

All applicants must complete this section

Please complete this form and return it to Hexis UK Ltd, with a Business Letterhead.

TERMS ARE STRICTLY 30 DAYS FROM END OF MONTH IN WHICH THE INVOICE IS DATED. ALL GOODS REMAIN THE PROPERTY OF HEXIS UK LTD UNTIL PAID FOR IN FULL.

Payment by credit card is required until account has been opened. First order must be paid by credit card.

Contact	
Company Name	
Address	
Post Code	

Telephone number	
Fax number	
e-mail address	
All invoices will automatically be sent to the above email address.	
Date Company Established	
Amount of credit required	

Trade reference

Please note that accounts are credit checked by Euler Hermes.

One trade reference is required. The trade reference must be your current vinyl supplier, Whom you have been trading with for at least 12 months.

Company Name	
Address	
Post Code	
Telephone	
Fax	
Email	

Sole Traders & Partnerships must complete this section

First Partner to complete

Full Name	
Home Address	
Post Code	
Home Tel:	
Date of Birth	

Sign:

Date: ___/___/___

Second Partner to complete

Full Name	
Home Address	
Post Code	
Home Tel:	
Date of Birth	

Sign:

Date: ___/___/___

Limited Companies must complete this section.

Must have been trading as a Limited company for a least two years.

Company Registration No.	
Directors Names	

Sign:

Print:

Position:

Date: ___/___/___

Must be a Director or company secretary

I/We the signed understand and confirm that the information given is correct and apply for a credit account with Hexis UK Ltd.

I/We the signed give permission for Hexis UK Ltd to contact us using the details supplied on this form.

I/We understand and agree to accept the terms and conditions of Hexis UK Ltd which will be forwarded upon request.

I/We also give authority for Euler Hermes to approach the above referees for the purpose of obtaining a reference as they feel

HEXIS (UK) LIMITED

TERMS AND CONDITIONS OF SALE OF GOODS (the “Conditions”)

1. DEFINITIONS

1.1. In these Conditions the following words and expressions shall have the following meanings:

“**the Company**” Hexis (UK) Limited, (company number 02932692) whose registered office is at 7 Europa Way, Lichfield, Staffordshire, WS14 9TZ;

“**Conditions**” the terms and conditions set out herein;

“**Contract**” a contract between the Company and the Purchaser formed pursuant to Condition 2.

“**Goods**” any self adhesive sign vinyl, digital printing material, solar protection film, display systems and general sign making and printing equipment supplies or other goods (or any part thereof) supplied or agreed to be supplied by the Company to the Purchaser under any Contract;

“**Order Acknowledgement**” the Company’s written acknowledgement of the Purchaser’s order also known as the “Order Confirmation”;

“**the Purchaser**” the person, firm, company or other body from whom an order is accepted by the Company as identified in the Order Acknowledgement; and

“**Specification**” any description, sample and/or specification of the Goods as set out or referred to in an Order Acknowledgement, or as otherwise agreed in writing by the parties is based solely upon product information received by the Company from the (third party) manufacturer of the Goods and is not verified by the Company other than by means of a visual inspection to ensure that the Goods appear to be those ordered.

2. CONTRACT FORMATION

2.1. The Purchaser’s order to the Company is an offer to enter into a contract to purchase Goods from the Company on these Conditions. Acceptance occurs and a Contract is formed only upon the Company despatching to the Purchaser its Order Acknowledgement or when the Goods are despatched, whichever is earlier. A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise any quotation at any time prior to the Company’s acceptance of the Purchaser’s order.

2.2. The Company shall sell and the Purchaser shall purchase Goods in accordance with and on the basis of these Conditions which comprise the only terms and conditions upon which the Company will supply the Goods to the Purchaser and in the event of any inconsistency shall prevail notwithstanding any terms or conditions contained in any purchase order, confirmation of order, acceptance of estimate or quotation specification or other document proffered at any time by the Purchaser or otherwise brought to the Company’s attention by the Purchaser to the extent of the inconsistency.

2.3. Each Contract shall be subject to and shall incorporate the following documents:

2.3.1. these Conditions;

2.3.2. the Order Acknowledgement; and

2.3.3. the credit facility agreement (if any).

