



**T/A Garton International
Smith Bullough
Thomas Smith Fasteners**

CONDITIONS OF SALE

GARTON LIMITED

Terms and Conditions of Sale

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 12

1. Definitions

1.1 In these Conditions the following expressions shall (unless the context otherwise requires) have the following meanings:

“**Customer**” means the person, firm or corporation with whom the Supplier contracts for the sale of the Goods.

“**Customer's Property**” means any items, materials or other property provided or made available by the Customer to the Supplier to enable the Supplier to perform and comply with its obligations under the Contract including without limitation any Tooling, Processing Materials, Confidential Information and all drawings, designs, Specifications or other data, documents and particulars.

“**Conditions**” means the standard terms and condition of sale set out in this document together with any special terms and conditions agreed in writing between the Customer and the Supplier.

“**Contract**” means the contract for the sale of the Goods incorporating these Conditions and arising from the Supplier's acceptance of the Customer's order in accordance with Condition 2.1 of these Conditions.

“**Goods**” means the goods (including any instalment of the goods) which the Supplier is to sell to the Customer in accordance with these Conditions.

“**Intellectual Property Rights**” means patents, registered designs, trade marks and service marks whether registered or not), copyright, design right, and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, confidential information, business names, goodwill and the style of presentation of goods or services and any applications for protection of any of the above rights.

“**Supplier**” means Garton Limited (Registered in England No.4153036) whose registered office is at Unit 2A Swan Lane, Hindley Green, Wigan, Greater Manchester, WN2 4HD, England or any of its subsidiary companies or any subsidiary of any of its subsidiaries and ‘subsidiary’ shall have the meaning given to them by sections 736 and 736A of Companies Act 1985.

“**Tooling**” means any equipment, materials, tools, patterns, dies, moulds, jigs, fixtures or other chattels owned or purchased by the Customer or by the Supplier on the Customer's request made available to the Supplier to enable it to supply the Goods or Processing under this Contract.

“**Working Day**” means any day of the week except Saturday, Sunday or a bank, public or statutory holiday.

2 Basis of Contract

2.1 Any quotation or estimate given by the Supplier including the Supplier's published price list from time to time will be subject to these Conditions and is an invitation to the Customer to place an order which shall be an offer open to acceptance by the Supplier and no order placed in response to or any other acceptance of a quotation or estimate shall give rise to a contract binding upon the Supplier until accepted by the Supplier. A binding contract shall come into effect upon the earlier of the Supplier commencing the manufacture or despatch of the Goods or the Supplier expressly accepting the Customer's order whether orally or in writing.

2.2 Unless otherwise agreed in writing by the Customer and the Supplier, any Contract between the Customer and the Supplier shall be subject to these Conditions which shall be incorporated into the Contract to the exclusion of all other terms and conditions including any terms or conditions of the Customer specified or referred to in any order placed by the Customer.

2.3 No variation to these Conditions shall be binding unless agreed in writing by the Supplier.

2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer's own risk

2.5 The Customer shall be solely responsible for the accuracy of the Customer's designs drawings specifications and other data including the terms of any order supplied to the Supplier by the Customer or the Customer's employees or agents and in conformity with which the Supplier is to manufacture the Goods.

3 Prices

3.1 Subject to Clause 3.2, and unless otherwise agreed all prices quoted are valid for 30 days only or until earlier acceptance by the Customer after which time they may be by the Supplier without giving notice to the Customer.

3.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and/or Processing to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates or quantities for the Goods or Processing Materials which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

3.3 The Supplier may charge to the Customer the cost of any packaging materials such as pallets and other returnable containers in addition to the price of the Goods. If any packaging materials which have been charged for are returned by the

Customer in good condition before the due payment date, the Supplier shall issue a credit note to the Customer in respect of such returned materials.

3.4 All prices are exclusive of Value Added Tax which will be charges to and paid by the Customer in addition to the price of the Goods at the rate applicable at the relevant tax point together with any other duty or tax imposed by any competent authority payable on the sale of the Goods.

