

C&C GROUP TERMS OF SALE (UK)

1. Definitions

“**Contract**” means a contract between Supplier and Customer for the supply of Products in accordance with these Terms.

“**Customer**” means the person, company or firm (including, where relevant, its partners, directors, employees, officers, agents or sub-contractors (or any person holding themselves out as such)) who purchases the Products from Supplier.

“**Dispense Equipment**” means dispense equipment supplied to Customer by or on behalf of Supplier for draught products, including, without limitation, all beer engines, couplers, pumps, taps, fonts, cowns, badges, T-bars, pump clips, meters, pipes, lines, pressurisation cooling, flash coolers (including remote chilling units) to kegs and casks, wine preservation systems, other cooling and chilling equipment, and connectors to gas cylinders and beers tanks and ancillary apparatus and equipment for the dispensing of draught Product, and stoppers, carbon dioxide tubes and other related equipment, including chillers and cooling equipment but excludes carbon dioxide and/or mixed gas bottles and cylinders of whatever size and any flow regulating or monitoring systems.

“**Group**” means that party and its subsidiaries and holding companies, and any subsidiaries of any such holding companies, and “subsidiary” and “holding company” will have the meaning given to them by s1159 Companies Act 2006.

“**Insolvency Type Event**” means any event in which Customer compounds with or executes an assignment for the benefit of its creditors, has a bankruptcy order against it, enters into voluntary or compulsory liquidation, has, or provides Supplier notice of intention to have, an administrator or administrative receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent, or Supplier believes that any of the foregoing are reasonably likely to occur and informs Customer accordingly.

“**Order**” means Customer’s order for the supply of Products in any form or method, as the case may be.

“**Products**” means the products and/or materials (or any part of them) set out in the Order which are to be supplied to Customer by Supplier in accordance with these Terms.

“**Returnable Packaging**” means all kegs, casks, locator boards, crates, pallets, returnable bottles / cans, cases, CO2 and/or mixed gas bottles and cylinders of whatever size and any other packaging supplied to Customer by or on behalf of Supplier.

“**Supplier**” means the C&C group company stated in the Contract, delivery note and/or order acknowledgement.

“**Terms**” means these terms and conditions as amended from time to time by Supplier in accordance with [clause 17.7](#).

2. Orders

2.1 An Order constitutes an offer by Customer to purchase the Products in accordance with these Terms. Supplier may acknowledge receipt of Customer’s Order but this does not mean that the Order has been accepted.

2.2 Supplier’s acceptance of the Order is subject to the availability of the Products and shall take place when the Order is confirmed as accepted to Customer by Supplier’s authorised representative in writing (which, for the purpose of this **“2.2**, shall include

confirmation by email) or (if earlier) when the Products are dispatched for delivery or are made available for collection, at which point a Contract shall be formed.

2.3 Supplier reserves the right to reject an Order if it does not fulfil Supplier’s minimum order value (which may be imposed or amended by Supplier at its absolute discretion from time to time).

2.4 Save to the extent that these Terms are expressly amended by a formal written supplemental agreement signed by Supplier’s duly authorised representative, these Terms apply to the Contract to the exclusion of any other terms that Customer may seek to impose or incorporate (including, without limitation, any terms on Customer’s order form or similar document) or which may be implied by trade, custom, practice or course of dealing. The signing or acceptance of any of Customer’s documentation by any of Supplier’s employees or agents shall not modify these Terms or form part of any Contract between Customer and Supplier.

2.5 Unless Supplier expressly elects otherwise, any Contract between it and Customer for the supply of Products shall remain in existence notwithstanding any exercise by Supplier of its rights under [clauses 10, 11.1.1 or 12](#).

3. Delivery

3.1 Delivery of the Products shall be completed once the Products are unloaded by Supplier at Customer’s premises or agreed place of delivery (where Supplier arranges transport) or once the Products are loaded by Customer or its agent (where Customer arranges collection of the Products).

3.2 Customer shall at all times comply with Supplier’s delivery and collection instructions, its health & safety processes and protocols (including Supplier’s Delivery Point Safety Standards) “**Customer Policies**”. Supplier shall not be obligated and shall not be liable for any non-delivery where delivery is not possible due to the Customer failing to comply with the Customer Policies or Supplier otherwise deems it is unsafe to complete delivery.

