

Terms and conditions for the purchase of goods

1. Interpretation

1.1 Definitions:

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

Conditions means the terms and conditions set out in this document as amended from time to time in accordance with clause 25.4.

Contract means the contract between the Company and the Supplier for the sale and purchase of the Goods in accordance with these Conditions, the Goods Specification, the Order and any other documents agreed between the parties in writing.

Company means Moove Lubricants, a trading name of Comma Oil & Chemicals Limited (registered in England and Wales with company number 02075698) whose registered address is at Dering Way, Gravesend, Kent, England, DA12 2QX.

Commencement Date has the meaning given in clause 2.3.

Company Materials has the meaning given in clause 13.

Delivery Date means the date specified in the Order, or as otherwise notified by the Company in writing.

Delivery Location means the address for delivery of Goods as set out in the Order or as otherwise notified by the Company in writing.

Goods means the goods (or any part of them) set out in the Order or as otherwise agreed by the Company and the Supplier in writing.

Goods Specification means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Company and the Supplier.

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.



Mandatory Policies means the Company's business policies and codes notified by the Company to the Supplier in writing and as amended by notification to the Supplier from time to time.

Order means any written order from the Company for the supply of Goods from the Supplier.

Supplier means the person or firm from whom the Company purchases the Goods under a Contract.

1.2 Interpretation:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.3 a reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Company to purchase the Goods from the Supplier in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

2.3.1 the Supplier issuing a written acceptance of the Order; or

2.3.2 the Supplier doing any act consistent with fulfilling the Order,

at which point the Contract shall come into existence ("**Commencement Date**").

2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3. Supply of Goods

3.1 The Supplier shall supply, and the Company shall purchase, such quantities of Goods as the Company may order in accordance with these Conditions.

3.2 The Company may at any time prior to despatch of the Goods amend or cancel an Order by written notice to the Supplier. If the Company amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all

costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation (and for the avoidance of doubt shall not include any loss of anticipated revenue, profits or any consequential loss), except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under the Contract, the Company shall have no liability to the Supplier in respect of it.

- 3.3 The Supplier shall ensure that the Goods shall:
 - 3.3.1 correspond with their description and any applicable Goods Specification;
 - 3.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Company expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgement;
 - 3.3.3 where they are manufactured Goods, be free from defects in design, material and workmanship and remain so for twelve (12) months after delivery; and
 - 3.3.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.5 The Company shall have the right to enter the Supplier's premises:
 - 3.5.1 to inspect the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Goods;
 - 3.5.2 to inspect and take samples of the raw materials, the packaging and the Goods;
 - 3.5.3 to inspect stock levels of Good; and
 - 3.5.4 for the purpose set out in clause 4.8.
- 3.6 Inspections carried out pursuant to clause 3.5 shall be carried out during business hours on reasonable notice to the Supplier.
- 3.7 If following an inspection, the Company reasonably considers that the Goods are not or are not likely to be as warranted under clause 3.3, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted under clause 3.3. The Company shall have the right to re-conduct inspections and take further samples after the Supplier has carried out its remedial actions.

- 3.8 The Company may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.9 The Supplier shall use its best endeavours to procure that all warranties provided by a manufacturer in connection with the Goods are assigned to the Company. If any warranty cannot be so assigned, the Supplier shall use its best endeavours to make the warranty available for the Company in benefit to the maximum extent possible. The Supplier shall deliver a copy of each written warranty under this clause which shall be in addition to those set out in the Contract.

4. **Quality control**

- 4.1 The Supplier acknowledges that the Company is relying upon the quality assurance systems of the Supplier for the integrity of the Goods.
- 4.2 If the Supplier holds the ISO 9001 certification, the Supplier must use this certified quality system in the production of any Goods.
- 4.3 Any modification to the manufacturing process, raw materials or qualities of the Goods or the limits given in the Goods Specification from any previous Order must first be notified to the Company and a new Goods Specification and material safety data sheet must be supplied and agreed upon by the Company prior to dispatch of the modified Goods to the Company.
- 4.4 The Supplier undertakes that no contamination of the Goods will occur, and warrants that no such contamination has occurred, between the point at which the batch quality control was tested and the final point of package filling or bulk vehicle loading. This will be through the Supplier checking that the delivered Goods viscosity is within three percent (+/-3%) of the original batch results, and that the results are within the Goods Specification limits.
- 4.5 The Supplier shall fulfil the Company's requirements for quality control ("**QC Requirements**") which shall include: Product Quality Management Systems, Quality Practices and Guidelines, and Data Integrity Assurance Framework. The Company will provide details of QC Requirements and guidance in their interpretation if requested by the Supplier. The QC Requirements may be updated by the Company from time to time by written notice to the Supplier at the Company's absolute discretion.
- 4.6 The Company shall have the right to verify the findings of the Supplier's laboratory in relation to any Goods which will thereafter be sold as, or as part of, any Goods which the Company will ultimately sell under the Company brand name. Such verification may be carried out when and as often as the Company feels is necessary to satisfy the Company that the Supplier's laboratory operation meets the Company's required standards. The Supplier shall pay for all costs associated with any necessary upgrading of the Supplier's laboratory in order to meet the Goods Specification and QC Requirements, including the purchase of any equipment.
- 4.7 The Company shall at any time, during normal business hours and upon reasonable notice, at its own expense, be entitled to carry out an audit of the Supplier's compliance with the QC Requirements and, to the extent that any



