

STANDARD TERMS AND CONDITIONS OF SALE FOR ACENTA STEEL LIMITED (and Associated Companies) trading as ACENTA

1. Definitions

1.1 In these Conditions:

"Associated Companies" means any subsidiary or holding company (each as defined in section 1159 of the Companies Act 2006) from time to time of the Seller, and any subsidiary from time to time of a holding company of the Seller.

"Buyer" means a person who places an Order for Goods with the Seller.

"Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with clause 29.5.

"Contract" shall mean a contract between the Seller and the Buyer for the sale and purchase of Goods pursuant to an Order, subject to these Conditions.

"Force Majeure Event" has the meaning given in Condition 24.

"Goods" means goods which are the subject of an Order and which are described in the Seller's Order acknowledgement

"Order" shall mean an Order for Goods by the Buyer which is accepted by the Seller.

"Seller" means Acenta Steel Limited, registered in England and Wales with company number 03725308 and whose registered office is at Planetary Road, Willenhall, West Midlands, WV13 3SV

"Specification" means any specification for the Goods, including any related plans and drawings, that is agreed by the Buyer and the Seller and specified in writing in the Contract.

"Working Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

1.2 In these Conditions, the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3 Any term of expression which is defined in or given a particular meaning by the provisions of the International Commercial Terms current at the date of the Seller's Order acknowledgement shall have the same meaning in these Conditions, but in the event of a conflict these Conditions will prevail.

2. Formation of Contract

2.1 These Conditions shall form the terms and conditions of the Contract and shall apply to the exclusion of any terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice, course of dealing, or by law (insofar as the exclusion of the same is lawful).

2.2 Quotations given by the Seller are indicative only and are not binding on the Seller nor open for acceptance by the Buyer. Quotes remain valid for 7 days from their date of issue. Where Goods are quoted for supply from stock they are quoted subject to being unsold when the Buyer's Order is accepted.

2.3 The placing of an Order by the Buyer shall constitute an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.4 No Contract shall come into existence until an Order is accepted in writing by the Seller on the Seller's order acknowledgement form or, if there is no written acceptance of the Buyer's Order, when the Goods are delivered in accordance with Condition 5 below.

2.5 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

2.6 All samples, drawings, descriptions, illustrations, designs, weights, measurements, advertising and other information included in the Seller's catalogue or other literature are for guidance only and shall not form part of the Contract.

3. Orders not in Hard Copy Form

Orders made orally must be confirmed in writing by the Buyer within 2 Working Days of their being received or they will be executed at the Buyer's risk. The Buyer will indemnify the Seller against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller as a consequence of any mistake in transmitting, recording or implementing any such Order.

4. Cancellation and Amendments to Orders

4.1 Cancellation of any part of an Order by the Buyer will not be valid unless it has been notified to and accepted by the Seller in writing and only upon the condition that the Buyer pays to the Seller:

4.1.1 the total costs incurred by the Seller in producing the Goods which are the subject of the Order;

4.1.2 the Seller's loss of profit in respect of that Order; and

4.1.3 any other costs incurred by the Seller arising directly or indirectly out of such cancellation.

4.2 The amendment of any part of an Order by the Buyer will not be valid unless notified to and accepted by the Seller in writing (at its discretion), and only upon the condition that the Seller shall be entitled to revise any applicable quotation and specify amended terms that shall apply to that Order (including the price and the delivery date).

5. Prices

5.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

5.2 Any price quoted by the Seller is based upon the applicable surcharges (including but not limited to the costs and charges of packaging, insurance, freight and delivery and any other charges specified in the Seller's relevant carriage tariffs current at date of despatch) at the date of quotation or acceptance of an Order, and shall be subject to Condition 5.4 below.

5.3 Unless otherwise expressly stated in writing, all prices are exclusive of VAT, which shall be charged at the appropriate prevailing rate at the relevant tax point.

5.4 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

5.4.1 any factor beyond the Seller's reasonable control (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs, or increases in the surcharges referred to at Condition 5.2 above);

5.4.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods Ordered, or the Specification; or

5.4.3 any delay caused by any instructions of the Buyer or failure of Buyer Customer to give the Seller adequate or accurate information or instructions.