In the event of any conflict or inconsistency between the above mentioned documents, these Conditions shall prevail save where these Conditions or the provisions of any other above mentioned document expressly states otherwise. The provisions of the Order Acknowledgement relating to payment terms shall prevail over Condition 4.2.

2.4. No order which has been accepted by the Company may be cancelled or varied by the Purchaser, except on terms agreed in writing by the Company, and on the terms that the Purchaser shall on demand indemnify in full and keep the Company fully indemnified against all losses (including without limitation loss of profit), liability, costs (including without limitation the cost of all labour and materials used), damages, expenses (including legal costs and expenses) incurred by the Seller as a result of such cancellation.

2.5. In relation to any Contract, these Conditions shall constitute the entire agreement between the Purchaser and the Company and supersede any previous agreement or arrangement between them relating to the subject matter of that Contract.

2.6. No representation, undertaking, promise or statement shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of any Contract except as expressly stated in that Contract. The Purchaser shall not have any remedy in respect of any untrue statement made by the Company (including without limitation in the case of giving advice, if any, in relation to the Purchaser’s selection of particular Goods or otherwise) upon which the Purchaser relied in entering into a Contract (unless such untrue statement was made fraudulently or was as to a fundamental matter including a matter fundamental to the Company’s ability to perform its obligations under the Contract) and the Purchaser’s only remedies shall be for breach of contract as provided for in these Conditions. Misrepresentations as to fundamental matters shall be subject to the terms of Condition 7.

3. PRICE

3.1. The price for the Goods shall be as set out by the Company in an Order Acknowledgement or as otherwise agreed in writing by the parties and/or any additional amount the Company is entitled to charge in addition to the price under Condition 3.4.

3.2. The Purchaser shall not be entitled to make any deduction from the price of the Goods in respect of any alleged rights to set-off or counter-claim.

3.3. The Company reserves the right at any time to increase the price of the Goods by any amount attributable to:

3.3.1. any variation in the cost of all goods and materials purchased by the Company (including without limitation any raw materials), labour, transport, duties, taxes, exchange rates or any other costs of whatsoever nature in between the date of the Contract and the date of delivery or collection (as the case may be) of the Goods; and/or

3.3.2. exchange rates; and/or

3.3.3. any change in or delay or insufficiency of the Purchaser’s instructions.

3.4. Unless otherwise specified in writing by the Company, the price of the Goods is inclusive of the costs of packaging, freight, insurance, delivery charges and all applicable taxes, duties, tariffs and charges directly in respect of the sale or supply of the Goods. Without prejudice to the generality of the foregoing, the price of the Goods is exclusive of Value Added Tax. Any additional costs specified by the Company pursuant to this Condition 3.4 shall be payable by the Purchaser in addition to the price for the Goods in accordance with the provisions of Condition 3.

4. PAYMENT TERMS

4.1. Subject always to the provisions of Condition 4.5 and to satisfactory trade, bankers and other references which may be required by the Company, and unless terms of payment have been specifically otherwise agreed in the Order Acknowledgement or otherwise in writing by the Company, the Company shall be entitled to invoice the Purchaser for the price of the Goods (together with any transport, packaging, insurance, VAT and other charges payable) on or at any time after delivery is effected.

4.2. The Purchaser shall make payment of any amount invoiced by the Company in full in pounds sterling (unless otherwise agreed in the Order Acknowledgement) not later than 30 days from and including the last day of the calendar month of the date of the invoice.

4.3. Unless otherwise agreed in writing, the Purchaser shall pay all due amounts by either cash, cheque or electronically using BACS or CHAPS using the bank details set out in the relevant invoice.

4.4. All amounts due under a Contract shall be paid in full by the Purchaser without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law.

4.5. If the Purchaser fails, on the due date, to pay any sum due to the Company under any Contract then, without prejudice to any other right or remedy available to the Company, the Company shall (at its option) without prejudice to any other rights or remedies of the Company, whether hereunder or otherwise at law or in equity be entitled:

4.5.1. to suspend performance of the Contract until payment is made in full or terminate the Contract immediately by written notice; and

4.5.2. to charge the Purchaser interest (both before and after any judgment) on the amount unpaid at the rate of 4 per cent per annum above Barclays Bank Plc’s prevailing base lending rate from time to time, until payment in full is made.

