

## **ENERGY OPTIMIZERS LIMITED**

### **TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS**

**(2010)**

**NOTE:**

- (i) There are provisions contained in these Conditions, in particular Conditions 2.4, 2.10, 3.2, 3.4, 8.2, 8.4, 11, 12, 13 and 15 which exclude or limit liability of the Company, its servants and agents, and Conditions 5 and 6.1, which provides to the Company a right of indemnity against the Customer in certain circumstances.
- (ii) The Company's quoted and printed prices are not fixed prices as appears from Condition 4.1 below, and may be increased pursuant to Condition 4.5 below. The Customer may be liable for additional costs pursuant to Conditions 4.3, 4.4, 8.3 and/or 8.5.4.

#### **1. DEFINITIONS**

1.1 In these terms and conditions ("Conditions") the following words and expressions shall have the following meanings:-

"Company" Energy Optimizers Limited (company number 5367780) whose registered office is at Estate Road 1, South Humberside Trading Estate, Grimsby, South East Lincolnshire DN31 2TA;

"Contract" the contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these Conditions;

"the Customer" the person firm or company who purchases the Goods from the Company;

"Goods" the goods to be supplied to the Customer by the Company (including any instalment of the goods or part of them) under the terms of the Contract;

"Order" the order placed by the Customer with the Company for purchase of the Goods;

"Order Acknowledgement" the written acknowledgement of the Order sent to the Customer by the Company upon acceptance of the Order by the Company.

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced. Headings will not affect the construction of these Conditions.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

#### **2. GENERAL**

2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any written Order, confirmation of Order, specification or other document).

- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer's written Order, confirmation of Order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company.
- 2.4 The Company is prepared to receive the Order by telephone but will be under no liability whatsoever for any error or omission claimed by the Customer to have arisen in relation to a telephone Order.
- 2.5 Each Order shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions.
- 2.6 No Order shall be deemed to be accepted by the Company until an Order Acknowledgement is issued by the Company or (if earlier) the Company delivers the Goods to the Customer. Orders are accepted by the Company subject to availability of products and supplies from the Company's suppliers required to fulfil the Contract.
- 2.7 The Customer must ensure that the terms of its Order and any applicable specification are complete and accurate, and the Customer is responsible for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 2.8 Any quotation is given on the basis that no contract will come into existence until the Company despatches an Order Acknowledgement to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.9 The Contract (and/or any Goods or instalments of Goods comprised in the Contract) may only be cancelled by the Customer with the Company's prior written consent and upon cancellation the Company shall be entitled to invoice the Customer for a restocking charge at the Company's standard rate from time to time (together with the costs of all work carried out to date by the Company under the Contract including any costs and expenses incidental to that work).
- 2.10 To ensure that any advice or recommendations required by the Customer is given by an appropriate representative of the Company, the Customer acknowledges that any advice or recommendations given by the Company, its employees or agents to the Customer or its employees or agents as to the storage application or use of the Goods, which is not confirmed in writing by the Company, is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any adverse results of any such advice or recommendation which has not been so confirmed in writing.

### **3. DESCRIPTION**

- 3.1 The description of the Goods shall be as set out in the Company's quotation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in any catalogue, brochure, leaflet or correspondence issued by the Company are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.
- 3.3 Any trial units on loan from the Company 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 trial units are not to be treated as forming part of the Contract.

- 3.4 The Company shall not be liable to the Customer in respect of any minor deviations in the size, dimming or energy saving performance of the Goods from their description in the Company's quotation or promotional materials.
- 3.5 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.6 The Company shall be entitled to correct any arithmetical or typographical error or omission made in relation to the Goods (including without limitation in the Company's quotations or any of the documents referred to in Condition 3.2).