3.5 Except as otherwise stated under the terms of any quotation or in any price list of the Supplier, and unless otherwise agreed in writing between the Customer and the Supplier, all prices are given by the Supplier on an “ex works” basis (as defined in Incoterms), and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance.

4 Delivery and Passing of Risk

4.1 Delivery shall take place when in the case of Goods to be collected they are loaded on to the vehicle on which they are to leave the Supplier's premises to be delivered to the Customer whether such vehicle is in the possession or control of the Customer, the Supplier or a third party and in all other cases when the Goods are unloaded at the address for delivery specified in the Contract.

4.2 The risk in all the Goods shall pass to the Customer immediately on delivery to the Customer pursuant to Condition 4.1 above.

4.3 The Supplier shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment despatched. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated or to refuse to accept subsequent instalments.

4.4 The Supplier reserves the right to deliver against any order up to ten per cent (10%) more or ten per cent (10%) less by weight or number than the quantity ordered, and the quantity so delivered shall be deemed to be the quantity ordered. Any excess or shortage will be reflected in the pro-rata adjustment of the payment due.

4.5 The Supplier shall not be bound by any delivery date put forward by the Customer and any estimated delivery date quoted by the Supplier shall be a business estimate only and shall not be binding. Time of delivery shall not be of the essence of the Contract.

4.6 The Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless within 14 days of the date of delivery of the Goods the Customer notifies the Supplier in writing of any defect in materials or workmanship or failure to comply with designs drawings specifications or other data supplied by the Customer or any other failure of the Goods to conform with the Contract which would be apparent upon reasonable inspection and testing of the Goods within 14 days (or within a reasonable time where the defect or failure would not be so apparent) failing which the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

4.7 The Customer shall be responsible for any losses incurred by the Supplier if the Supplier's delivery schedule has been delayed because of the delay in obtaining access to the Customer's premises, unloading the Goods or exiting from the Customer's premises caused by any negligence or default by the Customers or its employees or agents.

4.8 If the Customer fails to take delivery of or collect the Goods or fails to give the Supplier adequate delivery instructions (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then, without prejudice to any other right or remedy available to the Supplier, the Supplier may at the Customer's expense:

- (a) store the Goods at its own premises or elsewhere until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- (b) 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.

4.9 The Supplier shall not be obliged to supply test certificates unless the Customer requests such certificates a reasonable time in advance of delivery and the Supplier shall be entitled to charge a reasonable fee for each such certificate provided.

5 Loss or Damage in Transit

5.1 Subject to Conditions 5.2, 5.3 and 5.4 below, where the Supplier has delivered or arranged delivery of the Goods the Supplier will repair or replace free of charge Goods damaged or lost in transit provided that the Customer inspects the Goods immediately upon their arrival at the destination to which they are despatched under the Contract.

5.2 The Supplier shall not be liable for any damage in transit, shortage of delivery, non delivery or loss of Goods unless the Customer gives to the Supplier written notice of such damage, shortage or loss with reasonable particulars thereof within 7 days of receipt of the Goods or (in the case of total loss) of receipt of the relevant invoice or other notification of despatch. No claim may be made for non delivery, short delivery or damage in transit unless the provisions of this Condition 5.2 are complied with and in the case of goods damaged in transit the Customer returns any damaged Goods or a sample at the Supplier's request (save in the case of total loss) to the Supplier within 7 days of such receipt.

6 Payment Terms

6.1 The Supplier shall invoice the Customer for the price of the Goods on or at any time after delivery of the Goods to the Customer, unless the Goods are to be

collected by the Customer or the Customer wrongfully fails to take delivery of the same, in which event the Supplier shall be entitled to invoice the Customer for the price of the Goods at any time after the Supplier has notified the Customer that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods.

6.2 The Supplier's invoices shall be paid in full in cleared funds in pounds sterling or such other currency as the Supplier shall specify no later than the end of the month following the month of invoice. If payments received from the Customer are not stated to refer to a particular invoice the Supplier may appropriate such payment to any outstanding invoice. The time of payment of the price shall be of the essence of the Contract.

