

# CONDITIONS OF SALE

## 1. Definitions

- (a) In these conditions of sale:
- **"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
  - **"Buyer"** means any person, firm or company to whom the Seller may from time to time sell the Goods,
  - **"Conditions"** mean the terms and conditions set out in this document as amended from time to time (and **"Condition"** shall be interpreted accordingly).
  - **"Delivery Note"** means the delivery note used by the Seller.
  - **"Financial Default"** means anything within the scope of Condition 15(i) to (vi) inclusive.
  - **"Force Majeure Event"** has the meaning given in Condition 11(a).
  - **"Goods"** means any goods supplied by the Seller.
  - **"IPR"** means (i) all copyrights, databases, business names, trade names, corporate names, domain names, social media profile/user names, trademarks, passing off rights, design rights, patents, trade secrets, know-how, confidential information, unfair competition rights and other intellectual property rights, anywhere in the world, whether registered or not, (ii) all rights to apply to register any of such rights anywhere in the world, (iii) taking legal action for past, present or future infringements of any of the above anywhere in the world, or (iv) any combination of any of the above.
  - **"Invoice"** means the invoice used by the Seller
  - **"Seller"** means Global Ceramic Materials Limited (English company with registered number 03306838) whose registered office is at Milton Works Diamond Crescent, Milton, Stoke-On-Trent, ST2 7PX,
  - **"Seller Confirmation"** means the written acceptance (whether sent by email or otherwise) by the Seller of the Buyer's offer.
  - **"Seller Group Entity"** means any company within the same corporate or VAT group as the Seller or with the same ultimate majority beneficial ownership as the Seller.
- (b) Any of terms or conditions stated in the Seller Confirmation, Invoice, and the Delivery Note shall be deemed incorporated into Agreement for Sale between the Seller and the Buyer for the sale and purchase of the Goods to the extent that such terms do not conflict with these Conditions. A contract between the Seller and the Buyer for the sale and purchase of the Goods shall be referred to in these Conditions as an **"Agreement for Sale"**.

## 2. The Agreement for Sale

- (a) **Application of Conditions:** These Conditions shall be deemed applicable to and incorporated into the Agreement for Sale. These Conditions shall apply to the Agreement for Sale to the exclusion of any terms or conditions contained or referred to in the Buyer's order or which the Buyer otherwise seeks to impose or incorporate into the Agreement for Sale or which are implied by trade, practice or course of dealing.
- (b) **Entire Agreement:** The Agreement for Sale represents the complete contract between the Seller and the Buyer with regard to the sale and purchase of the Goods and contains all conditions and other terms agreed or relied upon by either party in connection with the sale and purchase of the Goods. The Agreement for Sale supersedes and excludes all previous arrangements, understandings, commitments and agreements between the parties concerning the same subject matter.
- (c) **Pre-Contractual Statements:** In entering into the Agreement for Sale the Buyer agrees that, subject to Condition 13(a), the Buyer does not rely on and shall have no remedies in respect of any statement, representation or warranty (whether made innocently or negligently) that are not set out in the Agreement for Sale. Any advice or recommendation given by the Seller or its employees to the Buyer or its employees as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not confirmed in writing by the Seller.
- (d) **Offers:**

- (i) Any price lists, quotations, advertising or other sales information produced by the Seller do not constitute offers made by the Seller to the Buyer and they shall not form part of the Agreement for Sale nor have any contractual force. Subject to Condition 3(a), the Seller reserves the right to withdraw or revise the same at any time prior to receipt by the Buyer of the Invoice.
- (ii) By placing an order with the Seller or otherwise accepting any quotation from the Seller, the Buyer shall be deemed to have made an offer to purchase the Goods in accordance with these Conditions, which offer shall only be deemed to be accepted when the Seller issues a Seller Confirmation, at which point the Agreement for Sale shall come into existence.

