

H.T. BRIGHAM & COMPANY LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

DEFINITIONS

1.1 In these Terms, the following definitions apply:-

"Business Day" a day (other than a Saturday, Sunday or Public Holiday) when banks in London are open for business;
"Contract" the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Terms;
"Company" H.T. Brigham & Company Limited registered in England and Wales with company number 00598418 and whose registered office is at Station Road, Coleshill, Birmingham, B46 1JQ;
"Customer" the person or firm who purchases the Goods from the Company;
"Force Majeure" has the meaning given in condition 22;
"Goods" the goods (or any part of them) set out in the Order;
"Intellectual Property Rights" all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) or applications for the same anywhere in the World;
"Order" the Customer's order for the Goods;
"Specification" the specification of the Goods including any specification agreed in writing by the Customer and the Company; and
"Terms" the terms and conditions set out in this document as amended from time to time.

CONSTRUCTION

2.1 In these Terms, the following rules apply:-

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted.
- (d) Any phrase introduced by the Terms include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to writing or written includes faxes but not e-mails.

BASIS OF CONTRACT

- 3.1 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer (if any) are complete and accurate.
- 3.3 The Order shall only be deemed to be accepted by the Company when it issues a written acceptance of the Order (known as an **"Order Acknowledgement"**) at which point the Contract shall come into existence.
- 3.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 3.5 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue and the Company reserves the right to withdraw or amend such quotation at any time by written or oral notice.
- 3.7 If an Order is not placed the Customer is liable to reimburse any expenses incurred by the Company at the Customer's request.

GOODS

- 4.1 The Goods are described in the Order Acknowledgement or any Specification agreed in writing.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall on demand fully indemnify and keep the Company fully indemnified against all liabilities, costs, expenses, damages, claims and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation, and all interest, penalties and legal and other reasonable and professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This condition 4.2 shall survive termination of the Contract.
- 4.3 The Customer reserves the right to amend the specification of the Goods or any expressly agreed Specification if required by any applicable, statutory or regulatory requirement.

DELIVERY

- 5.1 The Company shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree (**"Delivery Location"**) at any time after the Company notifies the Customer that the Goods are ready.
- 5.2 Delivery of the Goods shall be completed on the Goods's arrival at the Delivery Location.
- 5.3 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in the delivery of the Goods however caused. The Customer shall have no right to damages or to cancel the Order for failure for any cause to meet any delivery time stated. Time for delivery shall not be of the essence of the Contract unless previously agreed with the Customer in writing. The Company shall not be liable for any failure or delay in delivery of the Goods which is caused by a Force Majeure Event.
- 5.4 The date of actual delivery shall in every case be dependent upon prompt receipt of all necessary information (including delivery instructions), final instructions or approvals from the Customer. Alterations by the Customer in design specifications or quantities required may result in delay in delivery.
- 5.5 Where Goods are delivered in installments, each delivery shall constitute a separate Contract and in the unlikely event that the Company fails to deliver one or more of the installments in accordance with these Terms or any claim by the Customer in respect of one or more of the installments shall not entitle the Customer to treat the Contract as a whole as repudiated. Failure by the Customer to take delivery of or to make payment in respect of any one or more installments of Goods delivered hereunder shall entitle the Company to treat the whole Contract as repudiated by the Customer.
- 5.6 The Company will use reasonable endeavours to comply with reasonable requests (in writing) by the Customer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company the Customer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and payment for the Goods shall be made in accordance with these Terms..
- 5.7 Any packaging supplied by the Company unless otherwise expressly agreed is intended to provide adequate protection throughout normal conditions of transit of usual duration.
- 5.8 The cost of delivery of Goods or installment of Goods of up to the value of £1,000 shall incur an additional delivery charge. Orders or part orders of £1,000 and over shall be delivered free in the United Kingdom.
- 5.9 If the Company fails to deliver the Goods (or any installment) for any reason other than any cause beyond the Company's reasonable control or the Customers fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to an amount equal to the cost to the Customer (in the cheapest available market) of goods similar in description and quality to replace those not delivered over the price of the Goods less the cost of the Goods (if any).
- 5.10 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's control or by reason of the Company's fault) then, without limiting any other right or remedy available to the Company, the Company may;
 - 5.10.1 store the Goods until actual delivery or make appropriate arrangements if outside the UK, and charge the Customer for the reasonable costs (including insurance) of storage; or
 - 5.10.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract.