4.6. The Company reserves the right at any time to require advance payment in cleared funds to be made by the Purchaser prior to delivery or collection (as the case may be) of the Goods.

4.7. Time for payment of the price due for Goods supplied by the Company and all other amounts due to the Company under the Contract shall be of the essence of the Contract.

4.8. Failure by the Purchaser to pay any sums owing to the Company under the Contract or any other contract will result in all indebtedness of the Purchaser to the Company becoming immediately due and payable.

4.9. The Company may at any time in its absolute discretion appropriate any payment made by the Purchaser in respect of Goods to such outstanding debt as the Company thinks fit, notwithstanding any purported appropriation to the contrary by the Purchaser.

4.10. Without prejudice to any other rights or remedies of the Company whether hereunder or otherwise at law or in equity, late payment of any amount due to the Company shall entitle the Company to charge interest on such amount from the date on which payment became due until the date on which the Company receives payment in full of such amount (whether before or after judgment has been obtained by the Company against the Purchaser) at a rate of 4 per cent per annum above Barclays Bank Plc’s prevailing base lending rate from time to time.

4.11. The Purchaser shall indemnify and keep indemnified the Company from and against any and all charges, costs (including without limitation legal costs and expenses), expenses and other liabilities whatsoever and howsoever incurred by the Company or its agents as a result of any failure by the Purchaser to make payment in accordance with the provisions contained in this Condition 4, including (without limitation) any costs incurred by the Company or its agents in the collection of any monies due to the Company.

4.12. Without prejudice to any other rights or remedies of the Company, whether hereunder or otherwise at law or in equity. In the event of the Purchaser defaulting on any of its obligations under either the Contract (including any Contract relating to an instalment) or any other contract between the Purchaser and the Company and/or if the Company at any time has any concerns regarding the financial circumstances of the Purchaser the Company reserves the right at any time at its sole option to:

4.12.1. require immediate payment in full or in part by the Purchaser of the price and/or any other amounts payable to the Company under any Contract; and/or

4.12.2. require immediate payment in full or in part by the Purchaser of the price and/or any other amounts payable to the Company under any other contract; and/or

4.12.3. suspend any further deliveries to the Purchaser (whether of the Goods or any Goods ordered under any other Contract between the Company and the Purchaser; and/or

4.12.4. cancel any allowance of credit (whether under the Contract or under any other Contract between the Purchaser and the Company; and/or

4.12.5. demand security for payment before continuing with an order or delivery of the Goods or any instalment of the Goods and/or any other Goods ordered under any other Contract between the Purchaser and the Company; and/or

4.12.6. cancel the Contract and/or any other contract between the Company and the Purchaser.

5. DELIVERY

5.1. Without prejudice to Condition 5.9, unless otherwise agreed in an Order Acknowledgement or otherwise in writing, delivery of Goods shall be made by the Purchaser or its nominated carrier collecting Goods at the Company’s premises no later than 3 days after the Company has notified the Purchaser that Goods are ready for collection or, if some other place for delivery is agreed in an Order Acknowledgement or otherwise in writing by the Company, by the Company delivering Goods to that place. If upon the expiry of the 3 day period the Purchaser has failed to collect Goods or notify the Company in writing of some other place for delivery, delivery shall be deemed to have been effected on the date of expiry of the 3 day period.

5.2. If the Company agrees to deliver the Goods to premises agreed with the Purchaser, the Purchaser shall be responsible for off-loading the Goods. Delivery of the Goods shall be deemed to have occurred immediately on the Goods arriving at the agreed delivery address.