## 3. Price

- (a) Subject to Condition 3(b), the price of the Goods shall be the price quoted by the Seller subject to the price as stated in the Seller Confirmation; but, if no price is quoted or stated in the Seller Confirmation, the price shall be as set out in the Seller's published price list in force as at the date of delivery.
- (b) The Seller may, by giving notice to the Buyer at any time up to 10 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (i) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the specification; or
  - (iii) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- (c) All amounts payable by the Buyer under the Agreement for Sale 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 Agreement for Sale by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

## 4. The Invoice and Payment

- (a) Subject to Conditions 4(b) and 8, the Seller shall be entitled to invoice the Buyer for all amounts due under the Agreement for Sale on or at any time after delivery of the Goods has taken place in accordance with clause 7 of these Conditions. If the Goods are being delivered by instalments, the Seller may invoice for an instalment of the Goods following delivery of such instalment.
- (b) If the Buyer fails to collect or accept delivery of the Goods within 3 Business Days of the Seller notifying the Buyer that the Goods are ready for collection or delivery, then:
- (i) delivery of the Goods shall be deemed to have taken place at 9.00 am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready for collection or delivery and the Seller shall store the Goods until the Buyer collects or accepts delivery of the Goods, and charge the Buyer for all related costs and expenses of such storage (including but not limited to the costs of insurance); and
  - (ii) the Seller shall be entitled (but not obliged) to invoice the Buyer at any time after the Seller has notified the Buyer that the Goods are ready for collection or delivery.
- (c) The Buyer shall make payment to the Seller in respect of each invoice in full and in cleared funds within 22 Business Days of the date of the Invoice. All amounts due under the Agreement for Sale shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding required by law). Time of payment shall be of the essence.
- (d) All payments shall be applied to invoices, and to Goods listed in such invoices, in the order determined by the Seller in its absolute discretion.

- (e) All payments must be made in pounds Sterling or such other currency expressly required or approved by the Seller in writing.
- (f) The Buyer shall pay for all currency conversions and bank transfer costs so that the amount received by the Seller in the currency required under Condition 4(e) is the full invoiced amount.
- (g) All amounts payable by the Buyer under the Agreement for Sale 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 Agreement for Sale by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- (h) Receipt, banking or dealing with a part-payment for an invoice shall not be deemed a waiver of the remainder of the invoice unless and until such waiver is made by the Seller specifically and expressly in writing.
- (i) If full payment is not received by the Seller in respect of any payment due under the Agreement for Sale by the due date for payment, then without prejudice to its other rights under the Agreement for Sale, the Seller shall be entitled to take any one or more of the following actions:
- (i) to initiate proceedings against the Buyer for any relief or remedy available to the Seller;
  - (ii) to charge interest on the overdue amount at the higher of (i) 4%, and (ii) 3% per annum over the base rate from time to time of JP Morgan International Bank Limited (such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment, and to be compounded at the end of each calendar month after the month in which the applicable payment due date occurs);
  - (iii) to suspend deliveries under the Agreement for Sale or any other Agreement for Sale for so long as the default continues;
  - (iv) to require the immediate return to the Seller of all Goods agreed to be sold by the Seller to the Buyer and the Buyer hereby agrees to reimburse to the Seller upon demand for the Seller's reasonable costs or expenses in recovering such Goods; or
  - (v) do any combination of any of the above.

- (j) Without prejudice to the above terms of Condition 4, an invoice shall be deemed undisputed if a good-faith dispute has not been notified in writing to the Seller, by or for the Buyer, concerning the calculation or content of the invoice, within 10 (ten) days of the date of the invoice.
- (k) Condition 4 applies subject to Condition 15.

## 5. Customs, Duties and Taxes

Without prejudice to Condition 4(g), all customs and excise duties, import or export duties and all other taxes (including, without limitation, value added tax), tariffs and surcharges of any nature whatsoever now or hereafter levied in any country in respect of the sale, delivery or use of the Goods or payments for them or upon freight or any other charges shall be borne by the Buyer and are not included in the price of the Goods.

## 6. Sale by Sample

- (a) All Goods are offered by the Seller on the basis that the Buyer has taken all reasonable measures to confirm their suitability for the Buyer's own particular products and production methods.
- (b) The Seller will use reasonable efforts to ensure that the Goods conform to their respective samples and specifications. Since, however, the Goods are based on naturally occurring raw materials, the Seller reserves the right to change the Goods from time to time without incurring any liability to the Buyer. Where possible, the Seller will notify the Buyer of any changes to the Goods. If any Goods are, in the Seller's reasonable opinion, changed to a material extent (the **"Materially Changed Goods"**), then the Buyer shall be entitled within 3 Business Days of delivery of the Materially Changed Goods in accordance with clause 7 of these Conditions to return the Materially Changed Goods in good condition to the Seller and to claim a refund of any sums paid in respect of such returned Materially Changed. The provision of a refund shall be the Buyer's exclusive remedy in such circumstances.