3.3 Any dates quoted for delivery of the Products are estimated only and the time of delivery is not of the essence.

3.4 Supplier shall not be liable for any delay in delivery of the Products or any loss or damage (including, without limitation, any loss of profit, sales, goodwill, business and/or contract) arising out of Supplier’s delay or failure in delivering the Products or making the Products available for collection.

3.5 Supplier reserves the right to deliver the Products in instalments at its sole discretion. Each instalment shall be invoiced, paid for separately and shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle Customer to cancel any other instalment or Contract.

3.6 Supplier may during any periods of shortage due to causes beyond its control, supply the Products on a pro rata basis among its customers in such a manner as may be deemed equitable in the sole judgement of Supplier and without any liability.

3.7 Customer shall immediately inspect the Products on delivery or collection and, provided that Customer endorses the delivery document at the time of delivery, shall be entitled to reject any

Products that have been delivered in excess or in error or which are damaged, missing or out of date.

- 3.8 Unless inspected, notified and rejected by Customer pursuant to **clause 3.7**, all Products delivered shall be deemed accepted and the Contract shall be treated as fully performed by Supplier.
- 3.9 Except as set out in **clause 3.7**, if Customer refuses or fails to take delivery of the Products, or where the Supplier is unable to deliver as per the terms of **clause 3.2**, or where Customer or its agent is to collect the Products from Supplier and has not done so within three working days after the agreed collection date, Supplier will be entitled to (at its sole discretion): (i) store the Products at the risk of Customer and Customer shall, in addition to the price payable under the Contract, pay for all related costs and expenses of such storage, initial delivery to and from Customer's premises (if applicable) and redelivery (including, without limitation, insurance and carriage) or (ii) sell the Products at the best price readily available and charge Customer for any shortfall below the price achieved and the price under the Contract together with all storage and sale related expenses, including the cost of initial carriage both to and from Customer's premises (less any payment made by Customer).
- 3.10 Products are not sold on a "sale or return" basis, unless specifically agreed in writing. Except as set out in **clauses 5, 12 and 14**, the Products cannot be returned for any reason unless agreed in advance by Supplier in writing.

4. Title and Risk

- 4.1 The risk in the Products shall pass to Customer on completion of delivery in accordance with **clause 3.1** and shall be and remain at Customer's risk at all times unless and until Supplier has retaken possession of them.
- 4.2 Customer shall insure the Products with a reputable insurer from the point at which risk passes to Customer until payment is made to Supplier for their full value. Products shall be insured for their full value against all liabilities pursuant to these Terms, to satisfaction of Supplier and Customer shall produce evidence of such insurance upon the request of Supplier.
- 4.3 Supplier shall retain title to and ownership of all Products, until, except where **clause 5** applies, it has received payment in full of all sums due from Customer (whether under a Contract or otherwise). If payments received from Customer are not stated to refer to a particular invoice Supplier may appropriate such payments to any outstanding invoice.
- 4.4 Until title in the Products passes to Customer pursuant to **clause 4.3**, it may resell the Products in the ordinary course of its business (but not otherwise) provided always that Customer shall hold in trust and to the extent that any monies are owed by Customer, pay to Supplier on demand any proceeds of sale. Customer shall resell the Products as principal and not as agent of Supplier.
- 4.5 Until their resale Customer shall hold the Products in satisfactory condition as Supplier's bailee, keep them secure, separate from any other products and identifiable as Supplier's property and shall not charge, pledge or deal with them or allow any lien or other interest to arise over them.

4.6 Customer grants Supplier or its contractor an absolute right of access to enter Customer's or third party premises where Products are stored without notice to in order to permit Supplier to inspect, audit, collect and/or repossess the Goods or any point-of-sale material provided by Supplier.

4.7 If Customer breaches any of these Terms or an Insolvency Type Event occurs in relation to Customer, then the right of Customer to sell the Products belonging to Supplier will immediately cease. In the event of such breach or Insolvency Type Event, Customer shall (at its cost) deliver the Products to Supplier and Customer shall procure that Supplier shall (without prejudice to any other rights) have the right to enter any place where the Products may be stored and repossess and use the Products.

