

# Terms and Conditions

The Customer should note the provisions of clause 13 (limitation of liability).

## 1. Definitions and interpretation

1.1. In these terms and conditions the following words shall have the following meanings:

Business Day	means a day (other than a Saturday, Sunday or public holiday) when banks in London, UK are open for business.
Customer	means the organisation or person who purchases Goods from the Company, whether directly or indirectly through an agent or third party who is acting for or instructed by or whose actions are ratified by such organisation or person.
Company	means Magnetic Shields Ltd (registered in England and Wales with company number 00581158) whose registered office is at Headcorn Road, Staplehurst, Tonbridge, Kent TN12 0DS and /or a Group Company (as the case may be).
Conditions	means these terms and conditions as amended from time to time in accordance with clause 10 (alterations) and clause 21 (variation).
Contract	means the contract between the Company and the Customer for the sale and purchase of the Goods and/or Services (as the case may be) in accordance with these Conditions, an Order Acknowledgement, Quotation and any other documents agreed between the Parties in writing. If there is any inconsistency between the documents comprising the Contract, they shall have precedence in the order listed herein.
Force Majeure Event	means an event or circumstance beyond a party's reasonable control.
Goods	means the articles or things, or part of them, including, without limitation, raw materials, processed materials or fabricated products to be purchased by the Customer from the Company as set out in an Order or as otherwise agreed between the Parties in writing.
Group Company	means the Company, its subsidiaries or holding companies from time to time and any subsidiary of any holding company from time to time including (but not limited to) Colsur Material Limited with company number 03305650, MSL Heat Treatment Limited with company number 10760412 and MSL Precision Limited with company number 11053076
Intellectual Property Rights	means patents, all rights to inventions, prototypes, products, discoveries, techniques or processes, systems, data, information, copyright and related rights, moral rights, trade marks and service marks, trade names, domain names, brand names, rights to goodwill, rights in design, rights in computer software (including source code and object code), database rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights relating to the Goods and/or Services in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights owned by the Company and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world.
Order	means the Customer's order for the Goods and/or Services (as the case may be) submitted to the Company.
Order Acknowledgement	means the Company's written acknowledgement confirming acceptance of an Order in accordance with clause 3.3.
Parties	means the Customer and the Company.
Quotation	means the written quotation or proposal detailing the Goods and/or Services to be supplied by the Company to the Customer.
Services	means the services to be supplied by the Company to the Customer as set out in the Order or as otherwise agreed between the Parties in writing.

1.2. In these Conditions, the following rules apply:

1.2.1. A person includes a natural person, corporate or unincorporated body (whether or not they have separate legal personality).

1.2.2. A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3. A reference to 'writing' or 'written' includes faxes and emails.

1.2.4. Any reference to a statutory provision is a reference to that provision as modified or re-enacted or both from time to time and to any subordinate legislation made under the statutory provision.

1.2.5. Any phrase introduced by the terms 'including' or 'include' or any similar expression shall not limit the sense of the words preceding those terms.

## 2. General

2.1. The Conditions shall apply to all contracts for the sale of Goods and provision of Services (as the case may be) by the Company to the Customer to the exclusion of all other terms and conditions referred to, offered or relied on by the Customer, whether in the negotiations or at any stage in the dealings between the Parties, including any standard or printed terms tendered by the Customer, unless the Customer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been agreed by the Company in writing.

## 3. Orders

3.1. An Order constitutes an offer by the Customer to purchase the Goods and/or the Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any Quotation are complete and accurate.

3.2. A Quotation given by the Company shall not constitute an offer. A Quotation shall only be valid for a period of 20 Business Days from its date of issue.

3.3. An Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order ("**Order Acknowledgment**"), at which point the Contract shall come into existence.

3.4. Unless verbal or telephone Orders and any variations to Orders are confirmed in writing by the Customer to the Company, the Company shall not be responsible for errors or subsequent misunderstandings.