- (c) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement for Sale.

## 7. Delivery and Return of Goods

- (a) The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce and published in 2020 ("Incoterms 2020") shall apply but where they conflict with these Conditions, these Conditions shall prevail.
- (b) The Seller shall deliver the Goods to the Buyer as specified in the Agreement for Sale. However, unless otherwise stated in the Agreement for Sale, all sales are Ex Works (EXW) the Seller's premises at Milton Works, Milton, Stoke-on-Trent, ST2 7PX England, and delivery of the Goods to the carrier nominated by the Buyer shall constitute delivery thereof to the Buyer.
- (c) Delivery is completed on the completion of loading of the Goods at the delivery location specified in the Buyer's order. Upon delivery the Goods shall be at the Buyer's risk.
- (d) Any period or date for delivery stated in the Agreement for Sale is intended as an estimate only and is not a contractual commitment and the Seller shall not be liable for any damages or losses arising out of the delay. Time shall not be of the essence in this regard.
- (e) 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. Without prejudice to clause 11 of these Conditions, the Seller shall have no liability for any failure to deliver the Goods:
  - (i) to the extent that such failure is caused by 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; and
  - (ii) unless the Buyer notifies the Seller of any claim for failure to deliver the Goods within 5 Business Days of the date of the Invoice for the Goods.
- (f) At the request of the Buyer, the Seller may arrange for carriage and transport insurance to the destination specified in the Buyer's order on such terms as to carriage and insurance as the Seller considers appropriate. The Seller shall invoice the Buyer all carriage and insurance costs incurred, and such Invoices shall be payable in accordance with the provisions of clause 4 of these Conditions.
- (g) If the Seller delivers up to and including 5% more or less than the quantity of Goods stated in the Agreement for Sale, the Buyer may not reject them, and the Buyer shall pay for the actual quantity delivered. The Seller shall not be liable for shortages which exceed 5% of the quantity of Goods stated in the Agreement for Sale unless the Buyer notifies the Seller of any claim for short delivery within 3 Business Days of delivery of the Goods.
- (h) The Buyer shall not return any Goods without the Seller's prior written consent and the Seller shall not be under any liability whatsoever in respect of Goods returned without such consent being obtained.
- (i) If the Goods are returned by the Buyer with the Seller's prior written consent, the Seller shall be entitled to replace the Goods free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods.

## 8. Instalment Deliveries

The Seller may deliver the Goods in one or more instalments which shall be invoiced and paid for separately. Where delivery is effected by instalment, each instalment shall be treated as a separate contract. Failure by the Seller to make any delivery or part delivery in accordance with the Agreement for Sale or any claim by the Buyer in respect of such delivery or part delivery shall not entitle the Buyer to reject the balance of the Goods agreed to be purchased by the Buyer.

## 9. Passing of Property

- (a) The risk in the Goods shall pass to the Buyer on completion of delivery.
- (b) The Goods shall remain the property of the Seller (as legal and equitable owner) and no title to or proprietary interest in the Goods shall pass to the Buyer until the Seller has received, in full and in cleared funds:
  - (i) the price of the Goods; and
  - (ii) all other sums (whether or not due) that are or become owing to the Seller from the Buyer under any contract between them:

- (c) If the Buyer processes, transforms, mixes or incorporates the Goods with other goods, the Seller shall, to the fullest extent permitted by applicable law, automatically acquire:
  - (i) sole ownership of the new item; or
  - (ii) where the Goods are processed together with goods owned by third parties, joint ownership of the new item in the proportion that the invoiced value of the Goods bears to the invoiced value of all other goods used

- (d) Where the Goods are inseparably combined, blended or mixed with other goods, the Seller shall acquire joint ownership of the combined stock or the new item created in the proportion referred to in Condition 9(c). If such combination results in the Buyer becoming the owner of the new item, the Buyer hereby transfers to the Seller (by way of present assignment of future rights) a co-ownership share in the new item equal to the proportion referred to in Condition 9(c) and shall hold it in trust for the Seller until all payments payable under Condition 9(b) have been received by the Seller in full and cleared funds.