5. Returnable Packaging and Dispense Equipment

- 5.1 All Returnable Packaging and Dispense Equipment shall remain the property of Supplier or its contractor but shall be at Customer's risk and Customer shall hold all such Returnable Packaging and Dispense Equipment on trust for Supplier and shall not sell, assign, pledge, charge, underlet or in any way part with possession of any of it. Customer hereby grants to Supplier or its contractor an irrevocable right of access to Customer's premises at reasonable times and intervals and after giving reasonable notice for the purpose of inspecting, auditing, servicing and/or removing any Returnable Packaging and Dispense Equipment. Customer shall return all Dispense Equipment to Supplier or its contractor immediately on request or, in the case of Returnable Packaging, immediately and no later than two (2) months from the date of delivery. Any residual Product in the Returnable Packaging shall be the property of Supplier from the time they are collected without further payment by Supplier.
- 5.2 Customer shall be responsible for all loss and theft of and damage to all Returnable Packaging and Dispense Equipment. Where the Returnable Packaging, or Dispense Equipment is lost, damaged or stolen, or if Customer fails to return any Returnable Packaging or Dispense Equipment in a like-for-like state, or at all, Supplier shall be entitled to charge Customer and Customer will, on demand, pay to Supplier the cost of replacement as new.
- 5.3 Supplier shall be entitled to levy a deposit charge from time to time in respect of Returnable Packaging or Dispense Equipment. Credit against any such deposit levied will be given for the return in good condition of the same.
- 5.4 It is the responsibility of Customer to ensure that returned Returnable Packaging and Dispense Equipment are noted on each related delivery note. Customer's signature on the delivery note or its affirmation or payment of any invoice shall be conclusive evidence that it agrees the accuracy thereof.
- 5.5 In no circumstances shall Customer remove the Dispense Equipment from an establishment to which it has been supplied or move it to another part of the establishment except with the approval of and under the control of Supplier or its contractor. Customer shall not permit or allow any third party to remove, repair or modify in any way Dispense Equipment, except with the express authority of Supplier or its contractor.

