

# Elementary Technology Limited CONDITIONS OF SALE

## 1. Definitions

1.1 In these terms and conditions the following words shall have the following meanings:

- Company: Elementary Technology Limited, of The Old Courthouse, 24 Church Street, Telford, Shropshire TF1 1DG (company no. 4870924).  
The Customer: The person, firm or organisation with whom the Company contracts.  
Authorised Person: A representative of the Customer who is authorised to discuss changes to the installation necessary during the installation and to sign off the Installation Completion Certificate.  
Conditions: The terms and conditions set out in this document.  
Contract: Any contract between the Customer and the Company for the sale and purchase of the Goods incorporating these Conditions.  
Goods: The goods and services specified in the Order Acknowledgment.  
Installation Completion Certificate: The Company's printed document, which is presented to the Customer at the completion of the installation. Also known as the 'sign-off sheet'.  
Price: The price for the Goods excluding VAT shall be the price of the Goods specified in the Quotation, subject to any increases permitted in accordance with clause 3.3 or the other provisions of these Conditions.  
Quotation: The estimated price based on information provided to the Company by the Customer.  
Order Acknowledgment: The Company's written acknowledgement and acceptance of the Customer's order to purchase the Goods at the price set out in the Quotation, subject to a Site Survey (if necessary). The Order Acknowledgment may be communicated by post, fax or email.  
Site Survey: The survey conducted either by an Installation engineer or the Customer to identify any additional engineering requirements.  
Working Day: Monday to Friday (excluding bank and other public holidays in the UK and any other days as notified by the Company to the Customer in advance).  
1.2 Any reference in these Conditions to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended, modified, extended, re-enacted or replaced and including all subordinate legislation from time to time made under it.  
1.3 Words indicating the singular include the plural, words importing any particular gender shall include all other genders and references to persons shall include companies and other unincorporated associations or bodies corporate and (in each case) vice versa.  
1.4 Any reference to "including" shall mean "including without limitation".  
1.5 Headings to Conditions are for convenience only and do not affect the interpretation of these Conditions.

## 2 Application of Terms.

- 2.1 Subject to any variation under Condition 2.3 or 2.8, the Contract shall be on these Conditions to the exclusion of any other terms and conditions (including any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).  
2.2 Any order for Goods from the Customer shall be deemed to be an offer to purchase the Goods subject to these Conditions.  
2.3 Save as specifically provided in these Conditions, these Conditions shall not be varied unless any agreement to vary is recorded in writing and signed by an authorised representative of both the Company and the Customer.  
2.4 No order placed by the Customer shall be deemed to be accepted by the Company until the Order Acknowledgment has been issued to the Customer or (if earlier) the Company provides the Goods to the Customer. Upon the Company's acceptance of the order, the Company and the Customer will have a binding Contract between them.  
2.5 The Customer warrants that all the details in the order and any applicable product and technical specification are complete and accurate.  
2.6 The Conditions shall apply to the sale of all Goods. Save as has been specifically provided for in the Conditions, any representations relating to the Goods shall not be effective unless expressly agreed in writing and signed by an authorised representative of both the Company and the Customer.  
2.7 Any Quotation is given on the basis that no Contract shall come into existence until the Company despatches the Order Acknowledgment to the Customer following the Customer's order or (if earlier) the Company delivers the Goods to the Customer. Any Quotation is valid for a period of 30 days from the date provided that the Company has not previously withdrawn it. The Company may withdraw the Quotation for any reason, for example in the event that any Goods are discontinued or no longer available.  
2.8 Subject to clause 2.9, these conditions (together with any documents referred to or executed under or pursuant to them) constitute the entire understanding between the parties concerning the subject matter of the Contract. The parties confirm that they have not entered into the Contract on the basis of any representations that are not expressly incorporated into the Contract by these Conditions.  
2.9 Where the Company requires the Customer to accept a disclaimer or any special conditions in relation to the manufacture, delivery, supply, installation or use of the Goods: -  
2.9.1 acceptance of these Conditions shall be deemed to be acceptance also of the disclaimer and/or special conditions; and  
2.9.2 the disclaimer and/or special conditions shall be deemed to be effectively incorporated into the Contract by these Conditions.  
2.10 Nothing in these Conditions shall exclude or limit the Company's liability for fraudulent misrepresentation.

