

# Open Space Aluminium Ltd- Sales Terms & Conditions

**2023**

## 1. APPLICATION OF TERMS AND CONDITIONS

- 1.1** The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation or offer of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller; and
- 1.2** These Terms and Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted by the Seller, or any such order is made or purported to be made, by the Buyer.

## 2. INTERPRETATION

- 2.1** In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Business Day”</b>	means any day other than a Saturday, Sunday or bank holiday;
<b>“Buyer”</b>	means the person who accepts a quotation or offer of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;
<b>“Contract”</b>	means the contract for the purchase and sale of the Goods which shall incorporate, and be subject to, these Terms and Conditions;
<b>“Contract Price”</b>	means the price stated in the Contract payable for the Goods;
<b>“Delivery Date”</b>	means the date on which the Goods are to be delivered any delivery date or time stated by the seller shall be approximate only and time, whether delivery or otherwise shall not be of the essence and the seller shall be under no liability whatsoever for late delivery however arising.
<b>“Goods”</b>	means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with the Contract;
<b>“Month”</b>	means a calendar month; and
<b>“Seller”</b>	means Open Space Aluminium Ltd, a company registered in England under 10741566 of Victoria Industrial Estate, Victoria Street, Leigh WN7 5SE

- 2.2** Unless the context otherwise requires, each reference in these Terms and Conditions to:

- 2.2.1** “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 2.2.2** a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 2.2.3** “these Terms and Conditions” is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time; please refer to our website for the latest Terms and Conditions
- 2.2.4** a Schedule is a schedule to these Terms and Conditions; and
- 2.2.5** a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
- 2.2.6** a “Party” or the “Parties” refer to the parties to these Terms and Conditions.

- 2.3** The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

- 2.4** Words imparting the singular number shall include the plural and vice versa.

- 2.5** References to any gender shall include the other gender.

## 3. BASIS OF SALE

- 3.1** The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. 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 within the “Order Acknowledgement”

- 3.2** No variation to these Terms and Conditions, or to the Contract, shall be binding unless agreed

- 3.3** Sales literature, price lists and other documents issued by the Seller in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. No contract for the sale of the Goods shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an “Order Acknowledgement” such “Order Acknowledgement” will include provision for:

- 3.3.1** the Seller’s written acceptance;
- 3.3.2** delivery of the Goods; and
- 3.3.3** The time period during which the price agreed in the “Order Acknowledgement” is valid.

- 3.4** Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 4. APPLICATION OF TERMS AND CONDITIONS

- 4.1** No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller by delivery of an “Order Acknowledgement” form to the buyer.

- 4.2** The specification for the Goods shall be that set out in the Seller’s “Order Acknowledgement” unless varied expressly in the Buyer’s order (if such variation(s) is/are accepted by the Seller). The Goods will only be supplied in the minimum units thereof stated in the Seller’s price list or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly.

- 4.3** Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Seller are intended as a guide only and shall not be binding on the Seller.

- 4.4** The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Buyer’s specification, which do not materially affect their quality or performance.

- 4.5** No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller on the 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 such cancellation.

## 5. PRICE

- 5.1** The Contract Price of the Goods shall be the price listed in the Seller’s Order Acknowledgement current at the date of acceptance of the Buyer’s order or such other price as may be agreed in writing by the Seller and the Buyer confirmed on an Order Acknowledgement.

- 5.2** Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all goods are supplied ex-works and all prices are inclusive of the Seller’s charges for packaging. Transport if agreed and confirmed in the “Order Acknowledgement” will be limited to a standard 7.5 tonne box van, if such transport is not sufficient or appropriate for the goods it shall be confirmed on the “Order Acknowledgement” and quoted for accordingly.

- 5.3** The Contract Price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

## 6. PAYMENT

- 6.1** The Seller’s payment terms shall be detailed to the Buyer within the “Order Acknowledgement” document.

- 6.2** The Buyer shall pay the Contract Price of the Goods (less any discount or credit allowed by the Seller, but without any other deduction, credit or set off) within 7 Business Days of the date of the Seller’s invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Buyer and the Seller in respect of the Contract detailed in the “Order Acknowledgement” document. Payment shall be made on the due date notwithstanding that delivery may not have taken place and/or that the property in the Goods has not passed to the Buyer. The time for the payment of the Contract Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

- 6.3** All payments shall be made to the Seller as indicated on the “Order Acknowledgement” issued by the Seller.