- 5.6** Customer shall be obliged to arrange and supply electricity for Dispense Equipment where necessary. Customer shall ensure that Dispense Equipment supplied to or under the charge of Customer is maintained in good repair and condition, is kept in accordance with all relevant safety standards and instructions, is insured with a reputable insurer from the time of delivery in the name of and for the benefit of Supplier and is returned to Supplier when no longer used by Customer with Supplier's products supplied hereunder.
- 5.7** Dispense Equipment supplied by Supplier is not compatible with equipment of other product suppliers and must not be interchanged with any such equipment. The only products which may be dispensed through Dispense Equipment provided by Supplier shall be those draught products supplied by Supplier for which the Dispense Equipment was installed. In the event that products not supplied by Supplier are dispensed through such Dispense Equipment, Supplier shall be entitled to remove such Dispense Equipment or charge for its use.
- 5.8** Supplier will not accept any liability whatsoever for loss, damage, nor (except arising out of Supplier's negligence) death or injury arising directly or indirectly out of any interchange or attempted interchange of Supplier's Dispense Equipment with equipment of other product suppliers and Customer will indemnify Supplier against: (i) any loss suffered by Supplier; and (ii) any action, claim, demand or proceeding against Supplier arising out of any such interchange or attempted interchange.
- 5.9** Customer shall comply with Supplier's reasonable guidelines as to storage, handling, transportation and dispensing of the Products from time to time.
- 5.10** Any point-of-sale material supplied by Supplier is for use by Customer for business purposes relating to the Products only and is returnable on demand by Supplier. Customer shall take good and proper care of any such point-of-sale material and make good any damage or loss caused to Supplier by failure to do so.
- 5.11** If Supplier has consented to Customer on-supplying Products to its third party customers, then, without prejudice to the foregoing provisions of **clause 5**, Customer shall procure that all Returnable Packaging and (if applicable) Dispense Equipment relating to such Products are supplied by Customer to its third party customer on the same terms as those set out in **clause 5**.
- 5.12** Where Supplier is lead supplier by volume of draught products (lead brewer) to any Outlet, and a third party supplier is benefiting from the use of Supplier's Dispense Equipment in that Outlet, Supplier reserves the right to charge Customer where any such third party fails to pay Supplier the charges due for such use.
- 6. Price**
- 6.1** The price payable for the Products (excluding Products supplied for export) shall be as stated in Supplier's current price list at the date of delivery unless otherwise agreed in writing by Supplier.
- 6.2** Any price quotation provided by Supplier shall not constitute an offer and is only valid for a period of 14 working days from its date of issue after which Supplier may alter such quotation (or any part of it) without notice to Customer.
- 6.3** All prices stated by Supplier (whether generally or in any Customer specific documentation) are subject to alteration at any time without prior notice and will be reviewed by Supplier at least once in each calendar year. In particular (and without limiting the foregoing) prices are subject to alteration to reflect changes to supplier pricing, supply chain costs, duties, taxes, levies, import costs, transport costs, fuel costs, environmental packaging levies and charges, and costs imposed on Supplier pursuant to a deposit return scheme, customs clearances and/or foreign exchange rates.
- 6.4** Customer acknowledges that there may be errors on any pricing notified by Supplier and where this is the case, Supplier shall provide a corrected invoice to Customer rectifying any error. Customer shall be responsible for settling such invoice in the normal manner and in accordance with these Terms. Any invoice errors must be notified by Customer to Supplier within 14 days of the date of the relevant invoice.
- 6.5** Subject to **clause 6.6**, and unless otherwise agreed in writing by Supplier, the price of the Products is inclusive of all duties, standard packaging and delivery, and exclusive of any special inspection or delivery requirements (including unscheduled and emergency deliveries), any additional transportation costs imposed by law or regulation and value added tax, all of which shall be for the account of Customer.
- 6.6** Where Products are supplied under bond, Customer shall be responsible for any duties and shall keep Supplier fully indemnified against any liability, deduction, contribution, assessment or claim incurred as a result of Customer's failure to fulfil these obligations. Where Products are supplied for export, Supplier's published export price list shall apply which excludes all costs of export. Supplier's sole responsibility is to make the Products available to Customer at the chosen delivery destination. All risk in the Products shall pass to Customer after they leave Supplier's premises and Section 32(3) of the Sale of Goods Act 1979 shall not apply. Responsibility for the customs clearance, duties and complying with all laws and regulations governing the importation, handling, use and re-sale of the Products shall be borne by Customer.
- 6.7** Unless Customer is an approved wholesaler and is purchasing Products from Supplier on that basis, all prices are quoted on the basis that the Products are being purchased by Customer for retail sale to end consumers at an outlet owned and operated by Customer (each an "Outlet") and if the Products are sold otherwise than in an Outlet Supplier reserves the right to clawback any discounts (retrospective or otherwise), listing fees and/or marketing support granted in respect of such Products and charge the full price stated in Supplier's then current price list in respect of those Products.
- 7. Payment**
- 7.1** Supplier may invoice Customer at any time before delivery or collection of the Products and Customer shall make payment in pounds sterling in cleared funds prior to the date of such delivery or collection to the account stated in Supplier's invoice. Customer acknowledges that any amounts due to Customer by

Supplier shall not affect Customer's obligations under this **clause 7**.

- 7.2** All amounts due to Supplier shall be paid in full by Customer without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Time for payment shall be of the essence of the Contract.
- 7.3** All amounts payable by Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by Supplier to Customer, Customer shall, on receipt of a valid VAT invoice from Supplier, pay to Supplier such additional amounts in respect of VAT as is chargeable on the supply of the Products at the same time as payment is due for the Products.
- 7.4** If Supplier makes any payment or overpayment to Customer in error, such payment shall be treated as a debt owed by Customer and shall be repayable to Supplier within 28 days of Customer having made Supplier aware of the error.
- 7.5** Supplier shall not, under any circumstances, accept payments in cash.

