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TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

In these Conditions:

- Seller;
- “**Buyer**” means the person or company whose order for the Goods is accepted by the
 - “**Carrier**” means any person who in a contract of carriage undertakes to perform or procure the carriage of the Goods to the Buyer and any employee, agent or contractor of that person;
 - “**Conditions**” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
 - “**Contract**” means the contract between the Seller and the Buyer for the sale and purchase of the Goods provided that a “**Scottish Contract**” shall mean a Contract under which the Seller supplies Goods from premises in Scotland, and an “**English Contract**” shall mean any Contract other than a Scottish Contract;
 - “**Goods**” means the goods (including any instalment delivery of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions;
 - “**F.O.C.**” free of charge
 - “**Seller**” means Interfuse Limited (Company number 850109).

2. BASIS OF THE SALE

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with these Conditions which shall govern the Contract to the exclusion of any other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document).
- 2.2 Each order for Goods by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions, and, for the avoidance of doubt, any call-off order on a Contract which differs from the negotiated Contract shall, to the extent accepted by the Seller in accordance with Condition 3.1, be deemed to be part of the Contract and subject to these Conditions.
- 2.3 Any quotation is given on the basis that no Contract will come into existence until the Seller accepts the order in accordance with Condition 3.1. Any quotation is valid for a period of 30 days only from its date provided that the Seller has not previously withdrawn it.
- 2.4 The Seller's catalogues, instruction leaflets, manuals, drawings, illustrations, specifications, quotations and price lists do not constitute offers by the Seller and the Seller reserves the right to withdraw the same at any time prior to acceptance of an order.
- 2.5 No terms or conditions endorsed upon, delivered with, or contained in the Buyer's purchase order, specification or similar document will form part of the Contract simply as a result of a reference to such document in the Contract.
- 2.6 No variation to these Conditions shall be binding unless agreed in writing by an authorised employee of the Seller of the grade of general manager or director.

- 2.7 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed in writing by a director of the Seller or senior manager of the Seller who is authorised by a director of the Seller. In entering into the Contract, the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed provided always that this Condition 2.7 does not seek to exclude liability for fraudulent misrepresentation by the Seller or its employees or agents.
- 2.8 Save where otherwise agreed in writing between the parties, any recommendation or suggestion relating to the use, storage or handling of the Goods made by the Seller either in sales and technical literature or in response to a specific enquiry or otherwise is given in good faith but it is for the Buyer to satisfy itself of the suitability of the Goods for its own particular purposes. All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.
- 2.9
- a) The Seller reserves the right to record all orders and enquiries received by telephone.
 - b) The Quotation which is based upon present Materials, Labour and Transport costs and adequate fuel and power and is subject to change if any variation of any of these items takes place, whether before or after acceptance, and if there is any change in the delivery date, quantities or specifications for the Goods requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
 - c) This Quotation is based on delivery during normal working hours on normal working days.

3. **ORDERS, SPECIFICATIONS, SAMPLING AND TESTING**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller until the earlier of an acknowledgement of order being dispatched to the Buyer, or the Goods being delivered to the Buyer.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation forming part of these Conditions or the Buyer's order (if accepted by the Seller in accordance with these Conditions).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss in connection with any claim for infringement of any patent, copyright, design or trademark, or other intellectual property rights which result from the Seller's use of the Buyer's specification.
- 3.5 **THE ATTENTION OF THE BUYER IS SPECIFICALLY DRAWN TO THE NEED FOR CARE IN THE HANDLING OF THE GOODS. FULL GUIDANCE IS GIVEN IN THE SELLER'S HEALTH AND SAFETY DATA SHEET.** In particular the attention of the Buyer is drawn to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974, as amended. The Seller gives notice to the Buyer that the Seller has available information, (including product safety data sheets) and product literature concerning the conditions necessary to ensure that, as far as is reasonably practicable, the Goods supplied will be safe and without risks to health when properly used, handled, processed, stored or transported by a person at work. If the Buyer is not already in possession of such literature or requires any information or advice in connection with the safe use of the Goods at work the Buyer should immediately contact the Seller.
- 3.6 The Buyer hereby undertakes pursuant to section 6(8) of the Act to take such measures as are communicated in writing to it and take such other steps as are sufficient to ensure, so far as is reasonably practicable, that the Goods will be safe and without risk to health at all times when

they are being used, handled, processed, stored or transported by a person at work and shall not use them or permit them to be used without regard to any relevant information or advice relating to their use which has been communicated to the Buyer pursuant to these Conditions.