shortcomings are identified, the Supplier shall work with the Company to ensure that future compliance is achieved.

- 4.8 The Company reserves the right (but is not required) to examine the Supplier's manufacturing operation to confirm that satisfactory quality controls are applied and documented and that the manufacturing or the process and the Goods conform to the Goods Specification and shall be entitled to set levels of compliance and a timetable for implementation.

5. Data integrity

The Supplier and its agents and subcontractors shall be accountable for the integrity of any test or measurement data provided by the Supplier to the Company, including the generation, recording, reporting and retention of such data. The Supplier agrees that for any such data measurement activities and information reported from measurement shall be complete and accurate and provided in a timely manner. Specified industry standard test methods and instrument calibration procedures shall be used by the Supplier without modification.

6. Health, safety & environment

- 6.1 The Supplier shall when using or supplying articles or substances as Goods (or part of them) ensure that it submits to the Company data sheets in accordance with the COSHH regulations (or other applicable laws and regulations) and in all cases, shall ensure that there will be available adequate information about an article's use for which it is designed and has been tested, or about the results of any relevant tests which are being carried on or in connection with a substance, and about any conditions necessary to ensure that, when properly used, the article or substance will be safe and without risk to health.
- 6.2 The Supplier warrants that in the performance of the Contract it will comply with all laws, rules, regulations and orders relating to the protection of the environment and without limitation, will take all reasonable precautions to avoid pollution of any type and releases of any emissions damaging to the environment.
- 6.3 The Supplier shall ensure it shall (and shall procure that its employees) comply with the Company's site rules and regulations relating to health, safety and the environment when on any Company premises.

7. Reach requirements (European Union)

The Supplier will comply with the Reach Regulation 1907/2006/EC ("**REACH**") requirements or other applicable laws and regulations in performing its obligations under the Contract. The Supplier represents and warrants that all substances, wherever sourced, that are contained in the Goods that are required to be registered under REACH, have been properly (pre) registered. Upon request, the Supplier shall provide appropriate documentation to the Company relating thereto.

8. Delivery of Goods

- 8.1 The Supplier shall ensure that:
- 8.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

- 8.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 8.1.3 if the Supplier requires the Company to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 8.2 The Supplier shall deliver the Goods:
 - 8.2.1 on the Delivery Date and for these purposes, time of delivery is of the essence;
 - 8.2.2 at the Delivery Location; and
 - 8.2.3 during the Company's normal business hours, or as instructed by the Company.
- 8.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 8.4 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle the Company to the remedies set out in clause 10.

9. Title and risk

Title and risk in the Goods shall pass to the Company on completion of delivery.

10. Remedies

- 10.1 If an Order is not delivered on the specified Delivery Date or it does not comply with the undertakings set out in these Conditions, then, without limiting any of its other rights or remedies the Company may have, the Company may exercise any one or more of the following remedies:
 - 10.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 10.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 10.1.3 to require the Supplier to repair or replace the rejected Goods; or to provide a full refund of the price of the rejected Goods (if paid);

- 10.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 10.1.5 obtain substitute Goods from another supplier or have the rejected Goods repaired by a third party and recover from the Supplier any costs and expenses reasonably incurred by the Company in obtaining substitute goods from a third party or having the rejected Goods repaired by such third party;
 - 10.1.6 to require a refund from the Supplier of sums paid in advance for Goods that it has not delivered; and/or
 - 10.1.7 to claim damages for any other costs, loss or expenses incurred by the Company which are directly or indirectly attributable to the Supplier's failure to carry out its obligations under the Contract provided that the Supplier shall have no liability for any failure or delay in delivering any Goods to the extent that such failure or delay is caused by the Company's failure to comply with its obligations under the Contract.
- 10.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 10.3 The Company's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

