

## **BENJN. R. VICKERS & SONS LIMITED**

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

In these Conditions, the following definitions and rules of interpretation apply:

#### **DEFINITIONS**

"**Buyer**" means the person, firm or company ordering and purchasing the Products and/or Services;

"**Confidential Information**" means any information, which by its nature is confidential, concerning the business, affairs, customers, or suppliers of the other party;

"**Contract**" means the contract between Vickers and the Buyer for the supply of Products and/or Services in accordance with these Conditions;

"**Expert**" means an independent auditor appointed by the parties or, in the absence of agreement, an independent firm of accountants appointed by the President, for the time being, of the Institute of Chartered Accountants of England and Wales;

"**Products Specification**" means the specification for the Products prevailing at the date of the Order and available on request

"**Order**" means the purchase order containing details of the Products and (where relevant) Services;

"**Products**" means the products (which are the subject of the Order) to be supplied by Vickers to the Buyer;

"**Vickers**" means Benjn. R. Vickers & Sons Limited incorporated and registered in England and Wales with company number 00130013 whose registered office is at Airedale Mills, 6 Clarence Road, Leeds, West Yorkshire LS10 1ND;

"**Services**" means any services provided by Vickers to the Buyer including, but not limited to, advice or opinion given in any medium but including orally, email, letters and reports;

"**Services Specification**" means the Buyer's request for the Services as agreed by Vickers.

#### **INTERPRETATION**

- (a) Clause headings shall not affect the interpretation of these Conditions. References to clauses are to the clauses of these Conditions.
- (b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (d) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (e) A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- (f) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- (g) A reference to **writing** or **written** includes email.
- (h) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

#### **BACKGROUND**

- (A) Vickers carries on the business of manufacturing and selling the Products and supplying the Services.
- (B) The Buyer wishes to purchase, and Vickers wishes to supply the Products and/or Services on the terms and conditions set out in these Conditions.

#### **1. APPLICATION OF THESE CONDITIONS**

1.1 All quotations, offers and tenders are made and all orders for Products and/or Services are accepted subject to the following conditions ("**Conditions**"). These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

1.2 Except as otherwise provided in these Conditions, all other terms, conditions or warranties (express or implied) are excluded from any contract between Vickers and the Buyer unless expressly accepted in writing by Vickers.

1.3 Any samples, drawings, descriptive matter or advertising issued by Vickers and any descriptions of the Products or illustrations or descriptions of the Services contained in Vickers' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract nor have any contractual force.

1.4 If there is a conflict between the Conditions and any other alleged terms of Vickers' quotation, offer, tender or acknowledgement of Order, the Conditions shall prevail unless otherwise evidenced in writing and signed and dated by both parties.

1.5 Quotations given by Vickers shall not constitute an offer, shall be valid for a maximum period of 14 days from date of issue and may be withdrawn by Vickers by written or oral notice to the Buyer at any time prior to Vickers' acceptance. The Order constitutes an offer by the Buyer to purchase Products and/or Services in accordance with these Conditions. Each Order shall be deemed to be a separate offer by the Buyer to purchase Products and/or on the terms of these Conditions, which Vickers shall be free to accept or decline at its absolute discretion. Acceptance of an Order will only be effective where it is made by Vickers in writing by or at the direction of an authorised representative of Vickers and posted, emailed or delivered to the Buyer, at which point the Contract will be formed.

1.6 If any statement or representation has been made to the Buyer by Vickers or its officers, employees or agents in relation to any specification additional to Vickers' standard Products Specification, upon which the Buyer wishes to rely, it shall only be entitled to do so if the statement or representation is attached to or endorsed on the Order and then only if Vickers subsequently confirms in writing, by a document signed by a director of Vickers, that the Buyer is entitled to rely on the statement or representation or additional specification.

1.7 The giving by the Buyer of any instructions to deliver the Products, the placing of an Order by the Buyer or the acceptance by the Buyer of delivery of the Products and/or performance of the Services or any part thereof, or any conduct by the Buyer in performance of the transaction after receipt by the Buyer of this document shall constitute unqualified acceptance by the Buyer of the Conditions.