3.7 The Buyer shall indemnify and keep indemnified the Seller in respect of any liability, monetary penalty or fine in respect of its failure to comply with any obligations imposed upon the Buyer in connection with the Goods pursuant to these Terms and Conditions or otherwise.

3.8 Materials offered ex-stock are offered subject to being unsold upon receipt of order.

4. DELIVERY

4.1 The parties shall agree the location for delivery of the Goods. Failing agreement delivery of the Goods shall be at the Seller's premises.

4.2 Where delivery of the Goods is to take place at the Seller's premises:-

4.2.1 delivery of the Goods shall take place within 7 days (other than Saturday, Sunday or a bank holiday) after the Seller notifies the Buyer that the Goods are ready for collection;

4.2.2 the Goods will be delivered onto the vehicle, in which the Buyer, its employees, agents or sub-contractors collect the Goods, at a suitable delivery point at the Seller's premises as directed by the Seller's duly authorised representative;

4.2.3 whilst at the Seller's premises the Buyer, its employees, agents and sub-contractors must obey the Seller's site rules and the instructions of the Seller's duly authorised representative; and

4.2.4 the Buyer will be responsible for the condition of the vehicle, in which it, its employees, agents or sub-contractors collect the Goods (whether owned or hired) and the Seller shall not be liable in any way (including, without limitation, for negligence) for loss or contamination of the Goods resulting from the condition of such vehicle. The Buyer shall indemnify the Seller for any loss, damage or injury to the Seller, its employees or agents or sub-contractors, its plant and equipment caused by the Buyer, its employees or agents or sub-contractors, the Buyer's vehicle, or that of its agent or sub-contractor, or the condition thereof.

4.3 Where the Goods are to be delivered at the Buyer's premises or to such other place as may be agreed between the Seller and the Buyer pursuant to Condition 4.1, in the case of road deliveries, the Buyer shall provide and shall clearly indicate to the Seller or Carrier a route between the metalled highway and the point at which the Buyer wishes the Goods to be discharged which, in the reasonable opinion of the Seller or such Carrier, is safe and proper and reasonable for access, manoeuvring and egress of the delivery vehicle. **IF, IN THE SELLER'S OR CARRIER'S REASONABLE OPINION, SUCH ACCESS IS NOT AVAILABLE OR IS UNSUITABLE, THE SELLER RESERVES THE RIGHT TO REFUSE TO DELIVER.** The Buyer shall be responsible for supervising completion of delivery. The Buyer indemnifies the Seller (both for itself and as agent and trustee for any Carrier) against all losses, costs, proceedings, claims, demands and expenses incurred by it or by any such Carrier (other than in respect of death or personal injury caused by (in the case of an English Contract) the negligence or (in the case of a Scottish Contract) breach of duty (as defined in Section 25 of the Unfair Contract Terms Act 1977 (as amended) ("UCTA")) of the Seller or Carrier) as a result of failure to provide such convenient and safe access or discharge point and/or properly supervised delivery as aforesaid.

4.3.1 It is a condition of the Contract that proper assistance is given by the Customer to the driver of the delivery lorry in unloading the Goods and the Company's delivery vehicles or those of its agents will be held on site for not more than half an hour. Any period in excess of these times will be charged as waiting time to the Customer at the rate determined by the Company and such rate is available from the company upon request.

4.4 Any time, period or date for delivery stated in the Contract is an estimate only and the Seller shall not be liable for any damages or losses (including as a result of negligence) arising out of

failure to meet such time, period or date. Delivery dates are given in good faith but estimates only. Time for the delivery shall not be the essence of the contract.

