

## **CONDITIONS OF SALE**

### **1 DEFINITIONS**

In the Contract, except where the context otherwise requires, the following words shall have the following meanings:

“**Buyer**” the person, firm or company to whom or to which the Company agrees to sell the Goods subject to the Contract;

“**Company**” is Controls for Doors Ltd;

“**Consumer**” an individual person acting outside his or her business;

“**Contract**” the agreement between the Buyer and the Company comprised of, collectively, any quotation of the Company, the Order Confirmation and these Conditions;

“**Goods**” the articles, products and/or things listed on the Website for sale including samples where relevant, which form the subject matter of the Contract;

“**Order Confirmation**” is as described in Condition 3; and

“**Website**” the Company’s website (which is currently at [www.cfdltd.com](http://www.cfdltd.com)).

Any phrase in the Contract introduced by the term "include", "including", "in particular" or similar expression will be construed as illustrative and shall not limit the sense of the words preceding that term.

### **2 THE CONTRACT**

2.1 The Contract (together with any documents referred to in it) sets out the terms on which the Company supplies Goods to Buyers. Buyers should read carefully and understand the Contract before ordering any Goods from the Website. By ordering any Goods, the Buyer agrees to be bound by these Conditions and the Contract.

2.2 The Buyer should contact the Company’s [sales@cfdltd.com](mailto:sales@cfdltd.com) if it has any difficulty understanding any of the terms of the Contract or has any other queries. The Company recommends that the Buyer keeps a copy of the complete Contract for future reference.

### **3 ACCEPTANCE**

Any quotation, whether written or oral, submitted by the Company shall be deemed to be an invitation to treat and not an offer. The placing by the Buyer of any order for the Goods, whether written or oral, and whether or not any quotation may have been submitted by the Company, shall constitute an offer by the Buyer, and the Contract shall not be taken to have come into existence unless and until the Company shall have accepted the Buyer’s offer in writing or by email (the “**Order Confirmation**”). Any order placed by the Buyer with any of the Company’s salesmen or other employees or representatives shall be subject to written or email acceptance by the Company as aforesaid. Acceptance by the Company shall be deemed to include acceptance of these Conditions, which shall form the Conditions of the Contract and shall apply to the exclusion of any terms or conditions put forward by or on behalf of the Buyer. The Contract will relate only to those Goods detailed in the accepted order, or, if different, will relate only to those Goods whose dispatch (and readiness for dispatch) the Company confirms when accepting the order.

## 4 VARIATION

- 4.1 The Buyer's attention is specifically drawn to the fact that any directors of the Company have authority to make or give on behalf of the Company any representation, warranty, condition or statement other than those contained in the Contract. However no variation of or addition to the Contract, whether written or oral, shall have effect unless and until agreed in writing by the Company and signed by a Director of the Company.
- 4.2 The Company has the right to revise and amend these Conditions from time to time. The Buyer will be subject to the Company's policies and Conditions in force at the time that it orders Goods from the Company, unless any change to those policies or these Conditions is required to be made by law or governmental authority (in which case it will apply to orders previously placed by the Buyer), or if the Company notifies the Buyer of the change to those policies or these Conditions before the Company sends the Buyer the Order Confirmation (in which case the Company has the right to assume that the Buyer has accepted the change to the policies or Conditions, unless **in the case of a Buyer who is a Consumer only**, the Buyer notifies the Company to the contrary within seven working days of receipt by the Buyer of the Goods).

## 5 INFORMATION WHICH THE COMPANY IS REQUIRED TO GIVE THE BUYER

- 5.1 [www.cfdltd.com](http://www.cfdltd.com) is a site operated by the Company. The Company is registered in England and Wales under company number 03077177 and has a registered office at Priory House Pilgrims Court, Sydenham Road, Guildford, Surrey, GU1 3RX, Fax Number 01883 652055, email address [sales@cfdltd.com](mailto:sales@cfdltd.com). The Company's main trading address is Hurst Place, Woldingham Road, Woldingham, Surrey, CR3 7LT. The Company's VAT number is 644620938.
- 5.2 A description of the main characteristics of the Goods is contained on the Website. Such a description will be contained in the Order Confirmation contained with the Goods when delivered to the Buyer.
- 5.3 The price of the Goods (including delivery and packaging charges) and arrangements for payment are as described in Condition 17.
- 5.4 The arrangements for delivery of the Goods are as shown at <http://www.cfdltd.com/faq.htm>. Note that delivery may take place more than 30 days from order. By accepting these Conditions, the Buyer agrees to a later delivery date as specified in <http://www.cfdltd.com/faq.htm>. Other details of delivery are set out in Conditions 11 and 20.
- 5.5 The Buyer has the rights of cancellation detailed in Condition 16.
- 5.6 If Goods ordered by the Buyer are not available, the Company reserves the right to supply substitute goods of at least equivalent quality and price.
- 5.7 The Goods are guaranteed for 12 months.
- 5.8 Details of support/after sales services are as shown at contact us page.
- 5.9 The technical means for concluding the Contract to buy Goods are set out in Condition 3. If the Buyer has made a mistake in inputting any information on the Website in relation to an Order, they should click on the back arrow to change it.
- 5.10 The language of the Contract will be English.

