

FlashForm Limited - Terms & Conditions for the Supply of Goods (B2B)

The Customer's attention is drawn in particular to the provisions of clause 8 (Limitation of Liability).

1. Interpretation

- 1.1 **Definitions:**
Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours: the period from 8.00 am to 4.30 pm on any Business Day.
Collection Location: has the meaning given in clause 4.3.
Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.7.
Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer: the person or firm who purchases the Goods from the Supplier.
Delivery Location: has the meaning given in clause 4.2.
Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.
Goods: the goods (or any part of them) set out in the Order.
Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order: the Customer's order for the Goods, including written orders received via email or other electronic means (including WhatsApp or SMS) and/or verbal orders received by telephone or in-person at the Supplier's trade premises, as the case may be.
Specification: any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier.
Supplier: FlashForm Limited (registered in England and Wales with company number 16073164) whose registered office is at 117 - 119 Cleethorpe Road, Grimsby DN31 3ET.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
(b) A reference to a party includes its personal representatives, successors and permitted assigns.
(c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
(d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
(e) A reference to **writing** or **written** excludes fax but not email.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point, and on which date the Contract shall come into existence.
2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. Goods

- 3.1 The Goods will conform in all material respects with the Specification.
3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, or where the Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.
3.4 Any samples given by the Supplier correspond with the Goods as far as is reasonably possible given the nature of the Goods, but this is not a sale by sample and the samples are not to be treated as forming part of the Contract.
4. **Delivery (including collections)**
4.1 The Supplier shall ensure that:
(a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense. Where packaging materials are not returnable to the Supplier (such as pallets), the Customer is responsible for disposing of these packaging materials in a responsible manner at its own cost.
- 4.2 The Supplier shall only deliver the Goods to the Customer's location if this is expressly agreed by the Supplier in writing in the Order, and in such instances delivery shall be made to the delivery location specified in the Order (or to such other location as the parties may agree in writing prior to delivery) or where appropriate to a hard road as close as reasonably possible to such location (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 If the Supplier has not agreed in writing to deliver the Goods to the Customer's location in accordance with clause 4.2, the Customer shall be responsible for collecting the Goods at its own cost from the Supplier's premises at Unit 13 Monsal Park, Atherton Way, North Lincolnshire, DN20 8FW (or from such other location as may be advised by the Supplier in writing prior to collection) (**Collection Location**) on a date and time agreed after the Supplier has notified the Customer that the Goods are ready for collection (which collection must be made within 3 Business Days of the Supplier's notification, unless otherwise agreed with the Supplier).
- 4.4 Where it has been agreed (in accordance with clause 4.2) that the Supplier shall deliver the Goods to the Customer's Delivery Location, delivery shall be completed on the completion of unloading of the Goods at the Delivery Location. Alternatively, where (in accordance with clause 4.3) the Customer is collecting the Goods from the Supplier's premises, delivery shall be completed on completion of loading of the Goods at the Collection Location.
- 4.5 Any dates quoted by the Supplier for production of Orders or for delivery are approximate only, and the time is not of the essence. The Supplier shall not be liable for any delay in production or delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Supplier fails to deliver the Goods (or, in cases where the Customer has agreed to collect the Goods and the Supplier fails to make them available for collection), its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Customer fails to accept delivery of the Goods (or, where appropriate, collect the Goods from the Supplier) within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
(a) delivery of the Goods shall be deemed to have been completed at 9am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
(b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.9 Where it has been agreed (in accordance with clause 4.2) that the Supplier shall deliver the Goods to the Customer's Delivery Location:
(a) the Customer shall provide safe and proper means of access for the Supplier's (or its agent's) delivery vehicles to the Customer's Delivery Location, and the Supplier (or its agents) may refuse to take their delivery vehicles onto a nominated site if in their opinion the site conditions are such as to constitute a danger to the vehicles, the Goods or any persons or property; and
(b) the Customer shall be responsible for the safe and proper unloading of the Supplier's (or its agent's) delivery vehicles promptly upon arrival (and in any event within 1 hour from arrival), and the Customer shall arrange for appropriate authorised representatives and suitable unloading equipment and facilities to be available upon delivery to effect this and shall sign the Supplier's delivery note/ticket. The Customer shall indemnify the Supplier against all claims, loss or damage suffered or incurred by the Supplier or its agents in connection with such unloading operations. This clause 4.9(b) shall survive termination of the Contract.
- 4.10 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.11 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
5. **Quality**
5.1 The Supplier warrants that on delivery the Goods shall:
(a) conform in all material respects with their description and any applicable Specification; and
(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
5.2 Subject to clause 5.3, if:
(a) the Customer discovers and gives notice in writing to the Supplier within 3 Business Days from delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
(b) the Supplier is given a reasonable opportunity of examining such Goods before they are used or interfered with; and
(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business,
the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Without limiting clause 8.6, and subject to clause 8.3, provided the Supplier complies with its obligations under this clause 5.2 the Supplier shall