- (e) The Buyer is authorised to resell the Goods (or any products incorporating them) in the ordinary course of its business provided that it assigns, and hereby assigns, to the Seller, by way of security and with effect from the date of the relevant contract of sale, all present and future claims (including ancillary rights and security interests) which the Buyer may have against its customer or any third party arising from such resale, to the amount of the Seller's unpaid invoice for the Goods (plus VAT). The Buyer shall, at the Seller's request, give written notice of this assignment to its customer and shall record the assignment in its books. The Buyer's authority to resell and to collect the assigned claims shall automatically cease upon the occurrence of anything under Financial Default.

- (f) Until title passes to the Buyer in accordance with this Condition 9, the Buyer shall:
  - (i) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
  - (ii) maintain the Goods in satisfactory condition;
  - (iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (iv) keep the Goods insured against all the usual risks for an amount not less than their full replacement value and note the Seller's interest on the policy;
  - (v) hold any insurance proceeds in relation to the Goods on trust for the Seller and promptly pay them over to the Seller on demand;
  - (vi) not grant any mortgage, charge, lien or other encumbrance of any kind over the Goods;
  - (vii) notify the Seller immediately if it becomes subject to any of Financial Default; and
  - (viii) give the Seller such information as the Seller may reasonably require from time to time relating to:
    - A. the Goods; and
    - B. the Buyer's ongoing financial position.

- (g) If Financial Default occurs before title passes, then, without prejudice to any other right or remedy available to the Seller:
  - (i) the Buyer's right to resell or use the Goods in the ordinary course of business shall immediately cease; and
  - (ii) the Seller may by written notice terminate the Buyer's authority to resell and require the Buyer to deliver up the Goods and/or the items in which the Seller has co-ownership.

- (h) The Seller may in any event notify the Buyer in writing that its authority to resell has ceased.

- (i) Upon termination under Condition 9(g), written notice under Condition 9(h) or if any payment under Condition 9(b) is overdue, the Seller may enter, or authorise its agents to enter, any premises where the Goods and/or the items in which it has ownership are stored (with or without vehicles) to repossess them. The Buyer grants to the Seller (and procure any applicable third party grants to the Seller) an irrevocable licence for this purpose and shall indemnify the Seller on demand for all costs, losses and liabilities incurred in repossessing, removing, transporting, preserving or reselling the Goods.

- (j) The Buyer shall, promptly on the Seller's request and at the Buyer's expense, do or procure the doing of all acts and things and execute or procure the execution of all documents (including registrations, filings and notifications) that the Seller reasonably considers necessary to:
  - (i) perfect, preserve or protect the Seller's title or security interest in the Goods, any new items and any assigned claims; or
  - (ii) give the Seller, in the Buyer's jurisdiction (including but not limited to Germany, Belgium or The Netherlands as the case may be), rights and remedies equivalent to those intended to be created by this Condition 9; and, in particular, where required under the Dutch Civil Code, the Buyer shall record the retention of title in its administration and hold the Goods as visible property of the Seller; and, where applicable under German law, shall cooperate in ensuring that the requirements of §§ 929, 930, 946–950, 1159 BGB are satisfied.

- (k) If, and to the extent that, the reservation of title set out in this Condition 9 is not effective or enforceable under the law of the Buyer's jurisdiction, the Buyer shall be deemed to have granted to the Seller, and shall take all steps necessary to perfect, a first ranking pledge, charge or comparable security interest over:
  - (i) the Goods and any new items created from them; and
  - (ii) all claims and proceeds arising from the resale of the Goods or such items, as security for the payments under Condition 9(b).

- (l) In any dispute, the Goods (and any items in which the Seller claims co-ownership) shall be presumed to belong to the Seller unless the Buyer proves otherwise.

- (m) The provisions of this Condition 9 shall survive expiry or termination of the Agreement for Sale howsoever arising, until payments under Condition 9(b) have been paid in full and irrevocably discharged.

## 10. Limitation of Damages

Subject to Condition 13(a):

- (a) Condition 10 applies to every liability arising under or in connection with the Agreement for Sale including (but not limit to) liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- (b) The Seller will not be liable for the proportion of any losses or other liabilities caused by, arising from, or made worse by:
  - (i) any Force Majeure Event preventing, frustrating, delaying or rendering uneconomic any performance or compliance with the Agreement for Sale (subject to Condition 11);
  - (ii) the Buyer's use of the Goods in combination with any other product or equipment not supplied or specifically authorised in writing by a director of the Seller for use in combination with the Goods;
  - (iii) any use, storage or other handling of the Goods by the Buyer or any person the sales channel of the Buyer (e.g. Buyer's customer, customer of that customer etc or their respective authorised users) contrary to any guidance or instruction given by the Seller;
  - (iv) any contributory or another statement, act, or omission of any person other than any Seller Group Entity or their respective employees, agents or sub-contractors; or
  - (v) any combination of any of the above applying.