## 6 INFORMATION GIVEN BY THE BUYER

- 6.1 Where appropriate the Buyers shall submit sufficient data, instructions, specifications and other information within a reasonable time to enable the Company to proceed forthwith with any order that is accepted.
- 6.2 In the event that any data, instructions, specifications and/or other information supplied by the Buyer are incorrect or incomplete or are altered or added to in any material respect, the Company shall be entitled to amend any price or quotation made by it so as to take accounts of any increase to it in costs, whether actual or projected.

## 7 SALES TO COUNTRIES OUTSIDE UK

- 7.1 The Company does not accept orders from Buyers outside the UK.
- 7.2 The Company will not be liable for any breach by the Buyer of this Condition 7.

## 8 THE BUYER'S STATUS

- 8.1 By placing an order through the Website, the Buyer warrants that:
- 8.1.1 it is legally capable of entering into binding contracts;
- 8.1.2 **if it is a Consumer:**
- (a) it is at least 18 years old; and
- (b) it is placing the order as a consumer, i.e. an individual acting outside his or her business;
- 8.1.3 it is resident in the UK
- 8.1.4 it is accessing the Website from the UK
- 8.2 If the Company discovers that any of the above warranties are incorrect, the Company shall be entitled to terminate the Contract and to pursue any legal remedies that the Company may have under the general law.

## 9 TIME LIMITS

- 9.1 **Where the Buyer is not a Consumer**, any time or date quoted by the Company for delivery of all or any of the Goods is an estimate only, and the Company shall not be liable for any failure to meet any such estimate, nor for any loss, whether financial or otherwise, resulting directly or indirectly there from.
- 9.2 **Where the Buyer is a Consumer**, if a Good (or substitute good) is unavailable so that the Company cannot deliver it to the Buyer within 30 days of the Buyer's order, the Company will contact the Buyer and either agree a later delivery date or permit the Buyer to cancel the Contract in which the case the Company will refund all monies paid in accordance with the Company's refund policy (set out in Condition 26 below).

## 10 AVAILABILITY

All Goods quoted from stock are quoted subject to being unsold on the date of the Order Confirmation.

## 11 DELIVERY

The Company shall deliver the Goods, when ready, to the Buyer at such address in Great Britain as the Buyer may specify or, if no such address is specified, to any address of the Buyer to which correspondence and/or Goods may previously have been addressed or sent by the Company. Unless otherwise agreed in writing, delivery shall take place at a time convenient to the Company between the hours of 9.00am and 4.00pm Monday to Friday inclusive but excluding Bank Holidays. The manner of delivery shall be such as the Company in its sole discretion shall deem reasonably appropriate.

## 12 LOSS OR DAMAGE IN TRANSIT

**Where the Buyer is not a Consumer**, the Company accepts no liability whatsoever for loss of or damage to Goods (other than where the Goods are collected by or on behalf of the Buyer) in transit unless notified in writing of the details of the loss or damage within seven days following dispatch of the Goods. The Company accepts no liability whatsoever for loss of or damage to Goods which are collected by or on behalf of the Buyer.

## 13 STORAGE

**Where the Buyer is not a Consumer**, in the event that the Buyer shall be unable to accept delivery of the Goods the Buyer shall arrange for the Goods to be at once removed and stored at its own risk and expense. If the Goods shall not have been removed as aforesaid, the Company shall be entitled without further reference to the Buyer to store the Goods upon any of its own premises or arrange for their storage with a third party in which event any costs (including VAT thereon) so incurred by the Company (including but not limited to storage, carriage and insurance) shall be borne by the Buyer.