- 5.3. From the time delivery of the Goods is deemed to have taken place pursuant to Conditions 5.1 or 5.2:
5.3.1. risk in the Goods shall pass to the Purchaser; and
5.3.2. the Company shall have no further obligations whatsoever in relation to the transportation, care or storage of the Goods **provided always** that if the Company elects to arrange transportation of the Goods to the Purchaser, to load or unload the Goods and/or store the Goods pending collection by the Purchaser (as applicable), the Purchaser shall indemnify and keep indemnified the Company fully on demand in respect of any and all costs, expenses (including legal expenses), loss, damage, charges and other liability incurred by the Company in connection with or paid by the Company in so doing.
- 5.4. The Company agrees to make the Goods available for collection or deliver the Goods to the Purchaser (as applicable) within a reasonable time of formation of the Contract. Any period or dates for delivery stated in the Purchaser's order or the Order Acknowledgment or elsewhere shall be treated as an estimate only and the Company will not be liable to the Purchaser for any loss or damage whatsoever and howsoever sustained by the Purchaser as a result of the Company's failure to comply with such delivery periods or dates. Any such dates included by the Purchaser in any order, acceptance of quotation or other document shall not form part of the terms of the Contract. The Purchaser shall not be entitled to refuse to accept late delivery or to treat late delivery as a breach of contract.
- 5.5. The Company may at its option deliver by instalments. Neither failure on the Company's part to make any delivery (or part delivery) in accordance with the Contract, nor any claim by the Purchaser in respect of such delivery (or part delivery) shall entitle the Purchaser to reject the balance of the Goods or to treat the Contract as a whole as repudiated or to cancel subsequent instalments.
- 5.6. Any discrepancy between the volume of Goods specified in a Contract and the volume of Goods actually delivered by the Company under that Contract where such discrepancy is less than 2% of the volume of the Goods set out in the Contract shall not entitle the Purchaser to reject the Goods or any of them delivered or to claim damages and in respect of volume the Company shall be deemed to have delivered the Goods in accordance with the Contract and the Purchaser shall be obliged to accept the Goods delivered and pay for such Goods at the rate set out in the Contract in accordance with the terms of Condition 4.
- 5.7. Where Goods are to be delivered by the Company outside England, Wales or Scotland, unless otherwise specified in the Order Acknowledgement or otherwise agreed in writing, the Company shall deliver the Goods CIF the Company's premises (or as otherwise specified in the Order of Acknowledgement) in accordance with Incoterms (2000 Edition).
- 5.8. Unless the Company agrees to deliver the Goods somewhere other than the Company's premises pursuant to Condition 5.1, the Purchaser shall be responsible for providing at its own cost any instructions, documents, licences, permissions or authorisations necessary to enable the Company to fulfil its obligations under Condition 5.1.
- 5.9. In the event that the Company agrees to supply Goods to the Purchaser's Specification and/or the Company agrees to allocate Goods solely for the Purchaser, the Purchaser hereby agrees to purchase from the Company the entire quantity of the Goods in question obtained by the Company in order to fulfil any such order placed by the Purchaser in respect of such Goods. The Company at its sole discretion, may agree in writing to deliver the quantity of Goods ordered by the Purchaser pursuant to this Condition 5.9 at such intervals as required by the Purchaser (on a call-off basis on written notice by the Purchaser of such requirement) provided that all such Goods shall be delivered to the Purchaser by no later than 6 calendar months from the date of the Contract. Any notification given to the Company to call-off Goods pursuant to this Condition 5.9 shall specify the quantity of Goods the Purchaser requires pursuant to this provision subject to any minimum call off quantities which may be specified by the Company in the Order Acknowledgement or otherwise from time to time. Any Goods ordered by the Purchaser pursuant to this Condition 5.9 which have not been requested and delivered to the Purchaser upon the expiry of the period which is 6 calendar months following the date of the Contract shall be deemed to have been delivered on and including the final day of such period and the provisions of Condition 5.10 shall apply.