RISK AND TITLE

- 6.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the Goods:-
 - 6.1.1 if the Company delivers the Goods by its own transport or in accordance with a specific contractual obligation arranges transport for the Goods at the time when the Goods or a relevant part thereof arrive at the place of delivery, or
 - 6.1.2 in all other circumstances at the time when the Goods or a consignment or other part thereof leave the premises of the Company.
- 6.2 Title to the Goods or any relevant part thereof shall only pass to the Customer upon the happening of any one of the following events:-

- 6.2.1 the Customer has paid to the Company all sums due and payable by it to the Company under the Contract and all other contracts between the Company and the Customer, or
- 6.2.2 when the Company serves on the Customer notice in writing specifying that title in the Goods or such part thereof has passed.
- 6.3 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licenses the Company, its officers, employees and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that condition 6.4 below is being complied with by the Customer or of recovering any Goods in respect of which property has not passed to the Customer and in particular may do so where any of the events in condition 20 occurs or the Company reasonably believes is about to occur.
- 6.4 Until title to the Goods has passed to the Customer pursuant to the terms hereof, the Customer shall:-
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
 - (c) not remove, deface or obscure any identifying mark or package on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify the Company immediately if it becomes subject to any of the events listed in condition 20; and
 - (f) give the Customer such information relating to the Goods as the Company may require from time to time, but the Customer may re-sell or use the Goods in the ordinary course of its business.

CANCELLATION

- 7.1 No Order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall on demand fully indemnify and keep the Company in fully indemnified against all loss (including loss of profit), claims, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of the cancellation.

PRICES

- 8.1 All prices are set out in the Order Acknowledgement and unless otherwise stated in the Order Acknowledgement quoted net ex works the Company's premises but exclusive of VAT and are subject to fluctuation in the event of any increase in the cost of labour due to local or national awards or increases in the cost of materials and overheads bought out finishing and quantities delivered within the Percentage tolerance or permitted variations set out in these Conditions. Any increase in such costs during the period of the Contract will be added to the price set out in the Order Acknowledgement.
- 8.2 In the event of any alteration or variation being requested by the Customer in design, specification or quantities required, the Company shall consider any such request made to it in writing but acceptance of any such request shall be at the Company's sole discretion. The Company shall inform the Customer in writing if and to the extent it accepts any such variation and also set out any amendments to the price as a result of such variation. The Contract will be deemed to be varied accordingly unless the Customer gives written notice that it no longer requires the variation within 7 Business Days from and including the date on which the Company gives written notice of the variation.
- 8.3 Prices quoted are for the total quantities shown and the Company may not offer the rates or prices quoted for smaller quantities on a pro rated basis or otherwise.

TERMS OF PAYMENT

- 9.1 Unless otherwise agreed by the Company in writing payment is to be made in full in cleared funds within 30 days from the end of month of invoice. Time for payment is of the essence.
- 9.2 The Company shall be entitled to submit its invoice with its delivery advice note or at any time thereafter save that where delivery has been postponed at the request of or by the default of the Customer then the Company may submit its Invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default as aforesaid.
- 9.3 Payment is to be made in pounds sterling unless otherwise agreed in writing with the Company. Subject to agreement, if the Company receives an invoice payment that is not in pounds sterling, the Customer shall be liable for any bank charges incurred by the Company in converting the payment and any shortfall in the amount paid due to the prevailing exchange rates at the relevant date of payment.
- 9.4 Payment in respect of tools purchased by the Company from a third party pursuant to the Contract shall be made by the Customer in the amounts and at the intervals specified in the

Order Acknowledgement and in any event such payments shall be due no later than one calendar month from the date of any invoice.

