

1. Definition of Terms

The Buyer's attention is in particular drawn to the provisions of Clause 18.
In these Terms

- 1.1. "Company" shall mean SF Limited whose registered office is at Pottington Business Park, Riverside Road, Barnstaple, Devon EX31 1LZ. Registered in England under number 04865090.
- 1.2. "Buyer" shall mean the person, firm or company with whom the Contract is made or from whom an order is received by the Company.
- 1.3. "Contract" shall mean any contract between the Company and the Buyer for the sale and purchase of the Goods.
- 1.4. "Delivery" shall, unless otherwise agreed with the Buyer, mean ex-works when the Goods are made available for collection by the Buyer (whether or not the Buyer collects the Goods when made available) or when the Goods are put into storage at the request of the Buyer. The Goods are deemed to have been delivered whether or not they have been signed for by the Buyer or the Buyer's agent.
- 1.5. "Goods" shall mean the goods agreed in the Contract to be supplied to the Buyer by the Company and shall include all units, parts, accessories, repairs and related services covered by the Contract. If the Company agrees to provide other services under a separate contract with the Buyer, these Terms (including without limitation Clause 20) shall for all purposes so far as the context admits apply as if such services were included in this definition of Goods.
- 1.6. "The Bribery Act" means The Bribery Act 2012 enacted by The Parliament of the United Kingdom on the 21st May 2013.
- 1.7. "Standard Goods" shall mean Goods that are published in the Company's sales literature and are of set dimensions as laid down by the Company.
- 1.8. "Specials" shall mean dimensional variations to the Company's Standard Goods that are purchased by the Buyer but are in keeping with the overall specification of the Goods.
- 1.9. "Third Party Specification" shall mean that the Company undertakes to manufacture Goods to the specification, instruction or design of the Buyer.
- 1.10. "Warranty" shall mean the Company's Good's manufacturing defects warranty.
- 1.11. "Online Warranty Registration Process" shall mean the process where the installer, end user or homeowner registers the installation via the Company's website and receives a "Registration Number" which should be kept safe for future reference.
- 1.12. "Domestic Property" shall mean a house, maisonette, apartment or flat occupied by one family unit at any one time.
- 1.13. "Appliance" shall mean the heat producing appliance to which the Company's Goods are fitted.
- 1.14. "HETAS" shall mean HETAS Limited, a company registered in England and Wales under company number 02117828 and with a registered office at Severn House, Unit 5, Newtown Trading Estate, Green Lane, Tewkesbury, GL20 8HD.
- 1.15. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment thereof and includes any subordinate legislation for the time being made under it. Words in the singular mean the plural and in the plural include the singular. Clause headings do not affect the interpretation of these Terms.

2. Application of Terms

- 2.1. These Terms shall apply to all contracts of sale by the Company, whether such contracts are concluded orally or in writing, shall take precedence over all other terms and conditions of sale previously issued by the Company and shall apply to the exclusion of all terms or conditions of purchase or other conflicting terms or conditions which may be issued, provided or referred to by the Buyer, except insofar as variations are expressly accepted in writing by a Director of the Company. Company employees do not have authority to vary these Terms except where such variations are in writing signed by a Director of the Company.
- 2.2. These Terms shall apply not only to the Contract but also to all orders subsequently placed by or on behalf of the Buyer with the Company. The remedies available to the Company for breach or non-observance of these Terms by the Buyer shall be available to the Company in the event of the Buyer breaching any terms and conditions under any collateral or separate contracts between the Buyer and the Company in force at the date of acceptance of the order to which these Terms apply. The benefits available to the Company under the Contract shall apply to any associated or subsidiary company of the Company that is in contractual relationship with the Buyer.