#### **4. PRICE**

- 4.1 The price payable for the Goods ("the Price") shall be the price specified in the Order Acknowledgement, or (if no price is specified) the price of the Goods set out in the Company's price list published on the date of delivery or deemed delivery ("the Company's Price List").
- 4.2 The Price shall be exclusive of VAT and any other similar taxes which the Customer shall be additionally liable to pay to the Company.
- 4.3 Unless otherwise specifically stated in the Company's Price List for the Goods (subject always to the terms of the Order Acknowledgement) the Price shall be exclusive of all costs or charges in relation to loading, unloading, carriage to the Customer's premises and insurance and accordingly where it has been agreed that the Company deliver the Goods to the Customer's premises pursuant to Condition 8.1, the Customer will be responsible for payment of all the aforementioned costs and charges when it is due to pay the Price.
- 4.4 The Company will package Goods for delivery with its standard packing suitable for normal deliveries within the UK. The Company will make an additional charge to the Customer in the event that special packing of the Goods is required by the Customer.
- 4.5 The Company may at any time increase the Price by an amount equal to the increase in the Company's cost in carrying out its obligations under the Contract which is due to any factor beyond the control of the Company (including but not limited to any significant increase in raw material, labour or energy costs or other costs of manufacture, any foreign exchange fluctuation, currency regulation or alteration of duties) and a proportionate increase in price required to preserve the Company's profit margin. Where delivery is by instalments the Company shall be entitled to increase the Price as stated in this Condition in respect of any Goods undelivered at that time.

#### **5. INDEMNITY BY THE CUSTOMER**

- 5.1 The Customer agrees to indemnify the Company on demand against any loss or extra cost incurred by the Company caused by any alteration by the Customer in the design, weight, quantities or specification of the Goods, or caused by the Customer's instructions or lack of instructions or through any act or default on the part of the Customer its servants or employees.
- 5.2 The Customer shall be solely responsible for and shall keep the Company indemnified and held harmless against all loss, liability, costs and expenses (including without limitation any legal costs) whatsoever arising directly or indirectly from the use of the Goods other than in accordance with the Company's operating instructions.

#### **6. INTELLECTUAL PROPERTY**

- 6.1 The Customer shall indemnify the Company against all loss, costs, claims, expenses and damages awarded against or incurred by the Company arising out of any alleged infringement of any patent, trade mark, registered design, design right, copyright or other industrial or

intellectual property rights of any other person arising out of the manufacture or sale of Goods made to the specification or special requirements (including without limitation the application of any process) of the Customer.

- 6.2 All written information, drawings and diagrams (excluding the Goods themselves) prepared by the Company in relation to the supply of Goods and the copyright therein and all other items owned by the Company and used in the production of the Goods shall remain the property of the Company and shall be returned by the Customer on demand. 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 Company.
- 6.3 The Customer shall ensure that its employees, servants and agents and all those under the Customer's control and supervision shall comply with the obligations of confidentiality contained at Condition 6.2.
- 6.4 The supply of Goods by the Company shall not confer any right upon the Customer to use any of the Company's trade marks (except in the re-sale of the Goods in the packaging supplied by the Company), or any of the Company's patents, design rights or other industrial or intellectual property rights, and at all times such patents, trade marks, design rights and other industrial or intellectual property rights shall remain the absolute property of the Company (or its suppliers).

## **7. PAYMENT**

- 7.1 Unless otherwise stated in the Order Acknowledgement, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- 7.2 Unless otherwise stated in the Order Acknowledgement or otherwise agreed in writing with the Company, the Customer shall pay the Price on or before the end of the calendar month following the calendar month in which the Company's invoice is dated PROVIDED ALWAYS that payment shall become due on demand in any event forthwith upon the occurrence of any of the events referred to in Condition 10.5. The Company shall be entitled to recover the Price notwithstanding that delivery may not have taken place and/or the property in the Goods has not passed to the Customer.
- 7.3 If upon the terms of the Contract monies due shall be payable by instalments, a default by the Customer of the payment of any instalment due shall cause the whole of the balance of the sums due to become due forthwith.
- 7.4 The sums due to the Company under the Contract shall be due in full to the Company in accordance with the terms of the Contract and the Customer shall not be entitled to make any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 7.5 The time of payment of the Price (and any other sums due from the Customer to the Company pursuant to the Contract or these Conditions) shall be of the essence of the Contract.
- 7.6 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
  - 7.6.1 cancel the Contract or suspend any further deliveries to the Customer;
  - 7.6.2 appropriate any payment made by the Customer to such of the Goods (or any goods supplied under any other contract between the Customer and the Company) as the

