

General Terms and Conditions of Sale

The acceptance of any order for Goods is conditional upon the Buyer agreeing to the following General Terms and Conditions of Sale (**Conditions**).

1. General

1.1 The definitions in this condition apply to these Conditions:

Buyer	the entity submitting an order for the purchase of Goods from the Seller (or where such entity acts as agent for another, that entity and the principal jointly and severally).
Contract	the contract for the sale and purchase of Goods between the Seller and the Buyer comprising the Order Acknowledgment and these Conditions.
Goods	any goods (or any part of them) which the Seller supplies to the Buyer pursuant to a Contract.
Order Acknowledgment	the acceptance of an order issued by the Seller setting out and confirming the sale and purchase of the Goods and any further specific terms agreed between the Seller and the Buyer.
Seller	the entity supplying the Goods, which shall be VEKA Plc (registered in England and Wales with company number 01626563).

1.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.3 References to include and including in these Conditions are to be construed without limitation.

1.4 These Conditions apply to each supply of Goods by the Seller and the Contract shall govern all matters in respect of such supplies to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.5 Any variation to the Contract and any representations about the Goods shall have no effect unless expressly agreed in writing by a director of the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

1.6 Where there is any conflict or inconsistency between these Conditions and the provisions of an Order Acknowledgment, the provisions of the Order Acknowledgment shall prevail.

1.7 Both the Buyer and Seller shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010, not engage

in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

- 1.8 Both the Buyer and Seller hereby undertakes that, at the date of the entering into force of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorised, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

2. **Seller's Specifications**

- 2.1 All descriptions, specifications, drawings, weights, dimensions, capacities, performance ratings and other data quoted or submitted by the Seller or included in any catalogue, prospectus, circular, advertisement, illustrated matter or price list are to be deemed approximate only (except where expressly stated otherwise in writing by a director of the Seller in the Order Acknowledgment) and subject thereto none of such items or any part thereof shall form part of the Contract.
- 2.2 The Seller reserves the right to correct any clerical or typographical errors in any materials provided by it at any time.
- 2.3 If Goods are made to the Buyer's design, specification and/or instruction, then the suitability and accuracy of that design, specification and/or instruction will be the Buyer's responsibility and the provisions of condition 12.1 shall apply in respect of such Goods.
- 2.4 The Seller may make any changes to the specification, design, materials or finishes of Goods which:
- 2.4.1 are required to conform with any applicable safety or other statutory or regulatory requirements; and/or
- 2.4.2 do not materially affect their quality or performance.

For the avoidance of doubt, the provisions of this condition 2.4 shall also apply where the Goods are to be supplied to the Buyer's design, specification and/or instruction.

- 2.5 The Buyer will pass on to all third parties to whom it may supply Goods all information as to the use and safe handling of the Goods which has been passed on to the Buyer by the Seller.

3. **Prices**

- 3.1 Unless otherwise stated in the Order Acknowledgment the price payable by the Buyer for each delivery of the Goods shall be the Seller's current list price at the date of the Order Acknowledgment. Notwithstanding the foregoing, where Goods are to be delivered in instalments, the price payable for each instalment of Goods shall be the Seller's current list price as at the date of despatch of such instalment unless the Seller expressly agrees in the Order Acknowledgment that the price of the Goods will remain fixed as at the date of the Order Acknowledgment in respect of any particular instalments.