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- not be liable to the Customer for any costs or expenses incurred by the Customer arising from defective Goods including those relating to installation, repair, re-installation, removal or labour costs.
- 5.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - in relation to 'oil canning' of the Goods, as this is an inherent characteristic of cold formed roofing products;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions, or misuse, alteration or repair of the Goods (other than where caused by the Supplier);
 - the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - the Customer alters or repairs such Goods without the written consent of the Supplier; or
 - the Goods differ from any Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 In the case of certain Goods, natural variations may arise in the colour, consistency and finish of products, particularly where they originate from different sources, coils and batches. Without limiting clause 3.4, samples of Goods are intended for reference to demonstrate the general character and substance of the product only and there may be a reasonable amount of deviation from sample to Goods supplied in terms of colour, size or shape. The Supplier shall not be liable for any loss caused by any such variations where the variation does not diminish the quality of the Goods and where Goods bought for a specific job or purpose are not purchased at the same time.
- 5.6 In addition to any other requirements in these Conditions or instructions provided by the Supplier regarding appropriate storage of Goods, the Customer must ensure that following delivery all Goods are stored indoors wherever possible, and in any event should remain protected from all weather conditions whilst stored until such time as they are ready to be installed, and stored so that there is no water ingress between Goods. Galvanised Goods should always be stored indoors whilst stacked as this will help reduce the possibility of an occurrence of white rust.
- 5.7 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 5.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- the Supplier receives payment in full (in cash or cleared funds) for the Goods; and
 - the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
 - give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - the Goods; and
 - the ongoing financial position of the Customer.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- it does so as principal and not as the Supplier's agent; and
 - title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, the Supplier may:
- by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Price and payment**
- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 Unless the Customer collects the Goods from the Supplier, or unless stated otherwise in the Supplier's quotation or order acceptance, the price of the Goods is inclusive of insurance and transport of the Goods to the Customer's Delivery Location. Additional delivery costs may be charged to the Customer for changes to the Customer's Delivery Location.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery or collection.
- 7.6 The Customer shall pay for all Goods in full and in cleared funds in advance of (or at the time of) collection or delivery by such payment methods as the Supplier operates from time to time, unless the Supplier confirms in writing to the Customer that credit facilities will be available to the Customer. If the Supplier confirms in accordance with the foregoing that credit facilities are available to the Customer, all invoices must be paid in cleared funds within 30 days of the invoice date, to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8. Limitation of liability**
- 8.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence;
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - defective products under the Consumer Protection Act 1987.
- 8.4 Subject to clause 8.3, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the total charges in the contract year in which the breaches occurred.
- 8.5 In clause 8.4:
- contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
 - total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of Goods actually supplied by the Supplier, whether or not invoiced to the Customer.
- 8.6 Subject to clause 8.3, the following types of loss are wholly excluded by the parties:
- loss of profits;
 - loss of sales or business;
 - loss of production;
 - loss or damage to other goods or property;
 - loss of agreements or contracts;
 - loss of anticipated savings;
 - loss of use or corruption of software, data or information;
 - loss of or damage to goodwill; and
 - indirect or consequential loss.
- 8.7 The Supplier has given commitments as to compliance of the Goods with relevant specifications in clause 5. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.8 This clause 8 shall survive termination of the Contract.
- 9. Termination & suspension**
- 9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
 - the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), 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;
 - the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 The Contract may only be terminated by the Customer for convenience with the Supplier's prior written acceptance, which may be given subject to such terms and conditions as may be specified by the Supplier. Upon any such acceptance by the Supplier of termination by the Customer, the Customer shall be liable to pay the Supplier for all work carried out under the