- 2.3. The placing of an order based on a quotation or tender supplied by the Company means acceptance of these Terms notwithstanding that the Buyer may for his own administrative convenience issue a standard form of purchase order or other document setting out other terms and conditions. The Buyer accepts that such a purchase order shall not serve to incorporate such other terms and conditions into this or any other contract with the Company.
- 2.4. The Buyer's offer to purchase any goods or services from the Company must be notified to the Company in writing and such written confirmation or the acceptance by the Buyer of the goods or services concerned (whichever is the earlier) shall constitute acceptance by the Buyer of these Terms. The Company is not obliged to accept any order.
- 2.5. Notwithstanding the above, quotations and tenders by the Company are deemed to be invitations to treat and shall not be offers in law. No contract shall come into existence between the Buyer and the Company until the Buyer is in receipt of the Company's express acceptance, which shall take the form of an official order acknowledgement. Receipt of an order acknowledgement shall be a condition precedent to the existence of a contract between the Buyer and the Company. The Buyer shall ensure that the terms of its order and any applicable specification provided by the Buyer are complete and accurate and shall check that the Company's order acknowledgment and invoice correspond with the Buyer's order.
- 2.6. If any provision of these Terms is held by any court in England and Wales to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected thereby.

3. Breach by the Buyer

If the Buyer breaches any of these Terms and fails to remedy such breach within 30 days when requested to do so by the Company, the Company reserves the right to stop any work in progress, to stop or recall deliveries, to recover any Goods already delivered and to terminate the Contract by written notice to the Buyer. Where materials have been purchased or work performed specifically for the execution of the Contract, the Company reserves the right to charge for such materials or work. These rights are without prejudice to any of the Company's other rights and remedies under the Contract.

4. Prices

- 4.1. Unless otherwise agreed by the Company in writing, the price of the Goods will be the prices set out in the Company's price list valid on the date of Delivery or deemed Delivery less any trade discount that has been agreed in writing between the Buyer and the Company. Prices for components outside of the price list are classed as Specials and are quoted by the Company in writing.
- 4.2. The Company reserves the right unilaterally to increase its prices in its absolute discretion by notice to the Buyer prior to Delivery if orders are received for quantities less than those quoted for or if Delivery is required in smaller instalments than those quoted for.
- 4.3. Any quotation or tender is valid for the period of ninety days only from its date, provided that the Company has not previously withdrawn it.

5. Variation Costs, Storage Charges and Other Additional Costs

- 5.1. The Buyer agrees to pay for any loss or extra cost incurred by the Company through the Buyer's lack of instructions or inaccurate or inadequate instructions or drawings or the Buyer's failure to take Delivery or delay in taking Delivery, or through the Buyer's failure to comply with any contractual term, or through any request or act or default on the part of the Buyer or the Buyer's employees servants or agents. In particular the Buyer will pay for any work carried out by the Company at the Buyer's request not being work that the Company originally contracted to undertake.
- 5.2. Unless otherwise agreed in writing or set out in the Company's tender, quotation, the Prices quoted for the Goods will be on an ex works basis and exclusive of delivery and off-loading charges and such costs shall be payable in addition.
- 5.3. Unless otherwise expressly stated, all prices are exclusive of VAT which will be payable in addition at the prevailing rate and of all other charges, duties, fees or taxes.
- 5.4. If the Buyer does not arrange for despatch or storage within seven days of the date notified by the Company for Delivery, the Company may arrange storage at its own premises or elsewhere on behalf of the Buyer and the Buyer shall be liable for the costs of storage and insurance and all other associated costs.
- 5.5. In the event of storage, Goods will be insured and the cost of insurance will be included in the storage charge.
- 5.6. The Buyer shall be responsible and have all risks for off-loading the Goods from the carrier at the place of Delivery. For the avoidance of doubt, it is acknowledged that the place of Delivery may not be the place of installation of the Goods. The Company shall have no responsibility for the storage at or movement to or within the Buyer's place of delivery, warehouse or site. The Buyer will, at his own expense, provide convenient access to and about the site to which the Goods are to be delivered on roads or surfaces suitable for transporting the weight of the Goods and materials.