## 4. Price and payment

4.1. All prices are in pounds sterling unless stated otherwise.

4.2. The price of the Goods and/or Services (as applicable) will be as stated in the Order Acknowledgement. If no price is quoted, the price shall be unless otherwise stated by the Company, the list price of the Company current at the date of the Order Acknowledgement.

4.3. The Company's prices are subject to adjustment at any time before delivery to take account of:

4.3.1. any variation in the Company's costs including (without limitation) any factor beyond the Company's control such as variations in wages, the cost of materials, exchange rate fluctuations, alterations of duties and other costs since the date of the Quotation or (if no Quotation is issued) the Order Acknowledgement;

4.3.2. any request by the Customer to change the delivery or performance date(s), quantities or types of Goods ordered or their specification or the scope of Services; or

4.3.3. any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.

4.4. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted or the Order is submitted (as applicable). The invoice so adjusted shall be payable as if the price set out therein were the original Contract price.

4.5. The price is exclusive of VAT, which will be charged at the appropriate rate. The price is also exclusive of transport, packaging, insurance and any other applicable duties or taxes, unless otherwise explicitly agreed.

4.6. The Company may invoice the Customer for the Goods and/or Services on or at any time after the Company has issued an Order Acknowledgement.

4.7. All invoices of the Company shall, unless otherwise agreed in writing by the Company, be paid by the Customer within 30 days of the date of the Company's invoice. Time for payment shall be of the essence.

4.8. The Company shall be entitled to charge interest on overdue invoices from the date when payment becomes due until the date of payment at the rate of 3% per annum above the base rate of Clydesdale Bank PLC. 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 Customer shall pay the interest together with the overdue amount.

4.8.1. If the payment of the price or any part thereof is not made by the due date, the Company shall be entitled to:

4.8.2. require payment in advance of delivery in relation to any Goods not previously delivered or performance in relation to any Services not performed;

4.8.3. refuse to make delivery of any undelivered Goods or performance of any unperformed Services whether ordered under a Contract or not and without incurring any liability whatsoever to the Customer for non-delivery or non-performance or any delay in delivery or performance; or

4.8.4. terminate the Contract in accordance with clause 14.

4.9. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

## 5. Specification of Goods

5.1. Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them and shall not form part of the Contract nor have any contractual force. It is therefore agreed by the Customer that Goods supplied may not comply in all respects with the description in the Company's literature or elsewhere.

5.2. Goods described in the Company's literature or elsewhere are subject to a continuing process of technical change and development and the Company therefore reserves the right to alter specifications without notice at any time before delivery. The Company also reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

5.3. To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal

infringement of a third party's Intellectual Property Rights arising out of or in connection with the Company's use of the specification. This clause 5.3 shall survive termination of the Contract.

