

H.K. WENTWORTH LIMITED
(Incorporating Electrolube, AF and Eurochemi)

STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

"Buyer" the person(s), firm or company whose order for the Goods and/or Packaging Services is accepted by the Company;

"Business Day" any day other than a Saturday or Sunday or a public or bank holiday in England;

"Company" H.K. Wentworth Limited;

"Confidential Information" all information in respect of the business of the Company including, but not limited to, know-how or other matters connected with the Goods, and information concerning the Company's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and of such persons and any other information which, if disclosed, will be liable to cause harm to the Company;

"Contract" any contract between the Company and the Buyer for the sale and purchase of the Goods formed in accordance with **Condition 2**;

"Delivery Point" the place where delivery of the Goods is to take place under **Condition 7.1**;

"Force Majeure" any cause preventing the Company from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of the Company including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of the Company or otherwise),

protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or subcontractors;

“Goods”

any goods which the Company supplies to the Buyer (including any of them or any part of them) under a Contract;

“Intellectual Property Rights”

all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

“International Supply Contract”

such a contract as is described in section 26(3) of the Unfair Contract Terms Act 1977;

“Liabilities”

all costs, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional expenses) whenever arising or brought;

“Minimum Order Value”

the required minimum value of any order by the Buyer for Goods, as notified to the Buyer by the Company;

“Packaging Services”

packaging services supplied by the Company in relation to re-packaging other manufacturers goods as requested by the Buyer;

“Specification”

in relation to the Goods, the technical specifications of those Goods; all preparatory, design and development materials which relate

to the Goods; all information of any description which explains the structure, design and development materials which relate to the Goods; all information of any description which explains the structure, design, operation, functionality of the Goods; all information of any description which relates to the maintenance and/or support of the Goods;

“Technical Data Sheet”

a document setting out typical properties of the Goods which should not be relied on by the Buyer; and

“Terms and Conditions”

the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and the Company as specified on the front of the acknowledgement of order.

1.2 The headings in these Terms and Conditions are for convenience only and will not affect their construction or interpretation.

2. FORMATION

2.1 Subject to any variation under **Condition 2.7**, the Contract will be upon these Terms and Conditions to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

2.2 Each order or acceptance of a quotation for Goods will be deemed to be an offer by the Buyer to purchase Goods upon these Terms and Conditions. The Contract is formed when the order is accepted by the Company, by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of the order is issued by the Company.

2.3 Any quotation is valid for a period of 3 months only from its date, unless otherwise specified on the quotation or the Company has not previously withdrawn it.

2.4 The Buyer must ensure that the terms of its order and any applicable Specification are complete and accurate.

2.5 Acceptance of delivery of the Goods will be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions.

- 2.6 Subject to **Conditions 7.5, 12 and 13**, cancellation of a Contract by the Buyer will only be accepted at the discretion of the Company. The Company may cancel the Contract at any time prior to despatch of the Goods.
- 2.7 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by a director of the Company.
- 2.8 Unless otherwise agreed there shall be a Minimum Order Value. In the absence of prior agreement, any order below the Minimum Order Value will incur a charge to include the cost of packaging, delivery and administration.

3. **THE GOODS AND SPECIFICATION**

- 3.1 The quantity and description of the Goods will be as set out in the acknowledgement of order.
- 3.2 All Technical Data Sheets, samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract.
- 3.3 If Goods are made to the Specification, instruction or design supplied by the Buyer, or third party on behalf of the Buyer, then the Buyer:
- 3.3.1 warrants the suitability and accuracy of those Specifications, instructions or designs;
 - 3.3.2 will indemnify, keep indemnified and hold harmless the Company from and against all Liabilities which the Company incurs or suffers as a result of any infringement of the Intellectual Property Rights of any third party; and
 - 3.3.3 will indemnify, keep indemnified and hold harmless the Company from and against all Liabilities which the Company incurs or suffers in respect of any liability under any and all applicable consumer protection legislation.
- 3.4 The Buyer warrants that it will provide to all third parties to whom it may supply the Goods, all information as to the use and safe handling of the Goods which has been provided to the Buyer by the Company.
- 3.5 The Company may make any changes to the Specification, design, materials (whether or not supplied by the Buyer) or finishes of the Goods which:
- 3.5.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or

3.5.2 do not materially affect their quality or performance.