## **2. PRICES**

2.1 The Buyer shall pay Vickers for the Products and/or Services in accordance with this clause 2.

2.2 Unless otherwise agreed in writing:

2.2.1 all prices for Products will be as set out in Vickers' current price list or as communicated to the Buyer from time to time; and

2.2.2 all prices for Services will be agreed between the parties in writing on a case by case basis.

2.3 All amounts payable by the Buyer to Vickers under these Conditions shall be exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If the Buyer is required under any applicable law to withhold or deduct any amount from the payments due to Vickers, the Buyer shall increase the sum it pays to Vickers by the amount necessary to leave Vickers with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

2.4 Vickers reserves the right to increase the price of the Products and/or Services, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Products and/or Services that is due to:

2.4.1 any factor beyond the control of Vickers (including foreign exchange fluctuations, increases in taxes and duties and increases in labour, materials and other manufacturing costs or overheads);

2.4.2 any request by the Buyer to change the delivery date(s) or quantities or types of Products and/or Services ordered; or

2.4.3 any delay caused by any instructions of the Buyer in respect of the Products (or their delivery) or failure of the Buyer to give Vickers adequate or accurate information or instructions in respect of the Products and/or Services.

2.5 Where Vickers delivers or arranges delivery of the Products, the Buyer shall be liable to Vickers for further carriage costs and any demurrage costs incurred by Vickers if vehicles are unduly delayed at the place of delivery. Where delivery is not included in the price, the Buyer shall pay all transportation and insurance costs incurred by Vickers in making or arranging such delivery.

2.6 Vickers reserves the right to make an additional charge to cover any increase in transport costs occurring before the date of delivery.

2.7 The Buyer shall reimburse Vickers for all reasonable out-of-pocket expenses incurred by Vickers in relation to the supply of the Services.

## **3. PAYMENT**

3.1 Unless otherwise agreed by Vickers in writing, payment shall be due and payable on the last day of the month following the date of invoice and shall be made by bank transfer in full and in cleared funds to the bank account nominated in writing by Vickers. Time for payment shall be of the essence of the Contract.

3.2 Vickers shall be entitled to submit its invoice with its delivery advice note and/or on commencement of performance of the Services or at any time afterwards except that where delivery has been postponed at the request of, or by the default of, the Buyer, Vickers may submit its invoice at any time after the Products are ready for delivery or would have been ready in the ordinary course but for the Buyer's request or default.

3.3 Where Products are delivered by instalments Vickers may invoice each instalment separately and the Buyer shall pay such invoices in accordance with these Conditions.

3.4 All amounts due under the Contract from the Buyer to Vickers shall be paid in full without any set-off, counterclaim or deduction whatsoever. Where any dispute arises, the Buyer shall not oppose and shall consent to the immediate enforcement of any judgment entered

against it regardless of any cross-claim, set-off or counterclaim. No disputes arising under the Contract nor delays (other than delays acknowledged by Vickers in writing), shall interfere with prompt payment in full by the Buyer.

3.5 If the Buyer disputes any invoice or other statement of monies due, the Buyer shall immediately notify Vickers in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. Vickers shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Buyer giving notice to Vickers, the matters in dispute shall be referred to an Expert for determination. The Expert shall act as an expert and not as an arbitrator and the Expert's determination shall in the absence of fraud or manifest error, be final and binding on the parties. The Expert's fees and related costs shall be apportioned between the parties as the Expert may direct.

3.6 If the Buyer shall default in payment whether under the Contract or any other contract with Vickers, Vickers shall be entitled, without prejudice to any other right or remedy, to do all or any of the following:-

3.6.1 to suspend the supply of the Services and/or any or all further deliveries of Products under the Contract and under any other contract or contracts between Vickers and the Buyer, without notice;

3.6.2 to charge interest on any amount outstanding at the rate of 4% per annum above the base rate of the Bank of England. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount;

3.6.3 to serve notice on the Buyer requiring immediate payment for all Products and/or Services supplied or to be supplied by Vickers under the Contract and all other contracts with the Buyer whether or not payment is otherwise due;

3.6.4 by its servants or agents enter the Buyer's premises and recover and dispose of the Products, and the Buyer shall not be entitled to make any claim against Vickers in respect of such entry or disposal;

3.6.5 to sue for the price of the Products and/or Services and any other sums then due or rendered due under the terms of any contract, even though title may not have passed to the Buyer or the Products have been recovered, provided that Vickers shall give credit for the cost of any Products not supplied or recovered (in saleable condition) from the Buyer as certified by Vickers, such certificate to be conclusive proof of the cost of such Products.