Company may think fit (notwithstanding any purported appropriation by the Customer); and

- 7.6.3 claim and charge the Customer interest (and reasonable compensation for debt recovery costs) under the terms of the Late Payment of Commercial Debts (Interest) Act 1998 and any enactment, order, regulation or other statutory instrument made thereunder.
- 7.7 The Company shall be entitled to withhold an amount equal to any amount due from the Customer to the Company from any amount due from the Company to the Customer on any account whatsoever and any term of any contract between the Customer and the Company that is inconsistent with this Condition shall be deemed to have been amended accordingly.
- 7.8 No payment shall be deemed to have been received until the Company has received cleared funds.
- 7.9 Notwithstanding any other provisions in these Conditions, the Customer shall be entitled to open a trading/credit account with the Company only with the prior agreement of the Company, which agreement shall include the Company making appropriate enquiries and being satisfied as to the Customer's creditworthiness.

## **8. DELIVERY OF GOODS**

- 8.1 Unless specifically agreed between the parties and stated in the Order Acknowledgement, delivery of the Goods is to be effected by the Company (or its agents) delivering the Goods (by a method of transport the Company thinks suitable) to the address of the Customer specified in the Order Acknowledgement (or such other place agreed in writing by the parties). In circumstances where it is agreed that delivery of the Goods shall take place by the Customer (or its nominated carrier) collecting the Goods, this shall be effected by the Customer collecting the Goods from the Company's place of business at any time after the Company has notified the Customer that the Goods are ready for collection.
- 8.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 8.3 Where delivery is to be made by the Company or its agents the Customer will provide safe and proper means of access to the Customer's delivery points, and, if appropriate, for any vehicles used by the Company or its agents. If the Customer fails to provide suitable equipment, means or facilities for the reception and unloading of the Goods (including where reasonably needed the attendance of the Customer's representatives at such delivery) the Company shall be entitled to withhold delivery and/or to charge the Customer for any additional costs and time thereby incurred by the Company.
- 8.4 The Company shall use reasonable efforts to meet delivery dates, but dates for delivery are estimates only and delivery is subject to performance by the Company's own suppliers and haulage contractors. Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 8.5 If the Customer refuses or fails to take delivery of the Goods within the Customer's normal working hours on the date of delivery, or if the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
  - 8.5.1 risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence);

- 8.5.2 the Goods will be deemed to have been delivered;
  - 8.5.3 the Company may suspend any further deliveries to the Customer (whether under the Contract or any other contract);
  - 8.5.4 the Company may store the Goods and the Customer shall in addition to the price payable under Condition 7 pay all related costs and expenses (including without limitation the costs for storage and insurance and any additional delivery costs incurred by the Company) and if the Customer fails to take delivery after 14 days following the date of delivery, the Company may rescind the Contract and sell the Goods to a third party.
- 8.6 Where the Goods are handed to a carrier for carriage to the Customer any such carrier shall be deemed to be an agent of the Company and not the Customer for the purposes of Sections 44, 45 and 46 of the Sale of Goods Act 1979.
- 8.7 Section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Company.
- 8.8 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

**9. RETURN OF GOODS**

Without prejudice to the provisions of Condition 11 below, Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to only such address as the Company shall notify to the Customer at the Customer's expense, and the Company's certificate as to the quantity of returned Goods received by it shall (save in respect of manifest error) be final and binding.

**10. PASSING OF TITLE TO AND RISK IN GOODS**

- 10.1 The Company retains title to and owns all Goods until it has received payment in full for all sums due under this Contract and all other sums which are or which become due to the Company from the Customer on any account.
- 10.2 Until title to the Goods has passed to the Customer pursuant to Condition 10.1 the Goods shall be stored separately from any goods belonging to the Customer or any third party (at no cost to the Company), shall be kept clearly marked as being the Company's property and the Customer shall not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.
- 10.3 Until title to the Goods has passed to the Customer pursuant to Condition 10.1 the Customer shall be entitled to sell or use Goods in the ordinary course of its business (which in the case of a sale must be at the full market value of the Goods) and any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 10.4 Save as expressly provided in this Condition 10 the Customer shall not assign, lease, pledge, charge or grant rights to third parties over the Goods in any way until they have been paid for in full by the Customer, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 10.5 If the Customer does not pay the Company in full when due, compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order made against him or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or

takes or suffers any similar action in consequence of debt or becomes insolvent or if the Company has reasonable cause to believe that any of these events is likely to occur, the Customer's right to possession of the Goods shall terminate immediately, and the Company shall have the right, without prejudice to any other remedies:-