- (c) The Seller shall not under any circumstances whatsoever be liable to the Buyer for any suffered by the Buyer that arises under or in connection with an Agreement for Sale:
  - (i) indirect or consequential losses;
  - (ii) loss or depletion of production, sales, business, goodwill, revenue, profits, anticipated savings, capital gains or equity value;
  - (iii) losses concerning business interruption, loss or corruption of data or wasted expenditure;
  - (iv) loss resulting from third party claims against the Buyer;
  - (v) without prejudice to the above, special losses, commercial losses or pure economic losses;

- (vi) punitive damages; or
  - (vii) any combination of any of the above.
- (d) The Seller's aggregate liability under or concerning the Agreement for Sale shall in no circumstances exceed: (i) in respect of the Goods in question, a sum equal to 125% of the price of such Goods, and (ii) in respect of anything else, £10,000.
- (e) The Buyer is not entitled to bring any claim or action (by way of set-off, counterclaim or otherwise), under or concerning this Agreement for Sale, against any Seller Group Entity other than the Seller.
- (f) The Seller and the Buyer acknowledge and accept that the terms of Conditions 10, 11 and 13 when taken together are reasonable in the commercial and operational context of the Agreement for Sale.

## 11. Force Majeure

- (a) Subject to Condition 11(b), the Seller shall have no liability in respect of any failure or delay in fulfilling any of the Seller's obligations to the extent that fulfilment of the Buyer's order under the Agreement for Sale, or compliance with any other obligation under the Agreement for Sale is prevented, frustrated, delayed or rendered uneconomic as a consequence of the occurrence of any of the following events or circumstances whether or not known or anticipated before entering into the Agreement for Sale (each a "Force Majeure Event"):
- (i) earthquake or any other natural disaster;
  - (ii) severe adverse weather conditions (including floods or storms);
  - (iii) anything considered as an act of God under the Seller's applicable insurance policies;
  - (iv) fires caused by unintended incidents (including lightning strikes, wildfires, spontaneous combustion, chemical reactions, and malfunctions of equipment of anyone other than the Seller);
  - (v) outbreak, continuance or development of any epidemic or pandemic in its original or mutated form;
  - (vi) protests, marches, riots, sabotage, civil commotion, civil unrest, armed hostilities, terrorism, war (declared or undeclared), restrictions or interference by civil or military authorities or any other national or international calamity;
  - (vii) introduction of or change in any law or government blockade, sanction, prohibition, restriction or binding guidance or requirement;
  - (viii) shortage or unavailability of fuel or raw materials;
  - (ix) any statement, act, or omission of any person other than the Seller Group Entity, or their respective sub-contractors, employees, or agents;
  - (x) any event, occurrence, or circumstance beyond the reasonable control of the Seller or its applicable suppliers, or sub-contractor(s); or
  - (xi) any combination of any of the above.

- (b) The Seller undertakes to use all reasonable endeavours to overcome difficulties arising in connection with any Force Majeure Event, but in the event of shortages of the Goods the Seller reserves the right to allocate as it may think fit the Goods available and resources between customers with whom it has contractual obligations in respect thereof and shall not be obliged to purchase the Goods from third parties to make good such shortages, and in these circumstances the Seller is entitled to terminate the Agreement for Sale without liability for any loss or damage thereby incurred by the Buyer.

## 12. Health and Safety

The Buyer agrees to strictly comply with any information supplied by the Seller and relating to the use for which the Goods are designed or have been tested and about any conditions necessary to ensure the safe use of the Goods.

## 13. Statutory Liability

- (a) Nothing in these conditions shall be interpreted as excluding or limiting/restricting the Seller's liability for: (i) fraud, (ii) death or personal injury arising from its negligence, or (iii) any other matter in respect of which it would be unlawful for the Seller to exclude or limit/restrict its liability.

