

Terms and Conditions for Equipment Sale, Hire and Services

1 Definitions and Interpretations

1.1 In these Conditions:

Buyer means the person who accepts a quotation or offer of the Seller for the sale or hire of Goods or Hired Goods and/or the provision of Services, or whose order for Goods and/or Services is accepted by the Seller

Contract means the contract for the purchase and sale of Goods and/or the lease and hire of Hired Goods and/or the provision of Services under these Conditions

Delivery Date means the date on which the Goods are dispatched by the Seller or made available for collection by the Buyer as the case may be, as specified in the Contract

Duration of Hire means the period which commences when the Hired Goods leave Mirage Machines Limited, Derby and ends when the Hired Goods are returned back to Mirage Machines Limited, Derby

Goods means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply for sale to the Buyer in accordance with these Conditions

Hire Period means the period during which it is agreed between the parties that the Buyer will hire the Hired Goods, as set out in the Contract

Hired Goods means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply for hire to the Buyer in accordance with these Conditions

Month means a calendar month

Quotation means the specification sheet to which these terms are attached, together with any and all documentation relating to the agreement between the Seller and the Buyer

Seller means Mirage Machines Ltd a company registered in England under number 02788205 whose registered office is Access 10 Business Park, Bentley Road, South, Darlaston, West Midlands, WS10 8LQ.

Services means any services detailed in the Quotation and any and all services that the Seller agrees to provide to the Buyer under the Contract

Site means the location or locations at which the Services are to be provided

Site Day means any day within the Duration of Hire that is not classed as a Transit Day

these Conditions means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

Transit Day means days that the Hired Goods are being transported from the Seller to the Buyer's stipulated site address and from the Buyer back to the Seller

Works means all Goods, Hired Goods and/or Services to be provided by the Seller under the Contract

- 1.2 **writing** includes faxes but not email
- 1.3 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 **Application of terms**

- 2.1 These terms shall apply to and be incorporated into the Contract and prevail over any inconsistent terms or conditions contained, or referred to, in the Buyer's purchase order, confirmation of order, acceptance of a quotation or specification or other document supplied by the Buyer or implied by law, trade custom, practice or course of dealing.
- 2.2 The Buyer's purchase order, or the Buyer's acceptance of a quotation for the performance of Works by the Seller, constitutes an offer by the Buyer to engage the Seller to perform the Works on these terms. No offer placed by the Buyer shall be accepted by the Seller other than by a written acknowledgement issued and executed by the Seller or (if earlier) by the Seller starting to provide the Works, when a contract for the supply and purchase of the Works on these terms and conditions will be established. The Buyer's standard conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.
- 2.3 Each order which is accepted by the Seller in accordance with **clause 2.2** shall constitute a separate legally binding contract between the Seller and the Buyer.
- 2.4 No addition, alteration or substitution of these Conditions will bind the Seller or form any part of any contract unless they are expressly accepted in writing by a person authorised to sign on the Seller's behalf.
- 2.5 The Buyer shall at its own expense provide the Seller with all necessary data or other information relating to the Works, within such time as is necessary to enable the Seller to provide the Works in accordance with the Contract. The Buyer shall ensure that all such information is accurate and complete.
- 2.6 The Seller's employees or agents are not authorised to make any representation with regard to the subject matter of the Contract. In entering into the Contract the Buyer acknowledges that if it relies on any representation, advice or recommendation given by the Seller, its employees or agents to the Buyer as to the use of the Hired Goods or the provision of the Works it does so entirely at the Buyer's own risk.
- 2.7 The Seller reserves the right to refuse to provide the Works where, in the opinion of the Seller, performance of the Works would pose a risk to the health and safety of any person including, without limitation, as a result of the condition of the Site any facilities or equipment provided by the Buyer or any failure of the Buyer to comply with any of its obligations under the Contract.

3 **Incoterms**

In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date

when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions. If there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

4 Sales literature and quotations

4.1 Sales literature, price lists and other documents issued by the Seller in relation to the Goods and/or Hired Goods and/or Services are subject to alteration without notice and do not constitute offers to sell the Goods or hire the make available the Hired Goods or supply Services which are capable of acceptance. An order placed by the Buyer may not be withdrawn cancelled or altered once the order has been acknowledged by the Seller.