5.5 Where applicable, the price shall include any other tax or duty relating to the sale or delivery of the Goods and where applicable the appropriate freight/delivery and other charges as specified in the Seller's relevant carriage tariffs current at date of despatch.

6. Terms of Payment

6.1 Time of payment is of the essence of the Contract.

6.2 Subject to prior written agreement to the contrary, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the earlier of the Seller notifying the Buyer that the Goods are ready for delivery or the Seller tendering delivery of the Goods (whether or not the Buyer accepts such delivery).

6.3 Payment is due from the Buyer in full and cleared funds on or before the last day of the month following the month which the Goods are delivered pursuant to Condition 7.3 notwithstanding that the property in the Goods may not have passed to the Buyer.

6.4 The Buyer shall pay all amounts due under a Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

6.5 The Buyer shall not be entitled to delay nor withhold the whole or any part payment due to the Seller on the grounds of insufficient or no proof of delivery unless the Buyer has notified the Seller in writing within 7 days of the invoice date requiring proof of delivery as per Condition 7.3 below. The Seller's delivery note, invoice copy receipted on behalf of the Buyer, or other such reasonable evidence as the Seller may procure shall be sufficient proof of delivery for this purpose.

6.6 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Seller shall be entitled at its own absolute discretion to charge interest on the overdue amount from the due date until actual payment at an annual rate of 4 per cent above the base rate of National Westminster Bank plc. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

7. Time of Delivery

7.1 Any time quoted by the Seller for delivery of all or any of the Goods is an estimate only and time of delivery shall not be of the essence. The Seller shall not be liable for any delay or failure to meet any such estimate, nor for any loss, of whatsoever nature resulting directly or indirectly therefrom, and in these circumstances the Buyer shall not be entitled to avoid the Contract or to any other remedy unless the Seller has guaranteed the date of delivery in a written warranty set out in the Contract that expressly modifies the provision of this Condition 7.1.

7.2 The Seller reserves the right to deliver all or any of the Goods in advance of the agreed delivery date.

7.3 In the absence of agreement to the contrary delivery of the Goods shall be made Ex Works from a site specified by the Seller (in its discretion). Delivery of the Goods shall be completed upon collection of the Goods from a site specified by the Seller or, if an alternative delivery location is agreed between the parties, upon the arrival of the Goods at that delivery location.

7.4 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Buyer's failure to take delivery of the Goods, or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

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8. Means of Delivery

- 8.1 The Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 8.2 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions after notification by the Seller that the Goods are ready the Seller may (without prejudice to its other rights and remedies):
- 8.2.1 store the Goods (on its own or any third party's premises) and charge the Buyer for its reasonable costs (including without limitation any VAT, costs of storage, insurance and transportation charges); and/or
- 8.2.2 sell the Goods at any time and, after deducting all costs and expenses incurred by the Seller, account to the Buyer for any excess over the price already paid under the Contract or charge the Buyer for any shortfall between the Contract price and such costs and expenses.
- 8.3 The Seller will consider a claim by the Buyer in respect of a shortfall in weight or quantity of the Goods only if the Buyer complies with the following conditions and subject to Condition 9:
- 8.3.1 Notification of short delivery (measured by weight or number) must be made in writing to the Seller within 3 days of the delivery of the Goods to the Buyer pursuant to Condition 7.3 and before the Goods have been used, processed or sold and the Seller must be given the opportunity to verify the accuracy of the Buyer's claim for 7 days following the date of the notification;
- 8.3.2 Notification of non-delivery must be made in writing to the Seller within 14 days after the date of the Seller's invoice.
- 8.4 The Buyer shall ensure compliance with all legal requirements applicable to the Contract and the Goods, including those relating to health and safety, the importation and use of the Goods and the payment of duties. It shall be a condition precedent to performance of the Seller's obligations under the Contract that all necessary licenses, permits and consents relating thereto shall have been obtained by the Buyer and the Buyer warrants that the same will be obtained prior to the Seller's performance of its obligations.

8.5 Delivery in instalments

The Seller reserves the right to deliver by instalments and each delivery shall constitute a separate Contract to which these Conditions shall apply and shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to treat the Contract as a whole repudiated or to cancel any other instalment.