- 3.2 Unless otherwise expressly stated in the Order Acknowledgment, the prices for the Goods will be exclusive of any value added tax (to be calculated at the prevailing rate). In certain cases, the price of the Goods is based on factors which are subject to change, including the costs of materials, packing, transport, freight, insurance, labour charges, import duties, fluctuations in currency exchange rates and overhead expenses applicable at the date of delivery of the Goods, and as such the prices are subject to any increases in the costs of such items prior to delivery of the Goods.
- 3.3 Except as otherwise stated in condition 3.4, the cost of delivery of the Goods, including transport and insurance, is included in the Seller's price.
- 3.4 Notwithstanding condition 3.3, where:
- 3.4.1 the price payable by the Buyer for Goods (excluding VAT) is less than £2000;
 - 3.4.2 the Buyer requests expedited delivery of the Goods; or
 - 3.4.3 the Seller has agreed to deliver the Goods outside the mainland of Great Britain,
- the Buyer shall be responsible for all costs in connection with the delivery of the Goods, including transport and insurance, unless the Seller expressly agrees otherwise in the Order Acknowledgment.
- 3.5 The Seller reserves the right to charge a deposit in respect of pallets, stillages and other reusable items of packaging with which the Goods are delivered. All such items remain the property of the Seller at all times but shall be at the Buyer's risk following delivery. The Buyer shall be responsible for and take good care of such items following delivery, and shall allow the Seller to access the premises at which such items are stored to inspect and/or recover such items at any time. The Buyer shall reimburse to the Seller the cost of repair or of a replacement for any such items in the event of loss or damage to them. Any deposit paid to the Seller shall only be refunded if and when the items are returned in good condition to the Seller and the Seller may retain the deposit or part thereof pending determination of the cost of any necessary repairs or of a replacement and will then refund the balance (if any) to the Buyer.
4. **Ordering and Cancellation**
- 4.1 A quotation for the Goods given by the Seller shall not constitute an offer. Any order by the Buyer for the Goods constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the order documentation (including any Goods specifications) are complete and accurate.
- 4.2 Unless otherwise expressly stated in the Order Acknowledgment, the Seller's standard order terms shall operate on the basis of order on day 1 for delivery on day 3. The Seller may accept additional order items up to 12.00pm (noon) on day 2 for delivery on day 3 subject to written confirmation.
- 4.3 Non-stock colour variants which are classed as made to order (**MTO**) under the Seller's variations policy shall be subject to the Seller's MTO lead times, these may vary from time to time and are available in the current variations policy (as made available by the Seller from time to time).

- 4.4 The Buyer's order shall only be deemed to be accepted when the Seller issues a written acceptance of it in the form of an Order Acknowledgment, at which point the Contract shall come into existence and be binding on both parties.
- 4.5 Following the issue of an Order Acknowledgment, the corresponding order is non-cancellable unless expressly agreed in writing by a director of the Seller (such agreement to be given or withheld at the Seller's sole discretion). In the event that the Seller agrees to any such cancellation, any costs or expenses incurred by the Seller up to the date of cancellation and all loss or damage resulting from the cancellation will be paid by the Buyer.
- 4.6 No Goods shall be supplied to the Buyer unless the Seller has issued a corresponding Order Acknowledgment to the Buyer.

5. **Delivery**

- 5.1 Time shall not be of the essence for delivery of the Goods and any time or date specified by the Seller as the time at which, or the date on which, Goods will be despatched or delivered (under condition 4.2 or otherwise) is provided as an estimate only.
- 5.2 The Seller shall not be liable for any loss, damage or expense suffered by the Buyer arising from any delay in delivery of the Goods.
- 5.3 The Seller shall deliver the Goods to the location specified in the Order Acknowledgment (or the Buyer's registered office address if no location is specified) and the Buyer shall take delivery of the Goods at such location.
- 5.4 The Buyer shall supply the Seller with all details necessary to allow the Seller to make delivery (if and where requested by the Seller).
- 5.5 If the Buyer fails to take physical possession of the Goods upon delivery, then delivery shall be deemed to have taken place and the Seller may, at the Buyer's cost and expense, store the Goods until the Buyer takes physical possession of the Goods. If the Buyer continues to fail to take physical possession of the Goods for a further period of 14 days, the Seller may (but shall not be obliged to) cancel the applicable order (or instalment) and, without prejudice to the Seller's rights to take action for breach of contract, the Buyer shall indemnify the Seller against all liability, costs, loss, damage, and expenses arising out of or in connection with such cancellation (including any direct, indirect or consequential losses).
- 5.6 The Seller reserves the right to make delivery of the Goods by instalments (and the Seller reserves the right to invoice and be paid for each instalment separately) and the period during which delivery by instalments may be made and the quantity of Goods delivered in each instalment shall be at the Seller's sole discretion. Any defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 5.7 The Buyer shall be solely responsible for the proper unloading of the Goods at the delivery location. If, to assist the Buyer to unload the Goods at the delivery location pursuant to this condition, the Seller or any sub-contractor carries out any unloading of Goods, no liability whatsoever shall thereby be incurred by the Seller or such sub-contractor and the Buyer shall indemnify the Seller in respect of all actions, liability, costs, loss, damage, and expenses arising out of or in connection with such assistance.
- 5.8 The Buyer will examine all Goods carefully and notify the Seller in writing within 3 days of taking physical possession of the Goods of any error in quantity or weight or

