

# Terms and Conditions of Business with our Customers

Customers are advised in their own best interests to read these Terms and Conditions of Business. Acceptance of delivery of the Goods will be deemed conclusive evidence of the Customer's acceptance of these conditions. These conditions shall be binding on the Company and the Customer in respect of all the Company's sales of the Goods and supersede any prior terms, conditions or agreements relating to them or verbal representations, warranties or undertakings given to the Customer by the Company or on its behalf. Although the text of these conditions is necessarily legalistic, we have used plain English where possible. However, if any item is unclear please raise this immediately with us. The Customer's attention is specifically drawn to the provisions of condition 12.

## 1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

"Carrier"	the deliverer of the Goods to the Customer;
"Company"	Lloyd-Reinhold Communications LLP (registered no. OC358158);
"Contract"	any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating the Terms and Conditions;
"Customer"	the person, firm or company who purchases the Goods from the Company;
"Delivery Point"	the place where delivery of the Goods is to take place under condition 4;
"Goods"	any goods (including, without limitation, books, printed sheets and any media on which material or data is electronically, magnetically or optically stored) specified in the Contract to be supplied to the Customer by the Company (including any part or parts of them);
"Literature"	any advertisement, catalogue, brochure, flyer, web-site or similar material produced by or issued on behalf of the Company in respect of the Goods;
"Publication Date"	in respect of any Goods the date shown on the corresponding invoice or despatch documentation as being the first date upon which the same may be sold or otherwise dealt with by the Customer;
"Publisher(s)"	the organisation(s) supplying the Goods to the Company for wholesale and distribution to the Customers;
"Returns"	Goods which the Company authorises the Customer to return or to make available for collection in accordance with condition 6;
"Terms and Conditions"	the Terms and Conditions of Business set out in this document and (unless the context otherwise requires) includes any special terms and conditions referred to in this document or as otherwise agreed in writing between the parties.

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

1.3 A reference to one gender includes a reference to the other gender and the neuter.

1.4 Words in the singular include the plural and in the plural include the singular.

1.5 Any reference in these Terms and Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.6 Where the Goods are sold under a consumer transaction (as defined by the Consumer Protection from Unfair Trading Regulations 2008) the statutory rights of the Customer are not affected by any provision in these Terms and Conditions.

## 2. Application of Terms

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall 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 the Terms and Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Customer 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 shall exclude or limit the Company's liability for fraudulent misrepresentation however arising.

2.4 Orders may be placed by telephone, e-mail, posting an order form, or electronic data transmission to the Company. Each order or acceptance of a quotation for the Goods shall be subject to the Terms and Conditions and in accordance with the Contract.

2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.

2.6 The Customer shall ensure that the terms of its order are complete and accurate.

2.7 Any quotation is given on the basis that no contract shall come into existence until the Company despatches an acknowledgement of order 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.

## 3. Contract

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Literature or any other catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.3 The Company may refuse to accept an offer to purchase the Goods, or in the event of conditions 3.3.1 or 3.3.2 occurring, may refuse to make a delivery of any further instalment if (and, for the avoidance of doubt, this list being not exhaustive):

- 3.3.1 the Customer is in breach of any of these Terms and Conditions or of any other contract between it and the Company, or
- 3.3.2 the Company has reasonable grounds to believe the Customer is or is likely to become unable to pay its debts as they fall due, or
- 3.3.3 the Goods are no longer in publication, or are not in stock at the time of the order; or
- 3.3.4 the Customer has a history of making frequent Returns (in excess of any agreed Returns level cap) on the grounds that it cannot sell the Goods, or
- 3.3.5 the Customer's order falls below any minimum order volume or value limits from time to time applied by the Company as a matter of commercial policy.

3.4 The Company shall not at any time be under any obligation to grant or maintain credit facilities for the benefit of any Customer and may withdraw it at any time.