9. Weight and Quantity

- 9.1 Unless the Contract specifies otherwise, the Seller shall be entitled to select the basis on which to calculate the price for the Goods and such calculation may take into account any usual industry standard tolerances applicable to such Goods, including the weight, length, thickness, scrap loss and/or packaging of goods.
- 9.2 The weight or quantity of the goods printed upon the Seller's delivery advice note or despatch note shall be final unless the Buyer has given notice in accordance with Condition 7.3 above.
- 9.3 Unless the Contract expressly specifies otherwise, delivery to the Buyer of a weight or quantity of goods up to 10% less than or greater than that which the Contract specifies shall under no circumstances be a breach of contract by the Seller or entitle the Buyer to reject the Goods delivered.
- 9.4 Where the weight or quantity of goods delivered is less than or greater than that which the Contract specifies:
- 9.4.1 the Seller shall invoice pro-rata in accordance with the quantity or weight actually delivered; and/or
- 9.4.2 the Seller may (at its option) make up part or all of the shortfall within a reasonable time.

10. Specification, standards and warranties

- 10.1 Subject to the provisions of these Conditions, Goods supplied by the Seller will, at the date of delivery, comply with any Specification and/or any other standard specified in writing by the Seller in the Contract and be free from damage or defects, subject to the usual industry standard tolerances (including as to the weight, length, thickness, scrap loss and packaging of the Goods).
- 10.2 The Seller shall not be liable for the Goods' failure to comply with Condition 10.1 above in any of the following circumstances:
- 10.2.1 the Buyer makes any further use of such Goods after giving notice that the Goods are damaged or defective in accordance with Condition 15.1;
- 10.2.2 the damage or 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 regarding the same;
- 10.2.3 the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
- 10.2.4 the damage arises in transit as a result of the Buyer having failed to specify in writing in the Order the wrapping and/or packaging required to suitably protect the Goods from damage during transit;
- 10.2.5 the defect or damage arises as a result of the Buyer's misuse, wilful damage, negligence, lack of proper handling of the Goods, or abnormal storage or working conditions;
- 10.2.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 10.3 The Buyer acknowledges and agrees that it is solely responsible for ensuring that the Goods are fit for any particular purpose, and the Seller does not warrant that the Goods are fit for any purpose, whether known to the Seller or implied into the Contract. The Seller acts as processors and stockists only and is not concerned with the manufacture of the Goods, which are purchased by the Buyer in reliance on the Buyer's own assessment as to fitness and quality.
- 10.4 The Seller shall be under no liability in respect of any failure of the Goods to meet any British, European or other internationally recognised standards where the Buyer does not make compliance with such a standard a requirement of the Specification. The Buyer shall satisfy itself that the goods are suitable for any product or application for which they are to be used before the Goods are incorporated into such product or application.
- 10.5 These Conditions set forth the full extent of the Seller's obligations and liabilities in respect of the Goods. In particular, there are no conditions, warranties, statement, undertaking or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Seller except as specifically stated in these Conditions. Any conditions, warranties or other terms concerning the Goods which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, are (to the extent permitted by law) expressly excluded.
- 10.6 The warranty provided in this Condition 10 does not extend to parts, materials or equipment not manufactured by the Seller in respect of which the Seller shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller and can be transferred.

11. Testing and Inspection

- 11.1 If the Seller agrees in writing for any testing and inspection of the Goods to be carried out at the Seller's premises, such testing and/or inspection shall be subject to the following conditions:-
- 11.1.1 upon the Seller providing the Buyer with notice that the Goods are ready for inspection, the Buyer will arrange for the inspection to occur within 7 days of such notice and shall provide the Seller with not less than 1 Working Day's notice of the date and time at which such inspection shall take place. If the Buyer fails to arrange such inspection within those 7 days, or if within 14 days of such inspection the Buyer fails to notify the Seller of any respects in which the Goods are not in accordance with the Contract, then the Buyer shall be deemed to have accepted the Goods and (notwithstanding the provisions of Condition 16) shall have no claim in respect of matters which were or should have been revealed on such testing or inspection;
- 11.1.2 the inspector must be an independent third party acting in good faith and be skilled and experienced in materials and goods similar to the Goods to a level that the Seller considers reasonably satisfactory;
- 11.1.3 the inspector's findings shall be final in the absence of a manifest error; and
- 11.1.4 all costs of such testing and/or inspection shall be borne by the Buyer (including but not limited to payment for any bar which is cut, altered or otherwise damaged for testing purposes);
- 11.2 Where the Goods pass the testing and/or inspection, the following conditions shall apply:
- 11.2.1 the Buyer shall promptly accept delivery of the Goods which form part of the Contract (which shall include all test pieces) in accordance with Condition 7;
- 11.2.2 the Seller shall not be obliged to produce test performance, certificates of conformity or safety critical certificates unless requested by the Buyer and accepted by the Seller in writing;
- 11.2.3 the Buyer shall pay for all test pieces which comply with Condition 10.