11. Price and payment

- 11.1 The price of the Goods shall be the price set out in the Order and shall be the full and exclusive remuneration of the Supplier, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the Commencement Date.
- 11.2 All amounts payable by the Company under the Contract:
- 11.2.1 exclude amounts in respect of value added tax ("**VAT**"), which the Company shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;
 - 11.2.2 unless otherwise stated in the Order the invoice price shall be deemed to include all taxes (other than VAT) and duties of every kind that may be levied upon the manufacture, sale, delivery, or execution of Goods; and
 - 11.2.3 includes the costs of packaging, insurance and carriage of the Goods.
- 11.3 No additional charges shall be payable by the Company unless they have been agreed in writing with the Company.
- 11.4 Unless otherwise specified in an Order the Supplier shall submit an invoice and supporting documentation in the month following the month of delivery. Invoices and supporting documentation must be (i) correct in all details, (ii) forwarded to the address specified in the Order, and (iii) must clearly quote the date of the Order, the invoice number, the Company's Order number and the Supplier's VAT registration number.

- 11.5 Invoices shall be issued separately in respect of each Order. An invoice in respect of more than one delivery may only be issued with the Company's prior written agreement. Discounts will be separately stated on the invoice.
- 11.6 Providing that invoices are correct, comply with this clause 11, include all required supporting documentation and the Goods comply with the Goods Specification, invoices will be paid within ninety (90) days from the date of invoice.
- 11.7 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of two percent (2%) per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 11.8 If the Company disputes any invoice or other statement of monies due, the Company shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in this clause 11. The Supplier's obligations to supply the Goods shall not be affected by any payment dispute.
- 11.9 The Company may at any time, set off any liability of the Supplier to the Company against any liability of the Company to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Company may convert either liability at a market rate of exchange for the purpose of set-off.
- 11.10 Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

12. Audit

Until three (3) years following completed performance of the Supplier's obligations under the Contract, the Supplier shall maintain and preserve documentation and data relating to the Contract. The Supplier shall allow the Company or the Company's authorised representatives or agents to have access to the Supplier's premises at all reasonable times upon reasonable notice for the purpose of inspecting and taking copies of the Supplier's books and records related to the Contract.

13. Company Materials

The Supplier acknowledges that any and all materials, equipment and tools, drawings, Goods Specification, QC Requirements and data supplied by the Company to the Supplier ("**Company Materials**") and all rights in the Company Materials, including all Intellectual Property Rights, are and shall remain the exclusive property of the Company. The Supplier shall keep the Company Materials in safe custody at its own risk, maintain them in good condition until returned to the Company and not dispose or use the same other than in accordance with the Company's written instructions or authorisation.

14. Intellectual Property Rights

- 14.1 The Company grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any Company Materials for the term of the Contract solely for the purpose of providing the Goods to the Company.
- 14.2 The Supplier shall not, without the prior written consent of the Company, use the name or any trade name or registered trade mark of the Company or its affiliates in any advertising or communications to the public in any format except as necessary to supply Goods in accordance with the Contract.

15. Indemnity

- 15.1 The Supplier shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of revenue, loss of profit, loss of reputation and all interest, penalties and legal (calculated on a full indemnity basis) and other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with:
 - 15.1.1 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 supply or use of the Goods;
 - 15.1.2 any claim made against the Company by a third party arising out of, or in connection with any breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
 - 15.1.3 any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 15.2 This clause 15 shall survive termination of the Contract.

16. Insurance

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

17. Confidentiality

- 17.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 17.2.
- 17.2 Each party may disclose the other party's confidential information:

- 17.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 17; and
- 17.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 17.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 17.4 This clause 17 shall survive termination of the Contract.

18. Compliance with relevant laws and policies

- 18.1 In performing its obligations under the Contract, each party shall:
 - 18.1.1 comply with all applicable laws, statutes, regulations and codes from time to time in force; and
 - 18.1.2 comply with the Mandatory Policies.
- 18.2 The Company may immediately terminate the Contract for any breach of clause 18 by the Supplier.