- 6.4** The Seller is not obliged to accept orders from any customer or buyer who has not supplied the Seller with references satisfactory to the Seller. If at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further goods will be delivered to the Buyer other than against cash payment and notwithstanding sub-Clause 6.2 of these Terms and Conditions, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.

## 7. DELIVERY

- 7.1** Delivery of the Goods shall be made by the Seller delivering the Goods to the place in the United Kingdom specified in the Buyer’s order and/or the Seller’s acceptance and/or the Contract as the location to which the Goods are to be delivered by the Seller or, if no place of delivery is so specified, 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.

- 7.2** Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms and 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.

- 7.3** If the Buyer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the Seller shall be entitled upon giving written notice to the Buyer to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 10.1, risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place and the Buyer shall pay to the Seller all costs and expenses including storage and insurance charges arising from such failure.

## 8. INSPECTION/SHORTAGE

- 8.1** The Buyer is under a duty whenever possible to inspect the Goods on delivery or on collection as the case may be.
- 8.2** Where the Goods cannot be examined the carrier's note or such other note as appropriate shall be marked "not examined".
- 8.3** The Seller shall be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the provisions of this Clause 9 are not complied with and, in any event, will be under no liability if a written complaint is not delivered to the Seller within 2 Business Days of delivery detailing the alleged damage or shortage.
- 8.4** In all cases where defects or shortages are complained of the Seller shall be under no liability in respect thereof unless an opportunity to inspect the Goods is supplied to the Seller before any use is made thereof or any alteration or modification is made thereto by the Buyer.
- 8.5** Subject to sub-Clauses 9.3 and 9.4, the Seller shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

## 9. INSPECTION/SHORTAGE

- 9.1** Risk of damage to or loss of the Goods shall pass to the Buyer at:
- 9.1.1** in the case of Goods to be delivered at the Seller's premises, the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 9.1.2** in the case of Goods to be delivered otherwise than at the Seller's premises, the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 9.2** Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title of 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.
- 9.3** Sub-Clause 10.2 notwithstanding, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Contract Price of the Goods and any other goods supplied by the Seller and the Buyer has repaid all moneys owed to the Seller, regardless of how such indebtedness arose.
- 9.4** Until payment has been made to the Seller in accordance with these Terms and Conditions and the Contract and title in the Goods has passed to the Buyer, the Buyer shall be in possession of the Goods as bailee for the Seller and the Buyer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Seller and shall insure the Goods against all reasonable risks.
- 9.5** 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 money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9.6** The Seller reserves the right to repossess any Goods in which the Seller retains title without notice. The Buyer irrevocably authorises the Seller to enter the Buyer's premises during normal business hours for the purpose of repossessing the Goods in which the Seller retains title.
- 9.7** The Buyer's right to possession of the Goods in which the Seller maintains legal and beneficial title shall terminate if:
- 9.7.1** the Buyer commits or permits any material breach of his obligations under these Terms and Conditions;
- 9.7.2** the Buyer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;
- 9.7.3** the Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- 9.7.4** the Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Buyer, notice of intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or 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.
- 9.8** The buyer shall be entitled to sell the goods during the normal carrying on of his business, but not as an agent or otherwise on behalf of the seller. In the event of the buyer selling the goods or any part thereof, the buyer shall hold the proceeds of any such sale upon trust for the seller until all of the sums due to the seller have been paid in full. Such proceeds of sale shall not be mixed with other monies, paid into any overdrawn bank account and be easily identifiable as the seller's monies.

## 10. ASSIGNMENT

- 10.1** The Seller may assign the Contract or any part of it to any person, firm or company without the prior consent of the Buyer.
- 10.2** The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