12. Risk

Subject to any Incoterms expressly incorporated into the Contract, the risk in the Goods shall pass to the Buyer when the Goods are delivered to the Buyer.

13. Retention of Title

- 13.1 The Seller and the Buyer expressly agree that the Goods shall remain the sole and absolute property of the Seller as legal and beneficial owner until such time as the Buyer shall have paid to the Seller the Contract price (in full and cleared funds) for the Goods together with the same in respect of any Goods the subject of any other Contract between the Seller and the Buyer.
- 13.2 Subject to Condition 14.3, until such time as the Buyer becomes the owner of the Goods the Buyer will:
- 13.2.1 maintain the Goods in a satisfactory condition and insure them against all risks for their full price from the date of delivery;
- 13.2.2 store them securely on its premises separately from all other goods held by the Buyer in a manner which makes them readily identifiable as the Seller's property; and
- 13.2.3 notify the Seller immediately if it becomes subject to any of the events listed in Condition 14.2.3-14.2.7 (inclusive).
- 13.3 The Buyer has a right to dispose of the Goods as principal in the ordinary course of its business provided that such right is terminable by the Seller giving to the Buyer written notice at any time and shall be automatically terminated (without notice) upon the happening of any of the events referred to in Condition 14.2 below.
- 13.4 The Buyer acknowledges that until such time as title in the Goods passes to the Buyer he is in possession of the Goods as a bailee for the Seller to whom he owes a fiduciary duty.