6. Terms of Payment

- 6.1. The Buyer agrees to make payment in full pursuant to the Contract, without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer
- 6.2. Goods must be paid for using pro forma invoices issued prior to manufacture or by arranging a credit account with the Company. The Company reserves the right to withdraw the Buyer's credit facilities at any time and for any reason.
- 6.3. Goods purchased on pro forma invoices will be manufactured following full payment of the invoice. In all other cases Goods will be invoiced on shipment from the Company.
- 6.4. Unless otherwise agreed by the Company in writing, payment is due in pounds sterling and terms of credit payment are strictly net cash due the end of the month following the date of the invoice. All payments should be sent to the address given on the invoice issued by the Company. No payment shall be deemed to have been received until the Company receives cleared funds.
- 6.5. The Company reserves the right to issue interim invoices and claims to the value of any Goods supplied including units, parts, accessories, repairs and services.
- 6.6. The Company reserves the right to issue invoices electronically and transmit via email. Invoices transmitted via this media shall be deemed to be valid.
- 6.7. Time for payment is of the essence.
- 6.8. All payments payable to the Company under the Contract shall become immediately due on its termination despite any other provision.
- 6.9. If an account is in arrears the Company reserves the right to suspend all or any work in progress and to withhold any further deliveries until all monies due are paid to the Company, and all monies otherwise due to the Company from the Buyer (including without limitation for part performance of the Contract) shall be immediately payable. In the event of any delay arising from any act or default within the Buyer's control, the Company shall be entitled to payment of such a part of the contract price as is proportionate to the Company's obligations already performed under the contract together with any additional costs incurred by the Company but without prejudice to any other rights that the Company may have.
- 6.10. Without prejudice to its other rights, the Company may both before and after judgment against the Buyer charge interest at 4 percent above the base lending rate of National Westminster Bank Plc accruing on a daily basis until payment is made. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.11. The Buyer shall not be entitled to withhold payment by reason of any alleged defect in the Goods. If the Buyer considers that the Goods are defective, the Buyer shall send full details of the complaint to the Company's registered office within five working days of discovery of the defect. The Company will investigate and repair or replace the Goods as necessary, in accordance with Clause 8 below. This undertaking by the Company in no way alters the Buyer's obligation to pay in accordance with the Company's payment terms set out in this Clause 6.

7. Cancellation or Amendment of Order

- 7.1. Cancellation or amendment of orders and/or the return of the Goods in whole or in part cannot be accepted without the Company's prior consent in writing. The Company reserves the right to refuse to accept cancellation or amendments or to accept cancellation or amendments only subject to conditions specified by the Company. Credit notes will not be issued for Goods returned in an unusable condition or if the Goods are returned without the prior agreement of the Company. Cancellations or amendments will only be accepted by the Company on the basis that all expenses incurred by the Company (calculated from receipt of the Buyer's order) will be repaid to the Company by the Buyer in full,
- 7.2. In the event that Goods, in whole or part, have been incorrectly ordered, supplied or are no longer required then they can be returned, subject to the conditions set out in these Terms, provided that said Goods remain unused, uninstalled, in as new condition, with all packaging and labelling intact and are returned to us within 30 days from date of purchase.
- 7.3. In the event that an order or item within an order: -
 - 7.3.1. is cancelled and that cancellation is of a non-standard product line, including but not limited to Specials as defined in clause 1.8, the Buyer will be subject to a minimum charge equivalent to the sales value of materials purchased and work completed;
 - 7.3.2. is cancelled and the cancellation refers to a standard product line which has been processed and packaged ready for dispatch, the Buyer will be subject to a minimum charge equivalent to the costs associated in processing and packaging the order;
 - 7.3.3. is amended and that amendment is of a non-standard product line, including but not limited to Specials as defined in clause 1.8, the Buyer will be subject to a minimum charge equivalent to the costs associated with that amendment.

- 7.4. In the event that the Buyer wishes to return an order which relates to the Company's Standard Goods as defined in clause 1.7:-
- 7.4.1. written authorisation must be obtained from Customer Services
 - 7.4.2. the date of dispatch must be less than 30 days
 - 7.4.3. the Buyer must undertake delivery of the goods to be returned and include a copy of the invoice.
 - 7.4.4. the Goods must arrive undamaged, in the original packaging, un-used and in a re-sellable condition.
 - 7.4.5. the invoice will be credited less a 25% restocking charge
 - 7.4.6. unauthorised returned will be refused by the company
 - 7.4.7. non-standard product line, including but not limited to Specials as defined in clause 1.7 are not eligible for return
- 7.5. Nothing in the above clauses shall prejudice any right of the Company to claim damages not specifically set out above where the cancellation of order amounts to a wrongful repudiation of the Contract.