## 3. Price and Payment

- 3.1 The price in the Quotation is an estimate based on information provided by the Customer.  
3.2 The price may be subject to the completion of a Site Survey, which may result in additional costs. The Site Survey may be conducted by a visit to the Customer's premises or by requesting that the Customer completes a paper self survey.  
3.3 Changes to the specification of the Goods after the date of the Order Acknowledgement or if the information on which the Quotation is based is found to be incorrect may result in additional charges.  
3.4 The Price and VAT at the applicable rate, are payable by the Customer to the Company in full within 30 days of the date of the Company's invoice for the Goods (or in accordance with Condition 9.8).  
3.5 If the Customer fails to pay the invoice by the due date then, without prejudice to any other rights of the Company, the Customer shall pay interest on any overdue amount from the date on which payment was due to the date of actual cleared payment (whether before or after judgement) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.  
3.6 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, abatement or otherwise unless it has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.  
3.7 Time for payment shall be of the essence. If the Customer does not make payments as required under these Conditions, the Company may suspend or terminate the Contract.  
3.8 Where there has been agreement to stage payment then each invoice will become due within 30 days of the invoice. Failure to make payment against an invoice could/will lead to suspension or cancellation of the remainder of the contract.  
3.9 The Company's invoice can only be settled by one of the following methods of payment: (1) cash, (2) cheque, (3) direct bank transfer to the Company's account. No payment shall be deemed to have been received until the Company has received cleared funds.  
3.10 All payments due to the Company under the Contract shall become due immediately on its termination despite any other provision of these Conditions.  
3.11 All property of the Customer delivered to or in the custody or control of the Company is subject to a lien for the general balance of account for any sums owed to the Company by the Customer. The Company reserves the right to sell such property as against sums owed if payment is not made within three months of the due date or property is not collected within that period. Any balance due will be paid to the Customer.

## 4. Goods

- 4.1 The Customer acknowledges that it has entered into the Contract as a result of its inspection or knowledge of the Goods and not in reliance upon any description given by the Company.  
4.2 The description and quantity of the Goods to be sold shall be as set out in the Order Acknowledgment provided by the Company to the Customer.  
4.3 The Company reserves the right to change the specification of the goods without notice to conform with the law or where this does not materially negatively affect the quality or performance of the Goods.  
4.4 Any samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and shall not form part of the Contract. This is not a sale by sample.  
4.5 Where the Goods contain software, the Customer shall be required to accept the terms of any licence agreement relating to such software (whether licensed by the Company or by a third party), and to comply with such licence in its use of the relevant Goods.

## 5. Delivery

- 5.1 The Company shall use reasonable endeavours to deliver the Goods to the Customer at the address of the Customer as shown on the Order Acknowledgment on the delivery date agreed either shown on the Order Acknowledgment or agreed with the Customer following confirmation of the installation date.  
5.2 At the Company's discretion the Goods may be delivered in instalments. The Company will use reasonable endeavours to advise the Customer in advance of any deliveries. When deliveries of Goods are made by instalments, a separate invoice may be rendered in respect of each such instalment in accordance with the provisions of the Contract. 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.  
5.3 Any dates or timescales specified by the Company for delivery of the Goods are intended to be an estimate and time for collection or delivery is not and shall not be made of the essence of the Contract by notice or otherwise. The Company will use its reasonable endeavours to deliver any Goods within any estimated timescale. If no date is estimated in the Order Acknowledgment, delivery of Goods shall be within a reasonable time.  
5.4 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 or has not prepared the premises for delivery or installation of the Goods:
  - risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence)
  - the Goods shall be deemed to have been delivered; and
  - the Company may store the Goods until actual delivery, whereupon the Customer shall be liable for all related costs and expenses (including storage, redelivery and insurance).Subject to Condition 11.2, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of

business, depletion of goodwill and similar costs), costs, damages, charges or expenses caused directly or indirectly by any delay in delivering the Goods (even if such delay is caused by the Company's negligence).