## 14 DESCRIPTION

**Where the Buyer is not a Consumer**, any specification, drawing and/or other particulars relating to the Goods is, unless otherwise expressly stated in writing, approximate only and any specification, description, design, drawing, illustration and/or other particulars contained in any catalogue and/or other promotional and/or advertising matter of the Company is intended merely to present a general idea of the Goods therein described and shall not be taken as forming part of the Contract. Accordingly, the Company reserves the right without notice to the Buyer to alter any such specification, description, design, drawing, illustration and/or other particulars and to supply the Goods as so altered in performance of the Contract.

## 15 THE COMPANY'S LIABILITY

15.1 **Where the Buyer is not a Consumer**, the following sub-conditions apply:

15.1.1 All information (including without limitation figures) given by the Company relating to the performance of the Goods or the cost of operating the Goods is based upon the Company's experience in the field in question, and all such figures are such as the Company might as a result of such experience expect to obtain on test, but the Company shall (subject to Condition

26.1.2) unless such information shall have been specifically guaranteed in writing, accept no liability should it prove to be in any way inaccurate.

- 15.1.2 In the event that the performance of the Goods shall fail to fulfill the terms of any written guarantee given by the Company, the Buyer shall allow the Company reasonable time and opportunity to fulfill the said terms. If after such reasonable time and opportunity the Company shall fail to fulfill the said terms, the Buyer shall be entitled to cancel the Contract only as regards such of the Goods that fail to fulfill the said terms.
- 15.1.3 It shall, (subject to Condition 26.1.2) be the responsibility of the Buyer to ensure that the capacity and performance of the Goods are sufficient and suitable for the purpose or purposes intended or for which the Goods are to be used or sold by the Buyer.
- 15.1.4 Where the Buyer provides any item of equipment for the installation and/or operation of the Goods and/or ancillary to and/or for use in connection with the Goods, it shall be the Buyer's responsibility to ensure that the use of any such item does not adversely affect the performance of the Goods.
- 15.1.5 Nothing in the Contract shall limit the liability of the Company to the Buyer for death or personal injury resulting from its negligence (as defined in the Unfair Contract Terms Act 1977), for fraudulent misrepresentation, for breach of the Company's obligations arising from Section 12 of the Sale of Goods Act 1979 or for any liability which cannot be excluded by law.
- 15.1.6 Subject to Condition 15.1.5 and 26.1.2 and the liability of the Company for defective Goods set out in Condition 26.1.1(g), the following provisions set out the limitations on the liability of the Company (including any liability for the acts and omissions of its respective employees, agents and sub-contractors) to the Buyer in all other cases with respect to: (i) any negligence of the Company and/or any of its employees and/or agents; (ii) any failure to perform or performance of or breach of its contractual obligations arising under the Contract (whether express or implied); (iii) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; (iv) any supply, installation, repair and/or maintenance of any of the Goods; and (v) any representation, statement, act or omission given, made or carried out under or in connection with the Contract (whether such liability arises in contract, tort, negligence, misrepresentation, breach of statutory duty or otherwise howsoever).
- 15.1.7 Except as expressly set forth in the Contract, all conditions, warranties and representations expressed or implied by statute, common law or otherwise with respect to the Goods are excluded to the fullest extent permitted by law and in no event shall the Company be liable for any negligence or tortious loss or for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise and whether or not the Company is advised of the possibility of loss, liability, damage or expense): (i) loss of revenue; (ii) loss of actual or anticipated profits (including for loss of profits on contracts); (iii) loss of the use of money; (iv) loss of anticipated savings; (v) loss of business; (vi) loss of operating time or loss of use; (vii) loss of opportunity; (viii) loss of goodwill; (ix) loss of reputation; (x) loss of, damage to or corruption of data; or any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt, where such loss or damage is of the type specified in (i) to (x) of this Condition 15.1.7). Direct financial and other loss not

excluded by this Condition is accepted by the Company up to the limits set out in Condition 15.1.8. Accordingly, it shall be for the Buyer to insure against any liability arising from its use of the Goods.

15.1.8 Except as stated in Condition 15.1.5, the aggregate liability of the Company to the Buyer (including liability for recovery of sums paid by the Buyer and for all damages, costs and expenses) with respect to all claims under or in connection with the Contract shall be limited to 100% of the [price of the Goods which gave rise to liability][price paid under the Contract.

15.2 **Where the Buyer is a Consumer**, the following sub-Conditions apply:

15.2.1 The Company warrants to the Buyer that any Good purchased from it through the Website is of satisfactory quality.

15.2.2 If the Company breaches these sub-Conditions to Condition 15.2 it will be responsible for any losses which the Buyer suffers as long as they were reasonably foreseeable to both the Buyer and the Company at the time of the Buyer's order and the Order Confirmation.