3.5 The Customer agrees with the Company that at all times it:

- 3.5.1 will not sell, copy, make available for purchase, lend, unpack, read or otherwise dispose of the Goods before their Publication Date and then only in their published covers, and will adhere to any other embargo conditions imposed on the Company by the Publisher of the respective title(s);
- 3.5.2 will not in any way amend, delete, deface or add to the contents of the Goods and/or their packaging; and
- 3.5.3 will observe all intellectual property rights or moral rights asserted in connection with the Goods.

## 4. Delivery

4.1 The Goods will be delivered to the Customer at the address within the United Kingdom specified by the Customer at the time of placing the order or, if condition 7 applies, at the premises of the Customer's nominated shipping agent within the United Kingdom or Ireland. If no address within the United Kingdom is so specified, the Goods will be delivered to any address within the United Kingdom specified in the Customer's application for credit facilities (if any) and if there is no such credit facility

- or specified address the Goods will otherwise be delivered 'ex-works' (EXW) at the Company's premises within the United Kingdom, as defined in INCOTERMS 2010. Delivery shall be deemed to take place at the time the Goods arrive at such address irrespective of whether or not the Customer accepts the Goods so delivered.
- 4.2 The Company will use its reasonable endeavours to deliver the Goods within the time specified in the Company's acceptance of the Customer's order and otherwise within 60 days thereof.
- 4.3 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 shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions the Company shall not be liable for any 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 similar loss), 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 shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 4.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 4.5.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
- 4.5.2 the Goods shall be deemed to have been delivered; and
- 4.5.3 the Company may store the Goods for such reasonable period as it determines until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance), but if no delivery has then been successful the Company may sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the price under the Contract, having taken into account any charges (including, without limitation, those charges set out above) related to the storage and/or sale of the Goods.
- 4.6 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 5. Non-delivery**
- 5.1 The quantity of any consignment of the Goods as recorded by the Company on 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.
- 5.2 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 7 working days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 6. Returns**
- 6.1 The Customer acknowledges that no warranty or representation is or has been made to the Customer that Goods will sell in the quantities ordered by the Customer or at all.
- 6.2 The Customer agrees with the Company that the Customer shall only have the right to reject the Goods in the circumstances set out at condition 6.3 and it shall have no other legal right or remedy by virtue of any defect in them.
- 6.3 The Customer's right to reject shall only exist in the case of and to the extent of the following (which, in every case, must be proved to the reasonable satisfaction of the Company):
- 6.3.1 the quantity of the Goods delivered is in excess of those ordered;
- 6.3.2 the Goods are physically defective on delivery to such an extent that they could not reasonably be sold other than at a discount below the Customer's reasonably anticipated resale price or at all, and/or