- Contract prior to the date of acceptance of such termination (including any costs and expenses incidental to that work) and shall indemnify the Supplier against any loss (including loss of profit) incurred by the Supplier relating to termination.
- 9.5 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.6 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 10. Confidentiality**
- 10.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- 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 Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
 - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 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 Contract.
- 11. Force majeure**
- Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.
- 12. Intellectual Property**
- 12.1 The Customer acknowledges that:
- the Intellectual Property Rights in the Goods (including all written information, drawings, artwork, images and diagrams) are the Supplier's (or its licensor's) property (other than Intellectual Property Rights in any materials provided by the Customer);
 - nothing in the Contract shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights referred to in clause 12.1(a). All such information shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of the Supplier; and
 - any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of the Supplier or any other owner of the trade marks from time to time. The Supplier asserts its full rights to control the use of its trade marks within the EEA.
- 12.2 The Customer shall not repackage the Goods and/or remove any copyright notices, confidential or proprietary legends or identification from them.
- 12.3 The Customer shall not use (other than pursuant to the Contract) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Supplier or any associated company of the Supplier owns or claims rights in anywhere in the world.
- 12.4 Without limiting the Supplier's rights under clause 3.2 (where applicable), if at any time it is alleged that the Goods infringe the rights of any third party or if, in the Supplier's reasonable opinion, such an allegation is likely to be made, the Supplier may at its option and its own cost:
- modify or replace the Goods in order to avoid the infringement; or
 - procure for the Customer the right to continue using the Goods; or
 - repurchase the Goods at the price paid by the Customer.
- 12.5 The Customer shall promptly and fully notify the Supplier of:
- any actual, threatened or suspected infringement of any Intellectual Property Rights in the Goods which comes to the Customer's notice; and
 - any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Goods infringes the rights of any person.
- 12.6 The Customer agrees (at the Supplier's request and expense) to do all such things as may be reasonably required to assist the Supplier in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 12.7.
- 12.7 In the event of any claim, proceeding or suit by a third party against the Customer alleging an infringement of any Intellectual Property Right connected with the in the Goods, the Supplier shall defend the Customer at the Supplier's expense, subject to:
- the Customer promptly notifying the Supplier in writing of any such claim, proceeding or suit; and
 - the Supplier being given sole control of the defence of the claim, proceeding or suit, and provided that the Supplier shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except the Supplier or its authorised representative, or out of use or combination of the Goods with products or third party materials not specified or expressly approved in advance in writing by the Supplier, or where the claim, proceeding or suit arises from the Supplier's adherence to the Customer's Specification (or requested changes to the Specification) or from infringing items of the Customer's origin, design or selection, (and this clause 12.7 shall not limit the Supplier's rights under clause 3.2, where applicable).
- 13. General**
- 13.1 Assignment and other dealings**
- The Supplier 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 the Contract.
 - The Customer 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 the Contract without the prior written consent of the Supplier.
- 13.2 **Severance.** If any provision or part-provision of the Contract 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 the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 13.2 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.
- 13.3 **Waiver.** A waiver of any right or remedy under the Contract 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 the Contract 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 the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.4 **No partnership or agency.** Nothing in the Contract 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.
- 13.5 **Entire agreement.**
- The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
 - Nothing in this clause shall limit or exclude any liability for fraud.
- 13.6 **Third party rights.**
- Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 13.7 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.8 **Notices.**
- Any notice or other communication given to a party under or in connection with the Contract 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 clause, and shall be delivered personally, sent by pre-paid first class post or other next Business Day delivery service or commercial courier.
 - A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.8(a); if sent by pre-paid first class post or other next Business Day delivery service, at 9:00 am on the two Business Day after posting; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
 - The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
 - A notice given under the Contract is not valid if sent by email or fax.
- 13.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 13.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.