4.2 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

5 Orders and Specifications

5.1 The specification for the Works shall be those set out in the Seller's sales documentation unless varied expressly in the Buyer's order (if accepted by the Seller). The Goods and/or Hired Goods will only be supplied in the minimum units (or multiples) stated in the Seller's price list or in multiples of the sales order as specified. Orders received for quantities other than these will be adjusted accordingly.

5.2 The Seller reserves the right to make any changes in the specification of the Works which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods or Hired Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

5.3 All dimensions and other information (whether provided on a data sheet or otherwise) are for reference only and may be subject to change without notice. The Buyer accepts that the performance of any Goods is subject to application and operator capability and confirms that all operators will be suitable qualified and trained.

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

5.5 The Buyer confirms that it has satisfied itself that the Goods are suitable for its purposes and has, as far as required, discussed and raised any pertinent questions with the Seller in relation to the Goods which it is seeking to buy and/or hire.

6 Price of the Goods and/or Services

6.1 The price of the Works shall be the price listed in the Seller's published price list current at the date of acceptance of the Buyer's order or such other price as may be agreed in writing by the Seller and the Buyer

6.2 The Hire Period includes the Transit Day and the Site Day. The length and respective rates of the Transit Day and Site Day shall be determined in writing prior to the commencement of the hire of the Hired Goods, subject to a minimum number of Site Day of 3 days.

- 6.3 If the Duration of Hire extends beyond the Hire Period, the Buyer will be charged a full days Site Day rate for every part day the Duration of Hire is extended beyond the Hire Period.
- 6.4 Where the Seller has quoted a price for the Works other than in accordance with the Seller's published price list the price quoted shall be valid for 60 days only or such other time as the Seller may specify.
- 6.5 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods or Hired Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller. Such as, without limitation, any foreign exchange fluctuation, currency regulation or alteration of duties, any change in delivery dates, quantities or specifications for the Goods or Hired Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 6.6 The Buyer undertakes not to offer the Goods for resale in any country that is considered restricted by Mirage Machines Ltd. Such as, without limitation, Cuba, North Korea, Sudan, Syria, Iran, Myanmar. If the Buyer intends to resell the Goods outside of the restricted counties or to any person that, the Buyer knows or has reason to believe, intends to resell the Goods must be notified by the Buyer to the Seller at or before the time the Buyer's order is placed.
- 6.7 The price is exclusive of any applicable value added tax, excise, sales tax or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Works, which the Buyer shall be additionally liable to pay to the Seller.
- 6.8 The Seller reserves the right to demand a non-refundable deposit from the Buyer at any time before delivery. The deposit shall be a percentage of the price of the Goods and/or Hired Goods, at the Seller's discretion and shall be deducted from any outstanding amount owing from the Buyer to the Seller. If the Seller makes a demand for a deposit, the Buyers order will not be deemed to be accepted until such deposit is paid. For the avoidance of doubt, the deposit shall not be refundable in any circumstance.
- 6.9 **Service Charges**
- 6.9.1 Where it is agreed that the Services will be charged on an hourly basis, charges will be made for time spent by the Seller's personnel in travelling to and from the Site and time spent in respect of preparation prior to departure. Timesheets will be submitted to the Buyer or the Buyer's representative on a weekly basis for the necessary approval and endorsement. Where a work period is less than a week, the timesheet will be submitted prior to leaving the Site. The Seller's decision relating to data inputted on timesheets will be final and binding on the Buyer. In the event of any conflict between the Seller's timesheets and any other information or records obtained or kept by either party in respect of hours spent by the Seller and its relevant personnel in the course of performing the Services, the Seller's timesheets shall prevail.
- 6.9.2 Charges for transportation of equipment and mobilisation will be made in respect of both despatch of the relevant equipment from and return of the relevant equipment to the Seller's premises.

- 6.9.3 Expenses covering meals, accommodation etc will be charged on the basis of the Seller's current daily rates or rates mutually agreed between the parties and specified in the Quotation.
- 6.9.4 The following additional conditions shall also apply to the provision of the Services for offshore locations:
- (a) the Buyer will be charged mobilisation from the Seller's premises to the relevant embarkation point at the Seller's fixed mobilisation rates unless varied within the Quotation;
 - (b) the Buyer shall be charged de-mobilisation from the relevant de-embarkation point to the Seller's premises, the Seller's fixed de-mobilisation rates apply unless varied within the Quotation;
 - (c) the Buyer shall be invoiced a minimum twelve (12) hours shift irrespective of times spent travelling to and from offshore locations; and
 - (d) should an early commencement be required by the Buyer, the Buyer shall be charged for the previous evening's accommodation and expenses at cost.