- 6.4 If the Customer seeks to reject Goods in accordance with condition 6.3, it must give notice of the fact to the Company in writing by letter, or e-mail transmission, such notice to be received by the Company no later than 14 days after the date of delivery of the Goods (or deemed delivery in accordance with conditions 4.1 or 4.5). The notice must include the original order and invoice numbers, specify the Goods to which the notice relates by title and number of copies affected and contain a detailed description setting out why the Customer considers that it is entitled to reject the Goods.
- 6.5 The Company shall reply to the Customer's notice by letter, or e-mail, such letter to be received by the Customer no later than 14 days after the date on which the Company received the Customer's notice. The reply must state whether the Company is satisfied with the reason set out in the notice or, if not, the grounds upon which the notice is rejected. In circumstances where the Company is satisfied that the Customer does have the right to return the Goods pursuant to condition 6.3, the Company will state that either the Goods should be returned by whatever means are appropriate (and, in circumstances where the Company sets out specified means by which the Goods should be returned by the Customer, this shall be at the expense of the Company) or that the Goods should be made available for collection by or on behalf of the Company on a specified date.
- 6.6 In respect of Returns for unsold Goods that the Company authorises to be returned by the Customer for credit, please see [Condition 6.3](#). Any such returns are at the absolute discretion of the Company.
- 6.7 Returns shall be at the risk of the Customer until received by the Company. For the avoidance of doubt, in the case of Returns to be collected by the Company, risk shall revert to the Company on the date that the Company, or its nominated carrier, actually collects the Returns.
- 6.8 The Company shall issue to the Customer a credit note for the invoiced price of any Returns within 28 days of the Company receiving the returned Goods.
- 6.9 If the Goods are returned or rejected otherwise than in strict conformity with this condition 6 the Company shall be entitled to dispose of them or return them to the Customer (in each case at the cost and risk of the Customer) and no credit shall be allowed in respect of them.
- 7. Customers Outside the UK and Ireland**
- 7.1 In the case of all Goods to be transported to an address outside the United Kingdom and Ireland the following provisions shall apply:
- 7.1.1 the Goods shall be delivered EXW INCOTERMS 2010 pursuant to condition 4.1 or on such other export terms as shall be specifically agreed in writing at the time of the order or as otherwise agreed in any relevant written supply contract between the Company and the Customer;
- 7.1.2 the Company shall only be obliged to deliver the Goods by its Carrier to the Customer's nominated shipping agent within the United Kingdom and Ireland, unless otherwise agreed prior in writing between the Company and the Customer; and
- 7.1.3 the Customer shall be responsible for and shall indemnify and keep indemnified the Company in respect of any and all handling charges, costs and expenses, taxes, imposts and Government impositions payable by virtue of the export of the Goods from England and their import elsewhere.
- 8. Price**
- 8.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's retail price list published on the date of delivery or deemed delivery (which is quoted exclusive of VAT, where applicable):
- 8.1.1 less any discount agreed between the Company and the Customer prior thereto in writing;
- 8.1.2 plus any applicable small order surcharge for orders accepted by the Company which are below its published minimum order volume or value;
- 8.1.3 plus the cost of complying with the delivery requirements of the Customer;
- 8.1.4 plus all costs, taxes or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.
- 8.2 An invoice setting out the price payable for the Goods despatched will either accompany the Goods on despatch, or will follow shortly thereafter.

