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TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

1.1 The following words shall mean:

Buyer: The person, firm or company that purchases the Goods from the Seller;

Conditions: The terms and conditions set out in this document;

Contract: Any contract between the Buyer and the Seller for the sale and purchase of the Goods incorporating these Conditions;

Delivery Point: The place at which the Buyer collects the Goods or to which the Seller delivers the Goods as set out in Condition 4;

Goods: The goods specified in the Seller's Acknowledgement;

Price: The price for the Goods (unless otherwise stated, excluding packaging, loading, carriage and insurance) and excluding VAT shall be the price set out in the Seller's current price list at the date on which the Buyer's order is accepted by the Seller under Condition 2.4;

Seller: Ashfield (UK) Limited of 107-115 Gwendolen Road, Leicester, LE5 5FL; and

Seller's Acknowledgment: The Seller's written acknowledgement and acceptance of the Buyer's order to purchase the Goods.

1.2 Any reference in these Conditions to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended, modified, extended, re-enacted or replaced and including all subordinate legislation from time to time made under it.

1.3 Words indicating the singular include the plural, words importing any particular gender shall include all other genders and references to persons shall include companies and other unincorporated associations or bodies corporate and (in each case) vice versa.

1.4 Any reference to "including" shall mean "including without limitation".

1.5 Headings to Conditions are for convenience only and do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.3, the Contract shall be on these Conditions 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, specification or other document).

2.2 Any order for Goods from the Buyer shall be deemed to be an offer to purchase the Goods subject to these Conditions.

2.3 These Conditions shall not be varied unless any agreement to vary is recorded in writing and signed by an authorised representative of both the Seller and Buyer.

2.4 No order placed by the Buyer shall be deemed to be accepted by the Seller until the Seller's Acknowledgement has been issued to the Buyer or (if earlier) the Seller provides the Goods to the Buyer. Upon the Seller's acceptance of the order, the Seller and the Buyer will have a binding Contract between them.

2.5 The Buyer warrants that all the details in the order and any applicable specification are complete and accurate.

2.6 The Conditions shall apply to the sale of all Goods. Save as has been specifically provided for in the Conditions, any representations relating to the Goods shall not be effective unless expressly agreed in writing and signed by an authorised representative of both the Seller and the Buyer. Nothing in this Condition shall exclude or limit the Seller's liability for fraudulent misrepresentation.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Seller despatches the Seller's Acknowledgement to the Buyer following the Buyer's order.

3. THE GOODS

3.1 The Buyer acknowledges that it has entered into the Contract as a result of its inspection or knowledge of the Goods and not in reliance upon any description given by the Seller.

3.2 The quantity and description of the Goods shall be as set out in the Seller's Acknowledgement.

3.3 All samples, 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 and shall not form part of the Contract. This is not a sale by sample.

4. DELIVERY OF GOODS

4.1 Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time for collection or delivery is not and shall not be made of the essence of the Contract by notice or otherwise. If no date is estimated in the Seller's Acknowledgement, delivery of Goods shall be within a reasonable time.

4.2 Unless otherwise agreed in writing, the Seller shall deliver the Goods to the Buyer's nominated location at the cost of the Buyer.

4.3 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions:

- **risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);**
- **the Goods shall be deemed to have been delivered; and**
- **the Seller may store the Goods until actual delivery, whereupon the Buyer shall be liable for all related costs and expenses (including storage and insurance).**

4.4 The Seller reserves the right to make deliveries of Goods by instalments and to render a separate invoice in respect of each such instalment in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.5 The Seller will use its reasonable endeavours to deliver any Goods within the estimated timescale but failure to meet estimated timescales will not constitute a breach of the Contract.

4.6 Subject to Condition 9.2, the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and similar costs), costs, damages, charges or expenses caused directly or indirectly by any delay in delivering the Goods (even if such delay is caused by the Seller's negligence).

5. NON DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's point of business shall be conclusive evidence of the quantity received by the Buyer unless the Buyer notifies the Seller within 3 days of delivery and can provide conclusive evidence to the contrary.

5.2 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless the Buyer gives written notice to the Seller of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Seller for non-delivery or short delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note for a reasonable proportion of the Price against any invoice raised for such Goods.

6. TITLE AND RISK

6.1 Title and ownership to the Goods shall not pass from the Seller to the Buyer until the Seller has received the Price in full (in cash or cleared funds) together with all other sums payable by the Buyer to the Seller on any account.

6.2 Until title and ownership in the Goods has passed, the Buyer shall:

- hold the Goods and each of them on a fiduciary basis as bailee on behalf of the Seller;
- store the Goods (at no cost to the Seller) separately from its other merchandise and possessions or the merchandise or possessions of third parties, in such a way that they remain readily identifiable as the Seller's property;
- not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- maintain the Goods in satisfactory condition in accordance with any storage conditions advised by the Seller and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller.