6.10 Restocking Charge

If agreed in advance by the Seller and the Buyer the Seller shall be entitled to charge a restocking fee in relation to any Goods which are returned to it. Such restocking fee shall be (unless agreed otherwise) 25% of the price of the Goods subject to such restocking.

7 Terms of Payment

- 7.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the net sum due for the Goods prior to or at any time after despatch of the Goods.
- 7.2 The Buyer shall pay the price of the Works on the payment date stated in the Contract or if no express provision for the time of payment is contained in the Contract, within 30 days after the date of invoice notwithstanding that delivery may not have taken place and/or that the property in any Goods may not have passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 7.3 The Buyer shall pay the price of the Hired Goods on the payment date or dates stated in the Contract or if no express provision for the time of payment is contained in the Contract, prior to despatch of the Hired Goods. The Seller shall not despatch the Hired Goods until cleared payment has been received by the Seller.
- 7.4 All payments shall be made to the Seller in the currency of the price stated in the Contract at its office as indicated on the form of acceptance or invoice issued by the Seller without any deduction credit or set off whatsoever.
- 7.5 The Seller is not obliged to accept orders from any customer or buyer who has not supplied the Seller with references satisfactory to the Seller. If at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer. In this event, the Buyer shall be required to give security deposits in respect of goods already shipped and no further goods will be delivered to the Buyer other than against cash payment and notwithstanding any payment terms contained in the Contract all amounts owing to the Seller shall be immediately payable in cash.

- 8 Delivery**
- 8.1 Delivery of the Goods shall take place and risk in the Goods will pass in accordance with Incoterms, where applicable, otherwise delivery of the Goods shall be made by the Seller tendering bills or other appropriate documents of lading or by delivering the Goods to the place specified in the Contract or by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection. Goods despatched by post will be deemed to be delivered when the Goods are accepted by the post office in the United Kingdom.
- 8.2 Once the Goods and/or Hired Goods have been dispatched, the Seller has no responsibility for delays in delivery.
- 8.3 The Buyer will be responsible for collection and return to the Seller of any Hired Goods.
- 8.4 Unless otherwise agreed in writing by the Buyer and the Seller, the shipment of all Goods will be on an ex-works basis (Incoterm EXW).
- 8.5 The Seller shall endeavour to comply with the shipping instructions given by the Buyer with its order for the Goods but the Seller reserves the right to make part shipments and to ship by vessels of the Seller's choice from any port in the United Kingdom or elsewhere.
- 8.6 Where the Buyer is to provide a vessel for shipment the Seller shall not be responsible for any charges resulting from failure by the Buyer to give due notice of the vessel's time of arrival.
- 8.7 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the Delivery Date upon giving reasonable notice to the Buyer. If the Seller delivers the Goods at any time after the Delivery Date the Seller shall have no liability in respect of such late delivery.
- 8.8 Where delivery of the Goods is to be made by the Seller in bulk measured by weight, the Seller reserves the right to deliver up to three per cent more or three per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 8.9 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 8.10 If the Buyer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the Seller shall be entitled upon giving written notice to the Buyer to store or arrange for the storage of the Goods and then notwithstanding the provision of **clause 10.1**, risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place and the Buyer shall pay to the Seller all costs and expenses including storage and insurance charges arising from such failure.
- 8.11 The Seller shall not be liable for any costs incurred for whatever reason after delivery of the Goods is deemed to have taken place. Where Goods are sold inclusive of any of the freight, handling, port or insurance charges, any increases in such charges arising after the date of the Contract and before the Goods are delivered or arising

through deviation to a new port or airport necessarily or at the Buyer's request or through any delay however caused shall be for the Buyer's account subject to the absolute discretion of the Seller. Port surcharges and other incidental charges are not included in the freight rate will be for the Buyer's account.

- 8.12 Import or customs duty or other official taxes or charges arising from or necessary to enable delivery of the Goods shall be for the Buyer's account and shall be reimbursed forthwith where necessarily paid by the Seller.
- 8.13 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in delivery or in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.13.1 act of God, explosion, flood, tempest, fire or accident;
- 8.13.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.13.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.13.4 import or export regulations or embargoes;
- 8.13.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.13.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery; or
- 8.13.7 power failure or breakdown in machinery.

