

## CONDITIONS OF SALE

Date of Issue : 1<sup>st</sup> December 2010

### 1. INTERPRETATION

#### 1.1 In these Conditions:

- “Bailment Liability Limit”** means £1,300 per tonne or such greater amount which comprises the Seller’s insurance limit for bailed property;
- “Buyer”** means the person whose order for the Goods and/or Services is accepted by the Seller;
- “Buyer’s Materials”** has the meaning set out in condition 5.1;
- “Charged Stock”** means any Goods which the Seller agrees to retain at its premises at the Buyer’s request until the date of its release;
- "Conditions"** means the terms and conditions of sale set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing by the Seller;
- “Confidential Information”** means any information of a secret or confidential nature including (but not limited to) technical and non-technical information, business and marketing plans and policies, client lists, terms of contracts or agreements and other similar information relating to the Seller and its suppliers or customers;
- "Contract"** means the relevant contract between the Seller and the Buyer for the sale and purchase of the Goods and/or the supply of the Services;
- "Goods"** means the goods (including any instalment or parts of them, and any Charged Stock (unless otherwise stated) but excluding any Buyer’s Materials) which the Seller is to supply in accordance with 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;
- “Intellectual Property Rights”** means all intellectual property rights (whether vested, contingent or future) including patents, trade and service marks, trade names, rights in designs, copyrights, typography rights, database rights, trade secrets and know-how, in each case whether or not registered and including registrations and applications for registrations of any of the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the same anywhere in the world;

<b>“Price”</b>	means the price of the Goods and/or the Services;
<b>“Product Liability Limit”</b>	means £1 million or such greater amount which comprises the Seller’s product liability insurance limit as set out in the Schedule;
<b>“Seller”</b>	means The Boxshop Limited (registered number SC097103); and
<b>“Services”</b>	means any design or other services to be provided by the Seller pursuant to the Contract whether in relation to the supply of Goods or otherwise.

- 1.2 In these Conditions, the masculine shall include the feminine and the neuter, and the singular the plural, and vice versa as the context shall admit or require.
- 1.3 The expression "person" shall mean any person, body corporate, unincorporated association and partnership.
- 1.4 The headings in these Conditions are for ease of reference only and shall not affect their construction.
- 1.5 Any reference to a statutory provision shall include that provision as from time to time modified or re-enacted provided that in the case of modifications or re-enactments made after the date of the Contract they shall not have effected a substantive change to that provision.
- 1.6 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of the Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of the Incoterms and these Conditions, the latter shall prevail.

## **2. BASIS OF THE SALE**

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or the Services in accordance with any written order of the Buyer which is accepted by the Seller, subject to these Conditions. For the avoidance of doubt, the Seller may refuse any order in its absolute discretion.
- 2.2 All other terms and conditions (except those implied in favour of a seller which are not inconsistent with these Conditions) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or any other document delivered or sent by the Buyer to the Seller are expressly excluded.
- 2.3 Receipt of the Goods by the Buyer or completion of the Services by the Seller shall be deemed to be conclusive proof that the Buyer has accepted these Conditions in the absence of any express or other implied acceptance of these Conditions by the Buyer.
- 2.4 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.5 The Seller's employees or agents are not authorised to make any representations concerning the Goods or Services 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.
- 2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the Services or to the storage, application or use of the Goods (whether in conjunction with other materials or otherwise) 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.

2.7 Any typographical, clerical or other error or omission 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.

2.8 The Buyer shall provide to the Seller all information necessary to enable it to perform the Contract. If it does not do so, the Seller shall have such additional time to perform the Contract as may be required by it.

### **3. QUOTATIONS AND ORDERS**

3.1 Any quotation or estimate given by the Seller is an invitation to the Buyer to make an offer only and no order of the Buyer placed with the Seller in pursuance of a quotation or estimate or otherwise shall be binding on the Seller unless and until it is accepted by an authorised representative of the Seller.

3.2 All quotes are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

3.3 The quantity, quality and description of and any specification for the Goods and/or the Services shall be those set out in the Buyer's order (if accepted by the Seller). 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.

3.4 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.

### **4. SPECIFICATIONS AND SAMPLES**

4.1 If the Services are to be performed or 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, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any Intellectual Property Right of any person which results from the Seller's use of the Buyer's specification.

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

4.3 All sketches, origination work, drawings, artwork, specifications, mouldings, dies and other such items prepared or provided by the Seller shall remain the property of the Seller and shall be returned to the Seller on request. The Seller may destroy or dispose of such items at its absolute discretion and without liability to the Buyer.