15.2.3 Any manufacturer's warranty or guarantee applicable to the Goods shall be in addition to any responsibility that the Company has to the Buyer under the Contract.

## 16 **CANCELLATION**

16.1 **Where the Buyer is not a Consumer**, the following cancellation terms shall apply:

16.1.1 Following acceptance as aforesaid by the Company of the Buyer's order, no cancellation, either in whole or in part, may be made by the Buyer other than with the prior written consent of the Company and upon terms which fully pay to the Company the amount or amounts of all work undertaken, time expended and costs incurred by it in connection with the Buyer's order together with a reasonable profit margin.

16.2 **Where the Buyer is a Consumer**, the following cancellation terms shall apply:

16.2.1 As the Buyer is contracting as a consumer, the Buyer has a statutory right to cancel the Contract for any reason at any time within seven working days, beginning on the day after the Buyer receives the Goods or (where it has been agreed that the Goods will be delivered in instalments) the last of the Goods. If the Buyer exercises the right, the Buyer will receive a full refund of the price paid for the Goods in accordance with the Company's refunds policy (set out in Condition 26 below). To cancel a Contract under the Buyer's statutory rights, the Buyer must inform the Company in writing of its intention to cancel by hand delivery, post or fax to the place given in Condition 5.1 or by email to sales@cdf ltd.com.

16.2.2 When exercising the cancellation right, the Buyer must return the Goods to the Company immediately. See Condition 26 as to the manner and cost of returning the Goods.

16.2.3 The Buyer is entitled to a reasonable opportunity to inspect the Goods. At all times, the Buyer must take reasonable care of the Goods and must not let them out of its possession. If the Buyer is in breach of its obligations to take reasonable care in this Condition 16.2.3, the Company will have a

claim against it and may deduct from the refund costs incurred by the Company as a result of the breach.

16.2.4 Details of this statutory right, and an explanation of how to exercise it, are also provided in the Order Confirmation. This provision does not affect the Buyer's statutory rights.

16.2.5 The cancellation right described in this Condition 16.2 is in addition to any other right that the Buyer might have to reject the Goods, for instance because they are faulty or misdescribed.

## 17 PRICE

17.1 Any price quoted by the Company is based upon current costs at the date appearing on the quotation, but the actual price to be charged to the Buyer under the Contract shall be based upon costs current at the date of the Order Confirmation and shall include the cost to the Company of any carriage, insurance and/or storage effected by it in connection with the Buyer's order in accordance with the Contract. The Company shall be entitled at any time up to the date of the Order Confirmation to vary the price quoted to the Buyer.

17.2 **Where the Buyer is a Consumer**, if the price of a Good at the time when the Company is ready to dispatch it is lower than the price at the time of the Order Confirmation, the Company will charge the Buyer the lower price. If the price of a Good at that time is higher, the Company will (at its discretion) either contact the Buyer for instructions before dispatching the Good, or cancel the Buyer's order and notify the Buyer of such cancellation.

17.3 The prices include VAT but exclude delivery costs, which will be added to the total amount due as set out in the Delivery Guide <http://www.cfdltd.com/faq.htm>.

17.4 The Company is under no obligation to provide a Good to the Buyer at an incorrect (lower) price, even after the Company has sent the Buyer an Order Confirmation, if the pricing error is obvious and unmistakable and could have reasonably been recognised by the Buyer as a mis-pricing.

17.5 Payment details for all Goods must be submitted by credit or debit card at the time of placing an order. The Company accepts payment with Visa, Visa Debit, MasterCard, Delta & Maestro. ***Would you like to be able to charge any credit card handling fees? If so these should be detailed in this Condition.***

17.6 **Where the Buyer is a Consumer**, subject to Condition 18 the Company shall charge the Buyer's credit or debit card at the time of providing Order Confirmation.

17.7 **Where the Buyer is a Consumer**, the Company will not charge the Buyer's credit or debit card until the Company despatches the Buyer's order.