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- 6.3 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.4 The Buyer's right to possession (and the Contract) shall terminate immediately if:
- the Buyer makes any voluntary arrangement or composition with its creditors, the Buyer (being an individual or firm) becomes bankrupt, an order is made for the appointment of an administrator to manage the affairs, business and property of the Buyer or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), a resolution is passed or a petition is presented or an order is made for the winding up of the Buyer (otherwise than for the purpose of solvent amalgamation or reconstruction) or circumstances arise which entitle a court of competent jurisdiction to make a winding up order of the Buyer, an encumbrancer takes possession of or a receiver or administrative receiver is appointed over any of the property, assets or undertaking of the Buyer or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Buyer or if any other person takes possession of or sells the Buyer's assets; or
 - the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it or the Buyer fails to observe or perform any of its obligations under the Contract or any other contract between the Seller and the Buyer or the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - the Buyer encumbers or in any way charges any of the Goods.
- 6.5 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 6.6 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or, where the Buyer's right to possession has terminated, to recover them.**
- 6.7 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 6.8 The Goods shall be at the risk of the Seller until the Goods are either delivered to the Buyer or collected by the Buyer and thereafter they shall be at the risk of the Buyer.**
- 6.9 Under the Seller's insurance policies, there is no cover provided in respect of loss or damage to the Buyer's own property whilst at the Seller's premises or in transit to or from those premises. The Buyer therefore acknowledges that it is its responsibility to insure its property whilst in the custody or control of the Seller.**
- 6.10 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this Condition 6 shall remain in effect.
- 7. PAYMENT**
- 7.1 Time for payment shall be of the essence. If the Buyer does not make payments as required under these Conditions, the Seller may terminate the Contract.
- 7.2 The Price, the costs of packaging, loading, carriage and insurance and VAT at the applicable rate, are payable in full within 30 days of the date of the Seller's invoice.
- 7.3 The Seller's invoice can only be settled by one of the following methods of payment:
- (1) cash, (2) cheque, (3) direct bank transfer to the Seller's account.
- No payment shall be deemed to have been received until the Seller has received cleared funds.
- 7.4 All payments due to the Seller under the Contract shall become due immediately on its termination despite any other provision of these Conditions.
- 7.5 If the Buyer fails to pay the invoice by the due date then, without prejudice to any other rights of the Seller, the Buyer shall pay interest on any overdue amount from the date on which payment was due to the date of actual cleared payment (whether before or after judgement) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and reimburse to the Seller all costs and expenses (including legal costs) incurred in the collection of any overdue amount.**
- 7.6 The Buyer acknowledges that the Seller is required by its insurers to immediately report any company in breach of these Conditions and to place it on STOP for all deliveries. This action may result in the withdrawal or downgrading of the Buyer's creditworthiness by credit reference agencies. No Goods will be supplied until any debt is cleared and the Seller reserves the right to require receipt of cleared funds before supplying any further Goods, until such time as the Buyer's creditworthiness is restored by the credit reference agencies.**
- 7.7 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, abatement or otherwise unless it has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 7.8 All property of the Buyer delivered to or in the custody or control of the Seller is subject to a lien for the general balance of account for any sums owed to the Seller by the Buyer. The Seller reserves the right to sell such property as against sums owed if payment is not made within three months of the due date or property is not collected within that period. Any balance due will be paid to the Buyer.
- 8. QUALITY OF GOODS**
- 8.1 The Seller warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period of 28 days from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 8.2 The Seller shall not be liable for a breach of the warranty in Condition 8.1 unless:
- the Buyer gives written notice of the defect to the Seller (and, if the defect is as a result of damage in transit, to the carrier), within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - the Seller is given a reasonable opportunity after receiving the notice of examining any affected Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost for the examination to take place there.
- 8.3 The Seller shall not be liable for a breach of the warranty in Condition 8.1 if:
- the Buyer makes any further use of the affected Goods after giving the notice required by Condition 8.2; or
 - the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; or
 - the Buyer alters such Goods without the written consent of the Seller.
- 8.4 Subject to Conditions 8.2, 8.3 and 8.6, if any of the Goods do not conform with the warranty in Condition 8.1, the Seller shall collect the Goods and may, at its option:
- replace the Goods or any defective part of them and deliver such replacement to the Buyer; or
 - refund a reasonable proportion of the Price of such Goods.
- 8.5 If the Seller complies with Condition 8.4 it shall have no further liability for a breach of the warranty in Condition 8.1 in respect of such Goods.
- 8.6 Any Goods which are damaged at the time of delivery or collection must be reported to the Seller within 48 hours and the Buyer shall allow the Seller or its representative reasonable access to the Goods to examine such damage. The Seller shall only provide replacement Goods if in its reasonable opinion or that of its representative the damage was caused prior to collection or delivery.**
- 8.7 Any Goods replaced shall belong to the Seller and the warranty in Condition 8.1 shall apply to the replacement Goods for the unexpired portion of the 28 day period.
- 8.8 The Buyer shall ensure that the Goods are suitable for the purposes for which they are to be used.