4.4 The Seller may make an additional charge for artwork, design and origination work including proofs, samples and models and accepts no responsibility in respect of any errors, omissions or defects in or arising from the same if they have been approved by the Buyer.

4.5 Samples are used solely to enable the Buyer to judge for itself the quality of the bulk and as a mere indication of the type and quality of the Goods and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample.

## **5. BUYER'S MATERIALS**

- 5.1 The Buyer is advised to retain duplicates or copies of any master artwork, films, tapes, disks and other materials provided by it to the Seller in connection with the Contract ("Buyer's Materials").
- 5.2 The Seller's liability for any loss of or damage to any of the Buyer's Materials or any Charged Stock whilst in the possession or custody of the Seller (whether such loss or damage is due directly to the negligence of the Seller, its employees or agents, or otherwise) shall not exceed the limits set out in condition 5.3 unless:-
- 5.2.1 at the time of ordering the Goods from the Seller the Buyer shall declare in writing to the Seller a special interest in the Buyer's Materials and/or the Charged Stock and agrees to pay a surcharge over the Price calculated by reference to the extent of that interest; and
  - 5.2.2 in respect of the Buyer's Materials, prior to the initial delivery of such materials to the Seller the Seller provides the Buyer with a written acknowledgement of such special interest setting out the extent to which the Seller agrees to narrow the scope of its limitation of liability in respect of such loss or damage to the Buyer's Materials as may occur in the future; or
  - 5.2.3 in respect of the Charged Stock, prior to the Seller notifying the Buyer that the Charged Stock is available for delivery to the Buyer the Seller provides the Buyer with a written acknowledgement of such special interest setting out the extent to which the Seller agrees to narrow the scope of its limitation of liability in respect of such loss or damage to the Charged Stock as may occur in the future.
- 5.3 The limits referred to in condition 5.2 are:-
- 5.3.1 the Bailment Liability Limit in respect of any claim for direct loss suffered by the Buyer as a result of any loss of or damage to any of the Buyer's Materials or any of the Charged Stock; and
  - 5.3.2 the Price of the Goods and/or Services supplied pursuant to the Contract under which the liability arises in respect of all other claims (including, without limitation, any claims for consequential loss or damage).
- 5.4 The Buyer shall insure all Buyer's Materials and Charged Stock whilst they are in the possession or custody of the Seller for all risks (including loss of profit) in full or for the excess over the Seller's limit of responsibility set out in condition 5.3.
- 5.5 The Buyer acknowledges and agrees that the Seller will have no knowledge of the intrinsic value to the Buyer of any of the Buyer's Materials or Charged Stock nor of the consequential losses the Buyer may suffer as a result of any loss of or damage to any of the Buyer's Materials or Charged Stock whilst in the possession or custody of the Seller nor does it have the ability to insure against any such loss or damage unless it is notified of a special interest pursuant to condition 5.2, and that therefore the limits on the Seller's liability set out in condition 5.3 are reasonable in all the circumstances.

## **6. PRICE**

- 6.1 The Price:-
- 6.1.1 shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply;

- 6.1.2 is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller, at the rate applicable at the appropriate tax point;
  - 6.1.3 is ex works unless otherwise stated, 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; and
  - 6.1.4 does not include the cost of cases or other packing materials which shall remain the property of the Seller and will be returnable at the Buyer's expense at the request of the Seller. Any such cases or packing materials not returned by the Buyer within 30 days of such request shall be paid for by the Buyer at their then value.
- 6.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery of the Goods or performance of the Services, to increase the Price 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 dates, production runs, quantities or specifications for the Goods or the Services which is requested by the Buyer, or any change in the limits on the Seller's liability under the Contract requested by the Buyer pursuant to either of clauses 5.2.1 or 12.3.1 or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

## **7. PAYMENT**

- 7.1 The Seller shall be entitled to invoice the Buyer for the Price on or at any time after delivery of the Goods or performance of the Services, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event 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.
- 7.2 The Buyer shall pay the Price (in full, in sterling and clear of any banking charges) within 30 days of the date of the Seller's invoice, notwithstanding that delivery of the Goods or performance of the Services may not have taken place and that property in the Goods has not passed to the Buyer.
- 7.3 The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 7.4 The Buyer shall not be entitled to set off against any monies due to the Seller under the Contract any amount claimed by or due to the Buyer from the Seller whether pursuant to the Contract or on any other account whatsoever.
- 7.5 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:-
  - 7.5.1 cancel the Contract or suspend any further deliveries or supplies to the Buyer;
  - 7.5.2 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);
  - 7.5.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of three per cent per annum above Lloyds TSB Bank 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); and
  - 7.5.4 charge the Buyer for all expenses (including legal fees) incurred by the Seller in collecting the amounts due.