## **6. Delivery and risk**

- 6.1. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence unless expressly agreed in writing by the Company. The Company undertakes to use reasonable endeavours to despatch the Goods on the agreed date, but does not guarantee to do so.
- 6.2. Where the Company is authorised or required by the Customer to deliver the Goods to the Customer:
- 6.2.1. the Goods will be deemed to be delivered upon delivery of the Goods to a carrier (whether named by the Customer or not);
- 6.2.2. all risk in the Goods shall pass to the Customer on delivery, such that the Customer shall be liable for any subsequent loss or damage to Goods however caused;
- 6.2.3. the Parties agree that the Company will be under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979 (the "Act"); and
- 6.2.4. the Customer authorises the Company to enter into a Contract with the carrier on its standard terms and conditions which the Customer confirms shall satisfy the requirements of the Company under section 32(2) of the Act.
- 6.3. Goods collected by the Customer from the Company's premises shall be deemed to be delivered and risk shall pass to the Customer upon the Customer arriving at the Company's premises.
- 6.4. In accordance with industry practice, the delivery quantity tolerances applied by the Company will be plus or minus 10% of the quantity ordered, unless otherwise specified by the Customer in writing at the point of order.
- 6.5. If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.6. If the Customer fails to take or accept delivery of the Goods within 3 Business Days of the Company notifying the Customer that the Goods are ready, risk in the Goods (or any of them not delivered in these circumstances) shall pass to the Customer immediately upon such refusal or request by the Customer and (without prejudice to the generality of the foregoing) then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- 6.6.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Customer that the Goods were ready; and
- 6.6.2. the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 6.7. If 10 Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 6.8. The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.9. The Company shall not be liable for non-delivery, loss of or damage to the Goods occurring prior to delivery or without prejudice to clause 11, for any claim that the Goods are not in accordance with the Contract unless:
- 6.9.1. the Customer gives notice in writing to the Company: (a) within 7 days of delivery for loss and/or damage or non-compliance with the Contract or (b) for non-delivery within 10 days of the delivery date specified by the Company;
- 6.9.2. the Company is given a reasonable opportunity of examining such Goods; and
- 6.9.3. the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business.
- 6.11. Without prejudice to clause 11.3, if the Customer fails to give such advice or otherwise fails to comply with clause 6.10 the Goods shall be deemed to be in all respects in accordance with the Contract and, without prejudice to earlier acceptance by the Customer, the Customer shall be bound to accept and pay for the same accordingly.
- 6.12. In the event of a claim for non-delivery, loss, damage or non-compliance with the Contract in accordance with this clause 6 the Company undertakes at its option either to repair or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery loss damage or non-compliance.

## **7. Title and risk**

- 7.1. Title in the Goods shall not pass from the Company until the Customer has paid the price of all the Goods under any Contract and no other sums are due from the Customer to the Company.
- 7.2. Until the property in the Goods passes to the Customer, the Customer shall hold the Goods and each of them on a fiduciary basis as a custodian/bailee for the Company. The Customer shall store the Goods separately from all other Goods in its possession and marked in such a way that they are clearly identified as the property of the Company. The Customer shall not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods. The Customer shall maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 7.3. Notwithstanding that the Goods remain the property of the Company the Customer may sell the Goods in the ordinary course of the Customer's business at full market value for the account of the Company. Until title in the Goods passes from the Company, the entire proceeds of sale or otherwise of the Goods shall be held on trust by the Customer for the Company.
- 7.4. Until such time as title in the Goods passes from the Company to the Customer, the Customer shall, upon request, deliver up such Goods as have not ceased to be in existence or resold, to the Company. If the Customer fails to do so, the Company may enter upon any premises owned or occupied or controlled by the Customer where the Goods are situated and repossess the Goods.
- 7.5. The Company shall have the right to pursue an action for the price of the Goods notwithstanding that title may not have passed to the Customer.

## **8. Supply of Services**

- 8.1. This clause 8 applies where the Company has agreed to provide Services to the Customer.
- 8.2. The Company shall use all reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3. The Company reserves the right to amend any Services specification if necessary to comply with any applicable law or regulatory requirement, or if the amendments will not materially affect the nature or quality of the Services and the Company shall notify the Customer in any such event.
- 8.4. The Company shall not in any circumstances be liable to the Customer:
- 8.4.1. for a failure to provide the Services in accordance with any Services specification caused by any act or omission of the Customer or the Customer's agents, sub-contractors or employees;
- 8.4.2. for a failure or delay in providing the Services caused by act or omission of a third party;
- 8.4.3. if any defect or fault materialises in the Goods or any articles provided by the Customer following performance of the Services resulting directly or indirectly from a defect in the original article provided by the Customer; or
- 8.4.4. if the defect arises as a result of the Company following any drawing, design or Goods specification supplied by the Customer.

## **9. Customer's obligations**

- 9.1. The Customer shall provide the Company with any information reasonably required by the Company as well as obtain all necessary permissions and consents including (without prejudice to the generality of the foregoing) promptly obtaining all necessary import licences, clearances and other consents necessary for the purchase of the Goods and/or Services.
- 9.2. Without prejudice to any other rights to which the Company may be entitled, in the event that the Customer unlawfully terminates or cancels any Contract, the Customer shall be required to pay to the Company, the full amount of any third party costs to which the Company has committed and in respect of cancellations on less than 30 days' written notice the full price of the Goods and/or Services as set out in the Contract, and the Customer agrees this is a genuine pre-estimate of the Company's losses in such a case.