- 9.5 Where tools have been manufactured or supplied by the Company pursuant to the Contract such tools will be maintained by the Company at the Company's cost to the required standard throughout the tools' normal life expectancy provided that the Company reserves the right to require the Customer to meet in full the costs of the replacement of any such tool beyond that period.
- 9.6 Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Terms.
- 9.7 No disputes arising under the Contract nor delays beyond the reasonable control of the Company shall interfere with prompt payment in full by the Customer.
- 9.8 In the event of default in payment or failure by the Customer, the Company by the due date for payment shall be entitled without prejudice to any other right or remedy to suspend all further deliveries on any Contract or contracts between the Company and the Customer without notice and to charge interest on any amount outstanding at the rate of 4% per annum above the Base Lending Rate of Lloyds Bank Plc from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

DIMENSIONS

- 10.1 All weights and dimensions quoted by the Company are subject to the tolerances provided by the appropriate British Standards.
- 10.2 Where materials are ordered by reference to numerical quantities or specified weights the Company reserves the right to under or over delivery the quantity ordered by ten per cent in accordance with trade custom.
- 10.3 If the Customer requests an alteration in the quantity of Goods which are the subject of a Contract including the suspension or reduction of 'firm' schedules agreed, the Company will consider the request but reserves the right not to agree to any such alteration. If any such alteration is agreed in writing by the Company, the Contract will be deemed to be amended accordingly including in relation to any variation in price in accordance with condition 8.2 and the Customer agrees that in respect of all Goods which are already in the manufacturing process further to the earlier Contract may still be delivered in accordance with the original Order Acknowledgement and the Customer shall on demand indemnify and keep the Company fully indemnified in respect of the price of such Goods and any costs and expenses arising from any variation by the Company in writing.
- 10.4 If and so far as work has been necessarily commenced in advance of 'firm' schedules in order to provide in accordance with a normal process time cycle for deliveries indicated by a 'tentative schedule' the Customer shall be liable to accept delivery of such Goods at the times and in the quantities so indicated and to pay the Company in full for such Goods in accordance with these Terms.

SAMPLES

- 11.1 The Company may at its discretion submit a sample together with an initial Sample Inspection Report to the Customer for approval before proceeding to manufacture the remainder of the Goods under the Contract, such manufacture will only be commenced on receipt by the Company of the Customer's approval of the sample in writing. All Goods in respect of which a sample is so approved shall be deemed to have been satisfactorily tested by the Customer and to be suitable for the purposes for which the Customer requires them and, subject to condition 17.1, the Company shall have no further liability for such Goods in this respect.
- 11.2 Notwithstanding that samples may be or have been submitted by the Company the sale to the Customer is not and shall not be deemed to be a sale by sample for the purposes of Section 15 of the Sale of Goods Act 1979. Any samples submitted to the Customer are intended to indicate only the substance and the general character of the materials and the Customer shall have no claim if the colour or composition of the majority of the Goods supplied fails to correspond with the sample in such respect unless the particular requirement is specified by the Customer and accepted by the Company in writing.

QUALITY

- 12.1 The Company warrants that on delivery and for a period of 12 months from the date of delivery ("**Warranty**") the Goods shall:-

- (a) conform in all material respects with the applicable Specification including that of an approved sample (if applicable);
 - (b) be free from material defect in design, material and workmanship.
- 12.2 Subject to the Customer's compliance with the requirements of condition 13 and/or condition 14 (as appropriate), the Company shall, at its sole option, repair or replace the defective Goods or refund the price paid for the defective Goods in full.
- 12.3 In the case of goods not manufactured by the Company, the Company gives no assurance or guarantee whatsoever that the sale or use of the Goods will not infringe the patent, copyright or other industrial intellectual property rights of any other person, firm or company.
- 12.4 Except as provided in this condition 12, the Company shall have no liability to the Customer except in respect of the Goods' failure to comply with the Warranty set out in condition 12.1.
- 12.5 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from the Contract.
- 12.6 These Terms shall apply to any repaired or replacement Goods supplied by the Company.

