller shall not have any liability to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise in respect of any claims arising from or in connection with the Buyer's failure to adhere to any instructions, advice or recommendation of the Seller in respect of the Goods or from manufacturing Goods to the Buyer Specification. The Buyer shall indemnify the Seller and shall keep the Seller fully and effectively indemnified, from and against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Seller arising from the Buyer's failure to adhere to any instructions, advice or recommendation of the Seller in respect of the Goods.

14 Force majeure

The Seller shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure to perform results from a Force Majeure Event. If the period of delay or non-performance continues for six (6) months, the Buyer may terminate this Contract by giving thirty (30) days written notice to the Seller.

15 General

15.1 Assignment and other dealings.

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15.1.1 The Seller 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.

15.1.2 The Buyer 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 Seller.


15.2 Confidentiality.

15.2.1 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 clause 15.2.3.

15.2.2 Information is not confidential if:

- (i) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the party receiving it or its representatives in breach of this Contract;
- (ii) it was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party;
- (iii) it was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not under any confidentiality obligation in respect of that information;
- (iv) it was lawfully in the possession of the receiving party before the information was disclosed by the disclosing party;
- (v) it is developed by or for the receiving party independently of the information disclosed by the disclosing party; or
- (vi) the parties agree in writing that the information is not confidential.

15.2.3 Each party may disclose the other party's confidential information:

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- (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 Contract. 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 15.2; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.2.4 Neither 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 this Contract.


15.3 Entire agreement.

15.3.1 This 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.

15.3.2 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 Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

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

15.5 **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.

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15.6 **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.

15.7 **Notices.**


15.7.1 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 or email.

15.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.7.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

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

15.8 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms.

15.9 **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.

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15.10 **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 this Contract or its subject matter or formation.