## 6. Title and Risk

- 6.1 Risk to the Goods shall pass from the Company to the Customer on delivery to the Customer or in accordance with clause 5.4.
- 6.2 Title and ownership to the Goods shall not pass from the Company to the Customer until the Company has received the Price in full (in cash or cleared funds) together with all other sums payable by the Customer to the Company on any account.
- 6.3 Until title and ownership in the Goods has passed, the Customer shall:
- hold the Goods and each of them on a fiduciary basis as bailee on behalf of the Company;
  - store the Goods (at no cost to the Company) separately from its other merchandise and possessions or the merchandise or possessions of third parties, in such a way that they remain readily identifiable as the Company's property;
  - not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - maintain the Goods in satisfactory condition in accordance with any storage conditions advised by the Company and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.
- 6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- any sale shall be effected in the ordinary course of the Customer's business at full market value; and
  - any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 6.5 The Customer's right to possession (and the Contract) shall terminate immediately if:
- the Customer makes any voluntary arrangement or composition with its creditors, the Customer (being an individual or firm) becomes bankrupt, an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), a resolution is passed or a petition is presented or an order is made for the winding up of the Customer (otherwise than for the purpose of solvent amalgamation or reconstruction) or circumstances arise which entitle a court of competent jurisdiction to make a winding up order of the Customer, an encumbrancer takes possession of or a receiver or administrative receiver is appointed over any of the property, assets or undertaking of the Customer or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer or if any other person takes possession of or sells the Customer's assets; or
  - the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it or the Customer fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer or the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
  - the Customer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Customer grants the Company, its agents, employees and sub-contractors 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 Customer's right to possession has terminated, to recover them.
- 6.8 Where the Company is unable to determine whether any Goods 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.
- 6.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Condition 6 shall remain in effect.

## 7. Non-Delivery

- 7.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's point of business shall be conclusive evidence of the quantity received by the Customer unless the Customer notifies the Company to the contrary within 7 days of delivery and can provide conclusive evidence to the contrary.
- 7.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 7.3 Any liability of the Company for non-delivery or short delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note for a reasonable proportion of the Price against any invoice raised for such Goods.

## 8. Delivery Acceptance

- 8.1 Customers will ensure, prior to accepting delivery that the Goods are delivered in a satisfactory condition. Any damage to Goods must be noted on the courier's delivery sheet and notified to the Company by the Customer within 24 hours.
- 8.2 The Customer shall be entitled to reject the Goods, only to the extent that they are not in accordance with the Contract or are not of satisfactory quality within the meaning of the Sale of Goods Act 1979, and in any other situation the provisions of Condition 8.6 shall apply.
- 8.3 The Customer shall be deemed to have accepted the Goods if they have not notified the Company of the rejection on or before the 7th day after delivery. The Customer shall not be entitled to reject the Goods in whole or in part after such date.
- 8.4 In the event that the Customer rejects the Goods in accordance with this Condition 8, the liability of the Company shall be limited to replacing the Goods within a reasonable time or issuing a credit note for a reasonable proportion of the Price against any invoice raised for such Goods.
- 8.5 The Customer will become responsible for all Goods once signed for and will ensure that they take appropriate and sufficient measure to insure, secure and protect the goods. The Company will not be responsible for any damage to the Goods once delivered to the address specified on the Order Acknowledgment or otherwise subsequently agreed in writing by the parties.
- 8.6 At the discretion of the Company, and with prior agreement, the Customer may return unused goods in original packaging other than in accordance with Condition 8.2, but this will be subject to a restocking fee of 25% of the Price.
- 8.7 In any event, the Customer will be responsible for returning the Goods to the Company at its own cost.