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- 13.5 Until title to the Goods passes to the Buyer, in the event of sale or disposal of those Goods by the Buyer:
- 13.5.1 the Seller shall be entitled to trace all proceeds of sale received by the Buyer through any bank or other account maintained by the Buyer; and
- 13.5.2 the Buyer shall, if requested by the Seller in writing to do so, assign its rights to recover the selling price of the Goods from third party purchasers.
- 13.6 The Seller may recover Goods from the Buyer if any amounts owed in respect of such Goods remain unpaid after the due date for payment. In such circumstances the Seller may require the Buyer to deliver up all Goods in its possession which have not been resold or irrevocably incorporated into another product or, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
- 14. Termination and suspension**
- 14.1 Without prejudice to any rights and remedies available to it, if the Buyer becomes subject to any of the events listed in Condition 14.2, the Seller shall have the right on written notice to the Buyer to terminate the Contract wholly or in part (together with any other Contract) with immediate effect.
- 14.2 For the purposes of Condition 14.1, the relevant events are:
- 14.2.1 a default by the Buyer in making any payment due under any Contract by the due date for payment;
- 14.2.2 the Buyer commits a material breach of a Contract;
- 14.2.3 the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts;
- 14.2.4 a creditor or encumbrance of the Buyer attaches or takes possession of, or a distress, execution, sequestration or similar process is levied or enforced on or sued against, the whole or any part of the Buyer's assets;
- 14.2.5 a notice is given, resolution is passed, order is made or a petition is filed in connection with the bankruptcy of the Buyer (being an individual) or the winding up of the Buyer (being a company) except for the purposes of a solvent amalgamation or reconstruction, or for the appointment of an administrator, receiver or an administrative receiver over the whole or any part of the assets or undertaking of the Buyer; or
- 14.2.6 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 14.2.7 any event analogous with any of Conditions 14.2.3 – 14.2.6 (inclusive) occurs in any other jurisdiction; or
- 14.2.8 the Seller reasonably anticipates that any of Conditions 14.2.3 – 14.2.7 (inclusive) will occur imminently.
- 14.3 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 14.2. In the event of a suspension or postponement pursuant to this Condition 14.3 the Seller shall be entitled to require, as a condition of resuming performance, payment in advance of delivery or such other security as it may require.
- 14.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest, together with any other sums owing to the Seller for Goods actually delivered to the Buyer, without any deduction, set off or counter claim.
- 14.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 14.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 15. Acceptance of Goods**
- 15.1 The Buyer shall be deemed to have accepted the Goods and agreed that the Goods comply with the terms of the Contract unless:
- 15.1.1 the Buyer gives notice in accordance with Condition 8.3, or 11.1.1 (as applicable); or
- 15.1.2 in the case any failure to comply with the Contract which would be reasonably apparent on careful inspection or by such testing as it is reasonable in the circumstances for the Buyer to undertake (or would have been reasonably apparent had a careful inspection or reasonable test been carried out), the Buyer notifies the Seller in writing within 5 Working Days after delivery of the Goods (with the exception of water damage, which needs to be communicated upon receipt) and before they have been used, processed or resold; or
- 15.2 Any failure to comply with the Contract that does not fall within Condition 15.1.2 is notified to the Seller by the Buyer in writing immediately on discovery of such defect or non-compliance with these Conditions and in any event within 6 months of delivery of the Goods.
- 16. Remedies**
- 16.1 Provided that the Buyer has complied with the requirements of Condition 15 and subject to the Condition 18 and any limitations on liability set out in these Conditions, if the Goods (or any part of them) are upon delivery, defective in quality or state or (save for discrepancy in weight or quantity) otherwise not in compliance with the Contract then either:
- 16.1.1 if the Seller and the Buyer agree, the Buyer shall accept the Goods at an agreed value; or
- 16.1.2 the Buyer may return the relevant Goods to the Seller upon which the Seller shall, at the Seller's option either:
- (a) repair the Goods at the Seller's expense;
- (b) repay the Buyer, or give the Buyer credit for, the invoice price of the Goods (including freight) and any reasonable transport costs incurred by the Buyer in transporting the relevant Goods from the place to which they were originally delivered to the Seller's site from which they were despatched or any other location as the Seller may nominate; or
- (c) replace the Goods by delivering replacement Goods to the original place of delivery as soon as may be reasonably practicable, provided that the original Goods shall at all times remain the property of the Seller and shall be made available to the Seller for collection.
- 17. Limitations of Liability**
- 17.1 Subject to Condition 17.5, the remedies in Condition 16 and Condition 9.4 are given in lieu of any of other legal remedy the Buyer may have (whether in contract, tort or otherwise) and shall be the Buyer's sole remedy in respect of Goods being defective in quality or not in compliance with the Contract.
- 17.2 Subject to Condition 17.5, the Seller (and the Associated Companies) shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with a Contract.
- 17.3 Subject to Condition 17.5, Condition 17.2 and Condition 17.4, the total liability of the Seller (and the Associated Companies) to the Buyer arising under or in connection with a Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price actually paid by the Buyer under that Contract.
- 17.4 Subject to Condition 17.5, the Seller shall have no liability whatsoever to the Buyer until all monies due from the Buyer under the Contract have been paid to the Seller in full and cleared funds.
- 17.5 Nothing in these Conditions shall operate so as to exclude the Seller's liability in respect of death or personal injury resulting from the Seller's negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or any other matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 18. Non-Prime Goods**
- 18.1 Goods sold as "non-prime" (including untested, substandard, scrap or rejected Goods) or goods accepted by the Buyer pursuant to Condition 16 which both parties agree to be "non-prime" are sold in their actual state, as seen, without warranty and with all faults whether or not those Goods have been inspected by the Buyer prior to delivery.
- 18.2 Subject to Condition 17.5, the Seller shall have no liability for Goods supplied "non-prime" and Condition 10.1 shall not apply. If the Buyer re-sells such Goods he shall ensure that provisions in a similar form to those set out in this Condition 18 are incorporated into the resale agreement unless prior to resale the Buyer has caused the Goods re-sold to comply with a recognised specification or standard.
- 19. Tools**
- 19.1 All tools used in the production of any Goods, whether paid for in whole or part by the Buyer, shall be and shall remain the sole and exclusive property of the Seller in all cases.
- 19.2 The Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation) and all interest, penalties and legal costs suffered or incurred by the Seller as a result of the use or operation of tools supplied or specified by the Buyer.
- 20. Processing done on Buyer's Material - "Hire Work"**
- 20.1 All processing of or any work done on the Buyer's materials is entirely at the Buyer's risk and the Seller accepts no liability for damage or yield losses incurred to such material howsoever arising.
- 20.2 The Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation) and all interest, penalties and legal costs suffered or incurred by the Seller as a result of the use, or any work carried out on, the Buyer's material.
- 20.3 The Buyer will only be charged for work done, based on the initial weight despatched by the Buyer and received by the Seller, prior to any processing of work being done and yield losses incurred thereof.
- 21. Lien**
- Without prejudice to any other remedies which the Seller may have, the Seller shall in respect of all debts due and payable by the Buyer to the Seller have a general lien on all property of the Buyer in the Seller's possession from time to time until all monies due to the Seller from the Buyer (whether under a Contract or otherwise) have been paid in full and cleared funds and shall be entitled, upon the expiry of 14 days' notice to the Buyer, to dispose of such property as it thinks fit and to apply any proceeds of sale (after deducting the Seller's reasonable selling expenses) towards the payment of such debts.
- 22. Sub-Contracting**
- The Seller reserves the right to sub-contract the performance of a Contract or any part thereof.
- 23. Intellectual Property Rights**
- If the Goods and/or any services are to be manufactured or delivered, or any process is to be applied, by the Seller in accordance with the Specification or any design or drawing