8. Warranties – Manufacturing Defects Warranty

8.1 Conditions

- 8.1.1. The Warranty shall commence from the date of installation.
- 1.1.2. To meet the Warranty, the conditions laid out in the following clauses must be met.
- 1.1.3. The Warranty must be registered with the Company within 28 days of installation using the Online Warranty Registration Process at www.sflchimneys.com/warranty-registration and a Registration Number obtained which must be kept safe for future reference.
- 1.1.4. The Warranty period for the Company's Goods is as below:

20 Year	15 Year	10 Year	5 Year
NOVA	SFLUE	SUPRA	IL
	EUROPA	SIGMA	ILS
			SW

- 8.2. **General Installation Compliance** – The chimney installation must comply with the following -
- 8.2.1. The Company's current installation instructions.
 - 8.2.2. Relevant Building Regulations Part J and British / European Standards and Codes of Practice including, but not limited to, BS EN 13216 and BS 5440.
 - 8.2.3. The Goods have to be matched to the performance and characteristics of the appliance as detailed within the Appliance manufacturer's installation instructions or otherwise be sized according to the calculation method as detailed within BS EN 13384-1.
 - 8.2.4. The Appliance shall be in good working order.
 - 8.2.5. The Appliance manufacturer's installation, operating and maintenance instructions must be followed.
 - 8.2.6. Where the Goods are installed externally in exposed coastal locations, the outer case and associated support components must be protected with a suitable coating to protect against environmental corrosion.
 - 8.2.7. Use only the Company's approved components, fixings, fittings, support components and terminals as detailed within the relevant product literature.

- 8.2.8. Where the Appliance is connected to a fuel source, the chimney installation must be undertaken by a recognised registered installer; e.g. HETAS, Gas Safe or OFTEC. Where the Appliance is not connected to a fuel source, the chimney installation can be undertaken by a competent person, providing adherence to clause 8.1 and 8.2. When installing a chimney in a Domestic Property serving a solid fuel appliance, the chimney installation can be installed by a competent person providing the final installation is signed off by Building Control. A copy of the sign-off form must be kept as a condition of the Warranty.
- 8.3. **Suitable Fuels and Appliance Types**
- 8.3.1. The Goods should only be used for fuels and appliance types as detailed within the Company's relevant product literature.
- 8.3.2. Where the Goods are suitable for solid fuel, only those fuels that are HETAS approved should be used. Under no circumstance should fuels containing petroleum coke, blended coke, industrial coal or high halogens based fuels be used.
- 8.3.3. Where wood is used, it must be seasoned to a moisture content of less than 20%, only virgin wood should be used. Under no circumstances should chemically treated wood or composite wood such as chipboard, MDF etc. be used as a fuel. Such use invalidates the Warranty.
- 8.3.4. Where used on biomass appliances, any biofuel fuel with the exception of wood pellet and wood chip fuels as described by the requirements of clause 8.3.5 must be approved by the Company in writing prior to the purchase and installation of the Goods.
- 8.3.5. Where wood chip and wood pellet fuels are used, the fuel must conform and be certified to BS EN 14961 Parts 1-6 and be approved under the HETAS Fuel Quality scheme.
- 8.4. **Maintenance/Operation**
- 8.4.1. Maintenance must be undertaken on the Goods as detailed in the Company's relevant installation, operating and maintenance instructions or as detailed within recognised national regulations and standards.
- 8.4.2. Where the Goods are used on solid fuel, the chimney should be swept and inspected a minimum of twice a year by a registered Chimney Sweep. Evidence of professional sweeping in the form of a sweeping & inspection certificate is required as a condition of the Warranty. Under no circumstances should steel or other metal brushes be used to sweep the Goods.
- 8.4.3. Under no circumstances should chemical cleaning products be used to remove products of combustion from the chimney.
- 8.4.4. Where the Goods have been powder coated by the Company, cleaning of the surface should be undertaken using only soap and water. Under no circumstances should chemical solvents, bleach based detergents or other aggressive forms of cleaning be used. Where the Goods are un-coated, only specialist cleaning products suitable for the material should be used. For further advice please contact SFL's technical department.
- 8.4.5. Regular servicing of the Appliance must be undertaken in accordance with the Appliance manufacturer's installation, operating and maintenance instructions and carried out by a registered engineer. All service records must be maintained by the user as a condition of the Warranty.
- 8.5. **Limitations:**
- 8.5.1. Corrosion in general is not considered a manufacturing defect, but constitutes a chemical attack on the Goods themselves and as such is not covered under the terms of the Warranty.
- 8.5.2. Whilst the Company will endeavour to provide consistency in colour, shade and texture of its coated finishes, some variation may result between different batches of materials. Where the Goods are coated, gradual changes may occur resulting from ultra-violet radiation and other environmental factors. Temperature also plays an important factor and it is normal over time to experience a slight change in finish between single wall components and that of twin wall insulated components. The Company therefore accepts no liability for variation or changes based on the above factors within the terms of the Warranty.
- 8.5.3. Whilst the Company will endeavour to provide consistency in reflectivity and finish of its standard BA stainless steel finish, there may be variation resulting from variances between different suppliers and batches. The Company therefore accepts no liability for variations resulting from the above under the terms of the Warranty