## 9. Installations

- 9.1 Where installation is to be carried out under a Contract, the Company reserves the right to invoice for delivered Goods prior to the installation being completed.
- 9.2 The Customer shall ensure that the premises are prepared prior to the installation and that they comply with any requirements notified by the Company.
- 9.3 Without limitation, when ordering an electrical spur the Customer will be required to confirm that their electrical supply is able to cope with the extra demands of the additional electrical spur required for completion of the installation. If, at the installation stage, it is discovered that such electrical supply is not suitable, then the installation will be completed (as far as possible) and the Customer will be invoiced for the cost of the installation (less the cost of the additional electrical spur). The failure to complete the electrical connection due to the Customer's failure to comply with this clause will not entitle the Customer to delay payment of those charges invoiced by the Company.
- 9.4 Where installation is to be carried out under a Contract the equipment will be installed at a height and position recommended by the Company. If the Customer requests an alternative height or position and this does not breach the Health and Safety guidelines of the Company then the installation will be carried out to the Customer's instructions however the Company will not be responsible for the quality or the performance of the Goods at this height or position, and no warranty will be given under clause 10 in respect of the installation.
- 9.5 The Contract will have been completed when the installation is demonstrated on industry standard equipment (e.g. a laptop computer) and handed over to the Customer, and the Installation Completion Certificate has been signed by an Authorised Person. Delays caused by other contractors employed by the Customer (e.g. installation of electrical supplies) or difficulties outside of the Company's control shall not be the responsibility of the Company and will not be a reason to delay payment of the invoice.
- 9.6 The Customer shall ensure that an Authorised Person is on site throughout the installation.
- 9.7 In the event that any work is incomplete, it should be clearly identified on the Installation Completion Certificate, which shall be signed in respect of those aspects of the work that are complete. The Company shall complete any outstanding work identified on the Installation Completion Certificate within a reasonable period of time, and a full Installation Completion Certificate shall be signed on completion.
- 9.8 Signing of the Installation Completion Certificate will indicate full acceptance that the Contract has been completed to the full satisfaction of the Customer and the invoice will be paid within 30 days, save that any portion of the Price relating to incomplete items identified on the Installation Completion Certificate in accordance with Condition 9.7 shall be invoiced after completion of such incomplete work, and such invoice will be paid within 30 days.
- 9.9 Unless specifically covered by the warranty in clause 10, the Customer is responsible for all aspects of maintenance, including changing lamps and cleaning filters. This includes removing the projector from the installation bracket or Interactive Whiteboard from the wall if required. Customers should refer to the manufacturer's warranty document and instructions for use when doing so.
- 9.10 Where Goods are installed, maintained or serviced incorrectly by the Customer or a third party other than the Company or its sub-contractor, the Customer accepts that any applicable manufacturer's warranty may be invalidated.
- 9.11 Customers will be required to purchase order before an engineer's visit is arranged. If the visit is found not to be covered by the warranty set out in Condition 10 then a call out charge will be levied in addition to any fees for work carried out.
- 9.12 In the event that an installation or other engineer's visit is cancelled, rescheduled or postponed by the Customer, the following charges will be levied by the Company:
- Up to 2 Working Days prior to date of installation Full cost of installation
  - 2 to 5 Working Days prior to the date of installation 75% of the cost of installation
  - 5 to 10 Working Days prior to date of installation 50% of the cost of installation
  - 10 or more Working Days prior to date of installation No charge.