description of Goods delivered or of any damage sustained to the Goods prior to delivery. Failure to make such notification within this specified time scale shall constitute a waiver by the Buyer of all claims based on or relating to facts which such examination should have revealed.

- 5.9 Unless otherwise agreed by the parties in writing, all Goods shall be delivered by the Seller to the Buyer to the location specified in the Order Acknowledgment (or the Buyer's registered office address if no location is specified), in accordance with the Delivered At Place incoterm outlined in Incoterms 2020.

6. **Payment**

- 6.1 The Seller may invoice the Buyer for the Goods at any time on or after delivery of the Goods. Unless otherwise agreed by a director of the Seller in writing, payment for the Goods by the Buyer shall be due within 30 days of the date of invoice. Time for payment shall be of the essence.

- 6.2 The Buyer shall pay the Seller by the payment methods stipulated by the Seller on any invoice issued from time to time. No payment shall be considered paid until the Seller has received it in cleared funds in full. The Buyer acknowledges and agrees that additional charges may also be payable if the Buyer wishes to pay via credit or debit card.

- 6.3 The Seller reserves the right to charge interest on all overdue monies at an annual rate of 8 per cent per annum above the Bank of England base rate (which may vary from time to time) accruing on a daily basis until payment is made, whether before or after any judgment.

- 6.4 Without prejudice to any other rights or remedies which the Seller may have, if the Buyer fails to pay the Seller any sum due pursuant to the Contract or any other agreement between the Seller and the Buyer (or if the Seller reasonably believes that the Buyer will not be able to pay such sum), the Seller may at its option, and without incurring any liability, cancel or suspend further deliveries of the Goods.

- 6.5 The Seller may appropriate any payment made by the Buyer to the Seller to such of the invoices for Goods as the Seller shall determine, despite any purported appropriation by the Buyer.

- 6.6 All sums payable to the Seller under the Contract will become due immediately upon termination of the Contract.

- 6.7 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature.

7. **Returns**

- 7.1 Subject to conditions 7.2, 8.2 and 9.4, all Goods are non-returnable.

- 7.2 The Seller at its sole discretion may agree to accept the return of Goods from the Buyer. If it elects to accept the return of certain Goods, such Goods shall only be returnable if they:

- 7.2.1 were delivered to the Buyer less than 3 months previously;