## 18 CREDIT

**Where the Buyer is not a Consumer**, and the Buyer wishes to open a credit account with the Company, the Company may make a search with a credit reference agency, which will keep a record of that search and may share that information as required with other businesses. The Company may also make enquiries about the principal directors of the Buyer with a credit reference agency. In considering the Buyer's request, the Buyer accepts that the Company may consult with and disclose certain data (including personal data) to credit reference agencies, banks, credit insurers and other responsible organisations outside the Company's business that it has nominated ("third parties"), and that such third parties

may process the data. The Buyer has the right to know what data is held by the Company and such third parties if it applies to the relevant party in writing and pays the applicable fee. The following terms shall also apply to Buyers who wish to open a credit account with the Company:

- 18.1 Credit accounts are only opened subject to satisfactory references being received and maintained, subject to the Buyer's observance of the terms on which credit is given.
- 18.2 If the Buyer has an approved credit account, settlement of invoices (which shall be issued on Order Confirmation) is required by the end of the month following the month in which the invoice is issued. Interest at the monthly rate of 2% above Barclays Base Lending Rate will be charged from day to day on all monies outstanding after this time until the actual date of payment, and any cash discount referred to in the quotation, correspondence and/or elsewhere will not be allowed to the Buyer.
- 18.3 Where payment is agreed to be made by instalments, any delay or default by the Buyer in making payment in respect of any one instalment shall render all the remaining instalments due forthwith, and interest will be charged in accordance with Condition 18.2 with immediate effect until the actual date of payment.
- 18.4 The Company reserves the right, on giving to the Buyer notice of its intention to do so, to close a credit account and/or withhold performance of any or all of its obligations under the Contract if in its absolute discretion it considers the Buyer's credit status to be unsatisfactory.

It is not possible for Buyers who are Consumers to have a credit account.

## 19 DATE FOR PAYMENT

**Where the Buyer is not a Consumer**, and subject to Condition 18.2 Goods will not be delivered until payment has been received in full.

## 20 DELIVERY BY INSTALMENTS

Where delivery is agreed to be made by installments, each installment shall be deemed to be a separate and distinct contract and no default by the Company in respect of any one or more installment shall entitle the Buyer to reject or withhold payment in respect of any other installment or installments.

## 21 DISPUTES AND SET OFF

**Where the Buyer is not a Consumer**, any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Buyer of all its obligations under these Conditions, and subject to these Conditions, the Buyer shall not be entitled to withhold or delay payment or exercise any right of set-off whatsoever and howsoever arising or arisen which might otherwise be available to it.

## 22 RISK

Subject to Condition 12, the risk of loss of or damage to the Goods or any of them shall pass to the Buyer upon delivery.

23      **TITLE**

Notwithstanding the passing of risk under Condition 22, unless and until payment shall have been made to the Company of all sums due to it under the Contract (including any delivery charges) and/or, **where the Buyer is not a Consumer**, under any other contract between the Buyer and the Company on any account whatsoever:

23.1      property in and title to the Goods shall remain in the Company; and

23.2      **where the Buyer is not a Consumer:**

23.2.1      the Buyer shall store the Goods separately from all other Goods and products and in such a way that they can be readily identified as being the property of the Company; and

23.2.2      subject to Conditions 23.2.3 and 23.2.4 the Buyer shall be free to sell the Goods in the ordinary course of its business on the basis that the proceeds of sale shall be the property of the Company, and the Buyer shall account therefore to the Company on demand; provided that the Buyer shall have no authority to enter into any contract for sale on behalf of the Company and any contract for sale shall accordingly be concluded in the name of the Buyer; and

23.2.3      the Company may at any time revoke the Buyer's power of sale referred to in Condition 23.2.2 by written notice to the Buyer if the Buyer shall for seven days or more be in default in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or any other goods supplied by the Company or services rendered, whether or not under the Contract, by the Company or for any other reason whatsoever) or if any bill of exchange, cheque or other instrument drawn or accepted by the Buyer in favour of the Company shall on presentation for payment be dishonored, or if the Company in good faith shall have doubts as to the solvency of the Buyer; and

23.2.4      the Buyer's power of sale referred to in Condition 23.2.2 above shall automatically cease if any receiver or manager shall be appointed over any or all of the assets or undertaking of the Buyer, or if any winding up order shall be made against the Buyer, or if the Buyer shall go into voluntary liquidation (otherwise than for the purposes of, and followed by, reconstruction or amalgamation) or call any meeting of or make any arrangement or composition with creditors or commit any act or bankruptcy; and

23.2.5      upon determination of the Buyer's power of sale under Condition 23.2.3 or 23.2.4 above, the Buyer shall place the Goods at the disposal of the Company and the Company shall be entitled, using only such force as may be necessary, to enter upon any premises of the Buyer for the purpose of removing the Goods from the premises; and

23.2.6      where payment may be made by means of any bill of exchange, cheque or other negotiable instrument, the Company shall be deemed not to have received payment for the purposes of this Condition 23.2 unless and until the bill of exchange, cheque or other negotiable instrument shall have been honoured on presentation for payment, notwithstanding that the Company may have negotiated it and received value therefore.