## 10. Warranty Quality of goods

- 10.1 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period of 28 days from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 10.2 The Company shall not be liable for a breach of the warranty in Condition 10.1 unless:
- the Customer gives written notice of the defect to the Company (and, if the defect is as a result of damage in transit, to the carrier), within 7 days of the time when the Customer discovers or ought to have discovered the defect; and

- (the Company is given a reasonable opportunity after receiving the notice of examining any affected Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 10.3 The Company shall not be liable for a breach of the warranty in Condition 10.1 if:
- (the Customer makes any further use of the affected Goods after giving the notice required by Condition 10.2; or
  - (the defect arises because the Customer failed to follow the Company's (or its sub-contractor's) oral or written instructions as to the storage, use, installation or maintenance of the Goods or (if there are none) good trade practice; or
  - (the Customer alters such Goods without the written consent of the Company.
- 10.4 Subject to Conditions 10.2, 10.3 and 10.5, if any of the Goods do not conform to the warranty in Condition 10.1, the Company shall collect the Goods or cover the Customer's reasonable costs of returning them to the Company and may, at its option:
- (replace the Goods or any defective part of the Goods and deliver such replacement to the Customer; or
  - (refund a reasonable proportion of the Price of such Goods.
- 10.5 If the Company complies with Condition 10.4 it shall have no further liability for a breach of the warranty in Condition 10.1 in respect of such Goods.

#### **Manufacturers' Warranty**

10.6 In the event that the Goods have the benefit of a manufacturer's warranty, the Company shall use its reasonable endeavours to procure that the Customer receives the benefit of such warranty.

#### **Installation**

10.7 Where installation is to be carried out under a Contract, the Company warrants that the installation will be carried out with reasonable care and skill and that the installation of the Goods will be of satisfactory quality for the period of 12 months from installation. This warranty excludes any claim resulting from:

- 10.7.1 misuse;
- 10.7.2 inappropriate use;
- 10.7.3 fair wear and tear;
- 10.7.4 failure to carry out maintenance as detailed in any applicable manufacturers' warranty and in accordance with Condition 9.3
- 10.7.5 deterioration of the supporting structure;
- 10.7.6 accidental damage to the installation or the surrounding structure; and
- 10.7.7 additional load being applied to the installation whether temporary or permanent.

10.8 Any alterations made to an installation by the Customer or a third party other than the Company or its subcontractor will invalidate the warranty set out in Condition 10.7.

10.9 In the event of a breach of the warranty in Condition 10.8, the Company shall re-perform the installation and use its reasonable endeavours to make good any defect at the cost to the customer. If the Company complies with this Condition it shall have no further liability for a breach of the warranty in respect of such installation.

10.10 In the event of a defect in the installation arising from any of the situations set out in Conditions 10.7.1 to 10.7.7 (inclusive) or 10.8, the Customer may request that the Company re-perform the installation or make good the defect, but this shall be subject to the Company's prior agreement, and shall be at the cost of the Customer.

#### **10.11 General**

10.12 The Customer shall have no entitlement to compensation in respect of any inconvenience or additional expenses incurred in relation to breach of any warranty set out in this Condition 10.

10.13 Any Goods which are damaged at the time of delivery or collection must be reported to the Company within 24 hours and the Customer shall allow the Company or its representative reasonable access to the Goods to examine such damage. The Company shall only provide replacement Goods if in its reasonable opinion or that of its representative the damage was caused prior to collection or delivery.

10.14 Any Goods replaced shall belong to the Company and the warranties in this Condition 10 shall apply to the replacement Goods for the unexpired portion of the applicable warranty period.

10.15 The Company gives no warranty that the Goods will be suitable for the Customer's purpose and the Customer shall therefore ensure that the Goods are suitable for the purposes for which they are to be used.

10.16 The Company takes no responsibility for the provision of packaging for the return of faulty Goods in accordance with this clause 10 or clause 8. The Customer is advised to retain packaging so that faulty Goods can be returned for examination or repair. Replacement packaging can be purchased from the Company.