- 4.5 Where the Goods are to be delivered in instalments a failure by the Seller to deliver any one or more (but not all) of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more (but not all) instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 4.6 The Buyer must satisfy itself as to the condition of the Goods at the time of delivery and the Goods must be inspected and accepted in writing by the Buyer or Buyer's representative at the time of delivery.
- 4.7 The Seller's liability in respect of short weight or measures of Goods supplied shall be limited to the delivery of an additional supply of the Goods in accordance with these Conditions to make up the short weight or measure. The Seller shall have no liability in respect of the short weight or measure if notification is given later than 24 hours after delivery of the Goods.
- 4.8 The Buyer shall reimburse the Seller (both for itself and as agent and trustee for any Carrier) all costs and expenses incurred by the Seller as a result of the Seller or Carrier being prevented from or delayed in making any delivery resulting from the acts or omissions of the Buyer or any of its employees, agents or sub-contractors.
- 4.9 Without prejudice to any other rights or remedies available to the Seller an additional charge may be made if:
 - 4.9.1 the Buyer requires delivery of the Goods in quantities less than minimum loads, as such minimum loads may be notified to the Buyer by the Seller from time to time, or delivery of several types of Goods on one vehicle; or
 - 4.9.2 the Buyer requires delivery outside the Seller's normal working hours; or
 - 4.9.3 the Buyer fails to take delivery or fails to give the Seller adequate delivery instructions; or
 - 4.9.4 unloading of the delivery vehicle is delayed by more than 30 minutes after the Seller or Carrier is ready to unload.
 - 4.9.5 delivery cannot be effected because of unsuitable access, or unsuitable discharge point;or
 - 4.9.6 the Buyer requests that delivery be deferred.
- 4.10 Save where otherwise agreed by the Seller, the Buyer may not re-direct delivery of the Goods or of any instalment of the Goods.
- 4.11 In the event that the Buyer requests that any Goods be deposited on a street, public highway and/or public footpath the Buyer shall be responsible for compliance with all statutes and regulations relating to public highways and byways including, without limitation, obtaining all necessary licences and/or orders, and for all steps which need to be taken for the protection at all times of persons or property and shall indemnify the Seller in respect of all costs, claims, losses or expenses (including legal costs) on an indemnity basis (other than in respect of death and personal injury caused by (in the case of an English Contract) the negligence or (in the case of a Scottish Contract) breach of duty (as defined in Section 25 of UCTA) of the Seller or its Carrier) which the Seller may incur as result of a breach of this Condition 4.11 by the Buyer.
- 4.12 If the Buyer cancels or postpones its order, the Seller shall be entitled to recover all costs accrued and/or incurred up to the date upon which the Seller receives notice of such cancellation.
- 4.13 Where a delivery outside of the Buyer's normal working hours is requested, the Buyer shall accept responsibility for ensuring that a representative of the Buyer is made available to sign any proof of delivery document ("POD"). In the event that a representative is not made available to sign the POD, any requirement for a signed POD shall be automatically waived and payment of invoices shall at no time be conditional on receipt of any POD and will remain due pursuant to Condition 6 of the Contract.

5. PRICE OF THE GOODS

- 5.1 The price of the Goods shall be the price quoted by the Seller. Where no price has been quoted by the Seller, deliveries will be made at the Seller's prices ruling at the date of delivery or collection (as appropriate). Subject to price increases in the interim period, where additional goods are ordered by the Buyer and accepted by the Seller in accordance with these Conditions, the price of the Goods shall be calculated pro-rata against the original main price as quoted in accordance with this Condition 5.1.
- 5.2 The price of the Goods shall be subject to the addition of VAT and a sum equal to any other government duty, tax or levy applicable to the Goods, any ingredient of the Goods or applicable to the sale of the Goods. Except where delivery takes place at the Seller's premises, all prices quoted by the Seller include the Seller's charges for transport.
- 5.3 Pallets:
- 5.1.1. The Seller can supply at the Buyer's request a 'non-refundable' pallet at a fixed price with no refund available or a refundable pallet of which it is the responsibility of the customer to return the pallets on which the goods were supplied to the depot of origin. Although whenever possible the Seller will collect F.O.C. but reserve the right to make a nominal charge where necessary. A set price is initially charged for the refundable pallet at the time of delivery or collection. This money will only be refunded on return of the pallet in good condition and the refund is only applicable to the return of the original pallet supplied by the Seller. No replica or substitute pallet will be deemed acceptable.