3.6 The Company may deliver to the Buyer Goods up to 5% more or 5% less than the quantity ordered of Goods supplied from the Company's stock without any adjustment in the price, and the quantity delivered will be deemed to be the quantity ordered, other than in relation to Goods which are produced to order by the Company, in which case the Company may deliver to the Buyer Goods up to 10% more or 10% less than the quantity ordered.

4. **PRICE**

4.1 The price for the Goods will be the price specified in the acknowledgement of order and is exclusive of any value added tax or other applicable sales tax or duty which will be added to the sum in question.

4.2 The Company may at any such time before delivery increase the price of the Goods by notice to the Buyer. In such an event the Buyer may on receipt of such notice cancel the order for the Goods, but if the delivery of the Goods is to be made by instalments the Buyer shall be entitled to cancel only the undelivered portion of the order. No other remedy shall be available to the Buyer in respect of such variation in price. If the Buyer does not make any such cancellation the increased price shall apply to the Contract as regards those Goods not already delivered when the increase is made.

4.3 The Company will be entitled to increase the price of the Goods following any changes in the Specification made both at the request of the Buyer and agreed by the Company or to cover any extra expense as a result of the Buyer's instructions or lack of instructions, or to comply with the requirements referred to in **Condition 3.5.1**.

5. **PAYMENT**

5.1 The Company may invoice the Buyer for the Goods on or at any time after despatch of the Goods.

5.2 Unless otherwise agreed in writing and subject to **Condition 5.5**, payment is due in pounds sterling 30 days after service of such invoice.

5.3 Time for payment will be of the essence.

5.4 No payment will be deemed to have been received until the Company has received cleared funds.

5.5 All sums payable to the Company under the Contract will become due immediately upon termination of the Contract.

- 5.6 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.
- 5.7 The Company may appropriate any payment made by the Buyer to the Company to such of the invoices for the Goods as the Company thinks fit, despite any purported appropriation by the Buyer.
- 5.8 Without prejudice to any other rights the Company may have, the Company will have the right to suspend performance of its obligations under the Contract if the Buyer does not make any payments in accordance with this **Condition 5**.
- 5.9 If any sum payable under the Contract is not paid when due then, without prejudice to the Company's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 8% per annum over HSBC plc base rate from time to time and the Company will be entitled to suspend deliveries of the Goods until the outstanding amount has been received by the Company from the Buyer.

6. **INSTALMENTS**

- 6.1 The Company may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.
- 6.2 Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract, instalment.

7. **DELIVERY**

- 7.1 Unless otherwise agreed in writing, delivery of the Goods will be made ex-works as defined in INCOTERMS 2000.
- 7.2 Delivery of the Goods will be made during the Company's usual business hours.
- 7.3 If the Company agrees in writing to deliver the Goods other than at the Company's premises:
- 7.3.1 the Company will be entitled to add a reasonable charge for the delivery of the Goods to the Contract Price; and
 - 7.3.2 the Buyer will give the Company all necessary instructions and loading and unloading of the Goods will be at the Buyer's risk and expense.

- 7.4 If the Contract is an International Supply Contract, it will be deemed to incorporate the latest edition of "Incoterms" current at the date of the Contract. If there is any inconsistency between "Incoterms" and any express term of the Contract, the latter will prevail. The Company will be under no obligation to give the Buyer notice specified in section 32(3) of the Sale of Goods Act 1979.
- 7.5 The Company will use reasonable endeavours to deliver each of the Buyer's orders for the Goods within the time agreed when the Buyer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery or performance on the specified date, the Company will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in this condition. Any delay in delivery will not entitle the Buyer to cancel the order unless and until the Buyer has given 5 days' written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period. If the Buyer cancels the order in accordance with this **Condition 7.5** then:
- 7.5.1 the Company will refund to the Buyer any sums which the Buyer has paid to the Company in respect of that order or part of the order which has been cancelled; and
- 7.5.2 the Buyer will be under no liability to make any further payments under **Condition 5.1** in respect of that order or part of the order which has been cancelled.
- 7.6 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except solely on account of the Company's default), the Goods will be deemed to have been delivered on the due date and (without prejudice to its other rights) the Company may:
- 7.6.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with **Condition 7.6.2** and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
- 7.6.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the

Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.

7.7 The Company will endeavour to comply with reasonable requests by the Buyer for postponement of delivery of the Goods, but shall not be under any obligation to do so. Where delivery of the Goods is postponed otherwise than due to the Company's fault, the Buyer will pay all costs and expenses of delay including, without limitation, a reasonable charge for storage and transportation.