- 5.10. If the Purchaser fails to take delivery of Goods at the time stated for delivery (otherwise than by reason of the Company's fault) or fails to give the Company adequate delivery instructions then, without prejudice to any other right or remedy available to the Company, the Company may at its sole option without giving notice to the Purchaser:
5.10.1. store Goods until actual delivery occurs and charge the Purchaser for the reasonable costs (including handling and insurance) of storage; and/or
5.10.2. sell the Goods and retain any proceeds of sale; and/or
5.10.3. dispose of the Goods in any manner it sees fit and recover from the Purchaser (less any proceeds of sale retained by the Company pursuant to Condition 5.10(b)) all sums payable to the Company under the Contract.
- 5.11. The risk of loss and damage to Goods (including for loss or damage caused by the Company's negligence) shall pass to the Purchaser on delivery.
6. **RETENTION OF TITLE**
6.1. Notwithstanding delivery and the passing of risk in any Goods legal and beneficial title to the Goods shall not pass to the Purchaser and shall remain vested in the Company, until the Company has received payment in full (in cleared funds) all sums due to it in respect of:-
6.1.1. the price of the Goods;
6.1.2. any other sums due under the Contract by the Purchaser; and
6.1.3. all other sums which are or become due to the Company from the Purchaser on any account whatsoever.
- 6.2. Goods in the Purchaser's possession or control in relation to which legal and beneficial title remain vested in the Company are referred to in the following provisions of this Condition 6 as "Retained Goods".
- 6.3. Until such payment in full, the Purchaser shall:
6.3.1. hold any Retained Goods on a fiduciary basis as the Company's bailee;
6.3.2. store any Retained Goods (at no cost to the Company) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as the Company's property;
6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to any Retained Goods;
6.3.4. maintain any Retained Goods in good condition; and
6.3.5. at its own expense keep the Retained Goods insured on the Company's behalf against all risks to the reasonable satisfaction of the Company and on request produce the relevant policy of insurance for inspection by the Company.
- 6.4. The Company reserves the immediate right of repossession of any Retained Goods exercisable at any time after delivery or collection of the Goods. The Purchaser hereby
- 6.5. For the avoidance of doubt, the Purchaser agrees that the Company shall be entitled to recover payment for any Retained Goods from the Purchaser notwithstanding that legal and beneficial ownership of the same has not passed from the Company.
- 6.6. The repossession of Retained Goods by the Company in accordance with this Condition 6 shall be without prejudice to all or any of the Company's other rights against the Purchaser under any Contract whether hereunder, at law or in equity.
- 6.7. On termination of the Contract howsoever caused, the Company's but not the Purchaser's rights contained in this Condition 6 shall remain in full force and effect.
7. **WARRANTIES AND LIABILITY**
7.1. Subject to Condition 7.3, Condition 7.4 and Condition 7.5 the Company warrants to the Purchaser that the Goods shall during the period commencing at the time of delivery (deemed or otherwise) of the Goods (pursuant to Condition 5) and ending on the earlier of the date on which the Goods are incorporated into or utilised in any other product and/or are resold or upon the expiry of the period of six (6) calendar months from the date of such delivery (the "Warranty Period") be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
7.2. The Company shall be under no liability to the Purchaser under Condition 7.1:
7.2.1. unless the Purchaser complies with the obligations under Condition 7.3;
7.2.2. unless notification of the breach of warranty is received by the Company during the Warranty Period;
7.2.3. if the provisions of Condition 7.4 apply;
7.2.4. if the defect in question was drawn to the attention of the Purchaser prior to formation of the Contract and the Company did not agree to remedy the defect or ought to have been discovered on inspection of the Goods by the Purchaser at the time of receipt;
7.2.5. if the Goods were examined by the Purchaser prior to formation of the Contract and such examination ought reasonably to have revealed the defect;
7.2.6. if the defect in question was caused by any repair, maintenance, alteration or addition to the Goods by any person other than the Company or an employee or agent of the Company;