8. Credit Accounts

- 8.1** Supplier may, at its sole discretion, establish a credit account for Customer. Any credit account will be subject to Supplier completing credit reference or other enquiries to its satisfaction. A credit account shall only become operational after Supplier has confirmed in writing that such a facility will be available to Customer and shall be subject to any additional terms and conditions notified by Supplier. Supplier shall be entitled, at its sole discretion, to refuse or at any time withdraw a credit account without giving reason and demand immediate payment of all sums then outstanding by Customer.
- 8.2** If Customer has a credit account pursuant to **clause 8.1**, Customer shall make payment in full for the Products in pounds sterling and in cleared funds in accordance with the credit terms and on the date set out in Supplier's invoice.
- 8.3** Supplier may at any time and at its sole discretion demand security or suitable guarantee for or to vary the terms or method of payment before continuing with or delivering Products in satisfaction of any Order notwithstanding any subsisting agreement to provide credit to Customer.

9. Know Your Customer ("KYC") Checks

- 9.1** Supplier reserves the right to conduct KYC Checks (including but not limited to anti-money laundering, sanctions & company screening, and adverse media checks) on an ongoing basis on Customer. Supplier reserves the right to suspend or terminate the Contract where any of the results of the KYC Checks, in Supplier's sole opinion, present a potential compliance or reputational risk or would otherwise prohibit Supplier from continuing the Contract.

10. Non-Payment

- 10.1** Customer must immediately notify Supplier in writing if it disputes an invoice and shall continue to pay the undisputed portion of such invoice in accordance with **clauses 7 and 8**.

- 10.2** If Customer fails to make any payment when due to Supplier in accordance with these Terms (save where any invoice is disputed by Customer in accordance with **clause 10.1**), then without prejudice to Supplier's other rights, Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate.

- 10.3** Interest shall accrue on a daily basis from the due date until payment of the overdue amount whether before or after judgment and Customer shall pay the interest together with the overdue amount. Upon an account being passed to the debt collectors for collection, Supplier shall be entitled to levy an additional collection charge of 5% on such Customer accounts in addition to any interest and legal charges payable.

- 10.4** Any discount, incentive, or benefits given to Customer are subject to payment being made on or before the date specified by Supplier. In the event of late payment Supplier shall be entitled to remove any discount, incentive, or benefits (including those applied on any other Orders) and re-invoice Customer for the Products at the full price stated in Supplier's then current price list.

- 10.5** Any cheques or direct debits unpaid or returned by Customer's bank shall be subject to additional charges as may be notified by Supplier from time to time. Supplier reserves the right to request on demand any alternative form of payment or to cancel any accounts and terms. Customer shall indemnify Supplier in full against all fees, costs and expenses incurred in seeking to recover such sums payable by Customer and/or in repossessing Products belonging to Supplier.

- 10.6** If payment is to be made by instalments, the failure of Customer to pay any instalment in due time shall entitle Supplier to treat such failure as a repudiation of the whole Contract by Customer and to recover damages for breach of Contract and the full balance outstanding on any account between Supplier and Customer shall become immediately payable.

- 10.7** Supplier may at any time, without prior notice, set off, net or withhold any amounts or liabilities owed by Customer (or any member of Customer's Group) to Supplier (or any member of Supplier's Group) against any amounts or liabilities payable by Supplier (or any member of Supplier's Group) to Customer (or any member of Customer's Group), whether: (i) arising under this Contract or otherwise; (ii) arising before or after the date of this Contract; and/or (iii) present or future, actual or contingent, liquidated or unliquidated, disputed or undisputed.

11. Suspension or Cancellation

- 11.1** If Customer experiences an Insolvency Type Event, defaults in any payment or otherwise is in breach of its obligations to Supplier under a Contract (or Supplier reasonably believes that Customer will) then, without prejudice to any other rights or remedies, Supplier may without penalty and by notice to Customer:

- 11.1.1** immediately suspend or cancel delivery of any Products under any Order (including stopping any Products in transit); and/or

- 11.1.2** terminate any uncompleted part of a Contract.

11.2 Upon suspension or cancellation of an Order or termination of a Contract, Customer shall immediately pay to Supplier all of Supplier's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, Supplier shall submit an invoice, which shall be payable by Customer immediately on receipt. In such event, Customer shall not be entitled to any discounts (retrospective or otherwise), listing fees and/or marketing support in relation to unpaid invoices, and any discounts (retrospective or otherwise), listing fees and/or marketing support which have accrued but not yet been paid will be cancelled and any rights to these shall automatically cease.

