

CONDITIONS FOR THE SALE OF GOODS

1. INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

"Account Application Form" - the application form provided by the Seller to the Buyer upon request, for completion by the Buyer in order for the Buyer to apply for a trade account with the Seller, under which alternative payment terms may be agreed;

"Buyer" - the sole trader, partnership, firm, company, public authority or agency whose Purchase Order for Goods is accepted by the Seller;

"Conditions" - the terms and conditions of sale set out in this document together with any special terms agreed in writing between the Seller and the Buyer as specified in the Quotation;

"Confidential Information" - all information in respect of the business of the Seller including, but not limited to, know-how or other matters connected with the Goods, information concerning the Seller's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Seller and of such other persons and any other information which, if discussed with or disclosed to third parties by the Buyer, will be liable to cause harm to the Seller;

"Consumer" - an individual who purchases the goods for personal use and not in the course of a trade or business.

"Contract" - any contract between the Seller and the Buyer for the sale and purchase of the Goods formed in accordance with **Condition 2**;

"Control" - has the meaning set out in section 1124 Corporation Tax Act 2010;

"Delivery Point" - the place where delivery of the Goods is to take place under **Condition 7**;

"Force Majeure" - any cause preventing the Seller from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of the Seller including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of the Seller or otherwise), protest, act of God, war, or national emergency, an act or threat of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, inability to obtain essential supplies or materials, fire, explosion, utilities failure, flood, storm, epidemic or default of suppliers or subcontractors;

"Goods" - any goods which the Seller is to supply to the Buyer (including any part or parts of the goods) under a Contract;

"Intellectual Property Rights" - all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, whether or not in existence at the date hereof, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

"Price" - the price payable by the Buyer to Seller for the Goods in accordance with **Conditions 4** and **5** below;

"Purchase Order" - the Buyer's order for Goods (whether in writing, by email, through the Sales Platform or by telephone and including, without limitation, the acceptance of a Quotation by the Buyer);

"Quotation" - any quotation (either in writing, by email, through the Sales Platform or by telephone) given to the Buyer by the Seller (at the request of the Buyer) for any Goods;

"Sales Platform" - the sales platform on the Website through which the Buyer may elect to purchase and the Seller may elect to sell the Goods;

"Seller" - Rinnai (UK) Limited (registered in England and Wales under company number 01247352) whose registered office is at 9 Christleton Court, Manor Park, Runcorn, WA7 1ST;

"Specification" - the written technical specification for any Goods as may be varied from time to time by the Seller.

"Website" - the Seller's website from which it advertises and makes sales of Goods, which is currently www.rinnaiuk.com and any links from there to other domains operated by the Seller.

1.2 The headings in these Conditions are for convenience only and will not affect their construction or interpretation.

1.3 Any reference in these Conditions to any provision of statute or a statutory instrument shall (unless otherwise specified) be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.4 Any reference in these Conditions to the neuter shall include the masculine and feminine and the singular shall include the plural if the context so requires.

1.5 In the event of any conflict between the terms contained in these Conditions and the terms contained in a Quotation, the Conditions shall prevail, unless expressly agreed otherwise in writing by duly authorised representatives of the parties..

2. FORMATION AND INCORPORATION

2.1 Save other than for a transaction under which the Buyer has either specifically identified them self to the Seller as being a Consumer or is in any event purchasing the Goods as a Consumer (in which event the Seller's "Conditions for the Sale of Goods to Consumers" shall apply, a copy of which is available upon request or at www.rinnaiuk.com) each

Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer attempts to apply under any Purchase Order, confirmation of order, acceptance of a Quotation or similar document).

2.2 No terms or conditions referred to in, delivered with or contained in the Buyer's Purchase Order, confirmation of order, acceptance of a Quotation or similar document will form part of the Contract.

2.3 Any Quotation provided by the Seller is an invitation to treat and not an offer to sell the Goods. The Seller reserves the right to amend any Quotation prior to acceptance of the Purchase Order by it. Any Quotation is valid for such a period of time as specified in the Quotation, or if not specified in the Quotation, for a period of 1 month only from the date of the Quotation provided the Seller has not previously withdrawn the Quotation. For the avoidance of doubt, any Quotation provided through the Website shall expire at the end of the day upon which it is provided.