7.2.7. if the defect in question was caused or aggravated by any act or omission on the part of any person other than the Company or any employee or agent of the Company, including (without limitation) use or storage of the Goods in a manner contrary to any written instructions of the Company or good trade practice, faulty or improper handling or installation;
7.2.8. if the defect in question arises from fair wear and tear, accident or neglect or any other failure to follow the Company's instructions;
7.2.9. if the defect in question was caused as a result of any reliance by the Company on any Purchaser information (as defined in Condition 12);
7.2.10. if the Purchaser makes any further use of the defective Goods after giving the Company notice of the defect; and/or
7.2.11. the alleged breach of warranty is due to any change, alteration or substitution which the Company is entitled to make under Condition 12.
- 7.3. If during the Warranty Period the Purchaser becomes aware of a breach of warranty set out in Condition 7.1, the Purchaser shall:
7.3.1. as soon as possible and in any event within 48 hours of discovering the relevant defect in the Goods, supply the Company with written particulars of the defect and, if the defect is as a result of damage in transit, within 24 hours of the time when the Purchaser discovers or ought to have discovered the defect including without limitation as a result of inspecting the Goods; and
7.3.2. at the Company's sole option either promptly return the Goods to the Company at the Company's expense and risk or permit the Company to inspect the defective Goods at the Purchaser's premises; and
7.3.3. shall provide to the Company all necessary access and other reasonable facilities and all information, particulars and assistance as may be necessary to enable the Company to ascertain or verify the nature and cause of the defect claimed and to carry out its warranty obligations under Condition 7.3.
- 7.4. If the Goods are supplied to the Company by a third party and are not manufactured by the Company, the warranties set out in Condition 7.1 shall not apply to the Contract and the Purchaser acknowledges and agrees that the Company shall provide no warranties in relation to the quality or fitness for purpose of the Goods. However, where the Company is given the benefit of warranties equivalent to those set out in Condition 7.1 from any third party manufacturer the Company shall, to the extent only that the Company itself has the benefit of such equivalent warranties, grant to the Purchaser the benefit of the remedies for breach of warranty set out in Condition 7.5 only.
- 7.5. Without prejudice to Condition 8.1 and subject to Condition 7.4, the Company's liability for any breach of the warranty contained in Condition 7.1 shall in all circumstances be limited to, at the Company's sole option, repair or replacement as soon as reasonably practicable of the defective Goods (or any part(s) in question) free of charge or where payment or part payment of the price has already been made by the Purchaser, crediting the Purchaser with the relevant amount already paid. Such repair, replacement or refund shall be the Company's sole liability and the Purchaser's sole remedy for breach of the warranty in Condition 7.1.
8. **LIMITS OF LIABILITY**
8.1. Nothing in these Conditions shall exclude or limit the Company's liability for:
8.1.1. fraud or fraudulent misrepresentation;
8.1.2. death or personal injury caused by its negligence;
8.1.3. breach of terms regarding title implied under the Sale of Goods Act 1979; or
8.1.4. any other liability to the extent that the same may not be excluded or limited as a matter of law.
- 8.2. Without prejudice to Condition 8.1 above, the Company's maximum aggregate liability to the Purchaser under or in connection with the Contract whether arising in contract, tort (including, without limitation, negligence) or otherwise shall in no event exceed the price paid by the Purchaser under the Contract.
- 8.3. Without prejudice to Condition 8.1, the Company shall, in no circumstances, be liable to the Purchaser by reason of breach of contract, tort (including, without limitation, negligence) breach of statutory duty or otherwise for any:
8.3.1. special damages; or
8.3.2. loss of profit (actual or anticipated), loss of income, loss of business, loss of revenue, loss of goodwill, loss of use or other economic loss; or
8.3.3. any loss arising from any claim against the Purchaser by any third party; or
8.3.4. any consequential or indirect loss, damage or expense of any kind howsoever caused or arising whether or not such loss or damage was foreseeable or in the contemplation of the parties.