## **10. Alterations to the Contract**

- 10.1. Subject to clause 21.1, the Parties may, at any time, mutually agree upon variations to a Contract, save for an Order Acknowledgement, provision for which is set out below.
- 10.2. Any alterations in the specification of Goods or scope of Services to be provided under a Contract shall be set out in a revised Order Acknowledgement, which shall reflect the changed Goods and for Services and price and all other terms agreed between the Parties.
- 10.3. The Customer may at any time within 3 days of the revised Order Acknowledgement request in writing alterations to it. On receipt of the request for alterations, the Company shall, within 3 days, or such other period as may be agreed between the Parties, advise the Customer by notice in writing whether it is prepared to alter the Order Acknowledgement in accordance with the Customer's request and, if it is, the basis upon which it is prepared to do so having regard to the changes which the Company shall require to the price and any other terms previously agreed between the Parties ("**an alteration notice**").
- 10.4. The Customer shall, within 2 days of receipt of an alteration notice, or such other period as may be agreed between the Parties, advise the Company by notice in writing whether or not it wishes an Contract to be altered on the basis set out in the alteration notice. If such a notice is given by the Customer, the terms of the altered Contract shall be set out in a revised Order Acknowledgement.

## **11. Warranty**

- 11.1. The Company warrants that it has the right to sell the Goods, but otherwise the Goods are provided on an 'as-is' basis without warranty of any kind, express or implied, oral or written.
- 11.2. Without limitation, any implied term under sections 13 to 15 of the Act as to the quality, fitness for purpose or description of the Goods, all of which are specifically and unreservedly excluded to the fullest extent permitted by law. In particular, but without limitation, no warranty is given that the Goods are suitable for any specific purpose intended by the Customer. An Contract shall not constitute a sale by description or sample. Save as expressly provided in the Contract, all conditions, warranties and other terms implied by statute or common law are to the fullest extent permitted by law excluded from any Contract.
- 11.3. Where the Goods have been manufactured by the Company and are found under proper use (fair wear and tear excepted) to be defective, the Company shall repair, or in its sole discretion, replace such defective Goods free of charge within 90 days from the receipt of notification from the Customer, subject to the following conditions:
- 11.3.1. the Customer notifying the Company in writing immediately upon the defect becoming apparent;
- 11.3.2. the Company is given a reasonable opportunity of examining such Goods; and
- 11.3.3. the Company determines that the defect is solely due to faulty design, materials or workmanship which is not directly or indirectly attributable to any specification, instruction or article provided by the Customer.
- 11.4. The Company shall not be liable for the Goods' failure to comply with its specification in any of the following events:
- 11.4.1. the Customer makes any further use of such Goods after giving notice in accordance with clause 6.10 or 11.3.1;
- 11.4.2. the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 11.4.3. the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
- 11.4.4. the defect relates directly or indirectly to any defect in the original article supplied by the Customer;
- 11.4.5. the Customer alters or repairs such Goods without the written consent of the Company;
- 11.4.6. the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions; or
- 11.4.7. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 11.5. Except as provided in clause 6 and this clause 11, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with its description.
- 11.6. Any Goods to be so repaired or replaced shall be returned to the Company at the Customer's expense.