12. Recovery of Products

12.1 If Customer experiences an Insolvency Type Event or if Customer fails to make any payment when due to Supplier in accordance with these Terms, Supplier shall, without prejudice to any other remedies, have the right to:

12.1.1 enter or appoint a contractor to enter the premises where Products may be (without prior notice), and repossess and dispose of any Products owned by Supplier in order to discharge any sums owed to it under this or any other Contract; and

12.1.2 require Customer not to resell or part with possession of any Products owned by Supplier until Customer has paid in full all sums owed to Supplier under this Contract or any other contract.

12.2 If Supplier notifies Customer of its intention to recover the Products pursuant to **clause 12.1**, Customer's rights under **clause 4.4** shall immediately cease and Customer shall continue to be solely responsible for the Products in accordance with **clause 4.5** until such time as the Products have been returned to Supplier.

13. Customer's Obligations

13.1 Customer shall:

13.1.1 at all times store, handle, use and sell the Products in accordance with any instructions from Supplier and all applicable laws and regulations from time to time;

13.1.2 ensure that the terms of the Order and any Customer Materials (as defined in **clause 15**) are complete, accurate and meet requirements;

13.1.3 be responsible for checking and verifying the suitability of the Products (including any barcoding) and for its own stock control and rotation of stock;

13.1.4 provide Supplier (including its employees, agents and contractors) with access to Customer's premises and other facilities as reasonably required by Supplier to deliver the Products and in accordance with **clause 3.2**;

13.1.5 ensure that the Products are rotated so that the oldest are sold first and in any event before the "Best before Date" which is marked on their respective containers;

13.1.6 ensure that the Products, until resold, remain in the containers in which they are supplied and all labels, names, barcodes, reference marks and numbers and

instructions are not removed, altered or covered at any time;

13.1.7 comply with all applicable laws, statutes, regulations and codes from time to time in force (including without limitation ensuring compliance with those regulations relating to health and safety, bribery, corruption and the environment); and

13.1.8 comply with any additional obligations or requirements that may be notified by Supplier from time to time.

13.2 If requested by Supplier, Customer shall give all reasonable assistance and cooperation in locating and recovering any defective Products and preventing their sale to third parties and shall comply with any product recall procedures adopted by Supplier and use all reasonable endeavours to ensure that its customers co-operate in a similar manner.

13.3 Customer shall indemnify Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred by Supplier or any member of Supplier's Group arising out of or in connection with Customer's breach of warranty or breach of its obligations under these Terms.

14. Quality of Products

14.1 Subject always to Customer complying with its obligations under the Terms, Supplier warrants that the Products will correspond with any description given in its price list or specification (subject to **clause 14.2**), be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with all applicable legislation governing the sale of the Products in the United Kingdom.

14.2 Supplier reserves the right to amend the specification of a Product (whether already agreed with Customer or otherwise) to reflect any changes made by the producer or manufacturer of the Product without notice.

14.3 Without prejudice to **clause 3.7**, Customer must notify Supplier immediately of any defects in a Product and not later than two days upon becoming aware of such defect. Any Products identified with a defect must be made available to Supplier for inspection or returned to Supplier at Customer's own expense (in their original condition and packaging), as Supplier may request.

14.4 Supplier shall at its discretion either refund the purchase price or provide a replacement of any Product notified to it as defective pursuant to **clause 14.3** and, except as set out in **clause 16**, Supplier shall otherwise have no liability in respect of a defective Product. No refund, credit or replacement will be given for any out of date Products.

14.5 Except as provided for in these Terms, there are no warranties, express or implied, of fitness for a particular purpose, or of any other kind except as to title. In particular, all terms and warranties which would otherwise be implied by statute or under common law (including, without limitation, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 13, 14 and 15 of the Supply of Goods and Services Act 1982) are hereby excluded to the fullest extent permitted by law.