## 24 **RESALE OF THE GOODS BY BUYERS WHO ARE NOT CONSUMERS**

24.1 **Where the Buyer is not a Consumer**, and the Buyer resells the Goods it shall:

- 24.1.1 make clear, in all dealings with customers and prospective customers, that it is acting as principal in sales of the Goods and not as agent of the Company;
- 24.1.2 ensure that the Goods and their marketing and sale comply with all manufacturing, sales, marketing, labelling, packaging, storage, safety and other applicable legal requirements and indemnify and keep indemnified the Company from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation any direct or indirect consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) incurred by the Company arising out of or in connection with failure of the Goods and their marketing and sale so to comply; and
- 24.1.3 not do anything which will harm the reputation of the Company and the Goods.

## 25 **TERMINATION AND SUSPENSION**

**Where the Buyer is not a Consumer**, without prejudice to any rights and remedies available to it, whether under the Contract or otherwise, the Company shall be entitled, in its absolute discretion and upon giving to the Buyer written notice of its intention to do so, whether to terminate wholly or in part the Contract and/or any other contract with the Buyer or to withhold performance of all or any of its obligations under the Contract and/or any other contract in any one or more of the following events:

- 25.1 if any sum owing to the Company from the Buyer on any account whatsoever shall be unpaid after the due date for payment; or
- 25.2 if the Buyer shall refuse to take delivery of or collect any of the Goods in accordance with the terms of the Contract; or
- 25.3 if the Buyer is in material breach of an obligation under the Contract (other than as mentioned in Condition 25.1) and in the case of any such breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so; or
- 25.4 if the Buyer, (i) is unable to pay its debts as they fall due, (ii) passes a resolution for winding up (other than for the purposes of a solvent amalgamation or reconstruction) or if a court of competent jurisdiction makes an order to that effect, (iii) enters into a composition or scheme of arrangement with its creditors or if a receiver, manager, administrator or administrative receiver is appointed over any of its assets, (iv) ceases or threatens to cease to do business; or (v) an analogous event occurs to the other party in any jurisdiction.

The Company shall be entitled to exercise its rights of suspension hereunder at anytime during which the event or default giving rise thereto shall not have ceased or been remedied and in the event of any such suspension the Company shall be entitled to require, as a condition of resuming performance under the Contract, prepayment of or such security as it may stipulate for the payment of any sum or sums due or to become due to it.

26 **DEFECTIVE GOODS AND REFUNDS**

26.1 The following sub-Conditions shall apply **where the Buyer is not a Consumer:**

26.1.1 The Company shall make good at its option by reimbursement of the whole or part of the price (and, where relevant, as a deduction from any part of the price remaining unpaid) or by repair or by replacement any defect developing under normal use in the Goods and due solely to faulty design, materials or workmanship (except where such design, materials or workmanship were supplied by the Buyer or on behalf of the Buyer by a third party), provided that:

- (a) written notice of any such defect shall be given to the Company within twelve months after the Buyer shall have taken possession of the Goods in question; and
- (b) any Goods alleged to be defective shall be promptly made available to the Company (including where reasonably required by the Company by return at the Buyer's risk and expense to the Company for inspection) and the Company shall in its reasonable opinion consider them to be defective solely by reason of faulty design, materials and/or workmanship; and
- (c) no attempt shall have been made by the Buyer or by any third party to remedy any defect before the Goods in question shall have been returned to the Company for inspection; and
- (d) the Goods in question shall have been fitted, serviced and maintained properly and in accordance with the Company's and/or its suppliers recommendations and specifications and shall not have been fitted with any parts, components and/or accessories other than those manufactured or recommended by the Company and/or its suppliers; and
- (e) where any such defect is due to a fault in any part, component, accessory and/or other item of the Goods not manufactured by the Company, the Buyer shall be entitled as against the Company, only to such remedy as the Company may be able to obtain against the relevant manufacturer or supplier; and
- (f) in default of any claim being made under this Condition 26.1.1 within the period of twelve months above referred to, the Goods shall be deemed to comply with the Contract and to be in all respects satisfactory.
- (g) The Company's liability shall (subject to Conditions 15.1.5 and 26.1.2) be limited to reimbursement of the price or repair or replacement of the Goods as aforesaid and shall be subject to compliance by the Buyer with the terms of the foregoing part of this Condition 26.1.