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9. LIMITATION OF LIABILITY

9.1 Subject to Conditions 4, 5 and 8, this Condition 9 sets out the entire liability of the Seller to the Buyer (including any liability for the acts and omissions of employees) in respect of:

- the Goods and any services performed in relation to the Goods;
- any breach of the Seller's contractual obligations arising under the Contract; and
- any representation, statement (other than fraudulent misrepresentation) or tortious act or omission including any negligence arising under or in connection with the Contract ("an Event of Default").

9.2 Notwithstanding any other provision of these Conditions, the Seller does not seek to limit or exclude its liability to the Buyer for death or personal injury resulting from its own or its employees' negligent act or omission or wilful misconduct or for fraudulent misrepresentation.

9.3 Subject to Conditions 9.1 and 9.2, the Seller's maximum total liability to the Buyer in respect of all claims, losses, damages, costs, charges, expenses, liabilities, demands, proceedings and actions (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) in respect of all Events of Default shall not exceed 125% of the total sums paid by the Buyer to the Seller under the Contract.

9.4 The Seller shall under no circumstances be liable to the Buyer for loss of profits, loss of contracts, loss of opportunity, loss of business, loss or depletion of goodwill, increased overheads or administration expenses, management time, or any type of special, indirect or consequential loss of any nature whatsoever (including loss or damage suffered by the Buyer as a result of an action brought by any third party) even if such loss was reasonably foreseeable or the Seller had been advised of the possibility of the Buyer incurring the same.

9.5 All terms, conditions, warranties and other matters which may be implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law. Accordingly, except as expressly set out in these Conditions, the Seller shall have no liability of any nature whatsoever to the Buyer.

9.6 The Seller shall not be liable where any Goods are lost or damaged in transit. All claims by the Buyer shall be made against the carrier.

10. INTELLECTUAL PROPERTY RIGHTS AND BUYER'S INDEMNITY

10.1 By submitting any design, logo or specification (including elements for a bespoke design) (a "Design") for the Goods or to be placed on the Goods, the Buyer warrants to the Seller that:

- it is the owner of all intellectual property rights in the Design;
- use and reproduction of the Design does not require the prior consent of any third party;
- any moral rights relating to the Design have been waived; and
- in possessing the Design and using it for the performance of its obligations under this Agreement, the Seller will not breach any contract nor infringe any copyright, trade mark or any other intellectual property or other right of any third party or be liable to any claim or proceedings in this regard whatsoever.

10.2 The Buyer agrees to indemnify the Seller and keep it indemnified against all claims, costs, proceedings, demands, losses, damages, expenses or liability whatsoever arising directly or indirectly as a result of any breach of the warranties contained in Condition 10.1 above.

10.3 Where the Buyer requests that the Seller produces a bespoke design to be placed on the Goods, the Buyer acknowledges that the Seller may own intellectual property rights in such design. The Seller shall assign its rights in the bespoke design to the Buyer only once full payment is received for the Goods in accordance with Condition 7. The Seller gives no warranty as to the existence of any intellectual property rights in such design or the non-infringing nature of the design produced.

11. ASSIGNMENT AND SUB-CONTRACTING

11.1 The Seller may sub-contract the performance of any of its obligations under or assign the benefit of the Contract to any person, firm or company.

11.2 The Buyer shall not assign, sub-contract, delegate or otherwise deal with all or any of its rights and obligations under the Contract without the prior written consent of the Seller.

12. FORCE MAJEURE

12.1 If the performance by the Seller of any obligation under the Contract is prevented, restricted, or interfered with by reason of circumstances beyond its reasonable control, the Seller shall give notice of this to the Buyer and the Seller shall be excused from performance to the extent of the prevention, restriction, or interference. The Seller shall use its reasonable endeavours to avoid or remove the causes of non-performance and shall continue performance under the Contract whenever the causes are removed or diminished.

13. GENERAL

13.1 Any notice to be given under the Contract shall be in writing and delivered personally or sent by first class, prepaid, recorded delivery or registered post. A notice shall be deemed served, if delivered personally, at the time delivered or, if posted, on the second day after posting (excluding weekends and public holidays).

13.2 Each right or remedy that the Seller and the Buyer has under the Contract is without prejudice to any other right or remedy that may exist whether under the Contract or not.

13.3 In the event that any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal, invalid, unreasonable or otherwise unenforceable, it shall to that extent be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.4 If the Seller fails or delays to exercise any right or remedy, it shall not operate as a waiver of it. If the Seller partially exercises any right or remedy, it shall not be precluded from further exercising that right or remedy.

13.5 Any waiver of a breach of any provision of the Contract shall not be deemed to be a waiver of any subsequent breach or default and shall not affect the other terms of the Contract.

13.6 This Contract shall be governed by and construed in all respects in accordance with English law. In relation to any legal action or proceedings to enforce the Contract or arising out of or in connection with the contract, the Buyer and the Seller irrevocably submit to the exclusive jurisdiction of the English courts.