7.8 The Buyer shall inspect the Goods immediately upon delivery and shall within 2 Business Days of such delivery (time being of the essence in this context) give notice in writing to the Company of any matter or thing by reason whereof it alleges that the Goods are not in accordance with the Contract. Any delivery book or note marked "not examined" will not be accepted by the Company for the purposes of this sub-paragraph. If the Buyer fail to give such proper notice as is required hereunder then the Goods shall be deemed in all respects to be in accordance with the Contract and the Buyer shall be deemed to have accepted the Goods. The Goods in respect of which the Buyer makes any claims hereunder shall be preserved intact, as delivered, for a period of 21 days from negotiation of the claim within which time the Company or its agents shall have the right to attend at the Buyer's premises to investigate the complaint. Any breach by the Buyer of this condition shall disentitle the Buyer to any allowance in respect of its claim.

8. **RISK/OWNERSHIP**

8.1 Risk of damage to or loss of the Goods will pass to the Buyer on delivery (or deemed delivery in accordance with **Condition 7.6**).

8.2 Ownership of the Goods will not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

8.2.1 the Goods; and

8.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

8.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

8.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

8.3.2 store the Goods (at no cost to the Company) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

- 8.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the policy of insurance.
- 8.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 8.4.1 any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly; and
- 8.4.2 any such sale will be a sale of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
- 8.5 The Buyer's right to possession of the Goods will terminate immediately if any of the circumstances set out in **Condition 13.1** occur.
- 8.6 The Company will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company.
- 8.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 8.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 8.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this **Condition 8** will remain in effect.

9. **WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY**

Warranty

- 9.1 The Company will, free of charge, within a period of 12 months from the date of delivery of Goods which are proved to the reasonable satisfaction of the Company to be damaged or defective due to defects in material, or workmanship, at its option either repair or replace, or refund the purchase price of such Goods. This obligation will not apply where:
- 9.1.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;

- 9.1.2 the Goods have been improperly installed or connected;
 - 9.1.3 any maintenance requirements relating to the Goods have not been complied with;
 - 9.1.4 any instructions as to storage of the Goods have not been complied with in all respects; or
 - 9.1.5 the Buyer has failed to notify the Company of any defect or suspected defect within 7 days of the delivery where the defect should be apparent on reasonable inspection, or within 7 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 6 months from the date of delivery.
- 9.2 Any Goods which have been replaced will belong to the Company. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in **clause 9.1** for the unexpired portion of the 12 month period from the original date of delivery of the replaced Goods.

Exclusion of Liability

- 9.3 In the event of any breach of the Company's express obligations under **Conditions 7.5 and 9.1 to 9.2** above the remedies of the Buyer will be limited to the purchase price of the Goods.
- 9.4 The Company does not exclude its liability (if any) to the Buyer:
- 9.4.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
 - 9.4.2 for personal injury or death resulting from the Company's negligence;
 - 9.4.3 for any matter for which it would be illegal for the Company to exclude or to attempt to exclude its liability; or
 - 9.4.4 for fraud.
- 9.5 Except as provided in **Conditions 7.5 and 9.1 to 9.4**, the Company will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:

- 9.5.1 any of the Goods and/or the Packaging Services, or the manufacture or sale or supply, or failure or delay in supply, of the Goods and/or the Packaging Services by the Company or on the part of the Company's employees, agents or sub-contractors;
- 9.5.2 any breach by the Company of any of the express or implied terms of the Contract;
- 9.5.3 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;
- 9.5.4 any statement made or not made, or advice given or not given, by or on behalf of the Company

or otherwise under the Contract.

9.6 Except as set out in **Conditions 7.5** and **9.1** to **9.4**, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.

9.7 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in **Conditions 7.5** and **9.5** to **9.7** in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those clauses save each reference in **Condition 9.5.1**.

9.8 The Buyer agrees to indemnify, keep indemnified and hold harmless the Company from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Company incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure in performance by the Buyer of the terms of the Contract or in respect of the Goods sold under the Contract in the event that the damage or injury shall have been occasioned otherwise than by the negligence of the Company.

10. **TESTING**

10.1 The Buyer shall undertake its own testing of all Goods before use to ensure that the Goods are fit for the Buyer's purpose.

11. **PACKAGING AND FREE ISSUED MATERIALS**

11.1 If the Company provides Packaging Services to the Buyer, the technical composition and quality of the contents of the items being packaged is beyond the control of the Company and any defects in such areas must be pursued with the original manufacturer of formulated product. No liability will be accepted by the Company for any such defect of whatever nature.