- 8.5.4. Under the terms of the Warranty; Joint Seals, Gaskets, Expansion Bellows, Terminals, Tee Caps and Condensate Collectors are considered sacrificial and are excluded.
- 8.5.5. If the Goods are replaced under a warranty claim, the warranty period will not be extended.
- 8.5.6. Where a claim has been made, the Company reserves the right to inspect the installation in consultation with the installer and also undertake any tests that the Company sees fit. Should such an inspection conclude that the fault is as a direct result of non-compliance to the terms and conditions laid out under the Warranty, the Company reserves the right to claim compensation for the costs incurred.
- 8.5.7 The liability hereby undertaken shall be the sole liability of SFL in relation to the product/s and SFL accepts no other liability for loss of profit, re-installation, economic loss, damage to buildings or any other loss or damage whatsoever.
- 8.6. **Specific Exclusions**
- 8.6.1. The Company shall not be liable under the terms of the Warranty where -
- 8.6.2. Damage to the Goods resulting from improper installation, repair, misuse, abuse, vandalism (including, but not limited to, excessive or improper operating conditions for example: Over firing or chimney fire), or alteration / adjustment other than in compliance with the Company's installation, operating and maintenance instructions
- 8.6.3. If any of the Goods have been moved from their original place of installation or acquired second hand
- 8.6.4. Where damage that may results from accidents such as fire, floods, high winds, "acts of God", or any other contingency beyond the Company's control
- 8.7. **Change of Ownership (Transfer of Warranty)**
- 8.7.1. Should the property in which the Goods have been installed be sold; the remaining period of the Warranty can be transferred to the new owners.
- 8.7.2. Where a transfer of the Warranty is required, it is the responsibility of the current owner to notify the Company using the online service and provide the required information relating to the new owner.
- 8.7.3. Failure to notify the Company of a transfer of warranty within 3 months of such transfer of ownership will invalidate the Warranty.
- 8.7.4. Transfer of Warranty is only applicable for Nova, Sflue and Sigma when installed in a Domestic Property serving a solid fuel stove appliance.
9. **Indemnity by Buyer**
- 9.1. The Buyer shall indemnify the Company and keep the Company fully and effectively indemnified against any and all liability, loss, costs, expenses, claims or proceedings, whatsoever (including any liability of the Company to any third party) whether for loss or damage to property or injury to or death of any person arising out of or in consequence of the manufacture of the Goods or any part of the Goods or the application of any process to the Goods or any part of the Goods, in compliance with any specification submitted by or with any instruction given by or any design of the Buyer.
10. **Descriptions and Representations**
- 10.1. Illustrations, data, descriptions, performance figures, design calculations, drawings and weights given in any of the Company's catalogues and statements made by any representative of the Company are provided merely to give the Buyer a general description of the Goods concerned and do not form the basis of any contractual liability. No warranty or condition that the Goods shall accord with such illustration, data, description, performance figures or statement is to be implied and any such warranty or condition capable of arising is hereby excluded.
- 10.2. Prior to the Company's formal acceptance of any order by the sending of an order acknowledgement, no quotation or written or oral communication made by the Company to the Buyer, nor any information about the price, availability, delivery, design, specification or description of the Goods given to the Buyer, shall have any contractual effect.
- 10.3. The Buyer acknowledges that it has not relied on any statement or representation made or given by or on behalf of the Company which is not set out in these Terms. Any such statement or representation which is not in these Terms shall be of no effect, unless the Buyer sets out that statement or representation in a document to be enclosed with its order and requests that it be made a term of the Contract and it is specifically agreed to in writing by a Director of the Company. Nothing in these Terms shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 10.4. The Company pursues a policy of continuous development and reserves the right to make changes to Goods without prior notice.