19. Compliance with Relevant Requirements

- 19.1 Without limiting the generality of clause 18, the Supplier shall:
 - 19.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
 - 19.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements if such activity, practice or conduct had been carried out in the UK;
 - 19.1.3 have and shall maintain in place throughout the term of Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Mandatory Requirements, the Mandatory Policies and clause 19.1.2, and will enforce them where appropriate;
 - 19.1.4 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
 - 19.1.5 immediately notify the Company (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no

foreign public officials as direct or indirect owners, officers or employees at the date of the Contract; and

- 19.1.6 upon request, certify to the Company in writing signed by an officer of the Supplier, compliance with this clause 19 by the Supplier and all persons associated with it. The Supplier shall provide such supporting evidence of compliance as the Company may reasonably request.
- 19.2 In addition to the foregoing, the Supplier shall in performing its obligations under the Contract:
 - 19.2.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - 19.2.2 not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 19.2.3 notify the Company as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract; and
 - 19.2.4 maintain a complete set of records to trace the supply chain of all Goods provided to the Company in connection with the Contract; and permit the Company and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 19.
- 19.3 The Supplier represents and warrants that at the Commencement Date it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 19.4 The Supplier shall ensure that any person associated with the Supplier (including but not limited to its employees, officers, sub-contractors, agents and suppliers) who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 19 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Company for any breach by such persons of any of the Relevant Terms.

20. [Liquidated Damages]

- 20.1 The Supplier may be required to pay the amount specified in the Order or as otherwise notified by the Company in writing as liquidated damages in the event of a default by the Supplier. The parties confirm that this sum represents a genuine pre-estimate of the Company's damages suffered as a result of that particular breach or event of default.
- 20.2 The Supplier shall pay these liquidated damages on demand or the Company may deduct them from its payments to the Supplier provided.

20.3 The parties confirm that these liquidated damages are reasonable and proportionate to protect the Company's legitimate interest in performance.

20.4 [If the Company exercises its rights under this clause 20, it shall not be entitled to some or all of the remedies set out in clauses 10.1.5, 10.1.6 and 10.1.7.]]

21. Termination

21.1 The Company may terminate the Contract for convenience, in whole or in part, at any time before delivery of the Goods is completed with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work under the Contract. The Company shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated revenues, profits or any consequential loss.

21.2 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Supplier if:

21.2.1 there is a change of control of the Supplier;

21.2.2 the Supplier commits a breach of clause 19,

21.2.3 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within seven (7) days of being notified in writing to do so;

21.2.4 the Supplier repeatedly breaches any term of the Contract in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

21.2.5 the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

21.2.6 the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

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

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

21.3 [Without effecting any other right or remedy available to it, either party may terminate the Contract for convenience by giving the other party three (3) months' notice in writing.]

21.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

22. Consequences of termination

22.1 On termination of the Contract, the Supplier shall immediately return all Company Materials. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

22.2 Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

22.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

23. Limitation of liability

23.1 This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

23.1.1 any breach of the Contract;

23.1.2 any use made or resale of the Goods by the Company, or of any product incorporating any of the Goods; and

23.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

23.2 Nothing in the Contract shall limit or exclude the liability of either party for:

23.2.1 death or personal injury resulting from negligence; or

23.2.2 fraud or fraudulent misrepresentation; or

23.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

23.2.4 breach of section 2 of the Consumer Protection Act 1987; or

23.2.5 the indemnities contained in clause 15; or

23.2.6 the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.

23.3 Without prejudice to clause 23.2, neither party shall be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

23.3.1 loss of profit; or

23.3.2 loss of goodwill; or

23.3.3 loss of business; or

23.3.4 loss of business opportunity; or

23.3.5 loss of anticipated saving; or

23.3.6 loss or corruption of data or information; or

23.3.7 special, indirect or consequential damage or loss,

suffered by the other party that arises under or in connection with the Contract.

23.4 Without prejudice to clause 23.2 or clause 23.3, the Company's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the amount unpaid of the invoices submitted by the Supplier for Goods purchased (less the amount paid by the Company in respect of such invoices), and any interest due on such amount pursuant to clause 11.

23.5 Where applicable and without prejudice to clause 23.2 or clause 23.3, the Supplier's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the amount specified in the Order.

24. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate the Contract by giving seven (7) days written notice to the affected party.

25. General

25.1 Assignment and other dealings

25.1.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract provided that, in the case of subcontracting only, the Company remains responsible for the performance of its obligations under the Contract.

- 25.1.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.
- 25.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Company. If the Company consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 25.3 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 25.4 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Company.
- 25.5 **Waiver.** Except as set out in clause 2.4, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 25.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 25.7 **Notices.**
- 25.7.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- 25.7.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 25.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- 25.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action, or other method of dispute resolution.



- 25.8 **Third party rights.** No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.
- 25.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 25.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.