## **8. DELIVERY**

- 8.1 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.
- 8.2 Any dates quoted for delivery of the Goods or for the supply or completion of the Services (as the case may be) are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Seller or the Services supplied in advance of the quoted date upon giving reasonable notice to the Buyer.
- 8.3 Where Goods or Services are to be supplied or delivered by the Seller in accordance with periodic delivery or performance schedules or similar notification of the delivery or performance requirements of the Buyer, the Buyer shall not be entitled to cancel or vary any such delivery or performance schedules or requirements, which are expressed by the Buyer to be firm requirements, without the prior written consent of the Seller, and the Seller shall be entitled to reimbursement of any additional costs and expenses incurred or suffered as a result of such cancellation or variation.
- 8.4 When expedited delivery or completion is agreed to by the Seller and necessitates overtime or other additional costs the Buyer shall reimburse the Seller for the amount of such overtime payment or other costs.
- 8.5 Where postponement of delivery of the Goods or completion of the Services is agreed by the Seller the Buyer shall, if required by the Seller, pay all costs and expenses (including a reasonable charge for storage and insurance of the Goods and interest on the Price) occasioned thereby but any Goods shall be held at the Buyer's risk as from the time of postponement.
- 8.6 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10% more or 10% less than the quantity ordered and the Price shall be adjusted to reflect the quantity delivered but based on the Contract rate.
- 8.7 The Seller shall be entitled to make delivery of the Goods or perform the Services by instalments and to invoice the Buyer for each instalment despatched or performed. Each delivery or 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.
- 8.8 If the Seller fails to deliver the Goods or perform the Services 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 or services, to replace those not delivered or performed, over the Price.
- 8.9 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:-
- 8.9.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 8.9.2 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 or charge the Buyer for any shortfall below the Price.

- 8.10 Where damage to or loss of the Goods occurs before delivery to the Buyer, the Seller undertakes (subject as provided in condition 8.11) to replace or (at its discretion) to repair free of charge any Goods so damaged or lost in which event the time for delivery of the damaged or lost Goods shall be extended for such period as the Seller shall reasonably require for such replacement or repair.
- 8.11 The undertaking in condition 8.10 is conditional upon:-
- 8.11.1 the Buyer giving written notice of such damage or loss with reasonable particulars thereof to the Seller and to the carrier (if other than the Seller) within 7 days of the receipt of the Goods or in the case of total loss within 5 days of receipt of the Seller's or the carrier's (as the case may be) delivery advice or other notification of despatch; and
- 8.11.2 the Buyer (if requested by the Seller and at the Buyer's cost) returning any damaged Goods to the Seller's works within 30 days of receipt thereof.
- 8.12 Save as expressly provided in this condition 8, the Seller shall not have any liability whatsoever for, or in connection with, any damage to or loss of the Goods in transit to the contracted place of delivery.

## **9. ACCEPTANCE**

- 9.1 Without prejudice to the Buyer's rights under condition 8.10 and 11 the Buyer shall be deemed to have accepted the Goods and/or the Services as being in conformity with the Contract, and shall be bound to pay for them, unless written notice of rejection thereof is received by the Seller within 7 days of delivery.
- 9.2 Save in the circumstances referred to in condition 11, Goods accepted by the Buyer cannot subsequently be returned and any claim which the Buyer might otherwise have shall be deemed to have been waived.
- 9.3 If after notice of rejection has been given the Buyer deals with the Goods as owner thereof, or if any conduct of the Buyer is inconsistent with such rejection or with the ownership of the Goods by the Seller, the Buyer shall be deemed to have accepted the Goods and be bound to pay for them.