- 7.2.2 are returned in their original packaging;
 - 7.2.3 are undamaged;
 - 7.2.4 are unused and in a saleable condition; and
 - 7.2.5 are approved by the Seller following an inspection.
- 7.3 The collection of Goods from the Buyer's premises or receipt of Goods on the Seller's premises will constitute a return of goods for inspection only. The Seller shall not be obliged to accept the returned Goods or to credit the Goods until the Goods have been inspected by the Seller at its premises. If on inspection the requirements of conditions 7.2.1 to 7.2.4 are not met (to be determined by the Seller at its sole discretion) then the Seller will refuse to accept the returned Goods and no credit will be raised. The Goods will remain the property of the Buyer (subject to condition 10) and the Buyer will be responsible for any additional costs incurred by the Seller in relation to the collection and inspection of the Goods pursuant to this condition 7. The Seller may alternatively, at its sole discretion, accept the return of the Goods but on the condition that the Buyer is responsible for the Seller's costs incurred in connection with the collection and inspection of the Goods and otherwise in connection with repackaging or servicing the Goods to bring them into a saleable condition. If on inspection the requirements of conditions 7.2.1 to 7.2.4 are met the Seller will accept the returned Goods and will raise a credit on the Buyer's account at the original invoice price of the Goods less a charge of 20% for the Seller's costs in relation to servicing such return.
8. **Defects on Subsequent Fabrication, Manufacture and/or Installation of an End Product**
- 8.1 For the avoidance of doubt, the Seller's potential liability in respect of the subsequent fabrication, manufacture and/or installation by the Buyer or any third party of any product which incorporates the Goods shall be limited to that set out in condition 9.4.
- 8.2 If any non-compliance of any Goods with the warranties referred to in condition 9 is alleged during the course of fabrication, manufacture and/or installation of a product which incorporates the Goods, the Buyer shall:
- 8.2.1 notify the Seller in writing within 3 days of taking physical possession of the Goods in question where the non-compliance should be apparent on examination pursuant to condition 5.8 (or within 3 days of the same coming to the knowledge of the Buyer where the non-compliance is not such that it would be apparent on reasonable inspection);
 - 8.2.2 immediately cease to use the Goods in question; and
 - 8.2.3 allow the Seller reasonable access to the Buyer's premises or to the place of installation to inspect the Goods or allow the Seller reasonable access to collect the Goods from their premises for inspection at the Seller's premises.
- 8.3 If the Seller agrees to collect the Goods from the Buyer for inspection and it subsequently discovers on inspection that such Goods are compliant with the warranties referred to in condition 9, then the Seller shall:
- 8.3.1 arrange for the return of the Goods to the Buyer; and

- 8.3.2 charge the Buyer a minimum handling charge of 20% of the sales value of such Goods.
- 8.4 If, following the inspection referred to at condition 8.3, such Goods are found not to comply with the warranties referred to at condition 9, the Seller shall (at its sole discretion), subject to the provisions of condition 9, replace or repair the Goods or take back the Goods and refund the Buyer with the cost of such Goods (but the Seller shall not be responsible in any circumstances for any costs incurred in: (i) the removal or re-installation of such Goods, or (ii) the subsequent fabrication, manufacture and/or installation of any product which incorporates such Goods).
- 8.5 The provisions of this condition 8 shall be without prejudice to the Buyer's indemnity at condition 12.2.