## 9. Payment

- 9.1 Subject to condition 9.4, payment of the price for the Goods is due in the currency stated on the invoice and shall be made by the Customer in accordance with the provisions of any credit facility then in force between the parties. If there is no such credit facility then payment of the invoice must be made no later than the last working day in the calendar month following the date of invoice.
- 9.2 Time for payment shall be of the essence.
- 9.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 9.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 9.5 The Customer shall make all payments due under the Contract in full without 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.
- 9.6 If the Customer disputes the amount of an invoice it must raise the dispute in writing to be received by the Company no later than 10 working days after the date of the Company's invoice.
- 9.7 If the Customer fails to pay the Company any sum due pursuant to the Contract:
- 9.7.1 the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
- 9.7.2 the Company may, without liability, suspend supplies of the Goods (in whole or in part) until payment of the Customer's trading account and all other monies owing to the Company are otherwise received in full. The Customer will be notified of this in advance.
- 9.8 The Company may claim for the price of the Goods even if title to them has not passed to the Customer.

## 10. Termination

- 10.1 Without prejudice to the Company's rights and remedies, the Company may terminate the Contract and/or all future or ongoing supplies of the Goods to the Customer or terminate any Customer account (in whole or in part) with immediate effect, without incurring liability, in the following circumstances:
- 10.1.1 upon the termination for any reason of the Company's arrangements with the respective Publisher in respect of such Goods to be delivered;
- 10.1.2 upon the Customer's irremediable breach of the Contract and/or of any of the Terms and Conditions (such as non-payment of any invoice pursuant to condition 9.1) or, (where such a breach is capable of remedy) on failure to remedy any breach within seven (7) days of being given written notice of such breach by the Company of the Contract or any of these Terms and Conditions;
- 10.1.3 where the Customer has made false claims in respect of non-receipt or shortage of supplies or Returns or in respect of other documents where in the Company's reasonable opinion the claim has been made other than through genuine error on the Customer's part;
- 10.1.4 where (in the case of a company) the Customer or its Parent Company becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986; suspends or threatens to suspend or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income; has passed a resolution for its winding up; has a petition presented to any Court for its winding-up or for an administration order or (being an individual, partnership or firm) enters into a composition or arrangement with his creditors; has a bankruptcy order made against him, has been made the subject of an application for an interim order under section 253 Insolvency Act 1986 or has an interim receiver appointed under section 286 Insolvency Act 1986, or anything analogous to any of the foregoing occurs to the Customer under the law of any jurisdiction;
- 10.1.5 where the Customer fails to pay his account in full on the due day on two (2) or more consecutive occasions or on any four (4) or more occasions in any period of six (6) months, or such other number of occasions as the Company deems unreasonable;
- 10.1.6 where the Company obtains judgment in a court or tribunal of competent jurisdiction against the Customer in respect of a debt or unpaid invoice;
- 10.1.7 where the Customer has in the Company's reasonable opinion ceased or threatened to cease to trade or carry on business;
- 10.1.8 where an encumbrancer takes possession of, or if any distraint, execution or other process is levied or enforced on any of the property or assets of the Customer;
- 10.1.9 where the Customer (being an individual) dies, becomes of unsound mind or is otherwise unable to perform his obligations under these Terms and Conditions for a continuous period of three (3) months or for an aggregate period of six (6) months in any rolling 12 month period; or
- 10.1.10 where the behaviour of the Customer is not consistent with accepted business trading relations or where he does any act which brings the reputation or goodwill of the Company into disrepute or otherwise adversely affects trading connections with or the business of the Company.
- 10.2 In the event that a court makes an order for the Customer to be wound up or the Customer's, or its Parent Company's, business goes into receivership or administration:
- 10.2.1 the Company reserves the right to charge interest on the Customer's outstanding balance from time to time of its debts with the Company from the date of liquidation, receivership or administration (as the case may be) at 8% above the National Westminster Bank Plc base lending rate from time to time;
- 10.2.2 the Company reserves the right to repossess any of the Goods in the Customer's possession up to the value of the outstanding account pursuant to condition 13.5 and in such event the repossession of those goods will be deemed to have discharged each contract(s) between the parties for the current and any future supply of the Goods on the terms hereunder, allowing for the Company to issue valid VAT credit notes (at its absolute discretion); and
- 10.2.3 to the extent that the supplies have been made by the Company prior to the receivership or administration on, or subject to, any special terms and conditions other than those contained in this document, the Customer irrevocably and unconditionally shall be deemed to have immediately and automatically reverted to the Terms and Conditions in this document in respect of future supplies of the Goods made on or after the receivership or administration (as the case may be).
- 10.3 On termination pursuant to condition 11.1, all rights and obligations under these Terms and Conditions will automatically terminate with the exception of:
- 10.3.1 such rights of action as shall have accrued prior to the date of termination (including, but not limited to, any and all claims for any breach of any term, condition or undertaking contained in these Terms and Conditions); and
- 10.3.2 all obligations under these Terms and Conditions which are expressed to (or are by implication intended to) survive its termination and continue thereafter including (but not limited to) conditions 11, 12 and 13.
- 10.4 On termination pursuant to condition 11.1, the Customer shall:
- 10.4.1 pay an administration charge (which shall be notified by the Company from time to time) in respect of the Company's reasonable fee in processing the Customer's closure of account / closure of premises; and
- 11.4.2 pay the final outstanding invoice presented by the Company to the Customer.
- 10.5 For the avoidance of doubt, any deposit of the Customer held by the Company together with (i) any credits for Returns (if any) and (ii) any other sums owing by the Company to the Customer (whether under this Contract or any other) shall each be capable of set off by the Company only and deducted against (i) any invoice presented by the Company to the Customer and/or (ii) any other monies outstanding from the Customer to the Company (or any member of its Group, from time to time, whether under these Terms and Conditions or any contract or otherwise), and to the extent there is any excess, it shall be paid over to the Customer.