- (b) None of the Goods has been determined by the Seller or by any government or scientific agency or regulatory body as safe to use in articles to be in contact with food, in articles to be implanted in the human body or in articles to be in contact with internal bodily fluids or tissues (the "Relevant Articles"). Persons proposing to use any Goods in Relevant Articles must rely on their own legal and medical judgement without reliance on any representations by the Seller. The Seller makes no warranty, promise or representation whatsoever with respect to the use of the Goods in Relevant Articles and excludes to the fullest extent permitted by law any liability for any loss or damage in any way arising out of or relating to the use of the Goods in Relevant Articles.

## 14. Intellectual Property

- (a) The Buyer grants the Seller a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Buyer to the Seller for the duration of the Agreement for Sale for the purpose of providing the Goods to the Buyer.
- (b) As between the parties, all IPR in, arising out of or in connection with the following (in each case whether or not existing from before the Agreement for Sale and whether or not created under or independently of the Agreement for Sale) shall vest in and belong to the Seller:
- (i) the Goods;
  - (ii) any process or know how involved in their manufacture, development, promotion or sale of the Goods;
  - (iii) any designs, drawings, work or other material created or provided under the Agreement for Sale (other than materials provided by the Buyer);
  - (iv) any combination of any of the above.
- (c) The Buyer shall not itself (or with, for or through any third party), acting in any capacity whatsoever:
- (i) reverse engineer, manufacture or otherwise handle the Goods in breach of the IPR of the Seller or any other Seller Group Entity or any of their respective licensors;
  - (ii) remove copyright notices or trademarks of any Seller Group Entity or its licensors on any Goods provided to the Buyer under the Agreement for Sale;
  - (iii) use any Seller Group Entity's brand, logo or trade-mark in any marketing, promotional, broadcast, publishing, packaging or other marketing or sales activity without the express prior written consent of the Seller; or
  - (iv) do any combination of any of the above.
- (g) The Seller shall indemnify the Buyer against the damages awarded or settlement agreed for any claim by a third party that the use by the Buyer of the Goods provided by the Seller under the Agreement for Sale infringes the third party's IPR in the UK, and the Buyer shall indemnify the Seller against the damages awarded or settlement agreed for any claim by a third party that the use by the Seller of the Buyer's IPR infringes the third party's IPR – in each case provided that the indemnified party (i) has not modified the Goods or the claim arises because of their use in combination with any other materials, (ii) promptly notifies the indemnifying party in writing of any allegation of infringement of a third party's IPR; (iii) gives the indemnifying party the sole conduct of the defence to any third party claim relating to IPR infringement; (iv) does not admit liability, attempt to settle or compromise the third party claim except upon the express instructions of the indemnifying party; and (v) gives such assistance as shall be reasonably required in respect of the third party claim at the indemnifying party's cost.
- (h) In respect of an indemnity claim against the Seller under Condition 14(g):

- (i) if the Buyer ceases to use the Goods in order to mitigate damages or for other important reasons, it is obligated to advise the third party alleging or claiming infringement that cessation of use does not imply any acknowledgment of infringement of IPR (and any cessation of use within the meaning of this Condition 14(h)(i) must be agreed with the Seller in advance); and
- (ii) the Seller is entitled at its option to, as the Buyer's sole remedy for such indemnity claim: (i) procure the right for the Buyer to continue using the relevant Goods; and/or (ii) make or procure

such modifications, adjustments or substitutions to all or any part of the Goods and/or Services and/or output of the Services so that they become non-infringing; and/or (iii) make a refund of a reasonable proportion of any price for the infringing Goods.