3.7 Vickers may, at any time, set off any liability of the Buyer to Vickers against any liability of Vickers to the Buyer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

#### **4. PRODUCTS, DELIVERY AND RECALL**

4.1 Vickers warrants that on delivery the Products shall conform in all material respects with the Products Specification.

4.2 Unless, collection of the Products has been agreed between the parties in writing (in which case clause 4.3 shall apply), Vickers shall deliver (or procure the delivery of) the Products to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after Vickers notifies the Buyer that the Products are ready.

4.3 The Buyer may agree with Vickers to collect the Products from the Vickers' premises or such other location as may be agreed with the Buyer before delivery ("**Delivery Location**") within five days of Vickers notifying the Buyer that the Products are ready.

4.4 Delivery of the Products shall be deemed to be completed on receipt of a signed Products Received Note (GRN).

4.5 Time for delivery of Products and/or supply of the Services is given as accurately as possible but is not guaranteed. The Buyer shall have no right to damages or to cancel the contract for failure to meet any delivery time stated nor shall the Buyer be entitled to make, or to purport to make, time for delivery of the essence of the contract.

4.6 The date for delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Buyer in connection with any act required to enable Vickers to dispatch the Products and/or supply the Services.

4.7 Vickers may effect delivery in one or more instalments. If any Order is to be delivered by several instalments to the Buyer, each such instalment shall be treated as a separate and identifiable contract and the rights of either party thereunder shall be construed accordingly, save only that Vickers may suspend delivery thereof whilst payment is overdue in respect of any previous instalment. The Buyer may not cancel an instalment because of any delay in delivery or defect in another instalment.

4.8 If Vickers shall fail to make delivery or shall make defective delivery of any instalment, such failure shall not affect the obligations of the parties under the Contract and Vickers' liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. Vickers shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a force majeure event or the Buyer's failure to provide Vickers with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

4.9 Vickers will endeavour to comply with reasonable requests by the Buyer for postponement of delivery of the Products and/or supply of Services but shall be under no obligation to do so. Where delivery is postponed by the Buyer or the Buyer fails to take or accept delivery of the Products otherwise than due to default by Vickers then, without prejudice to all other rights and remedies available to Vickers,

delivery of the Products shall be deemed to have been completed at 9.00 am on the third day following the day on which Vickers notified the Buyer that the Products were ready; and the Vickers shall store the Products until delivery takes place and charge the Buyer for all costs and expenses, including a reasonable charge for storage and transportation so occasioned.

4.10 If 14 days after the day on which Vickers notified the Buyer that the Products were ready for delivery the Buyer has not taken or accepted actual delivery of them, Vickers may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, charge the Buyer for any shortfall below the price of the Products.

4.11 The Buyer shall be responsible for obtaining any import licences or permits necessary for the entry of the Products, or their delivery to the Buyer, and the Buyer shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the import and delivery of the Products.

4.12 If the Buyer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Products from the market ("**Recall Notice**") it shall immediately notify Vickers in writing enclosing a copy of the Recall Notice.

4.13 Unless required by law, the Buyer may not undertake any recall or withdrawal without the written permission of Vickers and only then in strict compliance with Vickers' instructions about the process of implementing the withdrawal.

4.14 Vickers may issue a notice to recall or withdraw the Products from the market ("**Voluntary Recall Notice**") if:

4.14.1 the supply or use of the Products infringes, or may infringe, a third party's intellectual property rights;

4.14.2 the Products are, or may be, unsafe;

4.14.3 the Products are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;

4.14.4 a defect in the Product may cause harm to Vickers' reputation or brand; or

4.14.5 any other reasonable ground.

4.15 The Buyer must comply with any Recall Notice or Voluntary Recall Notice and give such assistance as Vickers reasonably requires to recall or withdraw the Product from the market.

## 5. PACKAGING

5.1 Packaging supplied by Vickers, unless otherwise expressly agreed in writing, is intended to provide adequate protection in normal conditions of transit of expected duration.