#### **11. Limitation of Liability**

11.1 Subject to Conditions 7, 8 and 10, this Condition 11 sets out the entire liability of the Company to the Customer (including any liability for the acts and omissions of employees) in respect of:

- (the Goods and any services performed in relation to the Goods;
- (any breach of the Company's contractual obligations arising under the Contract; and
- (any representation, statement (other than fraudulent misrepresentation) or tortious act or omission including any negligence arising under or in connection with the Contract ("an Event of Default").

11.2 Notwithstanding any other provision of these Conditions, the Company does not seek to limit or exclude its liability to the Customer for death or personal injury resulting from its own or its employees' negligent act or omission or wilful misconduct or for fraudulent misrepresentation.

11.3 Subject to Conditions 11.1 and 11.2, the Company's maximum total liability to the Customer in respect of all claims, losses, damages, costs, charges, expenses, liabilities, demands, proceedings and actions (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) in respect of all Events of Default shall not exceed 125% of the total sums paid by the Customer to the Company under the Contract.

11.4 The Company shall under no circumstances be liable to the Customer for loss of profits, loss of contracts, loss of opportunity, loss of business, loss or depletion of goodwill, increased overheads or administration expenses, management time, or any type of special, indirect or consequential loss of any nature whatsoever (including loss or damage suffered by the Customer as a result of an action brought by any third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.

11.5 All terms, conditions, warranties and other matters, which may be implied by statute or common law, (except for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law. Accordingly, except as expressly set out in these Conditions, the Company shall have no liability of any nature whatsoever to the Customer.

#### **12. Termination**

12.1 The Company shall be entitled to terminate the Contract by notice to the Customer effective immediately in accordance with clauses 3.2 and 3.5, or in the event of any other breach by Customer of these Conditions.

12.2 The Company shall be entitled to terminate the Contract by notice to the Customer effective immediately in the event that the Customer makes any voluntary arrangement or composition with its creditors, the Customer (being an individual or firm) becomes bankrupt, an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), a resolution is passed or a petition is presented or an order is made for the winding up of the Customer (otherwise than for the purpose of solvent amalgamation or reconstruction) or circumstances arise which entitle a court of competent jurisdiction to make a winding up order of the Customer, an encumbrancer takes possession of or a receiver or administrative receiver is appointed over any of the property, assets or undertaking of the Customer or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer or if any other person takes possession of or sells the Customer's assets.

#### **13. Designs**

13.1 By submitting any design, logo or specification (including elements for a bespoke design) (a "Design") for the Goods, the Customer warrants to the Company that:

- it is the owner of all intellectual property rights in the Design;
- (use and reproduction of the Design does not require the prior consent of any third party;
- any moral rights relating to the Design have been waived; and (in possessing the Design and using it for the performance of its obligations under this Agreement, the Company will not breach any contract nor infringe any copyright, trade mark or any other intellectual property or other right of any third party or be liable to any claim or proceedings in this regard whatsoever.

13.2 The Customer agrees to indemnify the Company and keep it indemnified against all claims, costs, =proceedings, demands, losses, damages, expenses or liability whatsoever arising directly or indirectly as a result of any breach of the warranties contained in Condition 13.1 above.

13.3 If Goods are to be made to the Customer's Design then the Customer must provide written confirmation of the Design prior to any work being carried out.

13.4 Where Goods are produced in accordance with the Customer's Design, the Customer shall be taken to have waived any right to reject or return those Goods unless the Goods do not comply with the Design. For the avoidance of doubt, no warranty is given that the Goods will be of satisfactory quality or fit for purpose.

13.5 Where the Customer requests that the Company produces Goods to a bespoke Design, the Customer acknowledges that the Company may own intellectual property rights in such design. The Company gives no warranty as to the existence of any intellectual property rights in such design or the non-infringing nature of the design produced.

#### **14. Assignment and Sub-Contracting**

14.1 The Company may sub-contract the performance of any of its obligations under or assign the benefit of the Contract to any person, firm or company and for the avoidance of doubt; any obligation stated to be performed by the Company may be performed by its sub-contractor.