## 15. Termination

- (a) The Seller shall be entitled to terminate the Agreement for Sale with immediate effect by giving written notice to the Buyer if:
- (i) the Buyer commits a material breach of any non-payment related obligation under or concerning the Agreement for Sale and (if such breach is remediable) fails to remedy that breach within 5 Business Days of being notified to do so by the Seller;
  - (ii) the Buyer commits a material breach of any payment related obligation under or concerning the Agreement for Sale and (if such breach is remediable) fails to remedy that breach within 5 Business Days of being notified to do so by the Seller;
  - (iii) for payments by instalments, the Buyer is late for any 2 instalments by an aggregate of more than 10 days;
  - (iv) the Buyer becomes subject to (whether initiated by the Buyer, a creditor of the Buyer or any other person/entity) any step or action in connection with the Buyer entering into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring pre-approved by the Seller), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (v) the Seller concludes that the Buyer's financial position has deteriorated (or is reasonably likely to deteriorate) so far as to reasonably justify the Seller's opinion that the Buyer's ability to give effect to the terms of the Agreement for Sale is in jeopardy; or
  - (vi) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.
- (b) The Buyer shall notify the Seller immediately if it shall become subject to any Financial Default.
- (c) On termination of the Agreement for Sale for any reason:
- (i) the Buyer shall immediately pay to the Seller all of the outstanding unpaid invoices and any interest due;
  - (ii) in respect of Goods supplied by the Seller, but for which no invoice has been submitted, the Seller shall be entitled to submit an invoice, which shall be payable by the Buyer immediately on receipt;
  - (iii) to the extent not covered by the above terms of Condition 15.1(c), in respect of costs incurred by the Seller or any other Seller Group Entity in respect of the Buyer's ordered Goods that are not yet supplied by the Seller by the termination of the Agreement for Sale, the Seller or the other applicable Seller Group Entity shall be entitled to submit an invoice to the Buyer for the same; and
  - (iv) at the Seller's request the Buyer shall return or destroy all hard copy (and delete all digital versions) of all Confidential Information of or concerning the Seller within the scope of Condition 17, promptly on request, except for information that must be retained by the Buyer under applicable laws.
- (d) Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties or any Seller Group Entity that have accrued up to the date of termination or expiry, including the right to claim fees, charges, costs or expenses or damages of any kind and to any extent in respect of any breach of the Agreement for Sale which existed at or before the date of termination or expiry.
- (e) Any provision of the Agreement for Sale that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 16. General Points

- (a) **Assignment and other dealings:** The Seller may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under Agreement for Sale. The Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under Agreement for Sale without the prior written consent of the Seller.
- (b) **Severance:** If any provision or part-provision of the Agreement for Sale is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of Agreement for Sale. If any provision or part provision of Agreement for Sale is deemed deleted under this condition 16(b), the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- (c) **Waiver:** A waiver of any right or remedy under Agreement for Sale or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under Agreement for Sale or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under Agreement for Sale or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- (d) **No partnership or agency:** Nothing in Agreement for Sale is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, 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.
- (e) **Third party rights:** A third party (other than a Seller Group Entity or any licensor, director or other officer or employee of the Seller or any other Seller Group Entity) is not entitled to enforce any purported right or benefit under, or other aspects of, the terms of Agreement for Sale under Agreement for Sales (Rights of Third Parties) Act 1999. The rights of the parties to rescind or vary Agreement for Sale are not subject to the consent of any other person.
- (f) **Changes:** Except as set out in these Conditions, no variation or addition to the Agreement for Sale shall be effective unless and until it is expressly and specifically agreed in writing and signed by the parties in wet/ink form or using e-signatures (or their authorised representatives) – with no content set out in an email itself (as opposed to an signed document attached to an email) being treated as a signature. Subject to the first sentence of this Condition 16(f), delivering a document or communication to the Seller with the Buyer's own terms and conditions stated or incorporated in that document or communication is not binding on the Seller.
- (g) **Approvals:** Any purported representation, promise, concession, settlement, consent, approval, authority, or agreement of any kind in any way about or arising from Agreement for Sale, for and on behalf of the Seller, will only be valid and binding on the Seller if: (i) recorded expressly in writing in Agreement for Sale, and/or (ii) given or approved expressly in writing by (or in accordance with the express written authority of) a registered director of the Seller or an employee of the Seller that can reasonably be considered as having express authority to bind the Seller in the applicable context.
- (h) **No Derogatory Statements:** Each party will not make any statements or comments about the other party to any third party, on any online or offline forum/platform or in any other way, in each case that can reasonably be considered to be defamatory, derogatory or (even if true) deliberately or negligently designed or intended to harm the reputation or commercial success of the other party.
- (i) **Verification:** The Buyer will promptly on request allow the Seller and/or its representatives to attend the premises of the Buyer or any of its agents or representatives, and review any documentation (and take copies of the same) for the purposes of checking and verifying the extent of the Buyer's compliance with Agreement for Sale. The Buyer will promptly on request provide correct, up to date non-misleading information and responses to the Seller and/or its representatives concerning anything to do with the Buyer's compliance with Agreement for Sale.
- (j) **Relief:** The parties acknowledge that damages will or may not be an adequate remedy for every breach of Agreement for Sale by the Buyer and that the Seller will be entitled to: (i) an injunction or restraining order for restraining the other party from committing or continuing to commit any breach or threatened breach of the obligations under Agreement for Sale, and/or (ii) other equitable relief. For such remedies, each party agrees that proof will not be required that monetary damages for breach or threatened breach of the obligations would be difficult to calculate or otherwise that remedies at law would be inadequate.
- (k) **Disputes:** The parties will work together in good faith to promptly notify, discuss and seek to resolve grievances, allegations, complaints, concerns, disputes or claims of any kind concerning or arising from Agreement for Sale (including those concerning or arising from the conduct or performance of any party). Such working together includes reasonably prompt investigations and information sharing to a reasonable extent.
- (l) **Interpretation:** The expressions **will** and **shall** each have the same meaning and effect as the expression **must**. Headings or sub-headings don't affect interpretation of these Conditions or the Agreement for Sale. If the Agreement for Sale or any part of it is translated, the original English version shall prevail and apply. References to legislation include all respective updates and replacements, and all respective subordinate legislation. Singular words include the plural, and vice versa. Where a party is prohibited or restricted from doing something under the Agreement for Sale, such party will also be deemed to ensure that such thing is not done with, through or for any other person in any role or capacity. Any phrase introduced by the expression **including, include, in particular, for example** or any similar expression shall be interpreted as non-exhaustive and illustrative and shall not limit the sense of the words, description, definition, phrase, expression or term preceding it. A reference to **writing** or **written** includes email and any document signed in wet/ink form or through e-signature on a platform like DocuSign.
- (m) **Governing law & Jurisdiction:** The formation, construction and performance of the Agreement for Sale and any disputes arising out of the Agreement for Sale (including non-contractual disputes or claims) shall be governed in all respects by English law and the parties agree that the English Court shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement for Sale; however, the Seller may commence proceedings, transfer proceedings to, or enforce judgments in any jurisdiction where the Buyer is believed to be incorporated or hold assets.
- (n) **Signatures:** The Buyer's order documentation, Order Confirmation or Agreement for Sale, in each case where signed, may be signed as a single document or in counterparts, in wet/ink form or using e-signatures. Each emailed signature page will be just as valid as the originals if circulated with or incorporated in the final agreed form of Agreement for Sale.