6. TERMS OF PAYMENT

- 6.1 Payment is due before delivery if required by the Seller at the time of entering into the Contract. In all other cases, payment shall be made within 30 days following the end of the month of invoice, but if default is made in the payment of any one invoice, these credit terms shall cease to apply and the Buyer will become immediately liable for all sums outstanding.
- 6.2 Where the Seller has not required payment before delivery in accordance with Condition 6.1 and the Buyer fails to collect or accept delivery of the Goods (as appropriate) in accordance with these Conditions the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after such failure to collect or accept delivery (as appropriate).
- 6.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:
- 6.3.1 cancel the Contract or suspend any further deliveries to the Buyer; and
- 6.3.2 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 2% per month until payment in full is made.
- 6.3.3 Invoices not settled in accordance with our terms and conditions will result in the withholding of credit facilities.
- 6.4 The Buyer shall not be entitled to make any deduction from, set-off, or retention of, the amounts due under the Contract unless the Buyer has a valid court order requiring an amount equal to such deduction, set-off or retention to be paid by the Seller to the Buyer. The Seller shall be entitled to appropriate any payment made by the Buyer to the Seller to such of the Goods as the Seller thinks fit despite any purported appropriation by the Buyer including, but not limited to, any goods which have been supplied by the Seller to the Buyer under any contract between the Seller and the Buyer.
- 6.5 We reserve the right not to execute any order in the arrangements for payment or the Purchasers' credit are not satisfactory to us and to suspend or discontinue delivery of any goods or materials to any customer whose account is overdue for payment.
- 6.6 Cancellation:
- 6.6.1 Cancellation of the Contract by the Customer will only be accepted at the discretion of the Company

and in any case on condition that any costs or expenses incurred by the Company up to the moment of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith.

7. RISK AND PROPERTY

7.1.1 Title in the Goods shall not pass to the Buyer until the price of the Goods and every other sum due from the Buyer to the Seller (whether under the Contract or otherwise) has been paid in full and until such payment, the Seller shall be entitled to enter the Buyer's premises to recover the Goods.

7.1.2 Until Property in the Goods passes to the Buyer, the Buyer shall store the Goods separately from any other goods and identify them as belonging to the Seller.

7.2 Risk of damage to or loss of the Goods shall pass to the Buyer:

Risk in the goods shall pass to the Buyer on delivery. The Company accepts no liability for any consequential loss, damage or expenses of any kind.

Upon delivery of the goods the Customer shall hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such time as the Customer shall have paid to the Company the full purchase price thereof. Until such time the Company shall be entitled to recover the goods or any part thereof and for the purpose of exercising such rights the Company, its Employees and Agents with appropriate transport may enter the Customers premises or any other location where the goods are situated.

7.2.1 in the case of Goods to be delivered at the Seller's premises where the Seller is responsible for loading, at the moment of loading at the delivery point on the Seller's premises onto the vehicle in which the Buyer, its employees, agents or sub-contractors collect the Goods; or

7.2.2 in the case of Goods to be delivered otherwise than at the Seller's premises where the Seller is responsible for unloading, at the moment of completion of unloading from the Seller's or Carrier's vehicle at the delivery point identified by the Buyer in accordance with these Conditions;

7.2.3 in the case of Goods to be delivered otherwise than at the Seller's premises where the Seller is not responsible for unloading at the moment of arrival of the Seller's or the Seller's Carriers vehicle at the delivery point identified by the Buyer in accordance with these Conditions.