12. **FORCE MAJEURE**

12.1 The Company will be deemed not to be in breach of the Contract or otherwise liable to the Buyer in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in **Condition 12.2**.

12.2 If the Company's performance of its obligations under the Contract is affected by Force Majeure:

12.2.1 it will give written notice to the Buyer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity, without being obliged to incur any expenditure;

12.2.2 subject to the provisions of **Condition 12.3**, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event; and

12.2.3 it will not be entitled to payment from the Buyer in respect of extra costs and expenses incurred by virtue of the Force Majeure.

12.3 If the Force Majeure in question continues for more than 3 months, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 30 days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

13. **TERMINATION**

13.1 The Company may by notice in writing served on the Buyer terminate the Contract immediately if the Buyer:

13.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Buyer fails to remedy such breach within 30 days service of a written notice from the Company, specifying the breach and requiring it to be remedied. Failure to pay

any sums due in accordance with **Condition 5.1 and 5.2** is a material breach of the terms of the Contract which is not capable of remedy;

- 13.1.2 becomes bankrupt, insolvent, makes any composition with his creditors, has a receiver appointed under the Mental Health Act 1983 or dies;
 - 13.1.3 has any distraint, execution or other process levied or enforced on any of its property;
 - 13.1.4 ceases to trade or appears in the reasonable opinion of the Company likely or is threatening to cease to trade;
 - 13.1.5 has a change in control as defined by section 416 Income and Corporation Taxes Act 1988; or
 - 13.1.6 the equivalent of any of the above occurs to the Buyer under the jurisdiction to which the Buyer is subject.
- 13.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Buyer or the Company accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 13.3 The Company will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying a breach under **Condition 13.1.1**, until either the breach is remedied or the Contract terminates, whichever occurs first.

14. **LIEN**

- 14.1 Notwithstanding that credit may have been given to the Buyer under the Contract the Company may be able to retain possession of the Goods or any part of them until payment been received from the Buyer in full.
- 14.2 Without prejudice to any other right which the Company may have, the Company shall be entitled to exercise a general lien or right of retention on all Goods in the Seller's possession, which are, or are intended to become, the Buyer's property in regard to all debts, damages or other sums due to the Company under any Contract whatsoever between the Company and the Buyer, and pursuant to such lien or right the Seller shall be entitled without prior notice to the Buyer to sell all or any portion of such Goods privately, by auction or otherwise and to keep the proceeds in diminution of such debts, damage or sums of all costs and expenses incurred in and about affecting such a sale.

15. **INTELLECTUAL PROPERTY**

- 15.1 The Company shall own all Intellectual Property Rights in the Goods.

- 15.2 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of the Company, except the right to use, or re-sell the Goods in the Buyer's ordinary course of business.
- 15.3 The Buyer will not without the Company's prior consent allow any trade marks of the Company or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.
- 15.4 For the avoidance of doubt, no representation or warranty is given by the Company that the Goods do not infringe any third party Intellectual Property Rights and in this respect the Buyer shall accept such title to the Goods as the Seller has.

16. **CONFIDENTIALITY**

- 16.1 The Buyer will keep confidential any and all Confidential Information that it may acquire.
- 16.2 The Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this **Condition 16**.
- 16.3 The obligations on the Buyer set out in **Condition 16.1** and **16.2** will not apply to any information which:
- 16.3.1 is publicly available or becomes publicly available through no act or omission of the Buyer; or
- 16.3.2 the Buyer is required to disclose by order of a court of competent jurisdiction.

17. **GENERAL**

- 17.1 Time for performance of all obligations of the Buyer under the Contract is of the essence.
- 17.2 Time for performance of all obligations of the Company under the Contract is not of the essence.
- 17.3 Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company under this or any other Contract.
- 17.4 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any

other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

- 17.5 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 17.6 The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.
- 17.7 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 17.8 Save as set out in **Condition 9.7**, the parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 17.9 The Contract contains all the terms which the Company and the Buyer have agreed in relation to the Goods and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this **Condition 17.9** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

18. **COMMUNICATION**

- 18.1 Any notice, demand or communication or in connection with the Contract will be in writing and may be delivered by hand first class post (but not by e-mail), addressed to the recipient at its registered office (or such other address or person which the recipient has notified in writing to the sender in accordance with this **Condition 18**, to be received by the sender not less than seven Business Days before the notice is despatched).
- 18.2 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

19. **JURISDICTION**

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English Courts will have exclusive jurisdiction to settle any

disputes which may arise out of or in connection with the Contract. The parties agree to submit to that jurisdiction.