- 8.4. Save as expressly provided in Condition 8.1, all conditions, warranties, representations and terms, express or implied whether by statute, common law or otherwise in relation to Goods are hereby expressly excluded to the fullest extent permitted at law.
9. **INTELLECTUAL PROPERTY AND THIRD PARTY CLAIMS**
- 9.1. Notwithstanding delivery of and the passing of title in any Goods, nothing in any Contract shall have the effect of granting or transferring to, or vesting in, the Purchaser any intellectual property rights, or any other right, title or interest in or to any Goods.
- 9.2. The Purchaser shall indemnify and keep indemnified the Company fully on demand from and against any and all actions, claims, costs, losses (including without limitation, loss of profits whether actual or anticipated, revenue or goodwill), damages, demands, expenses (including without limitation legal costs and expenses), proceedings, and other liabilities incurred by, or awarded against, the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim of alleged infringement of any rights of a third party as a result of or in connection with the carrying out by the Company, its employee, sub-contractor or agent of any work required to be done to Goods in accordance with the requirements or Specifications submitted by the Purchaser or arising out of any defect in the Goods to the extent occasioned or contributed to or resulting from any act or omission of the Purchaser, its employee, sub-contractor or agent.
10. **INFRINGEMENT OF THIRD PARTY RIGHTS**
- 10.1. The Purchaser shall promptly inform the Company of any threat, claim or allegation of which the Purchaser becomes aware that the Goods (or any of them) infringe the intellectual property or other rights of any person.
- 10.2. The Purchaser shall not take any action or make any admission of liability in connection with any threat, claim or allegation of the nature outlined in Condition 10.1 without the prior written consent of a duly authorised representative on behalf of the Company.
- 10.3. If required by a duly authorised representative on behalf of the Company, the Purchaser agrees to take such action or steps in connection with any threat, claim or allegation notified to the Company pursuant to the Purchaser's obligations under Condition 10.1 as the Company may request. Subject to Condition 10.4, any such action or steps taken by the Purchaser shall be at the Company's cost.
- 10.4. Where any threat, claim or allegation of the nature outlined in Condition 10.1 has, in the reasonable opinion of the Company, arisen as a result of any use of the Goods by the Purchaser in any manner or for any purpose prohibited by the Company or other than in accordance with the Company's instructions, any action or steps taken by the Purchaser at the Company's request under Condition 10.2 shall be at the Purchaser's sole cost.
11. **DESIGN ALTERATIONS AND SUBSTITUTION OF GOODS**
- 11.1. The Purchaser agrees that:
- 11.1.1. the Company shall be entitled at any time to alter or change the general specifications of its products as published in the Company's product portfolio [and product data sheets produced by any third party supplier] subject to reasonable prior notice of any such alteration or change being given to the Purchaser to the extent only that the Company itself is given such notice by any third party supplier; and
- 11.1.2. should any materials or products required for the Goods be unavailable, the Company reserves the right to supply substitutes materials or products reasonably deemed by the Company to be similar to the required Specification and suitable for the general purpose of the Goods suitable for the intended purpose of the Goods as understood by the Company and that any such change or alteration affecting the Goods and/or the use by the Company of such substitutes shall be accepted by the Purchaser and deemed to constitute proper performance by the Company of its obligations under the Contract.
- 11.2. Should the Company be required by any regulatory authority to alter the specification of any Goods, the Company reserves the right to amend the Specification of the Goods without prior notice to the Purchaser.
12. **CONFIDENTIAL INFORMATION**
- 12.1. The Purchaser shall treat all drawings, procedures, instructions, documents and other information of any kind whatsoever (including without limitation any information relating to the price of Goods) supplied by the Company to the Purchaser as strictly confidential (except to the extent that any such information is available in the public domain) and shall not without the prior written consent of the Company, disclose or part with possession of any such documents or information or extracts thereof or copies thereof or use any such documents or information otherwise than in connection with the purchase and use (but not the re-sale of) Goods to which they relate.
13. **FORCE MAJEURE**
- 13.1. The Company reserves the right to suspend, delay or cancel the performance of a Contract or any part thereof where the Company is prevented or hindered from performing the same due to any cause beyond its reasonable control.
- 13.2. Notwithstanding anything to the contrary in these Conditions, the Company shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser as a direct or indirect result of the supply of Goods by the Company being prevented, hindered, delayed or rendered uneconomic or for the suspension or cancellation of a Contract by reason of any circumstances or event beyond the Company's reasonable control.