## 11. Liability

- 11.2.1 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:
- 11.2.1.1 any breach of these Terms and Conditions and each contract between the parties for the supply of the Goods on the terms hereunder;
  - 11.2.1.2 any representation, statement or tortious act or omission including negligence, recklessness or wilful misconduct arising under or in connection with these Terms and Conditions; and
  - 11.2.1.3 physical damage to property caused directly or indirectly by any act or omission or by the negligence, recklessness or wilful misconduct of the Company or its employees, agents and sub-contractors.
- 11.2 Except where the Customer is dealing as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977) 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) are, to the fullest extent permitted by law, excluded from these Terms and Conditions.
- 11.3 Nothing in these Terms and Conditions excludes or limits the liability of the Company:
- 11.3.1 for death or personal injury caused by the Company's negligence; or
  - 11.3.2 under section 2(3), Consumer Protection Act 1987; or
  - 11.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - 11.3.4 for fraud or fraudulent misrepresentation.
- 11.4 Subject to conditions 12.2 and 12.3:
- 11.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the supply of the Goods shall be limited to the aggregate amount paid by the Customer for the supply of the Goods to the Company in the last 12 months; and
  - 11.4.2 the Company shall not be liable to the Customer for:
    - 11.4.2.1 loss of profit, use, opportunity, business and/or anticipated savings;
    - 11.4.2.2 depletion of goodwill or reputation and/or similar losses;
    - 11.4.2.3 losses resulting from delay or suspension in the supply of the Goods, in whole or in part (howsoever arising);
    - 11.4.2.4 any liability to third parties incurred by the Customer;
    - 11.4.2.5 any liability arising as a result of any statement or representation made by any employee, agent or sub-contractor of the Company unless such statement or representation is confirmed in writing on the Company's headed notepaper and approved by the Company; or
    - 11.4.2.6 any liability arising out of or as a result of an event of force majeure as provided in condition 15, in each case whether direct, indirect or consequential, or any claims for consequential compensation, whatsoever and howsoever caused (whether by negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply, non-supply or late supply of the Goods by the Company and/or arising pursuant to these Terms and Conditions, including (without limitation):
      - 11.4.2.7 the content in the Goods breaching any criminal law; or
      - 11.4.2.8 the content in the Goods breaching any civil law or intellectual property rights or moral rights of any third party, or
      - 11.4.2.9 defects in the Goods other than defects in their physical condition, the latter being defects for which the Company is liable to the extent set out in condition 6 only; or
      - 11.4.2.10 the Goods not being reasonably fit for any express or implied purpose; or
      - 11.4.2.11 the Goods being improperly installed, connected to or contaminated by any computer hardware or software of the Customer or a third party; or
      - 11.4.2.12 problems occurring as a result of the Customer's negligence or default or because of accident, neglect or misuse; or
      - 11.4.2.13 use made or resale by the Customer of any of the Goods or of any product incorporating the Goods.
- 11.5 The Customer is responsible for providing an adequate level of public liability insurance cover to its customers and other persons (including, but not limited to, the Company's employees, agents and sub-contractors) at the Delivery Point pursuant to the Occupier's Liability Act 1984.
- 11.6 Where following security investigations, the Customer acknowledges responsibility for making false claims in respect of non-receipt, shortage of supplies or Returns of the Goods, the Customer will recompense the Company for both the cost of the false claims and the cost of the security investigation.
- 11.7 If any part of this condition 12 is found to be unenforceable by any court or competent authority or would be found to be unenforceable if it were interpreted or construed in a particular way, then, it is the parties' express intention that the relevant wording should be interpreted or construed so as to avoid such a finding and that, in the event of such a finding, the remainder of the provision in question shall be interpreted or construed to give it full effect.
- 11.8 The Customer agrees to fully indemnify and to hold harmless the Company from and against all losses, liabilities, costs, damages, claims, fines and expenses (including legal expenses) which the Company suffers, or may suffer, as a result of or arising out of any breach or negligent performance or failure in performance by the Customer or its agents or employees of any representation, statement, warranty, condition or other provision of these Terms and Conditions or of any damage or injury to the Company, its employees, visitors, agents, contractors, property or equipment caused by the actions or defaults of the Customer or its staff or agents whilst on, or at, the Delivery Point or at the Company's premises.

