

CONDITIONS OF SALE

1 Interpretation

In these Conditions:

'Buyer' means the person who agrees to purchase the Goods and/or Services from the Seller as detailed in an invoice or advice note of the Seller;

'Goods' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

'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 for the purchase and sale of the Goods and/or Services;

'Seller' means J.G. Paxton and Sons Limited registered in England under number 1696152;

'Services' means the services (including any part performance thereof) which the Seller is to provide in accordance with these Conditions;

'Writing' includes facsimile transmission, e-mail and comparable means of communication;

Any reference to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;

Headings are for convenience only and shall not affect the interpretation of these Conditions.

2 Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or Services subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, advice note or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

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 and/or Services 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 and/or Services shall be those set out in the Seller's invoice or advice note.

3.4 The Buyer acknowledges that this Contract does not have effect so as to transfer or otherwise assign any intellectual property rights of the Seller or any third party in the Goods and/or Services to the Buyer.

3.5 The Seller reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory or EC requirements or, where the Goods and/or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance or provision.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

3.7 The Seller may cancel the Contract by notice in Writing to the Buyer at any time before delivery of the Goods or performance of the Services (as appropriate), and the Seller shall promptly thereafter repay to the Buyer any sums already paid by the Buyer towards the price of the Goods and/or Services. The Buyer accepts that the Seller shall not be liable for any loss or damage whatsoever and howsoever arising from such cancellation.

4 Price of the goods and/or services

4.1 The price of the Goods and/or Services shall be the price stated in the Seller's invoice or advice note. The Seller will add VAT to such price at the rate that applies when the Goods are supplied and/or the Services are performed. At present, VAT is charged at 20%.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery or performance, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery or performance dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any invoice or advice note, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices for the Goods are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax and in the case of the provision of the Services all expenses reasonably incidental to the provision of the Services (including for the avoidance of doubt travel and accommodation costs), which the Buyer shall be additionally liable to pay to the Seller.

5 Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods or provision of the Services.

5.2 Subject to any special terms agreed in Writing between the Buyer and the Seller the Buyer shall pay the price of the Goods and/or Services within 30 days of the last day of the month in which the Seller's invoice is dated and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 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:

5.3.1 cancel the Contract or suspend any further deliveries of the Goods or provision of the Services to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of four per cent per annum above the Barclays Bank PLC base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Delivery and performance

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. Performance of the Services shall take place at the location stipulated in the Contract.

6.2 Any dates quoted for delivery of the Goods and performance of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods and performance of the Services however caused. Time for delivery and performance shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered and the Services performed by the Seller in advance of the quoted date upon giving reasonable notice to the Buyer.

6.3 Where the Goods and/or Services are to be delivered or performed in instalments, each delivery or part performance shall constitute a separate contract and failure by the Seller to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods or perform the Services (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods and/or services to replace those not delivered or performed over the price of the Goods and/or Services.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage;

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7 Risk and property

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

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods and/or services agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8 Liability

8.1 For the purposes of this clause 8, the word "Seller" shall be deemed to include the manufacturer of any Goods sold to the Buyer.

8.2 The Seller shall be:

8.2.1 under no liability in respect of any defect in the Goods and/or Services arising from any drawing, design or specification supplied by the Buyer;

8.2.2 under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.2.3 under no liability under any warranty, condition or guarantee if the total price for the Goods and/or Services has not been paid by the due date for payment.

8.3 Subject as expressly provided in these Conditions, and except where the Goods and/or Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods and/or Services are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or the provision of the Services or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or provision or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and/or Services and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and/or Services had been delivered and performed in accordance with the Contract.

8.6 Where any valid claim in respect of any of the Goods and/or Services which is based on any defect in the quality or condition of the Goods or the provision of the Services or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) or provide again the Services free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods and/or Services (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and/or Services, except as expressly provided in these Conditions.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.8.1 Act of God, explosion, flood, tempest, fire or accident;

8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.8.4 import or export regulations or embargoes;

8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7 power failure or breakdown in machinery.

9 Insolvency of buyer

9.1 This clause applies if:

9.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) become bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 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.

9.2 If this clause 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 or performance under the Contract without any liability to the Buyer, and if the Goods have been delivered or the Services provided but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10 Export terms

10.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

10.2 Where the Goods and/or Services are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

10.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into and the provision of the Services in the country of destination and for the payment of any duties on them.

10.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered fob the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

10.5 The Buyer shall be responsible for arranging for inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

10.6 The Buyer undertakes not to offer the Goods for resale in any country notified by the Seller to the Buyer or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

11 General

11.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.

11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice may be served either by hand or first class letter post or by facsimile transmission or e-mail. Notice shall be deemed served if by hand upon delivery if by first class letter post 48 hours after posting and if by facsimile transmission or e-mail upon being so transmitted.

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

11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

11.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.