26.1.2 Nothing in these Conditions of sale shall be construed as attempting to exclude or restrict the liability of the Company to a consumer as referred to in section 6(2) Unfair Contract Terms Act 1977.

26.2 The following sub-Conditions shall apply **where the Buyer is a Consumer:**

- 26.2.1 When the Buyer returns a Good to the Company (for instance, because the Buyer has cancelled the Contract, or has notified the Company in accordance with Condition 4.2 that the Buyer does not agree to any change in these Conditions or in any of the Company policies, or because the Buyer claims that the Good is defective), the Company will examine the returned Good and will notify the Buyer of its entitlement to a refund via e-mail within a reasonable period of time.
- 26.2.2 The Company will process any refund due to the Buyer within 30 days of the day the Company received the Buyer's cancellation. The Company aims to make refunds using the same method as that used by the Buyer to pay for its purchase.
- 26.2.3 Refunds will be given on the following basis:
- (a) where the Buyer has validly returned a Good under its right of cancellation described in Condition 16.2, the Company will refund the full amount paid by the Buyer for the Good, including the cost of delivery to the Buyer. The Buyer will be responsible for returning the Good to the Company at its own cost;
  - (b) where the Buyer has validly returned a Good which is a substitute good under its right of cancellation, the Company will refund the full amount paid by the Buyer for the Good (including the cost of delivery to the Buyer) and reimburse the reasonable cost incurred by the Buyer in returning the Good;
  - (c) where the Buyer validly returned a Good to the Company because it is defective or for some other reason for which the Company is responsible, the Company will refund the full amount paid by the Buyer for the Good (including the cost of delivery to the Buyer) and reimburse the reasonable cost incurred by the Buyer in returning the Good; and
  - (d) where the Buyer has returned a Good in circumstances other than Conditions 26.2.3(a) to 26.2.3(c) above (which includes rejecting a defective Good more than a reasonable time after receipt), any refund will be at the Company's discretion. If the Company does agree to provide a refund, the Company will not refund the cost of delivery to the Buyer and the Company will not reimburse the cost incurred by the Buyer in returning the Good.

26.3 When returning Goods to the Company, for any reason, the Buyer must take reasonable care to see that it is received by the Company and not damaged in transit.

## 27 EMPLOYEES

**Where the Buyer is not a Consumer**, these Conditions are stipulated by the Company on behalf of the Company and on behalf of all its employees and agents and apply for their benefit as for that of the Company, and the Buyer shall not sue or make any claim against any employee or agent of the Company in respect of any alleged negligence and/or other default on the part of the Company and/or any such person in relation to the Contract.

## 28 THIRD PARTY CLAIMS

**Where the Buyer is not a Consumer**, the Buyer shall indemnify the Company in full against any liability whatsoever (including any liability based on the negligence of the Company)

which it may incur resulting from any claim made against the Company by any third party, including without limitation any employee or agent of the Buyer or any subsequent buyer or hirer or other bailee of the Goods or any of them, arising or arisen directly or indirectly out of the performance and/or any nonperformance and/or breach of the Contract and/or otherwise out of or connected with the manufacture and/or supply of the Goods or any of them or the provision of any services.

## 29 INTELLECTUAL PROPERTY RIGHTS

29.1 As between the Company and the Buyer, all intellectual property in the Goods which subsists now or at any time in the future shall without limitation vest in and be the absolute property of the Company or its licensors.

29.2 **Where the Buyer is not a Consumer**, the Buyer shall forthwith notify the Company in writing of any claim made or action brought against the Buyer for infringement of any intellectual property right or rights or for unauthorised use of any confidential information or for passing off by reason of the manufacture and/or sale of any Goods, and the Company (or its nominee) or its licensors (as applicable) shall be free to conduct any negotiations for the settlement of any such claim and/or to conduct any litigation resulting therefrom without any obligation or responsibility whatsoever to the Buyer other than where it is decided by a competent court of law or agreed by the Company (or its nominee) or its licensors (as applicable) in writing that there has been any such infringement or unauthorised use or passing off, to give credit for the Goods giving rise to the claim or action or at the option of the Company (or its nominee) or its licensors (as applicable), and at its (or its nominee's) or its licensor's cost and expense to make such alterations thereto as may be necessary to remedy the matter complained of. The Buyer shall without cost to the Company (or its nominee) or its licensor (as applicable) provide such facilities and assistance as the Company (or its nominee) or its licensors (as applicable) may reasonably require – to enable it to investigate and conduct any such claim or action. Where the Goods are manufactured in accordance with a design or specification provided by, or on behalf of the Buyer, and sold by the Company to the Buyer than, as regards any such Goods, the Buyer shall indemnify the Company (and where appropriate its supplier) against all actions, costs, claims, demands, damages, liabilities and expenses whatsoever and howsoever arisen, together with interest and any VAT thereon, in relation to any claim or action for infringement of any intellectual property right or rights or for unauthorised use of any confidential information or for passing off, whether actual or alleged.