9 Insurance

- 9.1 Unless otherwise expressly agreed in writing by the Buyer and the Seller, Goods sold c.i.f. will be insured from the time the Goods leave the warehouse or place of storage at the commencement of transit, throughout the ordinary course of transit and until:
- 9.1.1 delivery to the Buyer or other final warehouse or place of storage at the destination named in the Contract;
- 9.1.2 the expiry of 60 days after completion of discharge of the Goods from the overseas vessel at the final port of discharge or on the expiry of 30 days after unloading the Goods insured from an aircraft at the final place of discharge, whichever shall first occur.
- 9.2 Insurance on Goods sold c.i.f. shall be effected by the Seller on behalf of the Buyer and shall be for the c.i.f. value of the Goods plus ten per cent (or such other percentage as may have been agreed in writing between the parties) against marine war and other marine risks (or air war or other air risks where appropriate). All special risks involved in the carriage of the Goods shall be for the Buyer's account. Claims are made by the Buyer to the Seller.
- 9.3 All costs arising from the insurance being effected, on the Buyer's request, on Goods sold other than c.i.f. shall be for the Buyer's account.
- 9.4 The Buyer will ensure that it carries insurance to cover the replacement value of Hired Goods for the Duration of Hire. A copy of the relevant certificate or policy must

be provided to the Seller prior to commencement of the Duration of Hire or at any time following the Seller's request for the same.

10 Risk and Property in the Goods

10.1 Risk of damage to or loss of the Goods shall pass to the Buyer in accordance with the relevant provision of Incoterms or where Incoterms do not for any reason apply:

10.1.1 in the case of Goods to be delivered at the Seller's premises, the time when the Seller notifies the Buyer that the Goods are available for collection; or

10.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has attempted delivery of the Goods.

10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

10.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

10.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;

10.3.2 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

10.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

10.3.5 notify the Seller immediately if it becomes subject to any of the events listed in **clause 13.2**; and

10.3.6 give the Seller such information relating to the Goods as the Seller may require from time to time, but the Buyer may resell or use the Goods in the ordinary course of its business.

10.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in **clause 13.2**, or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, 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.

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

11 Warranties and liabilities

11.1 The Seller warrants that the Goods will conform in all material respects and be free from material defects in design, materials and workmanship for a period of 12 months

(the Warranty Period) from the Delivery Date and the Hired Goods will conform in all material respects and be free from material defects in design, materials and workmanship for the Hire Period.

- 11.2 Subject to **clause 11.3**, if:
- 11.2.1 the Buyer gives the Supplier notice within 14 days of the date on which they become aware of or ought reasonably to become aware that some or all of the Goods or Hired Goods do not comply with the warranty set out in **clause 11.1**;
- 11.2.2 the Seller is given a reasonable opportunity of examining such Goods and/or Hired Goods; and
- 11.2.3 if the Seller asks the Buyer to do so, it returns such Goods and/or Hire Goods to the Seller at the Buyer's cost,
- the Seller shall, at its option, repair or replace any Goods and/or Hire Goods which do not comply with the warranty set out in **clause 11.1**, or refund the price of the such Goods and/or a proportionate part of the price of the Hired Goods, taking into account the use that the Buyer has had of the Hired Goods.
- 11.3 The Seller will be under no liability in respect of any defect in the Goods and/or the Hired Goods arising from fair wear and tear, or any wilful damage, negligence, subjection to abnormal conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration of the Goods and/or Hired Goods without the Seller's approval or as a result of us following any drawing, design or Specification supplied by the Buyer.
- 11.4 If, under the provisions of **clause 11.2**, the Seller, acting reasonably, concludes that there has been no breach of the warranty set out in **clause 11.1** then the Seller will:
- 11.4.1 notify the Buyer of its conclusion;
- 11.4.2 be entitled to charge the Buyer its reasonable costs for carrying out an examination of the Goods and/or Hired Goods and, if the Seller has paid the cost of the return of the Goods and/or Hire Goods to the Seller for examination, those costs of return;
- 11.4.3 make the Goods and/or Hired Goods available for collection by the Buyer if they have been returned to the Seller;
- 11.4.4 be entitled to charge the Buyer its reasonable costs of storing the Goods and/or Hired Goods until they have been collected by the Buyer; and
- 11.4.5 if, within 28 days of the Seller's notice under **clause 11.4.1**, the Buyer has failed to collect any Goods and/or Hired Goods which it has returned to the Seller, the Seller shall be entitled to sell the Goods and/or Hired Goods and account to the Buyer for the proceeds of sale, subject to first deducting its reasonable costs of storing the Goods and/or Hired Goods and arranging the said sale.
- 11.5 Except as provided in this **clause 11**, the Buyer shall have no liability in respect of the Goods and/or Hire Goods' failure to comply with the warranty set out in **clause 11.1**.
- 11.6 The terms implied by sections 13 to 15 of the Sale of Goods and/or Hire Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.7 Except as set out in these conditions, all warranties, conditions and other terms implied by statute or common law are, to the extent permitted by law, excluded from the context.