9. **Warranty of Seller**

- 9.1 Subject to conditions 9.4 and 11 below, the Seller warrants that each of the Goods which are known as the "white PVC-U profile" sold by it complies with the following criteria at the date of extrusion/manufacture of the Goods (such date to be printed on the Profile or Packaging) and for a period of 10 years thereafter:
- 9.1.1 it conforms with the shape, design and dimensions of the drawings provided by the Seller to the Buyer prior to the white PVC-U profile being sold to the Buyer;
- 9.1.2 the white PVC-U profile supplied will be both consistent, colourfast and resistant to the effects of weathering in accordance with established test procedures as outlined in British Standard BS EN 12608:2003: Unplasticised polyvinylchloride (PVC-U) profiles for the fabrication of windows and doors - classification, requirements and test methods; and
- 9.1.3 the white PVC-U profile will not fall below 3 on the "Grey" Scale of ISO 105-A02, as measured in accordance with the British Standards methods of measurement current at the time the profile was extruded.
- 9.2 If at the date of delivery or at any time during a period of 10 years thereafter any of the Goods which are known as the "white PVC-U profile" do not comply with the criteria set out in condition 9.1, the provisions of condition 9.4 shall apply solely in respect of the white PVC-U profile.
- 9.3 The Seller may at its discretion give a warranty in respect of other Goods supplied by it pursuant to condition 11.4) or otherwise and shall provide the details of such on the Buyer's request (and such warranties may be updated without notice from time to time). In the event that such Goods fail to comply with the terms of any such warranty given by the Seller at their date of delivery and/or extrusion/manufacture within any period specified in the warranty the Seller shall comply with the terms of such warranty subject to any conditions imposed as a condition of such warranty (which shall, as a minimum, be substantially the same as those conditions set out at condition 10.5 below). In the absence of any express warranty to be specified by the Seller in respect of Goods which are not "white PVC-U profile" no warranty shall be given in respect of the Goods.
- 9.4 In the event that any Goods which are known as the "white PVC-U profile" do not comply with the criteria set out in condition 9.1.1 to 9.1.3, or any other Goods do not comply with a warranty supplied by the Seller pursuant to condition 9.3, the Seller will (at its sole discretion), except as expressly stated otherwise as a condition of any warranty supplied by the Seller pursuant to condition 9.3, replace or repair the Goods or take back the

Goods and refund or credit the Buyer with the cost of such Goods (the Seller may at its own discretion agree to assist the buyer with costs to remove and refit the affected products, such costs will be limited to replacement product, labour and any technical assistance required but shall exclude, the hire of any equipment including vehicles and any mileage charges, this assistance shall be agreed prior to any removal taking place) and is strictly subject to all of the conditions being satisfied below:

- 9.4.1 such non-compliance occurs in the case of the Goods which are known as the “white PVC-U profiles” within 10 years of the date of extrusion/manufacture of such Goods (or in the case of other Goods pursuant to condition 9.3, within the time specified in the warranty provided) and the Buyer notifies the Seller in writing within 1 month of discovering the noncompliance giving full details thereof;
 - 9.4.2 the Seller shall be entitled to and shall be afforded facilities to inspect and test the Goods as it shall determine and (if the Seller so requires) the Buyer shall return the Goods (and be responsible for all costs of such return) to the Seller's premises;
 - 9.4.3 the Seller is satisfied that the Goods do not comply with the criteria set out at condition 9.1.1 to 9.1.3;
 - 9.4.4 the Seller is satisfied that no-one other than the Seller has so dealt with or tampered with the Goods in any manner which could contribute to such non-compliance;
 - 9.4.5 the Seller is satisfied that the Goods have been properly used, handled, maintained, stored and serviced (where appropriate) in accordance with generally accepted industry standards;
 - 9.4.6 the Seller is satisfied that any product which incorporates the Goods has been properly manufactured, fabricated and installed in accordance with generally accepted industry standards (including in accordance with the Seller's fabrication/installation manual/instructions made available from time to time); and
 - 9.4.7 the Seller is satisfied that the Goods have not been used whilst allegedly non-compliant with the warranties hereunder and have otherwise not been used other than in accordance with the Contract.
- 9.5 The Buyer acknowledges that this condition 9.4 shall represent the Seller's sole liability for any defect in and/or non-compliance of the Goods with condition 9.1 and any other warranty given by the Seller pursuant to condition 9.3 (unless expressly stated otherwise when such warranty is provided) and if the Seller complies with this condition it shall have no further liability for breach of the warranties set out in this condition 9 in respect of the Goods. In the event that any of the conditions 9.4.1 to 9.4.7 are not satisfied in respect of Goods which are alleged not to be compliant with condition 9.1 or any other warranty given by the Seller pursuant to condition 9.3, the Seller shall have no liability whatsoever in respect of such Goods.
- 9.6 The Buyer acknowledges that no warranty shall be given by the Seller in respect to colour stability, impact strength & shape retention in relation to any profile or ancillary products which have been colour sprayed or painted by the Buyer or their customer, this warranty exclusion covers both foiled and non-foiled profiles, but is limited to the paint affected area only.