## 17. Data Protection Act and Confidentiality

- (a) **Data Protection: "Data Protection Legislation"** means (A) all applicable data protection and privacy legislation in force from time to time in the UK (including, but not limited to, the retained EU law version of General Data Protection Regulation ((EU) 2016/679) ("**UK GDPR**"), the Data Protection Act 2018 ("**DPa 2018**"), and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), and data protection and privacy legislation in force from time to time in the EU (including but not limited to the EU law version of General Data Protection Regulation ((EU) 2016/679) ("**EU GDPR**")). Each party is a controller of personal data (as in each case defined in the Data Protection legislation) for the purposes of the Agreement for Sale. Each party will, at its own expense, comply with its own obligations under the Data Protection Legislation. Each party will, at its own expense, provide reasonable assistance for the other party's compliance with the Data Protection Legislation. If at any time one party is or becomes a processor under the Data Protection Legislation for the other party, the parties will fully co-operate with each other to promptly agree and enter into a data processing agreement that is compliant with article 28 of the UK GDPR or article 28 of the EU GDPR as the case may be.
- (b) **Confidentiality:** Each party shall not at any time disclose to any person (and shall keep confidential), in each case for as long as the law permits confidentiality to be maintained: (i) the trade secrets and know-how of the other party, (ii) any information concerning the business, affairs, customers, clients or

suppliers of the other party, (iii) the contents of the Agreement for Sale (and previous versions), (iv) the contents of any letter, email, or other communication of any kind concerning the Agreement for Sale, (v) information communicated, created or established under the Agreement for Sale which is expressly agreed by the parties or can reasonably be concluded to be imparted/shared in confidence, (vi) any grievance, complaint, concern, dispute or settlement in any way concerning the Agreement for Sale, and (vii) any other information that the parties from time to time agree to be confidential; HOWEVER, each party may disclose the other party's confidential information (A) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement for Sale (ensuring that such employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Condition 17(b)), (B) that is becomes public without breach of this Agreement for Sale, or (C) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement for Sale.

## 18. Notices

- (a) Any notice or other communication given to a party under or in connection with the Agreement for Sale shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 18(a) of these Conditions; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this Condition 18(a) of these Conditions shall not apply to the service of any proceedings or other documents in any legal action.