- 11.8 These Conditions shall apply to any replacement or repaired Goods provided by the Seller to the Buyer provided that the issue of replacement or repaired Goods will not be deemed to restart or extend the Warranty Period and the warranty at **clause 11.1** will expire, in respect of the replacement or repaired Goods and any parts for those replacement or repaired Goods, at the end of the original Warranty Period.
- 11.9 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 11.9.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 11.9.2 fraud or fraudulent misrepresentation;
- 11.9.3 breach of the terms implied by section 12 of the Sale of Goods and/or Hired Goods Act 1979;
- 11.9.4 defective products under the Consumer Protection Act 1987; or
- 11.9.5 any matter in respect of which it would be unlawful for us to exclude or restrict liability.
- 11.10 Subject to **clause 11.9**:
- 11.10.1 the Seller shall under no circumstances whatever be liable to the Buyer, 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 Works; and
- 11.10.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Works, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the sums paid by the Buyer to the Seller for the Works; and
- 11.10.3 the Seller will not be responsible for any loss of or damage to the Hired Goods or injury to any person or any property arising out of or in connection with any negligence, misuse, mishandling of the Hired Goods, failure to comply with the requirements of **clause 12** or otherwise caused by the Buyer or the Buyer's officers, employees, agents and contractors, and the Buyer will indemnify the Seller against the same.
- 12 The Hired Goods**
- 12.1 The Hired Goods will at all times remain the property of the Seller and the Buyer will acquire no rights or interest in the Hired Goods other than as set out in these Conditions.
- 12.2 Risk in the Hired Goods will pass to the Buyer upon commencement of the Duration of Hire.
- 12.3 Throughout the Duration of Hire the Buyer must:
- 12.3.1 ensure that the Hired Goods are kept and operated in a suitable environment, used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with the Seller's instructions and any applicable statutory or other regulatory requirements;
- 12.3.2 take all necessary steps to ensure that the Hired Goods are at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

- 12.3.3 maintain at its own expense the Hired Goods in good and substantial repair and make good any damage to the Hired Goods;
- 12.3.4 make no alteration to the Hired Goods without the Seller's prior written consent;
- 12.3.5 keep the Seller fully informed of all material matters relating to the Hired Goods;
- 12.3.6 not remove the Hired Goods which are not intended to be portable from its premises;
- 12.3.7 permit the Seller at all reasonable times to enter the Buyer's premises to inspect the Hired Goods;
- 12.3.8 not part with possession or control of, sell or offer for sale, underlet or lend the Hired Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of them or allow them to become attached to any land or buildings in a permanent or fixed way; and
- 12.3.9 not do or permit to be done anything which could invalidate the insurances referred to in **clause 9.4**.
- 12.4 The Buyer must deliver up the Hired Goods at the end of the Hire Period or on earlier termination of the Contract at such address as the Seller requires, or if necessary allow the Seller or its representatives access any premises where the Hired Goods are located for the purpose of removing the Hired Goods.

13 **Buyer's Default**

- 13.1 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-
 - 13.1.1 cancel the order or suspend any further deliveries to the Buyer;
 - 13.1.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
 - 13.1.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above the Bank of England (or such other bank as the Seller may notify) base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
 - 13.1.4 where the price is to be paid in a currency other than Sterling, charge to the Buyer the reduction in the amount of pounds sterling receivable by the Seller on conversion of the proceeds by the Seller's bankers as a result of variations in the rate of exchange between the due date and the date of actual payment.
- 13.2 This Condition applies if:
 - 13.2.1 the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
 - 13.2.2 the Buyer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;
 - 13.2.3 a charge-holder takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;