6.3 If any sum due from the Customer to the Supplier under the Contract or any other contract is not paid on or before the due date for payment or if and to the extent that the value of the Goods delivered but not paid for exceeds or if delivered would exceed the Customer's credit limit (whether or not advised to the Customer and whether or not payment is overdue) then without prejudice to any other right or remedy available to the Supplier all sums owed by the Customer to the Supplier shall become due and payable immediately and the Supplier shall be entitled to:

(a) cancel or suspend its performance of the Contract or any order including deliveries of the Goods and suspend delivery of any other goods to the Customer; and

(b) require the Customer to pay for Goods prior to their despatch or collection from the Supplier's premises; and

(c) charge the Customer interest calculated on a daily basis on all overdue amounts (both before and after judgement) until actual payment at the rate of eight per cent (2%) per annum above the base lending rate of Barclays Bank Plc prevailing from time to time until payment is made in full.

6.4 The Customer shall not be entitled to set-off against or deduct from sums due to the Supplier under the Contract any amount that the Customer claims from the Supplier, whether under the Contract or any other contract between the Customer and the Supplier.

6.5 Where the Supplier specifies that payment will be made by Letter of Credit, the Customer must establish and maintain in favour of the Supplier an irrevocable and unconditional Letter of Credit with or confirmed by a bank in England and in a form satisfactory to the Supplier. No delivery of Goods will take place until such a Letter of Credit has been opened and the Supplier is satisfied with all arrangements relating thereto. If for any reason the bank is liable to make payment to the Supplier under any Letter of Credit established for that purposes and fails to do so the Customer shall nevertheless remain liable to pay for the Goods, the processing of the Goods. If the Supplier does not specify that payment shall be made by Letter of Credit in accordance with this Condition 6.5 then unless otherwise agreed payment will be made by Telegraphic Transfer to the Supplier's bank account in England notified to the Customer from time to time in writing.

6.6 Each Contract shall be subject to the Supplier being satisfied as to the Customer's credit status both prior to and during the period of the Contract. If the Supplier becomes dissatisfied with the Customer's credit status the Supplier may suspend performance of the Contract or withhold delivery of Goods until the Customer satisfies the Supplier as to the Customer's creditworthiness or gives the Supplier such security as the Supplier shall deem appropriate for the price.

7 Title to the Goods

7.1 Title to and property in the Goods shall remain vested in the Supplier (even though they have been delivered and risk has passed to the Customer) until:

(a) payment in full for all the Goods has been received by the Supplier; and
(b) all other money payable by the Customer to the Supplier on any other account or under the Contract or any other contract has been received by the Supplier.

7.2 Until title to and property in the Goods shall pass to the Customer the following provisions shall apply:

(a) the Supplier shall hold the Goods as bailee on behalf of and in a fiduciary capacity for the Supplier; and

(b) the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect, preserve and insure them without any charge to the Supplier and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods whether or not supplied by the Supplier and are clearly identified as belonging to the Supplier and the Supplier shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so; and

(c) the Supplier may at any time on demand and without prior notice require the Customer to deliver the Goods up to the Supplier and the Supplier may repossess and resell the Goods if any of the events specified in Condition 15 occurs or if any sum due to the Supplier from the Customer under the Contract or on any other account or under any other contract is not paid when due; and

(d) for the purposes of this Condition 7 the Supplier, its employees and agents will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and/or any other location where any of the Goods are situated at any time without prior notice; and

(e) the Supplier shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that title to and property in the Goods has not passed to the Customer.

7.3 The Supplier hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business and to pass good title in the Goods to its customers if they are purchasers in good faith without notice of the Supplier's rights. This right shall automatically cease on the occurrence of any event set out in Condition 16 and/or if any sum owed to the Supplier by the Customer is not paid when due. If the Customer sells the Goods prior to paying the full price thereof the

Customer shall hold the proceeds of sale on trust for the Supplier and shall immediately pay the proceeds of the sale into a separate bank account. The Supplier shall be entitled to call upon the Customer to assign all claims that the Customer may have against purchasers of the Goods from the Customer.