2.4 Each Purchase Order is an offer by the Buyer to purchase Goods subject to these Conditions and the Specification. The Buyer must ensure that the contents of its Purchase Order are complete and accurate before submitting it to the Seller.

2.5 Where the Buyer notices any mistakes in its Purchase Order, it shall immediately notify the Seller. The Seller is under no obligation to permit the Buyer to amend the terms of any Purchase Order which it has already accepted, but will use all reasonable efforts to co-operate with any request by the Seller.

2.6 Where the Buyer places a Purchase Order through the Website, it shall be required to confirm its agreement to these Conditions at the time of placing the Purchase Order. In all other circumstances, the submission of a Purchase Order by the Buyer to the Seller shall be conclusive evidence of its agreement to these Conditions.

2.7 The Seller has the right to amend the terms of any Quotation and these Conditions at any time prior to it accepting the Buyer's Purchase Order. The Seller shall not be obliged to sell any Goods and no Contract will come into existence unless and until the Seller accepts the Purchase Order from the Buyer by either;

2.7.1 sending an email confirmation to the Seller; or

2.7.2 providing oral confirmation on the telephone; or

2.7.3 confirming in writing to the Seller; or

2.7.4 delivering the goods to the Buyer.

2.8 Any Purchase Order which the Seller has accepted may not be cancelled by the Buyer except with the written agreement of the Seller.

2.9 Any variation to these Conditions shall not have effect unless expressly agreed in writing and signed by a director of the Seller.

2.10 In the event that the Seller accepts the Buyer's Account Application Form, it shall confirm the same in writing to the Buyer (including any relevant payment terms). For the avoidance of doubt, the Seller shall be entitled to decline without reason any Account Application Form submitted to it by the Buyer.

3. THE GOODS

3.1 The quantity and description of the Goods will be as set out in the Seller's Quotation.

3.2 All samples, drawings, descriptive matter, specifications (other than the Specification) and advertising issued by the Seller (or the manufacturer of the Goods) and any descriptions or illustrations contained in the Seller's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

3.3 The Seller may make any changes to the specification, design, materials or finishes of the Goods which:

3.3.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or

3.3.2 do not materially affect their quality or performance.

4. PRICE

4.1 The Price shall be the price set out by the Seller in the Quotation or in the event the Seller does not provide a Quotation, the Seller's published price list current at the date of acceptance of the Purchase Order in accordance with **Condition 2.6**.

4.2 Subject to **Condition 4.5**, the Price shall be valid for such time period as specified by the Seller in the Quotation, or if not specified for a period of 1 month from the date of the relevant Quotation (provided the Seller has not withdrawn the Quotation). For the avoidance of doubt, any Quotation provided through the Website shall expire at the end of the day upon which it is provided.

4.3 After the expiry of the date in the Quotation or a 1 month period from the date of the Quotation (as applicable) the Price shall be as set out in the Seller's published list price current at the date of acceptance of the Purchase Order in accordance with **Condition 2.6**.

4.4 The Price is exclusive of:

4.4.1 value added tax or any other applicable sales tax;

4.4.2 any export, import duties, levies or tariffs,

which the Buyer shall pay in addition when it is due to pay for the Goods.

4.5 The Seller may at any time before delivery increase the Price to reflect any increase in the cost of manufacture or distribution of the Goods which is due to:

- 4.5.1 any factor beyond the reasonable control of the Seller including, without limitation, foreign exchange fluctuation, currency regulation, alteration of duties and taxes, increase in cost of labour, materials and other manufacturing costs and transport costs; and/or any change in delivery dates or quantities for the Goods requested by the Buyer; and/or
- 4.5.2 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions,
- and any dispute as to the amount of any increase in Price shall be determined by the Seller's auditors. In the event the Buyer objects to any increase in the Price under this **Condition 4.5**, it shall be entitled to cancel the Purchase Order upon 7 days' written notice to the Seller, provided that the Seller can elect at any time within the 7 day period to honour the original Price and confirm the Purchase Order under **Condition 2.7**.
- 4.6 The Price for the Goods is given on an ex-works basis (as defined in Incoterms 2000) and where the Delivery Point is other than at the Seller's place of business the Buyer shall pay the Seller's additional charges including, without limitation, for transport, shipping, packing, packaging, loading, unloading and (where applicable) insurance when it is due to pay for the Goods
- 5. PAYMENT**
- 5.1 The Seller may invoice the Buyer for the Goods prior to, or on, or at any time after delivery or deemed delivery. Subject to **Condition 5.4**, the Buyer shall pay for the Goods in full at the time of placing its Purchase Order unless the Seller has accepted in writing the Buyer's Account Application Form prior to the formation of any Contract pursuant to **Condition 2.7** whereupon payment will be due in accordance with the terms of the relevant account agreed between the Seller and the Buyer.
- 5.2 Time for payment by the Buyer for the Goods shall be of the essence.
- 5.3 No payment shall be deemed to have been received in accordance with a Contract until the Seller has received payment in full (subject to **Condition 5.6**) in sterling and in cleared funds. As from the date when sterling is replaced by a single European currency ("Euro") according to the uniform monetary system of the European Union then any references to sterling in this Agreement shall be replaced by references to Euros.
- 5.4 All payments payable to the Seller under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 5.5 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.
- 5.6 The Seller may appropriate any payment made by the Buyer to the Seller to such of the Goods as the Seller thinks fit despite any purported appropriation by the Buyer.
- 5.7 If the Buyer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies):
- 5.7.1 the Seller may charge the Buyer interest accruing on a daily basis on the amount unpaid at the annual rate specified by the Late Payment of Commercial Debts (Interest) Act 1998 until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest); and
- 5.7.2 the Seller shall be entitled to suspend performance of any of the obligations under any Contract with the Buyer until the outstanding amount has been received by the Seller from the Buyer in cleared funds.
- 5.8 The Buyer shall indemnify and keep indemnified the Seller against all fees, costs and expenses arising out of or in connection with the Seller collecting any outstanding sums due to it under a Contract.
- 6. DELIVERY BY INSTALMENTS**
- 6.1 The Seller may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.
- 6.2 Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract.
- 6.3 Failure by the Buyer to pay for any one or more instalments in accordance with the Contract shall entitle the Seller (without prejudice to its other rights and remedies):
- 6.3.1 to suspend without further notice deliveries of Goods or goods under any other contract between the Seller and Buyer pending payment by the Buyer; and/or
- 6.3.2 to treat that Contract as repudiated by the Buyer.
- 7. DELIVERY**
- 7.1 Delivery of the Goods shall be made ex-works (as defined in Incoterms 2000), when the Goods are placed at the disposal of the Buyer at the Seller's premises unless the Seller agrees in writing to an alternative Delivery Point.
- 7.2 If delivery is made ex-works under **Condition 7.1** the Buyer will take delivery of the Goods within 3 days of the Seller giving the Buyer notice that the Goods are ready for delivery.
- 7.3 Delivery of the Goods shall be during the Seller's usual business hours, unless otherwise agreed in writing by the Seller.
- 7.4 Any dates specified by the Seller for delivery of Goods are approximate only and may not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 7.5 The Seller will use reasonable endeavours to deliver the Goods in accordance with **Condition 7.4**. If, despite those endeavours, the Seller is unable for any reason to fulfil any delivery of the Goods on the specified date, the Seller will be deemed not to be in breach of the Contract for any delay or failure in delivery except as set out in this **Condition 7.5**. Any delay in delivery will not entitle the Buyer to cancel the Purchase Order (or part of the Purchase Order) unless and until the Buyer has given 60 days' written notice to the Seller requiring the delivery to be made and the Seller has not fulfilled the delivery within that period. If the Buyer cancels the order in accordance with this **Condition 7.5** then:
- 7.5.1 the Seller will refund to the Buyer any sums which the Buyer has paid to the Seller in respect of that Purchase Order (or part of the Purchase Order) which has been cancelled; and
- 7.5.2 the Buyer will be under no liability to make any further payments under **Condition 5.1** in respect of that Purchase Order (or part of the Purchase Order) which has been cancelled.
- 7.6 If the Delivery Point is agreed to be other than the Seller's premises in accordance with **Condition 7.1** the Goods shall be delivered to the Buyer's business premises or to such other address or third party's business premises by such means as the Seller thinks fit unless the Buyer has specified in its Purchase Order the details of the contract with a carrier which it reasonably requires having regard to the nature of the Goods and the circumstances and provided always that the Buyer shall be responsible for ensuring the Goods are adequately insured during carriage of the Goods in accordance with the Contract. The Buyer accepts that where the Seller appoints a carrier for the carriage of the Goods in accordance with this **Condition 7.6**, the Seller does so as the Buyer's agent. For the avoidance of doubt, the Seller shall in no way be responsible for any damage, destruction or loss of Goods in transit, and shall be under no liability to effect any insurance in this respect unless otherwise agreed in writing between the parties.
- 7.7 If the Buyer fails to take delivery of the Goods within 3 days of the Seller giving notice they are ready for delivery (if delivery is ex-works) or fails to accept delivery (if delivery is other than ex-works) or fails to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Seller's fault) the Goods will be deemed to have been delivered and (without prejudice to its other rights) the Seller may:
- 7.7.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage, insurance and any costs of carriage); and/or
- 7.7.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the Price.
- 7.8 The Buyer shall notify the Seller in writing within 5 days of the Goods being despatched from the Seller's premises of any irregularity between the Goods ordered by the Buyer pursuant to a particular Purchase Order and the Goods delivered under that Purchase Order in accordance with **Condition 7.1**. Failure to provide such notification within 5 days of delivery of the Goods shall be conclusive evidence of the Buyer's acceptance that the delivered Goods comply with such Purchase Order.
- 7.9 Upon receipt by the Seller of the written notification in accordance with **Condition 7.8** the Buyer shall at the request of the Seller return any such Goods to the Seller and if any irregularity under **Condition 7.8** is proven to the satisfaction of the Seller the Seller will, at its option, replace or refund the purchase price of the Goods.
- 8. RISK/OWNERSHIP**
- 8.1 Risk of damage to or loss of Goods shall pass to the Buyer when the Goods are placed at the disposal of the Buyer at the Seller's premises, or, where the Delivery Point is agreed to be other than the Seller's premises in accordance with **Condition 7.1** immediately prior to the Goods being loaded on to the carrier's vehicle on behalf of the Buyer at the Seller's premises.
- 8.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in sterling and in cash or cleared funds) all sums due to it in respect of:
- 8.2.1 the Goods; and
- 8.2.2 all other sums which are or which become due to the Seller from the Buyer on any account.
- 8.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 8.3.1 hold the Goods on a fiduciary basis as the Seller's bailee; and
- 8.3.2 where practicable, store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property; and
- 8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 8.3.4 maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
- 8.3.5 hold the proceeds of the insurance referred to in **Condition 8.3.4** on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account;
- 8.3.6 notify the Seller immediately if it becomes subject to any of the events in **Conditions 11.1.3** or **11.1.4**.
- 8.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- 8.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Seller accordingly; and
- 8.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 8.5 Where the Seller is unable to determine whether any goods of the Buyer are the Goods, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 8.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 8.7 If before ownership of the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in **Condition 11.1.3**, 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.
- 8.8 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 8.9 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this **Condition 8** will remain in effect.

9. WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY

Warranty

- 9.1 The Seller warrants that the Goods will, for a period of 12 months following the date of their delivery, will be free from defects in material or workmanship. The Buyer's sole remedy for breach of the warranty in this **Condition 9.1** shall be that the Seller will (subject to **Condition 9.2**), free of charge, within a period of 12 months from the date of delivery of Goods (which are proved to the reasonable satisfaction of the Seller to be defective due to defects in material or workmanship) either repair, or at its option replace or refund the Price for, such Goods. This obligation will not apply where:
- 9.1.1 any defect is directly or indirectly caused by the Buyer or its customers or caused during the transit of the Goods following delivery of the Goods;
- 9.1.2 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
- 9.1.3 the Goods have been improperly installed or connected;
- 9.1.4 any instructions (whether oral or written) as to storage, installation, maintenance, servicing, testing or repair requirements of the Goods have not been complied with in all respects or (if there are no such instructions or requirements) good trade practice;
- 9.1.5 the Buyer has failed to notify the Seller of any defect or suspected defect within 5 days of the delivery where the defect should be apparent on reasonable inspection, or within 10 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in all other circumstances no later than 12 months from the date of delivery; or
- 9.1.6 the Buyer has failed to give the Seller a reasonable opportunity of examining such Goods after receiving notice of any defect or suspect defect.
- 9.2 In order for the Buyer to benefit from the warranty in **Condition 9.1**, it must return the Goods (at its own cost) to the Seller at the address stated in these Conditions or such other address as may be notified to the Buyer by the Seller. Save where one or more of the exclusions in **Conditions 9.1.1 to 9.1.6** (inclusive) apply or any claim under the warranty in **Condition 9.1** is subsequently discovered by the Seller to be unfounded, the Seller will reimburse the Buyer in respect of any postage, insurance and shipping charges incurred as a result of returning the Goods to the Seller under this **Condition 9.2**.
- 9.3 Any Goods which have been replaced by the Seller under the warranty in **Condition 9.1** will belong to the Seller. Any repaired or replacement Goods will continue to benefit from the warranty and be liable to repair or replacement under the terms specified in **Condition 9.1** for the unexpired portion of the 12 month period from the date of delivery of the original Goods.
- 9.4 Subject to **Condition 9.8**, **Condition 9.1** shall be the Buyer's sole remedy for any defects in quality in the Goods (including without limitation by reason of the Seller's negligence) and if the Seller complies with **Condition 9.1** the Seller shall have no further liability (including without limitation by reason of the Seller's negligence) in respect of the quality of the Goods and the Goods being free from defects in material or workmanship in **Condition 9.1**.
- 9.5 Where the Goods are not manufactured by the Seller, the Seller will pass on to the Buyer so far as it is able the benefits obtained by it from the manufacturer of the relevant Goods.
- 9.6 The Buyer agrees to indemnify, keep indemnified and hold harmless the Seller from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Seller incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure in performance by the Buyer of the terms of the Contract.

- 9.7 Except as provided in **Conditions 7.5, 9.1, and 9.2**, the Seller hereby excludes to the maximum extent permissible in law, all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 9.8 The restrictions in this **Condition 9** relating to the Seller's liability will not apply to any liability in respect of:
- 9.8.1 death or personal injury caused by the negligence of the Seller; and/or
- 9.8.2 any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979; and/or
- 9.8.3 fraudulent misrepresentation; and/or
- 9.8.4 fraud; and/or
- 9.8.5 for any matter for which it would be illegal for the Seller to exclude or attempt to exclude its liability.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING PROVISIONS

- 9.9 Subject to **Conditions 9.7, 9.8 and 9.10**:
- 9.9.1 the Seller's maximum aggregate liability arising out of or in connection with a Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Seller's obligations under a Contract and/or where caused by and/or where caused by a deliberate breach by the Seller shall be limited to the Price paid under the relevant Contract; and
- 9.9.2 the Seller shall have no liability to the Buyer for any:
- 9.9.2.1 loss of profit (direct or indirect);
- 9.9.2.2 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);
- 9.9.2.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect);
- 9.9.2.4 loss of anticipated saving or loss of margin (in each case whether direct or indirect);
- 9.9.2.5 liability of the Buyer to third parties (whether direct or indirect); or
- 9.9.2.6 indirect, consequential or special loss,
- arising out of or in connection with a Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Supplier's obligations under a Contract..
- 9.10 The Buyer acknowledges that the above provisions of this **Condition 9** are reasonable and reflected in the Price which would be higher without these provisions, and the Buyer will accept such risk and/or insure accordingly.
- ## 10. FORCE MAJEURE
- 10.1 The Seller will be deemed not to be in breach of the Contract or otherwise liable to the Buyer in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in **Condition 10.2**.
- 10.2 If the Seller's performance of its obligations under the Contract is affected by Force Majeure:
- 10.2.1 it will give written notice to the Buyer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure; and
- 10.2.2 subject to the provisions of **Condition 10.3**, the date for performance of such obligation will be deemed suspended for a period equal to the delay caused by such event.
- 10.3 If the Force Majeure in question continues for more than three months, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.
- ## 11. TERMINATION
- 11.1 The Seller may by notice in writing served on the Buyer terminate the Contract immediately if the Buyer:
- 11.1.1 is in persistent or material breach of any term of the Contract and the breach is incapable of remedy;
- 11.1.2 is in persistent or material breach of any of the term of the Contract and, the breach is capable of remedy, but the Buyer fails to remedy

such breach within 14 days service of a written notice from the Seller, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with **the Contract** is a material breach of the terms of the Contract which is not capable of remedy;

11.1.3 has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any legislation for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer or suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations or duties under the Contract or any other contract between the Seller and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade or the equivalent of any of the above occurs to the Buyer under the jurisdiction to which the Buyer is subject; or

11.1.4 there is a change in Control of the Buyer.

or the Seller reasonably anticipates that any one of the circumstances in **Conditions 11.1.1 to 11.1.4** is about to occur.