## **10. RISK AND PROPERTY**

- 10.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-
- 10.1.1 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
- 10.1.2 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, the time when the Seller has tendered delivery of the Goods.
- 10.2 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 cleared funds payment in full of the Price and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 10.3 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. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

- 10.4 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.
- 10.5 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 monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **11. WARRANTIES**

- 11.1 Where the Contract requires the Seller to manufacture print supply or use a design style artwork or similar that is subject to Intellectual Property Rights the buyer warrants that the buyer has obtained the consent of the owner of the said Intellectual Property Rights for the Seller to manufacture print supply or use such design style artwork or similar and the Buyer further warrants that the seller is entitled to rely on the instructions and bona fides of the Buyer in these matters.
- 11.2 Subject to the condition 11.2, the Seller warrants that the Goods and Services will correspond with their specification at the time of delivery or performance (as the case may be) and will be free from defects in material and workmanship at the time of their original delivery or performance.
- 11.3 The warranty set out in condition 11.1 is given by the Seller subject to the following conditions:-
- 11.3.1 the Seller shall be under no liability in respect of any defect in the Goods or Services arising from any drawing, design or specification supplied by the Buyer;
  - 11.3.2 the Seller shall be 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;
  - 11.3.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Price has not been paid by the due date for payment; and
  - 11.3.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller and of which the Seller is actually aware.
- 11.4 Without prejudice to the provisions of condition 8, where any valid claim in respect of any of the Goods or Services which is based on any defect in the quality or condition of the Goods or 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 supply further Services (or the part in question) free of charge or, at the Seller's sole discretion, refund or issue a credit note to the Buyer for the Price (or a proportionate part of the Price) PROVIDED ALWAYS that:-
- 11.4.1 the Buyer has notified the Seller in writing within 14 days of the time when it discovered, or ought to have discovered, any such defect;
  - 11.4.2 the Buyer has afforded the Seller a reasonable opportunity to inspect the Goods and, if so requested by the Seller, has returned (at the Buyer's risk) the allegedly defective Goods to the Seller's main office (or such other address as it may have specified) suitably packaged and carriage pre-paid;
  - 11.4.3 the Goods have been properly and correctly stored and/or used by the Buyer;



11.4.4 the Buyer has made no further use of the Goods that are alleged to be defective after the time at which the Buyer discovered that they were defective; and

11.4.5 the liability of the Seller under this condition 11.3 is accepted by the Buyer in substitution for and to the exclusion of any other claims for direct loss which the Buyer has or may have.

11.5 Subject as expressly provided in these Conditions, and except where the Goods or Services are supplied 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.

## **12. LIABILITY**

12.1 Nothing in these Conditions shall limit or restrict the Seller's liability for death or personal injury resulting from its negligence or for any injury or damage caused by a defective product within the meaning of the Consumer Protection Act 1987.

12.2 The Seller's liability for any claim relating to loss of or damage to any of the Buyer's Materials is as set out in condition 5.2.

12.3 The Seller's aggregate liability for any other claim or series of claims arising out of the Contract or out of any act or series of acts or omissions or any default or defaults of the Seller (whether arising from the Seller's negligence or otherwise) shall not (subject to the provisions of condition 12.1) exceed the limits set out in condition 12.4 unless:-

12.3.1 at the time of ordering the Goods or the Services from the Seller the Buyer shall declare in writing to the Seller a special interest in the supply of the Goods or Services and agrees to pay a surcharge over the Price calculated by reference to the extent of that interest; and

12.3.2 prior to the delivery of the Goods or performance of the Services (as the case may be) the Seller provides the Buyer with a written acknowledgement of such special interest setting out the extent to which the Seller agrees to narrow the scope of its limitation of liability in respect of such loss as may occur in the future.

12.4 The limits referred to in condition 12.3 are:-

12.4.1 the Product Liability Limit in respect of any claims for direct loss suffered as a result of loss of or damage to physical property caused by the Goods sold or Services supplied; and

12.4.2 the Price of the Goods and/or Services supplied pursuant to the Contract under which the liability arises in respect of all other claims (including, without limitation, any claims for consequential loss or damage).

12.5 The Buyer acknowledges and agrees that the Seller will have no knowledge of the intrinsic value to the Buyer of any of the Goods and/or Services nor of the consequential loss or damage the Buyer may suffer as a result of any failure by the Seller to supply such Goods and/or Services in accordance with the Contract nor does it have the ability to insure against any such loss or damage unless it is notified of a special interest pursuant to condition 12.3, and that therefore the limits on the Seller's liability set out in condition 12.4 are reasonable in all the circumstances.