- 10.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Company shall be subject to correction without any liability on the part of the Company.
- 10.6. Technical advice regarding regulatory information, compliance, standards and codes of practice relating to the Company's Goods is given in good faith and do not form the basis of any contractual liability.
- 10.7. If the Goods are to be manufactured or any process to be applied to the Goods by the Company in accordance with a Third Part Specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any person which results from the Company's use of the Buyer's specification.
11. **Materials**
- 11.1. The Company shall use its standard materials whenever available and if not, shall substitute the most suitable alternatives available at the time of manufacture.
12. **Manufacturing and Delivery Times**
- 12.1. Manufacture by the Company will begin upon receipt by the Company of the Buyer's order or of all information necessary to enable the Company to proceed with uninterrupted manufacture, whichever is the later. The Delivery date is estimated from the time required for manufacture. In the cases of pro forma accounts the manufacturing time will run from the date when cleared funds are available to the Company. Times given for Delivery are given in good faith but are approximate and for guidance only and time shall not be of the essence of any contract nor shall the Company be under any liability for delay in Delivery whether arising out of fault on the part of the Company or otherwise.
- 12.2. Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer. In any event, the Buyer shall take delivery of the Goods or arrange collection of the Goods within Seven working days of the Company giving notice that the Goods are ready for delivery.
- 12.3. Where the Goods have been subject to a change or changes in specification by the Buyer, the Company reserves the right to alter the Delivery date in its absolute discretion and to deliver without prior notice.
- 12.4. Unless special arrangements have been agreed in writing, the Company shall package the Goods for Delivery in any manner that it considers to be reasonably appropriate given the nature of the Goods.
- 12.5. If proof of Delivery is required by the Buyer, this must be requested within seven days of the date of Delivery or the date that the Buyer is invoiced for the Goods, whichever is the later. If such a request is made after the expiration of the seven days, the Company reserves the right to charge the Buyer £10.
13. **Force Majeure**
- 13.1. The Company reserves the right to suspend or defer manufacture and/or any delivery(ies) in whole or in part, and to extend any time of delivery accordingly, without liability to the Buyer, if Company is prevented from or delayed in performance of the Contract or the carrying on of its business generally due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, adverse weather conditions, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable parts or materials, provided that, if the event or circumstance in question continues for a continuous period in excess of 60 days, the Company shall be entitled to give notice in writing to the Buyer to terminate the Contract and the Company shall not be liable to the Buyer for any costs incurred or loss suffered consequent on such termination.
14. **Defective Delivery, Shortages and Damage / Loss in Transit**
- 14.1. The Buyer shall have no right or claim for shortage or defects or misdelivery unless
- 14.2.1. the Buyer has inspected the Goods immediately on delivery and sent the Company a written complaint within three days of delivery specifying the shortage or defect and
- 14.2.2. the Company is given an opportunity to inspect the Goods before the Buyer has used, resold, altered, incorporated or modified the Goods

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14.2 If the Buyer has not made a complaint to the Company, the Goods shall be deemed to have been delivered in the correct quantity and free of defects apparent on inspection.

14.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company 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.

15. Use of Goods by the Buyer

15.1. The Buyer will ensure that the Goods will at all times be operated, installed, used and maintained: -

15.1.1. as required by the terms of the Health and Safety at Work Act 1974 and any equivalent and additional legislation concerning health, safety or environmental considerations which shall be enacted in the United Kingdom or by the European Community or by the country where the Goods are installed or used, and

15.1.2. with reasonable care and in full accordance with good engineering practice and with any operating and/or maintenance instructions relating to the Goods and issued by the Company.