8. THE GUARANTEE

8.1 If any materials supplied by us shall prove to be defective by reason of some fault in such materials, we undertake to replace such materials at our Works provided the defect is brought to our notice without delay. Except as provided in this condition we can accept no liability for any other claim and in particular we are not to be liable for any direct or indirect loss or damage caused or arising by reason of any defect in our work or materials or any delays in carrying out the same or by reason of any other matter, whatsoever.

8.2 The Guarantee is subject to the following limitations:

8.2.1 the Customer shall inspect the goods at the place and time of unloading and sign the Receipt Note. The Guarantee shall not apply unless the Buyer notifies the Seller in writing of the alleged defect or failure immediately upon its first becoming aware thereof and in any event within 2 days of the date of delivery of the Goods or, where the defect or failure was not apparent on reasonable inspection, within 2 days after the earlier of the discovery of the defect or failure by the Buyer, its employees, agents or sub-contractors or the time when the defect or failure ought reasonably to have been discovered by the Buyer, its employees, agents or sub-contractors;

- 8.2.2 if the Customer does not give the Company that written notice within that time the Goods will be deemed to have been delivered in the quantities shown in the delivery documents. The Customer shall not be entitled and irrevocably and unconditionally waives any right to reject the Goods or claim any damages whatsoever for short delivery howsoever caused.
- 8.2.3 the Company's liability for short delivery is limited to making good the shortage.
- 8.2.4 where it is or would have been apparent on a reasonable inspection that the Goods are not in conformity with the Contract or (if the Contract is a contract for sale by sample) that the bulk does not compare with the sample the Customer must inform the Company by telephone, facsimile or email as soon as reasonably practical and in any event must give the Company written notice within two working days of unloading of any claim to that effect.
- 8.2.5 if the customer (not being a Consumer) fails to give the Company that written notice within that time the Goods will be deemed to have been accepted and the Customer shall not be entitled and irrevocably and unconditionally waives any right to reject the Goods.
- 8.2.6 if the materials used in the production of the Goods contain naturally occurring inclusions which result in cosmetic blemishes or surface depressions no liability for such blemishes or depressions can be accepted by the Seller unless the Buyer has expressly indicated that it requires Goods without cosmetic blemishes or surface depressions for use in connection with a specific purpose and the Seller has accepted this in writing;
- 8.2.7 the Seller will accept no responsibility if the defect or failure in respect of the Goods results from incorrect specification or other data supplied by the Buyer to the Seller;
- 8.3 The Buyer shall provide to the Seller, its employees and agents (together with such vehicles, plant and equipment as the Seller shall deem necessary) safe and unrestricted access together with such other facilities and information as the Seller may reasonably require to enable it to ascertain or verify the nature and cause of the alleged defect or failure and to carry out its obligations under the Guarantee. **PROVIDED ALWAYS THAT** the Seller shall be under no obligation whatsoever to refund the price of, or supply any additional goods in respect of, any Goods which are removed by the Buyer without the Seller's prior written consent or where the Seller has not been given proper opportunity to ascertain or verify the nature and cause of the alleged defect in accordance with this Condition 8.3.
- 8.4 The Seller shall be entitled to require the Buyer by notice in writing to cease forthwith the use of any of the Goods in respect of which any alleged defect or failure has been notified to the Seller and if the Buyer fails to comply with such requirement the Seller shall be under no liability to the Buyer either under this Condition or otherwise in relation to such Goods. Notwithstanding this, the Seller shall not be liable for any damages or losses whatsoever suffered by the Buyer to the extent that they are caused by the continued use of the Goods after a defect or failure became apparent, or ought to have become apparent, to the Buyer, its employees, agents or sub-contractors.
- 8.5 The Seller shall be under no obligation whatsoever to refund the price of the Goods or supply any additional goods to the Buyer pursuant to the Guarantee where the alleged defect or failure results from incorrect installation or handling, alteration without consent, wear and tear, accident, failure to observe the sampling or testing procedures referred to in Conditions 3, abnormal or improper conditions of storage or use or any act, neglect or default (including negligence) of the Buyer or any third party.