12.6 The Buyer acknowledges that it has discussed the limitations of the Seller's liability set out in conditions 5.3 and 12.4 with the Seller and that the Seller has informed the Buyer that:-

- 12.6.1 the Seller's insurers require the Seller to incorporate into the Contract the limitations of liability set out in conditions 5.3 and 12.4 as a condition of the Seller's insurance contract;
- 12.6.2 if the Buyer considered that the limitations were insufficient in the context of the Buyer's business, it is possible for the Seller to negotiate increased insurance cover with its insurers and in such circumstances a higher maximum limitation could be negotiated other than that set out in conditions 5.3 and 12.4 provided that the Price would then be increased to reflect the increased insurance premium payable by the Seller;
- 12.6.3 the Buyer acknowledges that it considers the limitations set out in conditions 5.3 and 12.4 to be reasonable in the context of its business, the Buyer's Materials being supplied to the Seller, and the Goods and Services being supplied by the Seller and that it has not therefore requested the Seller to make enquiries of its insurers on the basis set out in condition 12.6.2.
- 12.7 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 or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control including, without prejudice to the generality of the foregoing, act of God, explosion, flood, tempest, fire or accident, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, or power failure or breakdown in machinery.
- 12.8 Where the Goods or Services are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 (as amended)) the statutory rights of the Buyer are not affected by these Conditions.

### **13. INSOLVENCY AND BREACH**

- 13.1 If any of the following events occur, are threatened or in the opinion of the Seller are reasonably likely to occur:-
- 13.1.1 the Buyer shall commit any breach of the Contract and shall fail to remedy such breach (if capable of remedy) within a period of 7 days from receipt of notice in writing from the Seller requesting such breach to be remedied;
- 13.1.2 any distress or execution is levied upon any of the goods or property of the Buyer;
- 13.1.3 the Buyer (or where the Buyer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors or a petition is presented or an order is made for the Buyer to become a bankrupt; or
- 13.1.4 the Buyer (being a limited company) has an administrative receiver or a receiver and manager appointed of the whole or any part of its undertaking, property or assets or a petition is presented or an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Buyer or for the appointment of an administrator thereof

the Seller shall thereupon be entitled without prejudice to its other rights hereunder forthwith to suspend further performance of the Contract and of any other contract between the Seller and the Buyer until the default has been made good or to determine the Contract or any other contract between the Seller and the Buyer or any unfulfilled part thereof or at the Seller's option to make partial supplies of Goods and/or Services.

13.2 Notwithstanding any such termination the Buyer shall immediately pay to the Seller at the Contract rate for all work done, materials used and Goods and Services delivered or performed (as the case may be) up to and including the date of termination and shall in addition indemnify the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the supply or non-performance of the Contract including the cost of any material, plant or tools used or intended to be used therefor and the cost of labour and other overheads including a percentage in respect of profit.

#### **14. EXPORT TERMS**

14.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this condition 14 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

14.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

14.3 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 (as amended).

14.4 The Buyer shall be responsible for arranging for testing and 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.

14.5 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by an independent financial institution acceptable to the Seller.

#### **15. PRODUCT LIABILITY AND REGULATORY COMPLIANCE**

15.1 The Buyer shall ascertain and comply with applicable laws relating to the Goods (including any consumable items), their operation, use and disposal, including compliance with customs declarations and formalities and shall ensure that the Goods are used only for the purposes and in the manner for which they were designed and supplied.

15.2 The Buyer shall procure that:-

15.2.1 the Goods are operated correctly, that safe working practices are adopted and complied with and that all persons likely to come into contact with the Goods receive appropriate training and all applicable information in respect thereof; and

15.2.2 all third parties who use or may be affected by or rely upon the Goods receive all appropriate warnings and that any warning notices displayed on the Goods are not removed, defaced or otherwise obscured.

15.3 The Buyer shall pass on the obligation set out in condition 15.2 to any third party recipient of the Goods.

15.4 If the Seller makes any recommendation to the Buyer in respect of the Goods concerning safety after delivery the Buyer shall promptly comply with same and procure compliance by any third party. Reasonable charges in respect of the Seller being required to supply replacements for, or additions to, the Goods in this respect shall be paid by the Buyer.

15.5 The Buyer shall indemnify the Seller in respect of any liability arising in relation to any breach of the Buyer's obligations under this condition 15 whether such liability arises as a result of a third party's use or operation of the Goods or otherwise.

**16. GENERAL**

- 16.1 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.
- 16.2 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 party 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.
- 16.3 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.
- 16.4 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 thereby.
- 16.5 Save as expressly stated in these Conditions, a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 16.6 The Buyer shall not at any time disclose any Confidential Information relating to the Seller or use such information in any manner which might be detrimental to the Seller.
- 16.7 The Contract shall be governed by the laws of Scotland and the Buyer irrevocably submits to the jurisdiction of the Scottish courts.