9.7 All warranties, conditions and other terms imposed by statute, common law custom, course of dealing or otherwise in respect of the Goods (except as expressly stated in conditions 9.1 and 9.3 are to the fullest extent permitted by law excluded from the Contract.

10. Risk & Ownership

10.1 Risk in the Goods shall pass to the Buyer in accordance with the Delivered At Place incoterm outlined in Incoterms 2020, i.e. risk shall pass when the Goods are available for unloading at the agreed delivery location, as also outlined in clause 5.7.

10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of (i) the Goods and (ii) all other sums which are or become due to the Seller from the Buyer under any agreement.

10.3 Until such time as the ownership of the Goods passes to the Buyer, the Buyer shall:

10.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;

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

10.3.3 not remove, destroy, deface or obscure any identifying mark on or relating to the Goods;

10.3.4 maintain the Goods in a satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall promptly provide a copy of the policy of insurance to the Seller; and

10.3.5 unless otherwise expressly stated in the Order Acknowledgment, not carry out any work on or otherwise incorporate the Goods in any other products.

10.4 The Buyer may not resell the Goods until ownership of such goods has passed to it without the written consent of the Seller. In the event that the Seller provides such written consent:

10.4.1 such sales may only take place in the ordinary course of the Buyer's business;

10.4.2 the proceeds of such sales shall be accounted for by the Buyer to the Seller and shall be kept separate from any monies or property of the Buyer or any third parties; and

10.4.3 such proceeds shall be held on trust by the Buyer for the Seller until ownership of the Goods to which such proceeds relate has passed to the Buyer.

10.5 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer and the Buyer's right to possession of the Goods shall terminate immediately if the Buyer:

10.5.1 fails to make any payment in accordance with the Contract;

- 10.5.2 commits any other breach of the Contract and, if such breach is remediable, fails to remedy that breach within 7 days of being notified to do so;
 - 10.5.3 any distress or execution shall be levied (whether legal or equitable) upon any of the Seller's Goods;
 - 10.5.4 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors or if any bankruptcy petition is presented against the Buyer or the Buyer is being wound up (whether voluntarily or by order of the court, unless for the purpose of reconstruction without insolvency) or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law.
- 10.6 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in condition 10.5.1 to 10.5.4 (inclusive), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 10.7 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 10.8 Until such time as ownership of the Goods passes to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller. In addition, the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 10.9 On termination of the Contract, howsoever caused:
- 10.9.1 the Seller's (but not the Buyer's) rights contained in this condition 10 shall remain in effect.
 - 10.9.2 the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
- 10.10 If any of the events listed in condition 10.5.1 to 10.5.4 (inclusive) occur and a court makes an order enabling an administrator of the Buyer to dispose of goods which are in the possession of the Buyer under any hire-purchase agreement it has entered into with the Seller, the Buyer warrants that any such order shall be made subject to the condition that the proceeds raised from any such sale shall be applied towards discharging the sums owed to the Seller under any such hire-purchase agreement.

11. **Limitation of Seller's liability**

- 11.1 Notwithstanding any other provision of the Contract, the provisions of this condition 11 set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer arising from the