## 30 COMPLIANCE WITH REGULATIONS

**Where the Buyer is not a Consumer**, it shall be the responsibility of the Buyer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, are duly complied with. It shall be a condition precedent to the performance of the Company of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Buyer.

31 **DATA PROTECTION**

- 31.1 Each party warrants that it is properly notified under the Data Protection Act 1998 to the extent required for the processing of personal data (as defined in that Act) required in the performance of the Contract.
- 31.2 Where applicable, the parties agree to comply with the relevant provisions of the Data Protection Act 1998 and any directions issued by the Information Commissioner in its processing of such personal data.

32 **WRITTEN COMMUNICATIONS AND NOTICES**

- 32.1 The parties will mainly communicate with each other electronically, such as by email. Applicable laws may require that some of the information or communications the Company sends to the Buyer should be in writing, for which purpose the parties both agree that electronic communications will suffice. This Condition does not affect any of the Buyer's statutory rights.
- 32.2 All notices given by either party to the other must be given in writing and delivered by hand, post, fax or email. Notices to the Company should be given in accordance with the details in Condition 5.1 above. Notices to the Buyer may be given to the email address or the postal address provided when the Buyer places its order.

33 **FORCE MAJEURE**

- 33.1 Neither party shall have any liability whatsoever for any failure to perform, or for any delay in the performance of any of its obligations under the Contract arising wholly or in part by reason of any factor beyond its direct control, including without limitation shortage of raw materials, components or services, act of God, War, National Emergency, Laws or Regulations of any Country, Industrial Dispute, Civil Commotion, Fire, Tempest and/or Flood.
- 33.2 **Where the Buyer is a Consumer**, this Condition does not affect its statutory rights and in particular the Company's obligation to perform the Contract within 30 days of order as set out in Condition 9.2.

34 **WAIVER**

No failure or delay on the part either party to exercise any of its rights under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by either party of any breach by the other party of any of its obligations under the Contract shall not affect the rights of that party in the event of any further or additional breach or breaches.

35 **ASSIGNMENT ETC.**

- 35.1 The Contract is personal to the Buyer, who shall not transfer, assign, charge, sub-contract or in any way part with the Contract, or any of the Buyer's benefit or burden thereof without the Company's prior written consent.
- 35.2 The Company may transfer, assign, charge, sub-contract or otherwise dispose of the Contract, or any of its benefit or burden arising under it, at any time during the term of the Contract.

36 **ENTIRE AGREEMENT**

The Contract constitutes the entire agreement and understanding between the parties with respect to the subject matter of the Contract, and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the parties relating to such subject matter.

**37 NO RELIANCE**

Each party acknowledges to the other that it has not been induced to enter into the Contract by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other party or any other person save for those contained in the Contract. Accordingly, each of the parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of the Contract shall be for breach of contract under the terms of the Contract. Nothing in the Contract shall exclude liability for fraud or fraudulent misrepresentation.

**38 SURVIVAL**

Notwithstanding any provision of the Contract to the contrary, the provisions of any Conditions which expressly or impliedly survive expiry or termination of the Contract for any reason whatsoever shall continue in full force and effect after expiry or termination.

**39 RIGHTS OF THIRD PARTIES**

A person who is not a party to the Contract has no rights under the Contracts (Rights of Third parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of the Contract.

**40 NO PARTNERSHIP/AGENCY**

Nothing in the Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other.

**41 SEVERABILITY**

Each and every obligation contained in the Contract shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any other such obligation.

**42 CLAUSE HEADINGS**

The clause headings in these Conditions are for convenience only and shall not in any way affect the interpretation of the Contract.

**43 GOVERNING LAW AND JURISDICTION**

The Contract and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in all respects in accordance with English Law, and the Company and the Buyer shall, in respect of all such disputes or claims, submit to the exclusive jurisdiction of the English Courts.