- 10.5.1 to enter without prior notice any premises where Goods owned by it may be and to repossess and dispose of any Goods owned by it so as to discharge any sums owed to it by the Customer under the Contract or any other contract;
  - 10.5.2 to require the Customer not to resell or part with possession of any Goods owned by the Company until the Customer has paid in full sums owed by it to the Company under the Contract or any other contract; and
  - 10.5.3 to withhold delivery of any undelivered Goods.
- 10.6 Unless the Company expressly elects otherwise, any contract between it and the Customer for the supply of Goods shall remain in existence notwithstanding any exercise by the Company of its rights under this Condition.
- 10.7 The Customer hereby irrevocably licences the Company, its agents and employees to enter any premises occupied by the Customer where the Company reasonably believes Goods owned by it are stored at any time to inspect them, or, where the Customer's right to possession has terminated, to remove such Goods.
- 10.8 Until such time as property in the Goods passes to the Customer, the Company shall be entitled at any time to require the Customer to deliver the Goods to the Company and the Company shall comply with any such request as soon as practicable thereafter.
- 10.9 Except as otherwise provided in these Conditions, the risk of loss or damage to the Goods passes to the Customer upon delivery.
- 10.10 The Customer shall insure the Goods from the time that risk passes and shall produce the policy to the Company for inspection on request. Until title to the Goods passes to the Customer pursuant to Condition 10.1, the Customer must hold any proceeds of such insurance on trust for the Company and not mix them with any other money, nor pay such proceeds into an overdrawn bank account. If the Customer fails to insure the Goods, the Company may do so and recover the cost from the Customer.

## **11. WARRANTY**

- 11.1 The Company warrants that the Goods will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) at the time of delivery and the Company shall at its option refund the purchase price at the *pro rata* Contract rate or repair or replace free of charge any Goods which are found to be defective within one year from date of delivery provided:-
- 11.1.1 the Customer complies with the provisions of Condition 11.3; and
  - 11.1.2 the Goods (or the part of the Goods which are defective) are returned to the Company at the Customer's own expense, as the Company may request; and
  - 11.1.3 the Customer (or any person to whom the Customer has sold the Goods) does not make any further use of such Goods (or the part of the Goods which are defective) after giving notice pursuant to Condition 11.3.1;
  - 11.1.4 the defect has not arisen because the Customer (or any person to whom the Customer has sold the Goods) has failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

- 11.1.5 the defect has not arisen through fair wear and tear of the Goods or because the Customer has applied to the Goods any process, operation or treatment not specifically recommended by the Company;
  - 11.1.6 the Customer (or any person to whom the Customer has sold the Goods) has not altered or repaired the Goods without the written consent of the Company; and
  - 11.1.7 the defect has not arisen from any drawing, design or specification supplied by the Customer in relation to the Goods; and
  - 11.1.8 the defect has not arisen due to any other negligent act or omission of the Customer relating to the Goods.
- 11.2 If the Company complies with Condition 11.1 it shall have no further liability for a breach of the warranty in Condition 11.1 in respect of such Goods.
- 11.3 The Company shall not be liable for a breach of the warranty in Condition 11.1 unless:
- 11.3.1 the Customer inspects each consignment of Goods upon delivery and (whether or not delivery is refused by the Customer) gives written notice all defects to the Company, and (if the defect is or appears to be as a result of damage in transit) to the carrier, within 5 working days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure; and
  - 11.3.2 the Company is given a reasonable opportunity after receiving the Customer's notice under Condition 11.3.1 to examine such Goods and the Customer (if asked to do so by the Company) returns such Goods (or the part of the Goods which are defective) to the Company's place of business at the Customer's cost for the examination to take place there.