- 13.2.4 the Buyer ceases, or threatens to cease, to carry on business; or
- 13.2.5 the Seller reasonably apprehends that any of the events mentioned above are about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 13.3 If **clause 13.2** applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but no paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14 **Confidentiality, Publications and Intellectual Property**

- 14.1 The Buyer undertakes to the Seller that:
 - 14.1.1 the Buyer will regard as confidential the Contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default;
 - 14.1.2 the Buyer will not use or authorise or permit any other person to use any name, trade mark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, notepaper, visiting cards, advertisements or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller. The Buyer will use all reasonable endeavours to ensure compliance with this condition by its employees, servants and agents. This Condition shall survive the termination of the Contract.
 - 14.2 All copyright, design right, know-how and all other intellectual property rights created by or used by the Seller in relation to the Contract (including, without limitation, all intellectual property rights in the Hired Goods) shall remain vested and belonging absolutely to the Seller. The Buyer shall have a licence to use the same only for the purpose of using the Hired Goods. Any drawings, designs and/or proposals submitted by the Seller for approval shall remain the property of the Seller and shall be treated by the Buyer as strictly confidential and shall not be divulged to third parties without the Seller's prior written consent.
 - 14.3 The Buyer warrants that any design instruction or specification given to the Seller by or on its behalf shall not infringe any intellectual property rights of any third party.

15 **Buyer's obligations**

- 15.1 The Buyer shall:
 - 15.1.1 co-operate with the Seller in all matters relating to the Works;
 - 15.1.2 provide the Seller, its agents, subcontractors, consultants and employees in a timely manner and at no charge, with access to the Site and the Buyer's premises, office accommodation, data and other facilities as reasonably required by the Seller for the purposes of providing the Works;
 - 15.1.3 provide to the Seller, in a timely manner, such information as the Seller may reasonably require for the purposes of providing the Works and ensure that it is complete and accurate in all material respects;
 - 15.1.4 be responsible (at its own cost) for preparing and maintaining the Site for the supply of the Works;

- 15.1.5 provide all personnel employed by the Seller in providing the Works with a full induction in relation to all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;
- 15.1.6 provide, at the Buyer's cost, to all personnel employed by the Seller in providing the Works, welfare facilities as required under the Workplace (Health, Safety and Welfare) Regulations 1992 (including, without limitation, regulations 20, 23, 24 and 25);
- 15.1.7 provide at the Site and at the Buyer's cost such facilities and utilities as the Seller may require for the purposes of performing the Works including, without limitation, electricity, lighting, compressed air supplies and hoses, lifting equipment, cranes, rigging and scaffolding;
- 15.1.8 permit the Seller, where required, to deliver and store any items necessary for the performance of the Works to the Site prior to the agreed date for commencement of the Works;
- 15.1.9 inspect the Works upon completion and approve the appropriate timesheet and joint completion certificates before the Seller's technicians depart from the Site.
- 15.2 If the Seller's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, the Seller shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.
- 15.3 The Buyer shall be liable to pay to the Seller, on demand, all reasonable costs, charges or losses sustained or incurred by the Seller (including without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Seller confirming such costs, charges and losses to the Buyer in writing.
- 16 General**
- 16.1 When placing the order the Buyer must advise the Seller in writing of any special, legal, administrative or regulatory requirements applying in the territory in which the Buyer is to import, use or sell the Goods as to composition labelling distributors or sale of the Goods and the Buyer must advise the Seller immediately of any change made in such requirements.
- 16.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 16.3 The Buyer may not assign the benefit of the Contract without the written consent of the Seller.
- 16.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 16.5 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

17 **Anti-Bribery and Corruption**

17.1 In obtaining this Contract, the Buyer warrants that it has not done, and in performing its obligations under the Contract, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations.

17.2 The Buyer shall immediately notify the Seller in writing on becoming aware of, or suspecting, any failure to comply with any provision of this **clause 17**.

17.3 Any failure by the Buyer to comply with any provision of this **clause 17** shall entitle the Seller to terminate the Contract immediately at no cost, liability or penalty to the Seller and without prejudice to any other rights or remedies that may have accrued to the Buyer's benefit under or in connection with the Contract.

18 **Applicable Law and Jurisdiction**

18.1 The Contract shall be governed by the laws of England and the courts of England will have exclusive jurisdiction to deal with any dispute arising in connection with it.

18.2 The Uniform Laws on the International Sale of Goods laid down in the 1980 United Nations Convention shall not apply unless expressly agreed between the parties in writing.