15.1.3. in accordance with National and European Standards, Codes of Practice and any other associated legislation relating to the extent of the Goods.

15.2. The Buyer shall indemnify the Company and keep the Company indemnified against any costs, damages or liabilities for which the Company may become liable as a result of any failure by the Buyer to comply with Clause 16.1.

16. Risk and Title

16.1. Risk shall pass to the Buyer, so that the Buyer is responsible for all loss, damage or deterioration of the Goods, at the time when the Goods arrive at the designated place of Delivery, notwithstanding any refusal of Delivery by the Buyer (if the Company delivers the Goods by its own transport, or in accordance with a specific contractual obligation arranges transport for the Goods) or, when the Goods are stored at the request of the Buyer or on the Goods being collected or made available for collection by the Buyer or on the Buyer's failure to accept or arrange Delivery or (in all other circumstances) at the time when the Goods leave the premises of the Company.

16.2. Title to the Goods shall only pass to the Buyer when the Buyer has paid to the Company in full in cleared funds all sums due or outstanding (including any interest) to the Company under the Contract and all other sums which are or which become due to the Company on any account from the Buyer or any associate or subsidiary company of the Buyer or any company under common control with the Buyer.

16.3. Until title to the Goods has passed to the Buyer, the Buyer must: -

16.3.1. hold the Goods on a fiduciary basis as the Company's Bailee;

16.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

16.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

16.3.4. maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and

16.3.5. hold the proceeds of the insurance referred to in sub-clause 16.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

16.4. If the Buyer converts the Goods into other goods or the Goods in any way become incorporated into or fixed to or mixed with other goods, the Buyer will hold such other goods on trust for the Company as security for the payment in full of the price of the Goods and all other sums due to the Company from the Buyer under the contract.

16.5. If the Buyer sells the Goods before title has passed, then the Buyer shall hold on trust for the Company all proceeds of the sale until such proceeds are paid to the Company in settlement of the sum due under the Contract.

16.6. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions: -

16.6.1. any sale shall be effected in the ordinary course of the Buyer's business at full market value;

and

16.6.2. any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

- 16.7. The Buyer's right to possession of and to resell the Goods shall terminate immediately if: -
- 16.7.1. the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), 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;
 - 16.7.2. the Buyer 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 under the Contract or any other contract between the Company 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;
 - 16.7.3. the Buyer encumbers or in any way charges any of the Goods; or
 - 16.7.4. the Company has reasonable doubts as to the solvency of the Buyer and so notifies the Buyer in writing
- 16.8. The Company shall be entitled to recover payment for the goods notwithstanding that ownership has not passed from the Company.
- 16.9. The Buyer grants the Company, 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 or resale has terminated, to recover them.
- 16.10. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Clause 17 shall remain in effect.
- 17. Termination**
- 17.1. The Company may terminate the Contract with immediate effect by written notice to the Buyer if the Buyer: -
- 17.1.1. is in breach any of the terms of the Contract and (if such breach is remediable) fails to remedy such breach within 15 days of being notified of the breach;
 - 17.1.2. fails to pay any amount due to the Company within 14 days of the payment being due;
 - 17.1.3. suffers any of the events referred to in Clause 16.7.
- 17.2. In the event of termination in accordance with Clause 17.1, the Company shall have no further obligation to perform under the Contract and all monies due to the Company under the Contract (including for part performance of any Contract) shall be payable by the Buyer.
- 18. Liabilities**
- 18.1. Subject to the warranty in Clause 8, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: -
- 18.1.1. any breach of these Terms;
 - 18.1.2. any use made or resale by the Buyer of any Goods, or of any product incorporating any of the Goods; and
 - 18.1.3. any representation, statement or tortious or other unlawful act or omission including negligence arising under or in connection with the Contract.
- 18.2. Subject to Clause 18.3 and 18.4: -
- 18.2.1. The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Goods under the Contract (excluding VAT and carriage);