If the Customer does not notify the Company in accordance with this Condition 11.3, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the Price and any additional costs specified in the Contract or as provided in these Conditions as if the Goods had been delivered in accordance with the Contract.

- 11.4 Where a complaint or a claim has been made in respect of Goods proved or alleged to be defective, the Company may suspend further deliveries of Goods under the Contract until the validity of such complaint or claim has been finally determined and in such event the applicable delivery date(s) shall be postponed accordingly.
- 11.5 Where the Goods are to be delivered by instalments any defect in any instalment shall not entitle the Customer to cancel the remainder of the instalments.
- 11.6 Where the manufacturer of any Goods supplied offers a product guarantee or warranty, the Company will endeavour upon request to transfer to the Customer the benefit of any such warranty or guarantee given to the Company.

## **12. LIMITATION OF LIABILITY**

- 12.1 Subject to Condition 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 12.1.1 any breach of these Conditions; and
  - 12.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.

**THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 12.4 AND 12.5:-**

- 12.4 The Company shall not be liable to the Customer for any:
- 12.4.1 loss of profits;
  - 12.4.2 loss of anticipated profits;
  - 12.4.3 loss of anticipated savings;
  - 12.4.4 loss of expected future business; and/or
  - 12.4.5 damage to the Customer's reputation or goodwill;
- which arise out of or in connection with the performance or contemplated performance by the Company of the Contract, or
- 12.4.6 any damages, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) whether arising from negligence, breach of contract or howsoever caused which may not fairly and reasonably be considered to have arisen naturally from the breach by the Company of any obligation in the Contract and which were not at the date of the Contract reasonably foreseeable as liable to result from the breach.
- 12.5 Subject to Condition 12.3, the Company's total liability arising in contract (including without limitation any breach of these Conditions by the Company), tort (including negligence or breach of statutory duty) misrepresentation, damage to the Customer's tangible property or otherwise arising out of or in connection with the performance or contemplated performance by the Company of the Contract shall be limited to the total price of all Goods supplied under the Contract.
- 12.6 The Company shall in no circumstances be liable to the Customer for any loss or damage suffered by the Customer caused by any incomplete or inaccurate information supplied to the Company or as a result of any other fault attributable to the Customer.
- 12.7 Subject always to Condition 12.3, the Company shall not be liable to the Customer for any damage to the property of personal injury to the Customer or any other person in circumstances where the Company is not negligent.

**13. NON-DELIVERY**

- 13.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 13.2 The Company shall not be liable for any non-delivery of Goods or shortages or discrepancies in the quantity of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 7 days of the date when the relevant Goods would in the ordinary course of events have been received.

- 13.3 Any liability of the Company for non-delivery, or shortages or discrepancies in the quantity of any Goods shall be limited to replacing any relevant Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

#### **14. COMMUNICATIONS**

- 14.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

14.1.1 (in case of communications to the Company) to its registered office specified in Condition 1.1 above, or to such changed address as shall be notified to the Customer by the Company from time to time; or

14.1.2 (in the case of the communications to the Customer) to the registered office of the Customer (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Customer from time to time.

- 14.2 Communications shall be deemed to have been received:

14.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

14.2.2 if delivery by hand, on the day of delivery;

14.2.3 if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

#### **15. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, blockades, strikes or other labour disputes (whether or not relating to either party's workforce), any restriction imposed by any local, municipal or government authority (including UK or other Customs authorities), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable stocks of Goods PROVIDED THAT if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

#### **16. SUB-CONTRACTING**

- 16.1 The Customer shall not be entitled to assign or sub-contract the whole or any part of the Contract without the prior written consent of the Company.

- 16.2 The Company may assign or sub-contract the whole or any part of the Contract to any person firm or company.

#### **17. GENERAL**

- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provisions shall continue in full force and effect.

17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

**18. PROPER LAW**

The Contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the Customer and the Company agree to submit to the exclusive jurisdiction of the English Courts.