- 13.3. If due to such circumstances or events the Company has insufficient stocks to meet all its commitments, the Company may apportion available stocks between its customers at its sole discretion.
- 13.4. Cancellation of a Contract under this Condition 13 shall be without prejudice to any rights or liabilities of either party which accrued prior to the date of cancellation other than as a result of the relevant event of force Majeure.
14. **INSOLVENCY OF PURCHASER**
- 14.1. Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to treat any Contract as repudiated and/or withhold any further deliveries of Goods without any liability to the Purchaser and, if any Goods have been delivered but not paid for, the total amount payable therefor shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, if:
- 14.1.1. the Purchaser is, or is deemed to be insolvent, or is unable to pay its debtors as they fall due;
- 14.1.2. the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or passes a resolution for its
- voluntary winding up or has a petition for its compulsory winding up presented against it;
- 14.1.3. an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Purchaser; or
- 14.1.4. the Purchaser ceases, or threatens to cease, to carry on business; or
- 14.1.5. any equivalent or analogous event or proceeding occurs in any other applicable jurisdiction; or
- 14.1.6. the Company reasonably believes that any of the events mentioned above is about to occur in relation to the Purchaser or any other matter which in the opinion of the Company may prejudice its rights against the Purchaser.
15. **CANCELLATION AND AMENDMENT**
- 15.1. No cancellation or amendment to these Conditions or any Contract shall be binding on the Company unless agreed in writing by a duly authorised representative of the Company and on the strict condition that all and any costs and expenses incurred by the Company in relation to the Contract in question up to the time of the cancellation or arising out of the amendment and all loss of profits and all other loss, damage, claims, costs, charges and other expenses resulting to the Company by reason of and/or in connection with such cancellation or amendment will be fully reimbursed by the Purchaser to the Company no later than 7 days following such cancellation or amendment.
- 15.2. Without prejudice to any other rights and remedies which the Company may have whether hereunder or otherwise at law or in equity, the Company shall have the right to cancel a Contract or any other contract with the Purchaser.
- 15.2.1. if the Purchaser commits any breach of the Contract or any other contract with the Company;
- 15.2.2. on the occurrence of an insolvency or other event in respect of the Purchaser as set out in Condition 14; and/or
- 15.2.3. if the Company has any reason to doubt the credit worthiness of the Purchaser.
16. **ASSIGNMENT**
- 16.1. The Purchaser shall not assign, transfer, novate, charge or otherwise dispose of or deal in any other manner with a Contract or all or any of its rights, interests and/or obligations under a Contract without the prior written consent of an authorised representative of the Company.
17. **WAIVER**
- 17.1. No waiver by the Company of any of the Company's rights under a Contract shall be effective unless it is in writing and signed by a duly authorised representative on behalf of the Company. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Company's right in relation to different circumstances or the re-occurrence of similar circumstances.
18. **RIGHTS OF THIRD PARTIES**
- 18.1. The Company and the Purchaser do not intend that any term of a Contract should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person who is not a party to the Contract save that where an agreement is entered into pursuant to which any rights contained in the Contract are assigned to a third party, nothing in this Condition 18 shall, of itself, operate to prevent the assignee from taking the benefit of, and enforcing, any right so assigned.
19. **LAW AND JURISDICTION**
- 19.1. The formation, existence, construction, performance, validity and all aspects of all Contracts and these Conditions will be governed by and construed in accordance with the Laws of England and the Company agrees to submit to the exclusive jurisdiction of the English Courts in relation to any claim brought by the Purchaser against the Company but that the Company shall be entitled to bring a claim against the Purchaser in any court of competent jurisdiction.
20. **CONSTRUCTION**
- 20.1. The headings of these Conditions are for convenience only and shall not affect the interpretation thereof.
- 20.2. Each of the Conditions contained herein shall be construed as a separate condition. If any provision or part of a provision of these Conditions shall be found by any court of competent jurisdiction to be invalid, void or unenforceable, it shall be deemed to be severed from these Conditions and shall not affect the remaining provisions or parts of such provisions of these Conditions which shall continue in full force and effect.
21. **NOTICES**
- 21.1. Notice under these Conditions and any Contract shall be in writing and notices shall be deemed to be received on delivery if sent by hand, courier or recorded delivery and 48 hours (excluding Saturdays, Sundays and Bank and public holidays) after despatch if sent by pre-paid first class post, and on confirmation of transmission if sent by facsimile or e-mail.