## 11. DEFECTIVE GOODS

- 11.1** If on delivery any of the Goods are defective in any material respect and either the Buyer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery as "condition and contents unknown" the Buyer gives written notice of such defect to the Seller within 2 Business Days of such delivery, the Seller shall at its option:
- 11.1.1** replace the defective Goods; or
- 11.1.2** refund to the Buyer the price for those Goods (or parts thereof, as appropriate) which are defective; but the Seller shall have no further liability to the Buyer in respect thereof and the Buyer may not reject the Goods if delivery is not refused or notice given by the Buyer as set out above.
- 11.2** No Goods may be returned to the Seller without the prior agreement in writing of the Seller. Subject thereto any Goods returned which the Seller is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at the Seller's sole discretion the Seller shall refund or credit to the Buyer the price of such defective Goods but the Seller shall have no further liability to the Buyer.
- 11.2.1** return such goods at his risk and cost; and
- 11.2.2** indemnify the Seller against any cost incurred by the Seller in rectifying any deterioration of the Goods caused by incorrect storage or use while in the Buyer's possession.
- 11.3** The Seller shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow the Seller's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Seller's prior approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.
- 11.4** Subject as expressly provided in these Terms and Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.5** Except in respect of death or personal injury caused by the Seller's negligence, or as expressly provided in these Terms and Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Buyer (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.
- 11.6** The Buyer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Buyer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority and the Buyer will indemnify the Seller against any liability loss or damage which the Seller might suffer as a result of the Buyer's failure to comply with this condition.
- 11.7** Where the buyer has sought to purchase any products above the maximum permissible sizes as defined by Reynaers Ltd, Open Space Aluminium Ltd will not provide any warranty and have no obligation to supply any replacement parts and/or service visits.

## 12. BUYER'S DEFAULT

- 12.1** 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:
- 12.1.1** cancel the order or suspend any further deliveries to the Buyer;
- 12.1.2** appropriate any payment made by the Buyer to such of the Goods (or the goods 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
- 12.1.3** charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 8 % per annum above the Bank of England 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).
- 12.2** This condition applies if:
- 12.2.1** the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
- 12.2.2** the Buyer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;
- 12.2.3** an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;
- 12.2.4** the Buyer ceases, or threatens to cease, to carry on business; or
- 12.2.5** 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.
- 12.3** If sub-Clause 13.2 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 notwithstanding any previous agreement or arrangement to the contrary.

### 13. LIMITATION OF LIABILITY

**13.1** Subject to the provisions of Clauses 7, 8 and 12 the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- 13.1.1** any breach of these Terms and Conditions or the Contract;
- 13.1.2** any use made (including but not limited to modifications) or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 13.1.3** any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

**13.2** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

**13.3** Nothing in these Terms and Conditions excludes or limits the liability of the Seller:

- 13.3.1** for death or personal injury caused by the Seller's negligence;
- 13.3.2** for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
- 13.3.3** for fraud or fraudulent misrepresentation.

**13.4** Subject to sub-Clauses 14.2 and 14.3:

- 13.4.1** the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and
- 13.4.2** the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

### 14. WARRANTIES

**14.1** The Seller warrants that, for a period of 5 years from the date of delivery the goods shall be fit for the purpose for which goods of the type are normally used under normal conditions and that every reasonable effort has been made to use good quality materials and workmanship.

**14.2** Safe as aforesaid all warranties and conditions, expressed or implied, are hereby expressly excluded:

**14.3** The foregoing warranty is subject to, correct and proper transportation, handling, fitting and installation of the seller's goods, notification of the alleged defect within 2 working days of its discovery or occurrence.

**14.4** Liability of the seller under the foregoing warranty or otherwise shall be linked to the replacement of the goods supplied by the seller, or, at the seller's discretion, the actual cost charged by the seller for the goods. The seller shall not be liable for the work or cost of fitting or installation of any replacement goods and shall be under no liability in respect of any consequential damage, loss of profit, damage suffered or expenditure incurred whatsoever, whether in contract or in tort, in respect of any faulty goods and the buyer will indemnify the seller against any liability in tort of the seller to any third party.

**14.5** Any replacement goods shall be warranted only until the expiration of 5 years from the date of delivery of the original goods.

**14.6** Where ironmongery furniture and fittings are supplied by the seller to the buyer then the periods in 14.1 and 14.5 shall be twelve months.

**14.7** The warranties given are subject to the end user adhering to Reynaers Operations and Maintenance Procedures which can be found at [www.reynaers.com](http://www.reynaers.com)

**14.8** Where glass defects are reported by the buyer the guidelines of the GGF (Glass and Glazing Federation) will be deemed as the inspection criteria. The Seller will not be liable for reported defects which fall outside these criteria. [www.ggf.org.uk](http://www.ggf.org.uk)

**14.9** Where coated aluminium surface defects are reported by the buyer the guidelines of BS EN 12206-1:2004 will be deemed as the inspection criteria. The seller will not be liable for defects which fall outside of these guidelines.