5.2 The Buyer shall be responsible for ensuring the Products are kept in adequate storage conditions once delivered, including but not limited to protecting the Products against the effects of humidity and temperature.

5.3 Vickers shall be entitled to deliver the total weight, area or volume of any Products which are the subject of a Contract in containers of such varying weights and sizes as it may decide.

5.4 Where packages, pallets, drums, beams or other containers ("**Packaging**") are stated to be returnable, they shall be returned in good order and condition at the Buyer's expense to the destination named on Vickers' invoice and the Buyer shall notify Vickers of the date of dispatch thereof. If any such Packaging was charged for on delivery, credit will be given when it is received at the named destination in good order and condition. If the Buyer fails within a reasonable period to return any such Packaging in good order and condition, the Buyer shall, if not so charged on delivery, be charged at Vickers' standard rate.

## 6. SERVICES

6.1 Vickers will use reasonable endeavours to perform the Services in accordance in all material respects with the Services Specification. Vickers reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Vickers shall notify the Buyer in any such event.

6.2 Vickers will use reasonable endeavours to perform the Services with reasonable care and skill. Vickers shall use all reasonable endeavours to meet any performance dates for the Services agreed in writing with the Buyer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.3 Vickers may employ agents and sub-contractors to perform all or components of the Services.

6.4 The Buyer will make available to Vickers promptly and without charge any information and documentation necessary for Vickers to perform the Services and the Buyer recognises that Vickers are reliant on the Buyer for all information concerning the Buyer's operations (including technical, legal and regulatory issues) required for the performance of the Services. The Buyer warrants that all such information and documentation provided pursuant to Clause 6.4 will be accurate and fit for purpose.

6.5 If the Buyer fails to fulfil its obligations in Clause 6.4, Vickers may charge the Buyer for any additional costs incurred by Vickers on a time and materials basis and may require an extension of time for the performance of the Services.

6.6 Where the Services are based on the information provided by the Buyer to Vickers, Vickers makes no representations as to the effects which may follow implementation of the Services.

## **7. RISK AND TITLE**

7.1 Risk in the Products shall pass to the Buyer (so that the Buyer is then responsible for all loss or deterioration of the Products or for any damage occurring):-

7.1.1 if Vickers is responsible for delivering or arranging for delivery of the Products, at the time when the Products arrive at the place for delivery; or

7.1.2 in all other circumstances, at the time when the Products leave the premises of Vickers.

7.2 Title to the Products shall not pass to the Buyer until the earlier of:

7.2.1 Vickers receives payment in full (in cash or cleared funds) for the Products and any other goods that Vickers has supplied to the Buyer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums; or

7.2.2 the Buyer resells the Products (with consent of Vickers in accordance with clause 7.5), in which case title to the Products shall pass to the Buyer at the time specified in clause 7.6.

7.3 Until title to the Products has passed to the Buyer, the Buyer shall:

7.3.1 hold the Products on a fiduciary basis as Vickers's bailee;

7.3.2 store the Products separately from all other products held by the Buyer so that they remain readily identifiable as Vickers' property and shall not be mixed with other products or altered in any way;

7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

7.3.4 maintain the Products in satisfactory, saleable condition and keep them insured against all risks for at least their full price on Vickers' behalf from the date of delivery;

7.3.5 notify Vickers immediately if it becomes subject to any of the events listed in Clause 16.1; and

7.3.6 give Vickers such information relating to the Products as Vickers may require from time to time.

7.4 If before title to the Products passes to the Buyer the Buyer becomes subject to any of the events listed in Clauses 16.1.3 to 16.1.4, or Vickers reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Vickers may have, Vickers may at any time require the Buyer to deliver up the Products and, if the Buyer fails to do so promptly, may enter any premises of the Buyer or of any third party where the Products are stored in order to recover them.

7.5 The Buyer shall not re-sell the Products unless it has been given express consent to do so by Vickers (such consent to be subject to specified conditions) and in the event that the Buyer does re-sell the Products without consent and/or re-sells the Products and gives any advice or representation (whether written or oral) in respect of the Products which is not in accordance with the advice or representations given by Vickers in respect of the relevant Products then Vickers shall not be liable for any losses, claims or costs incurred by the Buyer in respect of such Products.