7.4 The Supplier's rights and remedies set out in this Condition 7 are in addition to and shall not in any way prejudice, limit or restrict any of the Supplier's other rights or remedies under the Contract.

8 Performance of the Contract

8.1 If the Supplier's performance of the Contract is suspended following the Supplier's acceptance of a request from the Customer or is delayed through the Customer's default (including, without limitation, lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the Goods), the Supplier will be entitled to and the Customer will immediately make payment in accordance with the Contract for any part of the Goods which were already despatched to the Customer or were ready for despatch or were being manufactured prior to the suspension or delay and for any other additional costs that the Supplier incurs including storage, insurance and interest as a result of such suspension or delay provided that:

8.2 The Customer can only cancel an order (or any part of an order) which the Supplier has already accepted with the Supplier's prior agreement in writing.

Any sample supplied by the Supplier is supplied only to give the Customer a general indication of the quality, colour and/or type thereof and will not constitute a subsequent sale by sample.

8.4 Unless otherwise stated Goods which are stated to be available "ex-stock" (or an equivalent term) are subject to availability.

8.5 The quantity, quality and description of and any specification for the Goods shall be those set out in the Customer's order as accepted by the Supplier.

8.6 The Supplier reserves the right to without liability to the Customer make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or which do not materially affect their quality or performance.

8.7 The Customer shall not at any time alter, remove or tamper with any packaging of or any labelling on any of the Goods.

9 User Instructions

9.1 The Customer shall comply at all times with any written instructions attached to the Goods concerning their storage, application and use and the Customer shall refer its employees and its customers to such instructions.

9.2 The Customer should satisfy itself that the persons responsible for the use of any Goods supplied by the Supplier have all the information required on health and safety.

10 Intellectual Property

10.1 Any Intellectual Property Rights or know-how created by the Supplier in the course of the performance of the Contract or otherwise in the manufacture of the Goods shall remain the Supplier's property. Nothing in the Contract shall be deemed to have given the Customer a licence or any other right to use any of the Intellectual Property Rights or know-how of the Supplier.

10.2 The Customer by placing any order with the Supplier which requires the Supplier to use any of the Customer's Intellectual Property Rights or know-how to manufacture the Goods hereby grants to the Supplier a royalty-free non-exclusive grant of such Intellectual Property Rights and know-how for that purpose.

10.3 The Supplier reserves the right to photograph any Goods or Processing Materials following manufacture and/or Processing and to reproduce the photograph in any catalogue or other publication and any copyright in such publication shall remain with the Supplier.

11 Warranty for Goods

11.1 If the Customer establishes to the Supplier's reasonable satisfaction that there is a defect in the materials or workmanship of the Goods manufactured by the Supplier or there is some other failure by the Supplier in relation to the conformity of the Goods with the Contract then the Supplier shall at its option and within a reasonable time at its sole discretion either:

(a) repair or make good such defect or failure in such Goods free of charge to the Customer (including all costs of transportation of any Goods to and from the Customer for that purpose); or

(b) replace such Goods with Goods which are in all respects in accordance with the Contract; or

(c) take back such Goods and issue a credit note to the Customer in respect of the whole or part of the purchase price of such Goods as appropriate

subject in every case to the remaining provisions of this Condition provided that the liability of the Supplier under this Condition 11 shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of the Supplier's liability under this warranty.

11.2 Condition 11.1 shall not apply unless the Customer:

(a) notifies the Supplier in writing of the alleged defect within 14 days of the time when the Customer discovers or ought to have discovered the defect and in any event within 3 months of the delivery of the Goods to the Customer; and

(b) affords the Supplier a reasonable opportunity to inspect the relevant Goods and, if so requested by the Supplier, promptly returns them to the Supplier as soon as reasonably practicable after first becoming aware of the alleged defect or failure, returns a sample of the Goods and in any event within 14 days, (all reasonable costs of carriage incurred in returning the Goods or a sample of the same shall be reimbursed by the Supplier provided always that such costs are agreed by the Supplier and the Customer in advance of their return) for inspection, examination and testing and/or otherwise permit the Supplier to have access to the Goods at the Customer's

premises or other location where they may be for such purposes.