SHORTAGES AND DEFECTS APPARENT ON INSPECTION

- 13.1 The Customer shall not be entitled to reject the Goods if the Company delivers:
- 13.1.1 not less than 90 per cent of the quantity of Goods ordered; or
 - 13.1.2 not more than 110 per cent of the Goods ordered but a pro rata adjustment shall be made to the invoice on receipt of notice from the Customer that the quantity of Goods delivered differs from the quantity ordered.
- 13.2 Without prejudice to Condition 13.1, the Customer shall have no claim for shortages or defects in the Goods apparent on visual inspection unless:-
- 13.2.1 the Customer inspects the Goods within three working days of arrival at the Delivery Location;
 - 13.2.2 a written complaint (including by e-mail) is made to the Company and to the carrier within fourteen days of receipt of the Goods or such shorter period as the carrier's conditions (if applicable) require specifying the shortage or defect together with photographic evidence; and
 - 13.2.3 the Company is given an opportunity to inspect the Goods and investigate any complaint before any use of or alteration to or interference with the Goods.
- 13.3 If a complaint is not made to the Company as provided in Condition 13.2 then the Goods shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to pay for the actual quantity of Goods delivered (in accordance with Condition 13.1).
- 13.4 The Company may within 15 days of receiving such a written complaint (or 28 days where the Goods are situated outside the United Kingdom) inspect the Goods and the Customer if so required by the Company shall take all steps necessary to enable the Company to do so.

DEFECTS NOT APPARENT ON INSPECTION

- 14.1 The Customer shall have no claim in respect of defects in Goods not apparent on visual inspection at the time of delivery envisaged by these Terms unless:-
- 14.1.1 a written complaint is sent to the Company as soon as reasonably practicable after the defect is discovered and no use is made of the Goods thereafter and no alteration made thereto or interference made therewith before the Company is given an opportunity to inspect the Goods in accordance with this condition; and
 - 14.1.2 the complaint is sent within 12 months of the date of delivery of the Goods or in the case of an item not manufactured by the Company within the guarantee period specified by the manufacturer of such item (if any).
- 14.2 The Customer shall not be entitled to any claim under the Warranty at condition 12 or otherwise in respect of any repairs or alterations undertaken by the Customer without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse nor in respect of any Goods to which alterations have been made without such consent or to which replacement parts not supplied by the Company have been fitted.
- 14.3 The Warranty at condition 12.1 shall not apply where any loss or damage is suffered by reason of use of the Goods after the Customer becomes aware of a defect or ought reasonably to have become aware of the existence of a defect.
- 14.4 The Company may within 15 days of receiving such a written complaint (or 28 days where the Goods are situated outside the United Kingdom) inspect the Goods and the Customer if so required by the Company shall take all steps necessary to enable the Company to do so.

EXPORT TERMS

- 15.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this condition 15 shall unless otherwise agreed in writing apply notwithstanding any other provisions of these Terms.
- 15.2 The Customer 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 such compliance and any applicable duties payable.

LIABILITY

- 16.1 Nothing in these Terms shall limit or exclude the Company's liability for:-
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 16.2 Subject to condition 16.1:-
- (a) the Company shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect, special or consequential loss, damages, claims, costs, liabilities or expenses arising under or in connection with the Contract; and
 - (b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise [including losses caused by shall not exceed the price of the Goods under the Contract.

CONFIDENTIAL INFORMATION / INTELLECTUAL PROPERTY

- 17.1 The Customer acknowledges that all Intellectual Property Rights in the Goods and any drawings, documents, confidential records, computer software and other information supplied by the Company shall belong to the Company and the Customer shall have no rights in or to such Intellectual Property Rights other than the right to use the Goods and any other intellectual property in accordance with the purpose for which they are supplied to it without the prior written consent of the Company.