provision of Goods in respect of any breach of the Contract, any use or resale by the Buyer of any Goods or any product incorporating any of the Goods, and/or any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 11.2 Nothing in the Contract excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence, for fraud or fraudulent misrepresentation or for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability.
- 11.3 Subject to condition 11.2, in relation to the provision of the Goods:
- 11.3.1 the Seller's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Goods concerned under the Contract as at the date of such liability arising; and
- 11.3.2 the Seller shall not be liable to the Buyer for: (a) any indirect or consequential losses; or (b) loss of profit, loss of business, or depletion of goodwill, in each case whether direct, indirect or consequential.
- 11.4 Where Goods are supplied, designed or manufactured by a third party other than the Seller, the Seller shall (where possible) use reasonable endeavours to pass on the benefit of any warranty provided to the Seller by such third party to the Buyer, and shall notify the Buyer in writing in the event that it is able to do so setting out the conditions of any such warranty. However, in the absence of any such written notification the provisions of condition 9 (and in particular, condition 9.5) shall apply and the Seller shall have no additional liability for such third party Goods.
- 11.5 The Seller shall have no liability whatsoever for any advice or other assistance which it provides to the Buyer in connection with the sale of any Goods and it shall be the Buyer's sole responsibility to ensure that the Goods which it purchases pursuant to the Contract are suitable for their intended purpose.
- 11.6 The Buyer acknowledges that the above provisions of condition 11 are reasonable and reflected in the price of the Goods which would be higher without these provisions, and the Buyer hereby confirms that it accepts such risk and/or shall insure accordingly.

12. **Indemnity by Buyer**

- 12.1 The Buyer shall indemnify on demand and keep indemnified the Seller from and against all liability, costs, loss, damage, actions (including costs of defending legal proceedings) expenses, claims, proceedings and demands arising in connection with any Goods designed, assembled, produced and/or supplied to the specific design, specification, instructions and/or order of the Buyer (including any claims that the Goods infringe a third party's intellectual property rights).
- 12.2 In addition to the indemnity given at condition 12.1, the Buyer shall indemnify on demand and keep indemnified the Seller from and against all liability, costs, loss, damage, actions (including costs of defending legal proceedings) expenses, claims, proceedings and demands arising in connection with the manufacture, fabrication and/or installation of any products which incorporate the Goods by the Buyer (and/or any third party).

13. **Intellectual Property and Confidentiality**

- 13.1 The Buyer acknowledges that, as between the parties, all intellectual property rights (including trade marks and design rights) arising out of the Goods shall belong to the Seller (and our the Seller's licensors) and the Buyer shall have no rights to such intellectual property rights.
- 13.2 If any claim is made against the Buyer alleging that the Goods infringe any third party intellectual property rights:
- 13.2.1 the Buyer shall forthwith notify the Seller with full particulars, and
- 13.2.2 the Seller (or its supplier or licensors as the case may be) shall, at its option and expense conduct all negotiation and/or litigation in respect thereof and (if necessary) in name of the Buyer (except, for the avoidance of doubt where conditions 2.3 and 12.1 apply).
- 13.3 The Buyer will keep confidential any and all information which the Seller deems to be confidential that it may acquire in connection with the Contract and the Buyer will not use such confidential information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this condition 13.3.
- 13.4 The obligations on the Buyer set out in condition 13.3 will not apply to any information which is (i) publicly available or becomes publicly available through no act or omission of the Buyer; or (ii) the Buyer is required to disclose by order of a court of competent jurisdiction.

14. **Force Majeure**

The Seller shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, which by its nature could not have been foreseen, or, if they could have been foreseen, were unavoidable, including strikes, failure of a transport network, acts of God, war, terrorism, etc. The time for performance of the Seller's obligations shall be extended accordingly.

15. **General**

- 15.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or otherwise.
- 15.2 The Contract of which these Conditions form part shall be personal to the Buyer and the Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, 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 Seller.
- 15.3 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to the Contract shall not affect in any way the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist. The parties agree that should any term or provision of the Contract be invalid or unenforceable then they shall forthwith enter into good faith negotiations to amend such provision in such a way that, as amended, it is valid and legal and to the maximum extent possible carries out the original intent of the parties as to the point or points in question.

- 15.4 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to the Contract.
- 15.6 The Contract constitutes the entire agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and arrangements of any nature, whatsoever, whether or not in writing relating thereto. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 15.7 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.8 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.
- 15.9 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.