15. Intellectual Property Rights

- 15.1** Customer acknowledges that Supplier reserves all intellectual property rights in the Products and any associated merchandise or documentation (including but not limited to copyright, registered and unregistered design rights, registered and unregistered trade marks and confidential know-how). Except for the honest use of any trade marks to identify and promote the Products, Customer may not use any such rights without Supplier's express written consent.
- 15.2** Customer warrants that it has authority to supply any materials, designs and specifications (together "Customer Materials") provided by it to Supplier and that Supplier's use of the Customer Materials shall not infringe the rights of any third party. Customer grants to Supplier a non-exclusive licence to use the Customer Materials for the purposes of performing the Contract.
- 16. Limitation of Liability**
- 16.1** These Terms set out Supplier's entire liability in respect of the Contract.
- 16.2** Nothing in these Terms shall limit any liability for: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (iv) any other liability which cannot be legally limited.
- 16.3** Supplier shall, subject to **clause 16.2**, under no circumstances be liable for any loss of anticipated profit, loss of revenue or savings, loss of business, loss of goodwill, business interruption, any economic loss, any indirect, special or consequential loss or for any third party claims howsoever arising either from breach or non-performance of any of its obligations under a Contract or from the supply of or intended use of the Products, even if Supplier has been advised of the possibility of such potential loss.
- 16.4** Supplier will not, subject to **clause 16.2**, be liable for any loss, damage, claim, cost or expense arising from Customer's failure to comply with its obligations under these Terms or for any loss or damage caused to or suffered by Customer as a direct or indirect result of the supply of the Products by Supplier being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of Supplier including, without limitation, any export or import restrictions, quota, prohibition, changes to taxes, duties levies, customs clearances or circumstances affecting the provision of all or any part of the Products by Supplier's usual source of supply or means of delivery.
- 16.5** Supplier shall not be liable for any delay or non-performance of its obligations arising from any causes beyond its reasonable control (including without limitation: act of God, governmental act, industrial action, war, adverse weather / flood, explosion, pandemic / epidemic, breakdown of plant / equipment, delays in supply chain, material shortages).
- 16.6** Supplier's total liability to Customer shall not, subject to **clause 16.2**, exceed the price paid for the Products with respect to which the claim is made. Supplier's total liability includes liability in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 16.7** Unless Customer notifies Supplier that it intends to make a claim within the notice period set out in this **clause 16.7**, Supplier shall have no liability for that event, subject to **clause 16.2**. The notice period for an event shall start on the day on which Customer becomes, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 16.8** This **clause 16** shall survive termination of the Contract.
- 17. General**
- 17.1** Supplier has a zero tolerance approach to violence, physical, verbal, sexual or psychological harassment, bullying, abuse or threat and reserves the right to terminate any Contract it may have if Customer's personnel subject Supplier personnel or anyone involved in Supplier's supply chain to the same.
- 17.2** The Contract constitutes the entire agreement and understanding of the parties and supersedes all previous oral or written representations, undertakings and agreements relating to the Products. All information contained in Supplier's sales literature or correspondence is provided for guidance only and does not form part of the Contract. The sale of Products shall not be a sale by sample. Supplier's employees and agents are not authorised to make representations or give undertakings relating to the Products or the meaning of these Terms. Customer confirms that it has not entered into the Contract on the basis of any representations that are not expressly incorporated in the Contract.
- 17.3** The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of the remaining terms or rights under a Contract. Any invalid or unenforceable term 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.
- 17.4** The failure of Supplier to insist upon the strict performance of any of the Terms shall not be construed as a waiver of any such term and shall in no way affect Supplier's right to enforce such provision later. Supplier's express waiver of any breach of these Terms shall not be construed as a waiver of any subsequent breach of the same or any other provision of the Terms.
- 17.5** Nothing in the Contract is intended to nor shall it create any partnership, joint venture, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.6** Save for any company in Supplier's Group or any permitted assignee (which Supplier has consented to), a party who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.7** Supplier reserves the right to amend or update the Terms from time to time. Otherwise, no variation of a Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

- 17.8** Supplier may assign or novate its rights and obligations under a Contract to any company within Supplier's Group or to any successor to its business or assets. The Contract is personal to Customer and may not be assigned or transferred by Customer without Supplier's consent. Supplier may subcontract its obligations under a Contract provided Supplier will be responsible to Customer for the performance of the Contract in accordance with these Terms.
- 17.9** These Terms and any Contract shall be governed by the law of the jurisdiction in which Supplier is incorporated and the courts of that jurisdiction shall have exclusive jurisdiction in relation to any dispute relating thereto.