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- 18.2.2. The Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise (in each case whether direct, indirect or consequential) or for any indirect or consequential loss or damage or other claims for consequential compensation whatsoever and howsoever caused, in each case which arise out of or in connection with the Contract.
- 18.3. All warranties, conditions and other terms implied by statute or common law (including without limitation any term as to satisfactory quality or fitness for purpose but save for the conditions implied by section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law excluded from the Contract.
- 18.4. Nothing in these Terms shall exclude or limit any liability of the Company: -
- 18.4.1. for death or personal injury caused by the Company's negligence;
- 18.5. under section 2(3), Consumer Protection Act 1987;
- 18.6. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 18.7. for fraud or fraudulent misrepresentation.
19. **Assignment**
- 19.1. Unless the Company gives its express consent in writing, the Buyer shall not assign, transfer, sublicense or subcontract to any third party all or any part of the benefit and/or burden of this Contract.
- 19.2. The Company shall be free to employ subcontractors to manufacture the Goods or components to be supplied under this Contract and may assign the Contract or any part of it to any person, firm or company.
20. **Indulgence or Waiver**
- 20.1. Any indulgence, forbearance or other concession by the Company to the Buyer, shall not in any way constitute a waiver or otherwise prejudice the Company's rights under this Contract.
- 20.2. A waiver by either party of any of these Terms shall apply only to the particular instance and shall not affect the further continuance in force of such Terms in all other circumstances.
21. **Confidentiality**
- 21.1. All specifications, plans, drawings, technical knowledge and other confidential information, whether of a technical or commercial nature, which may be passed to or come into the possession of the Buyer, shall not be used by the Buyer other than for the purpose of the Contract and shall not be disclosed to any other person, company or firm whatsoever except where this is for the purposes of the Contract. Any such specifications, plans or drawings and reproductions thereof, shall be returned to the Company on demand.
- 21.2. All drawings, specifications, descriptions and other information submitted by the Company shall remain the property of the Company, together with the copyright therein.
22. **Intellectual Property**
- 22.1. The Buyer shall indemnify the Company and keep the Company indemnified against all damages, penalties, costs and expenses to which the Company may become liable as a result of work done in accordance with the specification of the Buyer and which involves the infringement of any letters, patent, registered design, trade mark, copyright or any other intellectual property rights belonging to third parties. Whilst every reasonable endeavour is made by the Company to avoid infringement of third party rights, no representation or warranty is made to the Buyer that the Goods supplied do not infringe the intellectual property rights of any third party.
23. **Notices**
- 23.1. Notices relating to the Goods or the Contract shall be in writing and may be delivered by hand or sent by prepaid mail or registered mail or facsimile to the Company or the Buyer (as the case may be) at its registered office or its last known business address as subsequently notified.
24. **Third Party Rights**
- 24.1. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it

25. The Bribery Act

- 25.1. The Company recognises the obligations of The Bribery Act 2013 and has a policy to contract with the Buyer on terms which are fully compliant. In circumstances where the Buyer suspects or knows of any breach or non-compliance with the Act then the Company shall be made immediately aware.
- 25.2. Buyers should promptly report to the Company any undue request or demand for any financial incentive or benefit that has been made in connection with the supply of goods and services by the Company.

26. Proper Law and Jurisdiction

- 26.1 The Contract shall be governed by and construed and performed in accordance with the law of England. The Buyer agrees, for the Company's exclusive benefit, that the English courts shall have sole jurisdiction to hear all claims or proceedings connected with the Goods or the Contract. The Company may nevertheless bring claims in any other courts of competent jurisdiction.

27. Specification, Instruction or Design

- 27.1. If Goods are made in accordance with specification, instruction or design supplied by the Buyer or any third party on behalf of the Buyer ("Third Party Specification") then:
- 27.1.1. the suitability and accuracy of that Third Party Specification will be the Buyer's responsibility;
 - 27.1.2. the Company reserves the right to amend any such Third Party Specification if required by any applicable statutory or regulatory requirements;
 - 27.1.3. the Buyer will indemnify the Company against all infringement or alleged infringement of any third party's intellectual property rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country in connection with such Third Party Specification; and
 - 27.1.4. the Buyer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the Goods being made to such Third Party Specification.
 - 27.1.5. the Buyer undertakes to ensure that all necessary permissions or consents (including those of third parties) are obtained in order to permit the Company to supply Goods in accordance with the relevant Third Party Specification.
- 27.2. Clause 27.1 shall survive termination of the Contract.