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submitted by the Buyer, the Buyer shall indemnify the Seller and all Associated Companies against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation) and all interest, penalties and legal costs suffered or incurred by the Seller or any Associated Company arising out of or in connection with any claim made against the Seller or any Associated Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of such Goods or the performance of such services.

24. Force Majeure

24.1 The Seller shall not be under any liability for any delay in performing, or failure to perform, any of its obligations under a Contract, or for any loss or damage, if such delay or failure result from, or any loss or damage is caused wholly or in part by, circumstances or causes beyond its reasonable control (including acts of god, war, fire, accident, transport delays, governmental restriction, condition of control, shortage of fuel or raw materials, acts done or not done pursuant to a trade dispute whether such dispute involves the Company's employees or not, or acts matters or things which occur at or in relation to any suppliers of raw materials or services to the Seller).

24.2 In such circumstances set out in Condition 24.1 above, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, either party may terminate the affected Contract by giving 5 Working Days' written notice to the other party.

25. Compliance with Laws and Regulations

The Buyer shall comply with all applicable laws and regulations in connection with its use and any subsequent re-sale of Goods (including any applicable European Commission Decisions from time to time), and shall indemnify the Seller on demand against all losses, costs, charges, damages and expenses incurred by the Seller or any Associated Companies as a result of a breach of this Condition 25 by the Buyer.

26. Law Applicable

These Conditions and each Contract shall be subject to and construed in accordance with English law. The parties shall submit any dispute relating to the interpretation, operation or alleged violation of these Conditions to arbitration by a single arbitrator to be agreed between the Seller and the Buyer or in default of agreement to be nominated by the President for the time being of the Law Society of England and Wales. Such arbitration shall be held in accordance with the provisions of the Arbitration Act 1996.

27. Data Protection

The Buyer hereby consents to the Seller using any information provided by the Buyer for any purpose connected with the supply of Goods under the Contract including the carrying out of a credit check on the Buyer, arranging credit insurance, processing payment by the Buyer, enforcing the Buyer's obligations and carrying out its own obligations under the Contract.

28. Notices

28.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

28.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

28.1.2 sent by fax to its main fax number.

28.1.3 Any notice shall be deemed to have been received:

28.1.4 if delivered by hand, on signature of a delivery receipt;

28.1.5 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

28.1.6 if sent by fax, at 9.00 am on the next Working Day after transmission.

28.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29. General

29.1 The Buyer shall not assign, transfer, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the Seller.

29.2 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

29.3 No failure or delay by the Seller in exercising any of its rights under the Contract shall operate as a waiver nor shall any waiver by the Seller of any breach by the Buyer of any of its obligations under the Contract affect the rights of the Seller in the event of any further or continuing breach.

29.4 No one other than a party to the Contract, their successors and permitted assignees shall have any right to enforce any of its terms.

29.5 No alteration to these Conditions shall be effective unless expressly agreed to in writing by the Seller.