7.6 If, before Vickers receives payment for the Products, the Buyer resells the Products (with consent of Vickers in accordance with clause 7.5):

7.6.1 it does so as principal and not as Vickers' agent; and

7.6.2 title to the Products shall pass from Vickers to the Buyer immediately before the time at which resale by the Buyer occurs.

## **8. VARIATIONS**

8.1 No variations to the Products and/or Services required by the Buyer shall be binding on Vickers unless agreed by Vickers and the Buyer in writing, including, as part of such agreement, any change to the contract price arising in consequence of the variation to the Products and/or Services.

8.2 Following agreement of any such variation by the parties, any dates quoted for delivery shall be extended accordingly.

**9. SAMPLE AND TESTING**

9.1 Vickers reserves the right to alter the dimensions or composition of the Products supplied to conform to applicable standards or laws.

9.2 Vickers reserves the right to alter the specification of any Products from those of its current specification for such Products from time to time ordered by the Buyer, without prior agreement of the Buyer.

9.3 No advertising, sales and technical information or data issued by Vickers shall form part of the contract unless the Buyer shall have complied with Clause 1.4 relating to statements and representations and Vickers shall have given the confirmation referred to in that Clause.

**10. DEFECTS AND DELIVERY DISCREPANCIES**

10.1 Subject to clause 10.2, if:

10.1.1 the Buyer gives notice in writing within 3 working days of discovery that some or all of the Products do not comply with the warranty set out in Clause 4.1;

10.1.2 Vickers is given a reasonable opportunity of examining such Products; and

10.1.3 the Buyer (if asked to do so by Vickers) returns such Products to Vickers' place of business at Vickers' cost,

Vickers shall, at its option, replace the defective Products, or refund the price of the defective Products in full.

10.2 Vickers shall not be liable for the Products' failure to comply with the warranty in clause 4.1 if:

10.2.1 the Buyer makes any further use of such Products after giving a notice in accordance with clause 10.1;

10.2.2 the defect arises because the Buyer failed to follow Vickers's oral or written instructions as to the storage or use of the Products or (if there are none) good trade practice;

10.2.3 the defect arises as a result of Vickers following any Products specification supplied by the Buyer; or

10.2.4 the Buyer alters or repairs such Products the written consent of Vickers;

10.2.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

10.2.6 the Products differ from the Products Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

10.3 The Buyer shall notify Vickers in writing within 3 working days of discovery of:-

10.3.1 any discrepancy between the delivered quantity of Products and the stated quantity set out on the delivery documentation;

10.3.2 any damage to the Packaging, including, without limitation, the condition of the drums and seals.

10.4 If notification is not made to Vickers as provided in this Clause 10, the Products shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be bound to pay for the same accordingly.

**11. EXCLUSION OF LIABILITY FOR SALES OF PRODUCTS AND/OR SERVICES WITHIN THE UNITED KINGDOM**

11.1 The limitations of liability in Clause 11 apply to all sales and deliveries of Products and/or Services within the United Kingdom and apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.2 Nothing in these Conditions shall exclude or limit the liability of Vickers for death or personal injury caused by Vickers' negligence or for fraudulent misrepresentation or for any other liability or loss which cannot be excluded by English Law.

11.3 Except as set out in these Conditions, any and all other warranties (including without limitation, relating to fitness for a particular purpose, satisfactory quality, and description) whether oral or written, express or implied by statute, common law, trade custom and industry practice are excluded to the fullest extent possible by English law.

11.4 Under no circumstances whatever shall Vickers be liable for:-

11.4.1 losses special to the particular circumstances of the Buyer;

11.4.2 indirect, economic or consequential losses;

11.4.3 recall costs and business disruption or interruption costs;

11.4.4 costs incurred in connection with the removal, disposal or storage of defective Products;

11.4.5 loss of or damage to goodwill or reputation;

11.4.6 loss of actual or anticipated profits, interest, revenue, anticipated savings, agreements or contracts, sales or business or damage to goodwill, even if Vickers is advised in advance of the possibility of such losses or damages.

11.5 Each of the sub-clauses in Clause 11.4 are to be regarded as separate and severable Clauses. If any sub-clause shall be or become void or unenforceable in whole or in part, the other provisions shall remain valid and enforceable.