- 11.7. Where the Goods have been manufactured and supplied to the Company by a third party, any warranty granted to the Company shall be passed on to the Customer to the extent that the Company is able and subject to the Goods having been accepted and paid for by the Customer.
- 11.9. The Company shall be entitled in its absolute discretion to refund the price of defective Goods in the event that such price has already been paid.
- 11.10. These Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- 12. Indemnity**
- 12.1. The Customer shall indemnify the Company against all claims (including but not limited to loss of profit), costs and expenses in respect of any dispute, suit, action, arbitration or proceedings that arise out of, or in connection with a Contract (including without limitation legal fees and other professional fees) which the Company may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under a Contract.
- 13. Limitation of liability**
- 13.1. Nothing in these Conditions shall limit or exclude the Company's liability for:
- 13.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 13.1.2. fraud or fraudulent misrepresentation;
- 13.1.3. breach of the terms implied by section 12 of the Act;
- 13.1.4. defective products under the Consumer Protection Act 1987; or
- 13.1.5. any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 13.2. Subject to clause 13.1:
- 13.2.1. the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 13.2.2. the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price stated in the Order Acknowledgement.
- 14. Termination**
- 14.1. Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 14.1.1. the Customer commits a breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of being notified in writing to do so;
- 14.1.2. the Customer 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;
- 14.1.3. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 14.1.4. the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.2. Without limiting its other rights or remedies, the Company may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 14.3. Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 14.4. On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 14.5. Termination of the Contract shall not affect any of the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 14.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 15. Intellectual Property Rights**
- 15.1. All Intellectual Property Rights in or arising out of or in connection with the Goods (including any specification and design in except where such specification and design has been provided by the Customer) and the Services (including any deliverables) shall be owned by the Company or the Company's licensors (as the case may be).
- 15.2. The Customer shall not:
- 15.2.1. claim any right of property in any of the Company's Intellectual Property Rights;
- 15.2.2. register or cause to be registered any Intellectual Property Rights that is similar to or an imitation of any Intellectual Property Rights of the Company;
- 15.2.3. make any modifications to the Goods or their packaging;
- 15.2.4. alter, remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods;
- 15.2.5. use any of the Company's Intellectual Property Rights in any way that might prejudice their distinctiveness or validity or the goodwill of the Company in them; and
- 15.2.6. use in relation to the Goods any intellectual property rights other than the Intellectual Property Rights without obtaining the prior written consent of the Company.
- 15.3. For the avoidance of doubt, nothing in a Contract confers upon the Customer any rights whatsoever in the Company's Intellectual Property Rights or the goodwill associated with them. The Customer acknowledges that, except as expressly provided in this Contract, it will not acquire any rights in respect of the Company's Intellectual Property Rights and goodwill and that they are, and shall remain, vested in the Company.
- 16. Confidentiality.**
- 16.1. 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 or of any member of the group to which the other party belongs, except as permitted by clause 16.2. For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- 16.2. Each party may disclose the other party's confidential information:
- 16.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16; and
- 16.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 17. Entire agreement**
- 17.1. 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.
- 17.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 18. Force majeure**
- 18.1. The Company shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from a Force Majeure Event. In such circumstances, the Company shall be entitled to delay or cancel delivery or to reduce the amount delivered. If the period of delay or non-performance continues for 8 weeks, either party may terminate the Contract by giving 14 days written notice to the other party.
- 19. Assignment**
- 19.1. The Customer shall not be entitled to assign a Contract or any part of it without the prior written consent of the Company.
- 19.2. The Company may assign a Contract or any part of it to any person, firm or company.
- 20. Waiver**
- 20.1. The failure by either party to enforce, at any time or for any period, any one or more of the terms and conditions of the Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of a Contract.
- 21. Variation**
- 21.1. Any variation to the Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by and signed by an authorised person on behalf of the Company.
- 22. Severability**
- 22.1. 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.
- 23. Rights of third parties**
- 23.1. The Parties do not intend any part of a Contract to be enforceable by any person not a party to it, by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 24. Notices**
- 24.1. 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, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.
- 24.2. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 24; 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. Governing law and jurisdiction**
- 25.1. This Contract shall be governed by and construed in accordance with the law of England and Wales and the Company and the Customer irrevocably agree that the courts of England and Wales have exclusive jurisdiction in respect of any dispute, suit, action, arbitration or proceedings which arises out of, or in connection with an Contract.