14.2 The Customer shall not assign, sub-contract, delegate or otherwise deal with all or any of its rights and obligations under the Contract without the prior written consent of the Company.

#### **15. Data Protection Act (for unincorporated Customers)**

15.1 The Company may transfer information about the Customer to our Financiers, and either the Company or such Financiers:

- 15.1.1 may use such information in the performance of any contract for the supply of Goods;
- 15.1.2 may store and process information about the Customer on their computers, the computers of any associated company used by them and in any other way; information will be used by them for credit or financial assessments, making payments, recovering monies, training, preparing statistics, preventing bad debts, fraud and money laundering;
- 15.1.3 from time to time may make searches of the Customer's records at their credit reference agencies and other enquiries in accordance with their normal procedures; the Customer's records with such agencies include searches made and information given by other businesses; details of their searches will be kept by such agencies;

15.1.4 may give information about the Customer and their indebtedness to any associated company of theirs (so that they may make credit or financial decisions and for statistical analysis), to any guarantor or indemnifier of the Customer (so they can assess or enforce such obligations), to bankers or advisers acting on their behalf (so they can carry out their services), to any business to whom the Customer's indebtedness may be transferred (to facilitate such a transfer) and to their credit reference and fraud prevention agencies (to give out information and assessments to other subscribers for credit and lending decisions, preventing bad debts, fraud and money laundering);

15.1.5 may monitor and/or record telephone conversations between them and the Customer for training or security purposes;

15.1.6 may make decisions about the Customer solely using an automated decision making process such as credit scoring, however the Financiers will advise the Company if they make a significant decision only using such a process and the Company will advise the Customer so that the Customer can request a review of the decision by them using other means.

15.2 The Company will provide details of its Financiers on request, including a contact telephone number should the Customer want to have details of the credit reference agencies and other third parties referred to above from whom the Company obtains and to whom the Company may give information about the Customer. The Customer has a legal right to these details. The Customer may also obtain a copy of the information about them held by these parties if an application is made in writing. A fee will be payable for this service.

#### **16. Force Majeure**

16.1 If the performance by the Company of any obligation under the Contract is prevented, restricted, or interfered with by reason of circumstances beyond its reasonable control, the Company shall give notice of this to the Customer and the Company shall be excused from performance to the extent of the prevention, restriction, or interference. The Company shall use its reasonable endeavours to avoid or remove the causes of non-performance and shall continue performance under the Contract whenever the causes are removed or diminished.

#### **17. General**

17.1 Any notice to be given under the Contract shall be in writing and delivered personally or sent by first class, prepaid, recorded delivery or registered post. A notice shall be deemed served, if delivered personally, at the time delivered or, if posted, on the second day after posting (excluding weekends and public holidays).

17.2 Each right or remedy that the Company and the Customer has under the Contract is without prejudice to any other right or remedy that may exist whether under the Contract or not.

17.3 In the event that any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal, invalid, unreasonable or otherwise unenforceable, it shall to that extent be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

17.4 If the Company fails or delays to exercise any right or remedy, it shall not operate as a waiver of it. If the Company partially exercises any right or remedy, it shall not be precluded from further exercising that right or remedy.

17.5 Any waiver of a breach of any provision of the Contract shall not be deemed to be a waiver of any subsequent breach or default and shall not affect the other terms of the Contract.

17.6 This Contract shall be governed by and construed in all respects in accordance with English law. In relation to any legal action or proceedings to enforce the Contract or arising out of or in connection with the contract, the Customer and the Company irrevocably submit to the exclusive jurisdiction of the English courts.

17.7 Except where expressly stated to the contrary, no provision of these Conditions is intended to or creates any right or benefit enforceable against the parties to this Agreement by any person who is not a party under the Contracts (Rights of Third Parties) Act 1999.

17.8 Nothing in these conditions shall affect the statutory rights of any consumer.