11.6 Without prejudice to the provisions of Clause 10 or this Clause 11, Vickers' aggregate liability to the Buyer in connection with or arising under any Contract for the delivery of Products and/or Services whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the lower of (i) the purchase price of the Products and/or Services which gave rise to the relevant claim or (ii) £25,000.

## **12. EXCLUSION OF LIABILITY FOR SALES OF PRODUCTS AND/OR SERVICES OUTSIDE OF THE UNITED KINGDOM**

12.1 The limitations of liability in Clause 12 apply to all sales and deliveries of Products and/or Services outside of the United Kingdom and apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Subject to Clause 12.1, Vickers shall be under no liability to the Buyer in relation to the supply of Products or Products and Services for any loss, damage or injury, direct or indirect, resulting from defects in design, materials or workmanship or otherwise (and whether or not caused by the negligence of Vickers its employees or agents).

12.3 Under no circumstances whatever shall Vickers be liable for:-

12.3.1 losses special to the particular circumstances of the Buyer;

12.3.2 indirect or consequential losses;

12.3.3 recall costs and business disruption or interruption costs;

12.3.4 costs incurred in connection with the removal, disposal or storage of defective Products;

12.3.5 damage to goodwill or reputation;

12.3.6 loss of actual or anticipated profits, interest, revenue, anticipated savings, agreements or contracts, sales or business or damage to goodwill, even if Vickers is advised in advance of the possibility of such losses or damages.

12.4 Each of the sub-clauses in Clause 12.3 are to be regarded as separate and severable Clauses. If any sub-clause shall be or become void or unenforceable in whole or in part, the other provisions shall remain valid and enforceable.

12.5 Vickers' aggregate liability to the Buyer in connection with or arising under any Contract for the delivery of Products or Products and Services, whether for negligence, breach of contract, misrepresentation or otherwise whatsoever shall in no circumstances exceed the lower of (i) the purchase price of the Products or Products and Services which gave rise to the relevant claim or (ii) £10,000.

## **13. INDEMNITY**

13.1 The Buyer will indemnify Vickers, on demand, for all liabilities, costs, expenses, charges, damages or losses sustained or incurred by Vickers (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and all interest, penalties and legal costs (calculated on a full indemnity basis, where applicable in the relevant jurisdiction) and all other reasonable professional costs and expenses) arising directly or indirectly from:

13.1.1 the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under these Conditions; and/or

13.1.2 any third party claim against Vickers relating to the Products in circumstances where the Buyer has re-sold the Products to such third party and the Buyer has given any advice or representation (whether written or oral) in respect of the Products which is not in accordance with the advice or representations given by Vickers in respect of the relevant Products.

## **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 The Buyer acknowledges and agrees that all patents, copyright, moral rights, business and trade names, trade marks (registered or unregistered), design rights (registered or unregistered), know-how and any and all other intellectual property rights in the Products and/or Services and any documentation relating to the Products and/or Services, together with any enhancements or improvements shall vest in Vickers and/or its licensors, free of charge. The Buyer shall have no rights in respect of any intellectual property rights belonging to Vickers nor any goodwill associated therein.

14.2 All claims for alleged infringement of patents, trade marks, registered designs, design right, copyright or any other intellectual property rights received by the Buyer relating to the Products and/or Services must be notified in writing immediately to Vickers. If requested by Vickers, Vickers shall be entitled to have conduct of any proceedings relating to any such claim in such manner as Vickers thinks fit and the Buyer will provide to Vickers such reasonable assistance as Vickers may request. In such circumstances, the cost of any proceedings will be borne by Vickers.

## **15. BUYER'S DESIGNS AND DRAWINGS**

15.1 The Buyer shall indemnify and keep indemnified Vickers from and against any and all actions, claims, costs, liabilities and proceedings which arise due to the manufacture of the Products and/or supply of the Services by Vickers being in accordance with drawings or specifications provided by the Buyer if such drawings or specifications are inaccurate or contain design defects or if they infringe or are alleged to infringe any patent, copyright, design right, registered design or any other third party intellectual property rights.

15.2 Vickers does not guarantee suitability of materials or design of Products made especially to the Buyer's requirements and differing from the Products Specification even if the purpose for which the Products are acquired is known to Vickers.