11.3 The Supplier shall be under no liability under the above warranty:

- (a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Supplier's approval;
- (b) if the total price for the Goods has not been paid by the due date for payment;
- (c) for any parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.

12 Supplier's Liability

12.1 The Supplier shall in no circumstances have any liability to the Customer:

- (a) for any direct economic loss or for any indirect or consequential loss (including without limitation loss of profits, future revenue, reputation, goodwill or anticipated savings) or damage (whether arising under contract, in tort or otherwise) of the Customer or for any liability of the Customer to any other person for any economic loss, claim for damages or awards howsoever arising; or
- (b) any loss or damage which the Customer may suffer whether in contract, tort (including negligence) or for breach of statutory duty or otherwise whatsoever save as otherwise provided in this Condition 12.

12.2 The Supplier's liability for any physical damage to the premises or any other tangible property of the Customer resulting from the negligence of the Supplier shall be subject to the limitations set out in Condition 12.3 below.

12.3 In the event that, notwithstanding the provisions of Condition 12.1, the Supplier is found liable for any loss or damage suffered by the Customer, or the Supplier is liable for any physical damage pursuant to Condition 12.2 above, the liability of the Supplier for each claim shall be limited to £25,000 or fifty times the price of the Goods in respect of which the Customer suffered or incurred such loss or damage whichever is the greater up to a maximum limit of the Supplier's product liability insurance cover limit from time to time details of which are available to the Customer on request provided that where any one event or series of two or more connected events gives rise to more than one claim that limit shall apply to all such claims as though they were a single claim.

12.4 All Goods sold by the Supplier are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979. Subject thereto all other conditions, warranties and other terms express or implied, statutory or otherwise are expressly excluded, save insofar as contained in these Conditions or as otherwise expressly agreed by the Supplier in writing.

12.7 Nothing in these Conditions shall exclude or restrict the Supplier's liability in respect of death or personal injury caused by its negligence or any statement or representation made fraudulently.

13 Customer's Indemnity & Insurance

13.1 The Customer acknowledges that the Supplier places particular reliance upon the provisions of the Contract and in addition to any other remedy available to the Supplier, the Customer irrevocably and unconditionally agrees to indemnify the Supplier and its employees and agents in full and on demand and keep them so indemnified from and against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including legal and other professional advisers fees and all economic loss whether direct or indirect (including loss of profit, future revenue, reputation or goodwill and anticipated savings)) which are made or brought against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the entering into of this Agreement and this indemnity shall cover all consequential and indirect losses suffered by the Supplier and its employees and agents and they shall have no duty to mitigate any such loss:

- (a) the manufacture and sale of the Goods by the Supplier in accordance with the Customer's designs, drawings, specifications or other data or information furnished or instructions with the Customer's designs, drawings given by the Customer;
- (b) any claims that any patent, trade mark, design, copyright, design right, confidential information or other intellectual property or other exclusive right of any third party has been infringed through the manufacture, sale or use of the Goods in accordance with the Customer's designs, drawings specifications or other data or information furnished or instructions with the Customer's designs, drawings given by the Customer;
- (c) the cancellation of any order by the Customer after its acceptance by the Supplier; and
- (d) any breach by the Customer of its obligations under the Contract;

13.2 The Customer shall maintain in force such insurance policies as are appropriate and adequate with a reputable insurer having regard to its obligations and liabilities under this Agreement.

13.3 The Customer shall, during the term of the Contract and for a period of 6 years thereafter do nothing to invalidate any of the insurance policies.