## 12. Risk and Title

- 12.1 The Goods delivered to the Customer are at the risk of the Customer from the time of delivery (or deemed delivery in accordance with conditions 4.1 or 4.5).
- 12.2 Notwithstanding delivery and passing of risk, ownership of the Goods delivered to the Customer shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it, together with all other sums which are or which become due to the Company (or any member of its Group) from the Customer on any other account whatsoever, in respect of:
- 12.2.1 the Goods delivered; and
  - 12.2.2 any other goods or services that the Company has supplied to the Customer.
- 12.3 Until such time as ownership of the Goods has passed to the Customer, the Customer shall:
- 12.3.1 hold the Goods delivered on a fiduciary basis as the Company's bailee;
  - 12.3.2 store the Goods delivered (at no cost to the Company) separately from all other goods of the Customer or any third party and/or place upon and maintain any agreed identifying mark in such a way that the Goods delivered remain readily identifiable as the Company's property;
  - 12.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods delivered; and
  - 12.3.4 maintain the Goods delivered in satisfactory condition and keep them insured on the Company's behalf for their full resale price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 12.4 Notwithstanding condition 12.3, the Customer may offer for sale and sell the Goods delivered before ownership has passed to it solely on the following conditions:
- 12.4.1 any sale shall be effected in the ordinary course of the Customer's business on arm's length terms;
  - 12.4.2 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; and
  - 12.4.3 the Customer shall account to the Company for all proceeds of sale or otherwise relating to the Goods, whether tangible or intangible, (including insurance proceeds) and shall keep such proceeds separate from any monies or property of the Customer and third parties, and in the case of tangible process properly stored, protected and insured.
- 12.5 The Customer's right to possession of the Goods delivered shall terminate immediately if:

- 12.5.1 the Customer (being an individual, partnership or firm) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) it or its Parent Company convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its or their undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or its Parent Company or notice of intention to appoint an administrator is given by the Customer or its Parent Company or their respective directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or its Parent Company or for the granting of an administration order in respect of the Customer or its Parent Company, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer or its Parent Company; or
- 12.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his property or such action is obtained against him, or the Customer is unable to pay his debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases (or threatens to cease) to trade; or
- 12.5.3 the Customer fails to observe or perform any of his obligations under these Terms and Conditions or any other contract between the Company and the Customer; or
- 12.5.4 the trading arrangement(s) between the Company and the Customer ceases, is suspended or is otherwise terminated (in whole or in part) for whatever reason (whether pursuant to conditions 9.7.2, 11.1 or otherwise); or
- 12.5.5 the Customer encumbers or in any way charges any of the Goods (or proposes to do any of the same).
- 12.6 The Customer shall obtain the agreement of any of its creditors having security over its assets that the Goods shall be excluded from the scope of such security.
- 12.7 The Company shall be entitled to recover full payment for the Goods delivered notwithstanding that ownership of any of the Goods has not passed from the Company.
- 12.8 The Customer grants the Company, its agents and employees an irrevocable and unconditional licence at any time, without notice, to enter its premises (wherever located, including the Delivery Point) and any other location where the Goods delivered are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them and all Literature. For the avoidance of doubt, if there is any dispute regarding the recovery of the Goods then the Customer shall at all times permit the Company to recover such Goods to its own premises on the assumption that title to the Goods is deemed to reside with the Company until proven otherwise by the Customer or the Customer's other suppliers, and whereupon those Goods in dispute shall be kept separate from the Company's other goods pending prompt resolution of the matter(s) in dispute by the parties (each acting reasonably and expediently).
- 12.9 Where the Company is unable to determine whether any Goods delivered are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 12.10 On termination of the Customer's account or of the supplies of the Goods, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 13 shall remain in effect.
- 13. Assignment**
- 13.1 The Company may assign the Contract or any part of it to any person, firm or company. However, the Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 14. 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, 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, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 15. Data Protection**
- 15.1 The Customer authorises and instructs the Company to:
- 15.1.1 acquire, collate, manipulate, process, delete and act upon any data relating to the Customer, at such times as the Company shall consider prudent in relation to the Customer, its business, its trading account, financial standing, trading history and its assets and liabilities;
- 15.1.2 receive, retain, record, copy and disclose with relevant authorities or organisations all responses to each application or purchase order in such form, format and medium as the Company shall consider prudent;
- 15.1.3 create data recording all the Customer's orders for the Goods, their value and volume, compliance or otherwise with applicable credit or payment terms together with these provisions and all Returns;
- 15.1.4 collate, manipulate, sort, process and delete all such material in such manner as the Company shall consider prudent and to record all decisions made by it in relation to the Customer; and
- 15.1.5 do each and every one of the foregoing in respect of each director of the Customer (being a company) and each partner in it (being a partnership) and each participant in it (being a joint venture or other unincorporated association).
- 15.2 The Customer agrees that such data held on computer or otherwise concerning its account, retail outlet(s) and Goods supplied by or returned to the Company may be transferred by electronic or other means to any other members of the Company's group or to any relevant third party suppliers nominated by the Company for (inter alia) marketing purposes or whom may be of legitimate interest to the Customer given the Goods supplied and/or the industry in which it operates.
- 15.3 The Company agrees with the Customer that in the exercise of each and every one of the functions in condition 16.1 it will observe the principles set out in Schedule 1 to the Data Protection Act 1998.
- 16. General**
- 16.1 Nothing in the Contract shall be taken as constituting the Customer as an agent or partner of the Company.
- 16.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under these Terms and Conditions or not.
- 16.3 If any of the clauses, or part of a clause, of these Terms and Conditions shall be held 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 clauses or part of a clause of these Terms and Conditions (and the remainder of such provisions) shall continue in full force and effect.
- 16.4 No failure by the Company to exercise nor any delay in the Company exercising any right or remedy under the Contract in respect of a breach by the Customer of the Contract and/or these Terms and Conditions shall operate or be construed as a waiver of such rights or remedy or of any other right or remedy.
- 16.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract and/or these Terms and Conditions by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.6 The Company reserves the right to vary, alter or add to the terms of the Contract. The Company will give the Customer not less than 30 days' notice of any change to the Contract but any variation, alteration or addition shall be without prejudice to each party's accrued rights and liabilities prior to that variation, alteration or addition.
- 16.7 Any notice given by either party to the other under the Contract shall be in writing addressed to the other party. In the case of the Company, the notice must be addressed to the Company's registered office address (being, unless notified otherwise, Wakefield House, Pipers Way, Swindon SN3 1RF) and, in the case of the Customer, at the Delivery Point, or such other address previously notified in writing to the party giving the notice. Notices must be delivered either by hand or by first class post. The notice will be deemed to have been received at the time of delivery if delivered by hand and on the second day after posting (not including Saturdays, Sundays or public holidays) in the case of a posted letter.
- 16.8 The Customer warrants that any information about the business of the Company, which may be provided to it or comes into its possession by any means, will not be passed to any other party either orally in writing or electronically, without the express permission of the Company.
- 16.9 This Agreement shall be governed by, and construed in accordance with, English law and the Customer and the Company agree that the courts of England shall have exclusive jurisdiction in relation to any dispute or matter arising in connection with the Contract.