9. THE SELLER'S LIABILITY

9.1 SUBJECT TO CONDITION 9.2:-

- 9.1.1 **THE LIABILITY ACCEPTED BY THE SELLER UNDER THE GUARANTEE SHALL BE IN SUBSTITUTION OF ANY OTHER LEGAL REMEDY OF THE BUYER IN RESPECT OF ANY ALLEGED DEFECT IN RELATION TO THE GOODS OR FAILURE OF THE GOODS TO COMPLY WITH THE SPECIFICATION OR QUALITY CONTAINED IN THE CONTRACT AND ANY OTHER CONDITION, WARRANTY, REPRESENTATION OR UNDERTAKING ON THE PART OF THE SELLER AS TO THE QUALITY OF THE GOODS OR THEIR FITNESS OR SUITABILITY FOR ANY**

PURPOSE HOWSOEVER AND WHENEVER EXPRESSED WHICH MAY BE IMPLIED BY STATUTE CUSTOM OF THE TRADE OR OTHERWISE IS HEREBY EXCLUDED AND THE PROVISIONS OF SECTIONS 13 TO 15 INCLUSIVE OF THE SALE OF GOODS ACT 1979 (AS AMENDED) SHALL NOT APPLY TO THE CONTRACT;

9.1.2 THE LIABILITY OF THE SELLER WHETHER IN CONTRACT OR IN TORT OR DELICT ARISING OUT OF OR IN CONNECTION WITH ANY ACT, OMISSION, NEGLIGENCE OR DEFAULT OF THE SELLER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS IN CONNECTION WITH THE CONTRACT (INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING FOR NEGLIGENCE, BREACH OF ANY CONDITION OR WARRANTY WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE HOWSOEVER) SHALL BE LIMITED TO THE REFUND OF THE PRICE OF THE GOODS OR THE SUPPLY OF ADDITIONAL GOODS PURSUANT TO THE GUARANTEE;

9.1.3 THE SELLER SHALL NOT BE LIABLE TO THE BUYER IN CONTRACT, TORT OR DELICT (INCLUDING NEGLIGENCE) OR FOR BREACH OF STATUTORY DUTY FOR ANY LOSS OF PROFIT, LOSS OF INCOME, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, LOSS OF OPPORTUNITY OR LOSSES CALCULATED BY REFERENCE TO PROFITS, INCOME, BUSINESS, REVENUE, GOODWILL, ANTICIPATED SAVINGS, DATA OR OPPORTUNITY (IN ALL CASES WHETHER DIRECT OR INDIRECT) OR ANY INDIRECT, CONSEQUENTIAL OR ECONOMIC LOSS OF ANY KIND WHATSOEVER WHICH THE BUYER MAY SUFFER OR INCUR BY REASON OF ANY ACT, OMISSION, NEGLIGENCE OR DEFAULT (INCLUDING NEGLIGENCE) IN CONNECTION WITH THE CONTRACT BY THE SELLER, ITS EMPLOYEES OR AGENTS.

9.2 NOTHING IN THESE CONDITIONS SHALL:

9.2.1 LIMIT OR EXCLUDE THE LIABILITY OF THE SELLER FOR DEATH OR PERSONAL INJURY RESULTING FROM (IN THE CASE OF AN ENGLISH CONTRACT) THE NEGLIGENCE OR (IN THE CASE OF A SCOTTISH CONTRACT) BREACH OF DUTY (AS DEFINED IN SECTION 25 OF UCTA) OF THE SELLER, ITS EMPLOYEES OR AGENTS;

9.2.2 LIMIT OR EXCLUDE THE LIABILITY OF THE SELLER FOR FRAUDULENT MISREPRESENTATION; OR

9.2.3 EXCLUDE THE CONDITIONS AND WARRANTIES IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979 (AS AMENDED).

9.3 We can accept no responsibility for failure to supply or delay in supplying any materials or goods which may be due directly or indirectly to any Act of God or force majeure, governmental actions, war or threat of war, invasion, riot, civil commotion, act of terrorism, Military or usurped power, any legislation, Government Order, Regulation or Direction, any strike or lock-out, any fire, accident, breakdown of machinery, any shortage of labour, equipment or spare parts affecting the production or transit of such materials or goods of any other cause or circumstances beyond our control or any abnormal conditions arising from any of the foregoing causes.