14 Care and Use of the Customer's Property

14.1 All Customer's Property delivered by the Customer to the Supplier shall at all times remain at the risk of the Customer who shall be responsible for insuring the same. If any (of the Customer's Property is damaged or destroyed whilst in the Supplier's possession or control (or in the possession or control of any subcontractor, agent or servant appointed pursuant to Condition 17.1) then the Supplier's liability shall be limited to replacing the same at its sole cost.

14.2 If the Supplier invests in any Tooling or equipment to enable it to supply the Goods under this Contract and the Customer specifically agrees to purchase a minimum quantity of Goods processing to justify such investment by the Supplier, then the Supplier may charge more (up to the actual cost) if the Customer orders or

takes delivery of a smaller quantity of Goods than previously agreed by the Customer.

15 Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, 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 materials. Provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

16 Breach of Contract or Insolvency

16.1 If any of the following events occurs or in the Supplier's reasonable opinion is likely to occur:

- (a) the Customer commits a material breach of the Contract or any other contract between the Customer and the Supplier; or
 - (b) any distress execution or diligence is levied upon any of the Customer's goods or property and is not paid out within 7 days of it being levied; or
 - (c) the Customer (being a partnership) or the Customer's partner offers to make any arrangements with or for the benefit of the creditors (If the Customer or the Customer's partner generally or there is presented in relation to the Customer or the Customer's partner a petition of bankruptcy; or
 - (d) the Customer (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer calls a meeting for the purpose of passing a resolution to wind up its company, or such a resolution is passed or the Customer presents or has presented a petition to wind up or present or have presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of the Customer's business, undertaking, property or assets; or
 - (e) the Customer ceases, or threatens to cease, to carry on business;
 - (f) if and to the extent that the value of the Goods delivered but not paid for exceeds or if delivered would exceed the Customer's credit limit whether or not advised to the Customer and whether or not payment is overdue;
- then the Supplier may as it thinks fit (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or cancel any outstanding delivery of the Goods or stop any Goods in transit or by notice in writing to the Customer terminate the Contract.

16.2 Notwithstanding any such termination or suspension in accordance with Conditions 15 or 16.1 above the Customer shall pay the Supplier at the contract rate for all work done materials used and Goods delivered or redelivered up to and including the date of suspension or termination and termination of any Contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any such owing or to become owing to the other.

17 Sub-contracting and Assignment

17.1 The Supplier shall be entitled at any time to assign, charge, subcontract or otherwise transfer its rights and obligations in whole or in part under the Contract.

17.2 The Customer shall not at any time assign, charge, sub-contract or otherwise transfer its rights or obligations in whole or in part under the Contract without the Supplier's prior written consent in writing.

18 Waiver

The Supplier's rights and remedies in respect of the Contract or in respect of any failure on the part of the Customer to observe or comply with the terms of the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Supplier nor by any failure of or delay by the Supplier in asserting or exercising any rights or remedies under the Contract.

19 Set Off

The Supplier shall be entitled to set off any sums owed by the Supplier to the Customer against any sums payable to the Supplier under the Contract.

20 General

20.1 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

20.2 The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such party to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

20.3 If at any time any one or more of the Conditions of the Contract (or any sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.

20.4 Any notice sent under the Contract must be in writing in the English language

and may be served by personal delivery, by registered or airmail post (as appropriate) or facsimile or electronic data transmission to the last known address or number of the other party. Notices shall be deemed to have been served at the expiration of 3 days after despatch of the same if delivered by post or at 10 hours after local time on the next normal business day of the recipient following despatch if sent by facsimile or electronic data transmission.

20.5 The Contract sets out the entire agreement and understanding between the Customer and the Supplier in connection with the sale of the Goods and shall supersede and replace all documentation previously issued by the Supplier purporting to set out its terms and conditions of sale of the Goods.

20.6 The parties to this Contract do not intend that any terms of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

21 Law and Jurisdiction

21.1 The Contract shall be governed by and be construed in all respects in accordance with English law and the Customer and the Supplier both hereby irrevocably agree to submit to the non-exclusive jurisdiction of the English Courts.