CUSTOMER'S DRAWINGS

- 18.1 The Customer warrants:
- 18.1.1 the accuracy and suitability of the drawings, information, advice or recommendations given to the Company for the purposes of completing the order in accordance with these Terms;
 - 18.1.2 that it shall at its own expense;
 - a. provide the Company with the required drawings, information, advice or recommendations in sufficient time to enable the Company to complete the Order;
 - b. retain copies of all drawings and information given to the Company;
 - 18.1.3 that the drawings, information etc. will not infringe the intellectual property rights of any third party and that all necessary consents have been obtained before transferring the information to the Company.
- 18.2 The Customer shall on demand indemnify the Company and keep it fully indemnified against any loss (including legal fees), damages, liabilities, claims, charges and expenses incurred by the Company caused by:
- 18.2.1 any breach of the warranties contained in 18.1.1;
 - 18.2.2 the accuracy of the drawings, information, advice or recommendations;
 - 18.2.3 any claim by the Customer or third party due to the information not being provided by the Customer within sufficient time to complete the order;
 - 18.2.4 any claim by a third party for infringement of intellectual property rights.

DATA AND TECHNICAL INFORMATION

- 19.1 The information contained in the advertising sales and technical literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed otherwise any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the Contract otherwise agreed in writing.

INSOLVENCY

- 20.1 If the Customer becomes subject to any of the events listed in condition 20.2 or the Company reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or any other contract between the Customer and the Company without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due and payable.
- 20.2 For the purposes of condition 20.1, the relevant events are:-
- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer];
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;
 - (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 20.2(a) to condition 20.2(h) (inclusive);
 - (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - (k) the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 20.3 Termination of the Contract (howsoever arising) shall not affect any of the parties' rights and remedies that have accrued as at termination, conditions which expressly or by indication survive termination of the Contract shall continue in full force and effect.

TOOLS

- 21.1 Subject to condition 21.2 below and unless otherwise expressly agreed in writing tools shall remain the property of the Company notwithstanding that the Customer may have paid or be liable to pay part of the cost of them under condition 9.4 hereof ("**part paid tools**").
- 21.2 Where any tools are loaned to the Company by the Customer ("loaned tools") they shall remain the property of the Customer and shall where reasonably practicable be clearly identified as such.

The Company shall not be liable in respect of any loss or damage to or the destruction of either part tools or loaned tools save where the Company is proved to have been negligent in its custody or use of them and in this case the Company's liability shall be limited to the repair or replacement of the tools in question so far as may be necessary for the purposes of fulfilling the Contract.

- 21.3 Notwithstanding that any tool is in the physical possession of the Company, the Customer shall:-
- 21.3.1 keep all and any tools which are the property of the Customer or in the case of any part paid tool (where for the avoidance of doubt title to the tool remains fully vested with the Company) fully insured for their full replacement value against all appropriate risks; and
 - 21.3.2 in the case of any part paid tool, ensure that the Company's interest is noted on the insurance policy; and
 - 21.3.3 provide the original insurance certificate and any other evidence of such fully paid up insurance to the Company promptly on request and in any event no less frequently than on an annual basis.
- 21.4 For the avoidance of doubt, in the event that the Customer fails to insure the tools the Company shall have no liability in respect of such tools other than as set out at clause 21.1 above and shall be entitled to replace such tools with reasonable replacements for the purposes enabling performance of this Contract and the Customer shall on demand indemnify and keep the Company fully indemnified in respect of all and any costs and expenses of the Company of doing so.
- 21.5 Neither the Customer nor the Company shall disclose to any third party any measurements, dimensional or design details or any other information in respect of the tools owned by the other without previous consent of the other in writing.

FORCE MAJEURE

22. The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control including but not limited to:
- 22.1 act of God, explosion, flood, tempest, fire or accident;
 - 22.2 war or threat of war, terrorism or threat of terrorism, sabotage, insurrection, civil disturbance or requisition;
 - 22.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority's
 - 22.4 Import or export regulations or embargoes;
 - 22.5 strikes, lock-outs or other industrial actions or trade disputes (whether including employees of the Company or of a third party);
 - 22.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 22.7 power failure or breakdown in machinery; or
 - 22.8 adverse weather conditions.

GENERAL

- 23.1 A notice requiring or permitted to be given by either party to the other under these Terms 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.
- 23.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 23.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 23.4 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.
- 23.5 A person who is not party to the Contract shall not have any rights under or in connection with it.
- 23.6 The Contract and any disputed claim arising out of it or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.