15.3 Vickers does not accept responsibility for the safekeeping and condition of the Buyer's drawings and any other documentation whilst they are in Vickers' possession.

15.4 Without prejudice to the generality of the foregoing, all recommendations and advice given by or on behalf of Vickers as to the methods of storage or use of the Products and the suitability of using such Products in manufacturing processes or in conjunction with any other materials are given without liability on the part of Vickers.

## **16. TERMINATION**

16.1 Without limiting its other rights or remedies, Vickers may terminate the Contract with immediate effect by giving written notice to the Buyer if:

16.1.1 the Buyer fails to pay any amount due under this Contract on the due date for payment;

16.1.2 the Buyer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;

16.1.3 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

16.1.4 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

16.1.5 Vickers reasonably believes that the financial position of the Buyer is such that its ability to adequately fulfil its obligations under the Contract are in jeopardy;

16.1.6 Vickers reasonably believes that an ongoing association with the Buyer would be harmful or potentially harmful to its goodwill or brand, or the wellbeing of its staff or customers.

## **17. CONFIDENTIALITY**

17.1 Each party undertakes that it shall not at any time during the Contract, and for a period of ten years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 17.2.

17.2 Each party may disclose the other party's Confidential information:

17.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 17;

17.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

17.4 If Vickers and the Buyer have entered into a separate Confidentiality Agreement, in the event of a conflict between the terms of such Confidentiality Agreement and the terms of this Clause 16, the terms of the Confidentiality Agreement shall prevail.



**18. FORCE MAJEURE**

18.1 Vickers shall be under no liability for any delay in performing or any failure to perform any of its obligations under the contract (including but not limited to delivering the Products) if and to the extent that the delay or failure is caused by act of God, war, riots, civil commotions, strikes, lock-outs, trade disputes, fires, breakdowns, interruptions of transport, governmental action or restriction, pandemic, shortages of labour or materials or breakdown of machinery, delay in delivery by Vickers' suppliers or any other cause whatsoever (whether or not similar to the foregoing) outside of the control of Vickers.

18.2 If a force majeure event (as set out in Clause 18.1) continues for a period of 30 days or more then Vickers shall have the option to immediately terminate the Contract with the Buyer by giving notice in writing.

**19. USE OF PRODUCTS IN COMPOSITE MATERIALS FOR RESALE**

19.1 In the circumstances in which Vickers supplies Products to the Buyer for incorporation with, or use ancillary to, any composite or other products to be produced, manufactured, processed or supplied by the Buyer or a third party then the Buyer shall indemnify and keep indemnified Vickers against any and all actions, claims, demands, liabilities, loss, damages, costs and expenses (including legal expenses and disbursements) which Vickers may incur if any claim(s) are made against Vickers relating to the composite or other products in circumstances in which the Products supplied by Vickers are either:

19.1.1 not the defective part of the composite or other product; or

19.1.2 are only rendered the defective part or became a defective product by reason of acts or omissions of the Buyer or a third party (including without limitation the supply of defective free issue materials); or

19.1.3 are only rendered the defective part or became a defective product by reason of instructions or warnings given by the Buyer or other supplier of the composite or other products; or

19.1.4 are supplied in accordance with a specification or drawings furnished by, or on behalf of, the Buyer.

**20. GENERAL**

20.1 **Compliance with laws:** In performing its obligations under the Contract, the Buyer shall comply with all applicable laws, statutes, regulations and codes from time to time in force and Vickers may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer commits a breach of this clause 20.1. Notwithstanding the generality of this clause 20.1, each party shall comply with all applicable data protection and privacy legislation in force from time to time.

20.2 **Assignment and other dealings:** The Buyer shall not be entitled to assign, transfer, mortgage, charge, subcontract, delegate, declare trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Vickers. Vickers may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

20.3 **No partnership or agency:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**20.4 Entire agreement:**

20.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

20.5 **Severance:** If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions.

**20.6 Notices:**

20.6.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or e-mail.

20.6.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 20.4.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the third working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one working day after transmission.

20.6.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

20.7 **Variation:** No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20.8 **Waiver:** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20.9 **Third Party Rights:** A person who is not a party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any of the terms of the Contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

20.10 **Governing law and jurisdiction:** The parties agree that any disputes arising or in any way connected with the subject matter or formation of the Contract (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.