**14.10** Where the buyer has sought to purchase a "lower level threshold" on Bi-Fold doors, and Open Space Aluminium has specified or advised that this component carries a lower weather rating, Open Space Aluminium will not guarantee the product for its weather tightness and will not be liable for any claim arising from such. The buyer will therefore decline all rights to report or make any claim for leakage or ingress of water, or any damage caused whether to property or persons.

**14.11** Where the buyer has sought to purchase any door scheme where the door leaves/glass/sightlines are not equal in size, Open Space Aluminium will not be liable for any claim arising from any complaint regarding glass sight line distances and equality of glass or door sizes. The buyer will therefore decline all rights to report or make any claim for such.

**14.12** Where the buyer has sought to purchase blinds integral to the glass units, the suppliers 5-year warranty period will apply to these products.

**14.13** Where the buyer has sought to purchase any products above the maximum permissible sizes as defined by Reynaers ltd, Open Space Aluminium will not provide any warranty and have no obligation to supply any replacement part.

**14.14** Where the buyer reports visible condensation on the inside fabric of the building and/or supplied glazing products, Open Space Aluminium will attempt to guide the buyer regarding background ventilation and the definitions stated in the GGF Condensation advice document. Open Space Aluminium Ltd accept no responsibility to control the internal environment in which the supplied products are placed and as such can accept no responsibility or liability, whether current or in the future, for the presence of condensation, any damage caused or its effects on occupant's health.

**14.15** All promotional literature and drawings provided by Open Space Aluminium or any of its suppliers are for general guidance only. Their contents do not form part of the Contract with Open Space Aluminium unless specifically referred to it in writing by Open Space Aluminium.

**14.16** Open Space Aluminium Ltd shall upon request, provide the 'Buyer' with any available technical information regarding the goods intended for purchase, not limited to, thermal values, load weights, design limitations etc. Open Space Aluminium Ltd accepts no responsibility to determine the suitability of the building envelope, its design (including insulation), structural loads and calculations or any other aspect that has not been agreed in writing.

**14.17** Upon delivery, the Buyer is responsible for the immediate and appropriate indoor storage of laminated glass goods ("Goods"). Laminated glass goods are typically delivered in stillages and are stacked with multiple pieces leaning against each other. When left outside under direct sunlight, this configuration can potentially cause a magnifying effect leading to breakages or fractures in the glass. The Buyer must, therefore, ensure that the Goods are moved indoors promptly upon delivery. Failing to do so may result in damage to the Goods that is not covered under our warranty policy. Damages caused by improper storage of the Goods, specifically those left outside in direct sunlight or under fluctuating temperature conditions post-delivery, are not considered defects and thus are not covered by Open Space Aluminium Ltd warranty. By accepting these terms and conditions, the Buyer acknowledges their responsibility to ensure appropriate handling and indoor storage of the Goods immediately upon delivery to prevent any such damage.

**14.18** Spontaneous breakage of the Goods, particularly due to Nickel Sulphide Inclusion (NIS), is a known phenomenon in the glass industry. This is an inherent risk in all tempered glass and is not considered a defect. Such breakages caused by NIS are not covered under warranty policies provided by the glass industry or by Open Space Aluminium. The Buyer acknowledges and accepts this risk upon purchasing the Goods and is advised to consider this factor when making a purchase and in setting expectations for the performance and durability of the Goods.

### 15. CONFIDENTIALITY, PUBLICATIONS AND ENDORSEMENTS

**15.1** The Buyer will regard as confidential the contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default.

**15.2** The Buyer will not use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.

**15.3** The Buyer will use all reasonable endeavours to ensure compliance with this Clause 15 by its employees, servants and agents.

**15.4** The provisions of this Clause 15 shall survive the termination of the Contract.

### 16. COMMUNICATIONS

**16.1** All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

**16.2** Notices shall be deemed to have been duly given:

- 16.2.1.1** when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
- 16.2.1.2** when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
- 16.2.1.3** on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 16.2.1.4** on the tenth business day following mailing, if mailed by airmail, postage prepaid.

**16.3** All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

### 17. FORCE MAJEURE

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

### 18. WAIVER

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

**19. SEVERANCE**

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

**20. THIRD PARTY RIGHTS**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

**21. LAW AND JURISDICTION**

**21.1** These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

**21.2** Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.