11.2 For the purposes of **Conditions 11.1.1 and 11.1.2** the term 'persistent' shall be construed to mean a breach of any term of the Contract on 2 or more occasions, notwithstanding that such breach may not be material.

11.3 The termination of the Contract howsoever arising is without prejudice to rights, duties and liabilities of either the Buyer or the Seller accrued prior to termination and the Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

11.4 The Seller will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying a breach under **Condition 11.1.2**, until either the breach is remedied or the Contract terminates, whichever occurs first.

12. EFFECTS OF TERMINATION

12.1 In the event of termination the Buyer shall forthwith upon demand deliver to the Seller any Goods which are in the possession or control of the Buyer the property of which remains with the Seller, and if in default thereof the Seller shall be entitled to repossess the same and for such purpose to enter into and upon the premises of the Buyer without being liable for any resulting loss or damage caused thereby.

12.2 In the event of termination the Seller shall be entitled by notice in writing to the Buyer to declare that all amounts due are immediately payable (whether under this or any other contract) and all such amounts shall bear interest in accordance with **Condition 5.8** from the date of the notice until actual payment.

13. INTELLECTUAL PROPERTY

13.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights in the Goods and/or otherwise of the Seller or any third parties, except the right to use, or re-sell the Goods in the Buyer's ordinary course of business.

13.2 The Buyer will not without the Seller's prior consent allow any trade marks of the Seller or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.

14. COMMUNICATION

14.1 All communications between the parties about a Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission or electronic mail (to such facsimile number or email address as provided by either party upon request (but not telex):

14.1.1 (in case of communications to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller and shall be marked for the attention of the Managing Director; or

14.1.2 (in the case of the communications to the Buyer) to the registered office of the Buyer (if it is a Seller) or (in any other case) to any address of the

Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Seller by the Buyer.

14.2 Communications shall be deemed to have been received:

14.2.1 if sent by pre-paid first class post, 2 (two) days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

14.2.2 if delivered by hand, on the day of delivery; or

14.2.3 if sent by facsimile transmission or electronic mail on a working day prior to 4:00 p.m., at the time of transmission and otherwise on the next working day.

15. CONFIDENTIALITY

15.1 The Buyer will keep confidential any and all Confidential Information that it may acquire.

15.2 The Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this **Condition 15**.

16. GENERAL

16.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller under this or any other Contract.

16.2 The Contract contains all the terms which the Buyer and the Seller have agreed in relation to the Goods and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods; and

16.2.1 the Buyer acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of the Seller which is not set out in the Contract;

16.2.2 the only remedies available for breach of any representation or statement which was made prior to entry into this Contract and which is set out in this Contract shall be for breach of contract; and

16.2.3 this **Condition 16.2** shall not exclude any liability which one party would otherwise have in respect of any statements it has made fraudulently to the other party.

16.3 If any Condition, part of a Condition, or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

16.4 No failure or delay by the Seller to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

16.5 The Seller may assign, license or sub-contract all or any part of its rights of obligations under a Contract without the Buyer's consent.

16.6 Each Contract is personal to the Buyer who may not assign, delegate, license, sub-contract or hold on trust all or any of its rights or obligations under this Contract without the Seller's prior written consent.

16.7 The Seller and the Buyer do not intend that any of the terms in the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

16.8 Governing Law and Jurisdiction

16.8.1 This Contract and any non-contractual obligations arising out of it, or in connection with it, shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales (including in relation to any non-contractual obligations).

16.8.2 The agreement contained in **Condition 16.8.1** above is included for the benefit of the Seller. Accordingly the Seller retains the right to bring proceedings in any court of competent jurisdiction. The Buyer irrevocably waives any objection to and agrees to submit to, the jurisdiction of such other courts.