9.4 Without prejudice to any of these Conditions or any other terms set out in the Contract, the Seller shall not be liable to the Buyer in any manner or deemed to be in breach of the Contract (subject to Condition 9.2) because of any delay in performing or failure to perform any of the Seller's obligations under the Contract if the delay or failure was due to any cause beyond the Seller's control.

9.5 The Seller undertakes to make every reasonable endeavour to overcome difficulties arising from a force majeure condition provided always that the Seller shall not be obliged to purchase the Goods from third parties.

10. INSOLVENCY AND BREACH OF CONTRACT OF BUYER

10.1 This Condition applies if the Buyer commits any breach of the Contract or of any other contract between the Buyer and the Seller or between the Buyer and any company within the same group of companies of which the Seller is a member; or the Buyer has a bankruptcy order made against him or makes any voluntary arrangement or composition with his creditors or otherwise takes the benefit of any statute for the time being in force for the relief of insolvent debtors (or being a

company or body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of a reconstruction or amalgamation, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or an encumbrancer takes possession or a manager, administrator, receiver or administrative receiver is appointed over any of the property, undertaking or assets of the Buyer (or part thereof); or the Buyer ceases or threatens to cease to carry on business; or if any distraint, lien, hypothec, execution (whether legal or equitable) or other process is levied or enforced on any property of the Buyer and is not paid out, withdrawn or discharged within 21 days; or the Buyer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986: or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this Condition applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable despite any previous agreement or arrangement to the contrary.

11. SET OFF

11.1 The Buyer undertakes to pay any sum due to the Seller in full without any deduction, offset or counterclaim whatsoever save in respect of any credit note issued to the Buyer by the Seller.

11.2 The Seller shall be entitled to set off against any sum due from the Seller to the Buyer on any account whatsoever any sum owed to the Seller or any other company within the Seller's corporate group by the Buyer whether or not the same shall have become due for payment and any claim or counterclaim which the Seller may have against the Buyer whether liquidated or unliquidated and whether jointly or otherwise.

11.3 In this clause 12 'Seller' and 'Buyer' includes any company within the same corporate group and all subsidiaries of the ultimate holding company of the Buyer or the Seller as the case may be.

11.4 These terms are in addition to rights of set off at common law or in equity.

12. GENERAL

12.1 All notices between the parties in respect of the Contract must be in writing and delivered by hand, sent by first class pre-paid post, sent by facsimile transmission or sent by e-mail (in the case of notices to the Seller) to the Seller's address, facsimile number or e-mail address shown on the Seller's quotation, or as notified in writing by the Seller from time to time or (in the case of notices to the Buyer) to its registered office (if it is a company) or (in any other case) to the last known address of the Buyer or such address, facsimile number or e-mail address as shall be notified in writing to the Seller by the Buyer for this purpose.

12.2 Notices shall be deemed to have been received 48 hours after posting (exclusive of the day of posting) if sent by first class post; on the day of delivery, if delivered by hand; or at the time of transmission, if sent by facsimile or by e-mail, provided that a confirming copy is sent by first class pre-paid post to the other party within 24 hours after transmission.

12.3 No waiver by the Seller of any breach of any provision of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.4 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.

- 12.5 English Contracts shall be governed by the laws of England and Wales. Scottish Contracts shall be governed by the laws of Scotland. The parties agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute which arises in connection with the Contract.
- 12.6 The Buyer shall not assign, sub-contract or otherwise transfer all or any of its rights, interests or obligations under the Contract without the prior written consent of the Seller. Any or all of the Seller's rights or obligations under the Contract may be assigned or sub-contracted by the Seller.
- 12.7 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it (in the case of an English Contract) or create a ius quaesitum tertio in any person (in the case of a Scottish Contract).